



*Republic of South Africa*

**IN THE HIGH COURT OF SOUTH AFRICA  
(Cape of Good Hope Provincial Division)**

**Criminal Case No: 02/08**

In the matter between

**NAJWA PETERSEN**

Accused 1

**ABDOER RAASIET EMJEDI**

Accused 2

**WALLEED HASSEN**

Accused 3

**JEFFERSON TION SNYDERS**

Accused 4

and

**THE STATE**

Respondent

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***JUDGMENT DELIVERED on 1 December 2008***

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**DESAI J:**

1. This case relates to the untimely and brutal death of music icon Abdul Mutaliep Petersen, better known as Taliep Petersen. The first accused was

his wife. The other three accused are men she allegedly solicited to assist in causing her husband's death.

2. The court's assessors are Mr D Du T Marais, a retired magistrate, and Ms J J Thaysen, a practising advocate at the local bar.

3. The accused appeared before us on five different charges. The first charge is one of murder, it being alleged that on 16 December 2006 and at Athlone here in the Cape the accused unlawfully and intentionally either killed the deceased by shooting him with a firearm or facilitated the plan to do so. There is an alternative to this charge, namely a conspiracy to commit the aforementioned offence. The second and third charges arise from the firearm used in the incident. The accused are charged with being in unlawful possession of the firearm and ammunition. Counts four and five are charges of robbery with aggravating circumstances. It is alleged that threats of violence, and the firearm, were used to rob Achmat Gamieldien and his wife Insaaf. The various items stolen are specified in the indictment. I may mention at this stage that Achmat Gamieldien is Accused No. 1's son from an earlier marriage.

4. Accused No. 1, the 46 year old Ms Najwa Petersen, or Ms Najwa Dirk as she elects to be called, was represented by different counsel at various stages of the trial. She was initially represented by Mr C Webster SC in the Magistrate's Court and then by Mr H Raubenheimer SC. When the trial commenced before us, Mr Raubenheimer withdrew as her counsel. He was succeeded by Mr K P C O von Lieres und Wilkau SC who in turn was replaced by Mr J Engelbrecht SC. On at least two occasions these changes of counsel resulted in the matter being delayed for several weeks.

5. Accused No. 2, the 42 year old Abdoer Raasiet Emjedi, Accused No. 3, the 35 year old Walleed Hassen and Accused No. 4, the 31 year old Jefferson Tion Snyders were represented throughout the trial by advocates L Abrahams, P Scott and R Konstabel respectively.

6. The accused pleaded not guilty to all the charges. They elected to exercise their right to silence and accordingly did not furnish any plea explanation. Certain formal admissions were, however, made shortly thereafter. For instance, Dr S Potelwa's *post-mortem* report was handed up in evidence and the parties were in agreement that the cause of death as

determined during the *post-mortem* examination and recorded in the report is correct. Photographs of the deceased's body, photographs and a plan of the place where the crime was committed, the record of a bail application by Accused No. 1 before Mr Robert Henney in the Wynberg Regional Court and certain cell phone records were also made available to the Court with the consent of the accused.

7. It was not really in dispute that the deceased was murdered during the night of 16 December 2006 by a person or persons who shot him in the neck with an unidentified firearm and that the incident took place in the house where the deceased resided, that is 101 Grasmere Street, Athlone. Nor is it in dispute that the deceased and Accused No. 1 were married according to both Muslim rites and the civil law since 1997. The marriage to Accused No. 1 was the deceased's second. He was previously married to Madeegha Anders with whom he had 4 children. Their eldest daughter, Jawaahier Petersen, was a witness for the State in this trial. Accused No. 1 has two children from two previous marriages, the one being Achmat Gamieldien, the alleged victim of the robbery. The items stolen from him and his wife that night are not in issue. The deceased and Accused No. 1

have a daughter, the nine year old Zaynab, who was the beneficiary of an insurance policy on the life of the deceased, valued at R5,3 million. Accused No. 1 suffers from a bipolar mood disorder or some such illness for which she is on prescribed medication. During the month of December 2006 there was telephonic contact on numerous occasions between Accused No. 1 and the witness Fahiem Hendricks. Accused No. 1 and Hendricks give different explanations for the calls between them. The resolution of this factual dispute is of some importance in the ultimate outcome of this matter.

8. Before dealing with the State's case against the accused, two other aspects warrant noting. While Ms S Riley, who appeared with Ms S Galloway on behalf of the State, was leading evidence against the accused, Accused No. 3 consented to the admission in evidence of an inculpatory statement made by him to the police. Moreover, certain admissions were made by him in terms of section 220 of Act 51 of 1977 ("the Act"), placing him on the scene and implicating him in the commission of the offences. Similarly, Accused No. 4's statement, made to a Superintendent M A Barkhuizen, was also admitted in evidence against him with his permission.

In the said statement he placed himself on the scene for the purposes of a robbery but alleges that he left the house immediately prior to the deceased being shot. I shall revert to these statements at the appropriate stage in this judgment.

9. The evidence of the State's first witness, Mr Mogamat Riefaat Soeker ("Soeker") is probably of some significance, more especially in that he was the last person to speak to the deceased before his death. Soeker is Accused No. 1's cousin and resided for a number of years in a flatlet on their property. Soeker described the layout of the house as reflected in exhibit "A" and the extensive security system employed by the Petersens. His evidence in this regard was confirmed at the *inspection in loco*. It is apparent from his evidence that from the time of the so-called stabbing incident – I shall deal with this incident in detail later – in April 2006 until his death 9 months' later the deceased and Accused No. 1 had not shared a common bedroom. Soeker's attempt to describe their relationship as a loving one was not entirely satisfactory. In any event on the night the offences were allegedly committed, Soeker was with the deceased in his kitchen conversing from about 21h00 until shortly after 23h00. During the

course of their conversation the deceased mentioned that he wanted to get another house as the children of his previous marriage no longer wanted to come to 101 Grasmere Street. Shortly after returning to his flatlet Soeker heard a noise. It sounded like a firecracker or a firearm going off. While he was in the shower, about 10 or 15 minutes later, his cell and landline phones rang. He then heard a commotion and saw Accused No. 1's family and the police outside. He checked his cell phone and saw that Accused No. 1 had called him at 23h54.

10. During his cross-examination of this witness, Mr von Lieres pointed out discrepancies with regard to the time of this call. It was pointed out, and Soeker agreed, that various people had remote controls giving access to the house. It also emerged from the cross-examination of this witness that from the upstairs area where the deceased was shot the front door to the house is visible.

11. I note one other aspect of Soeker's evidence. The witness Fahiem Hendricks ("Hendricks") was not seen visiting Accused No. 1 before 16 December 2006. Soeker saw him twice thereafter: Once at 101 Grasmere

Street and then at a house in Gordon's Bay belonging to Accused No. 1's family. It was suggested that he was in the company of Accused No. 1 during the period of *iddah*, the period of "waiting" or "mourning" in which Muslim widows are expected not to be in the company of strange men.

12. The evidence of Inspector Brian Trevor Hermanus ("Hermanus") does not take the matter much further. He was the investigating officer for a very short time. He arrived on the scene after other police officers were already there. The deceased had already been certified as dead by Metro personnel but the body was still lying on the front floor about two meters away from the stairs. The deceased's head was covered with a towel which Hermanus lifted and saw the deceased's bloodied head. He found Accused No. 1 in an upstairs bedroom. Her daughter, Zaynab, was with her. Hermanus endeavoured to obtain from her information with regard to what had happened that night in the house. Accused No. 1 was quite clearly distraught. She was crying. More significantly, she was confused. It emerged later that she had already been seen by a doctor who had given her an injection. In the circumstances, not much weight, if any, can be placed upon what she told Hermanus at that stage. There are also the



unsatisfactory features of the statement made by Hermanus which Mr von Lieres highlighted. Hermanus also interviewed Achmat Gamieldien with regard to the robbery and noted the broken door frames of two bedrooms.

13. The door frames, on both the doors, were kicked in by Mr Igshaan Petersen ("Igshaan") the next State witness, and his son Zahir. At about 11h56 on 16 December 2006 Igshaan received a call from his sister Ma'atoema to the effect that there had been a robbery at his brother's house and that his brother had been shot. Ma'atoema confirmed this aspect when she testified. It appears from the evidence that Igshaan resided in Glenhaven and Ma'atoema in Surrey Estate. Igshaan was thus much nearer to 101 Grasmere Street. When Igshaan and his son approached the deceased's house they saw another car already there. This car spun around and went to another entrance to the house. Koekie – one of the Petersen's domestic assistants – let Igshaan into the house. He went upstairs and found his brother lying in a pool of blood. A piece of cloth was stuffed in his mouth, his hands were tied behind his back with cable ties and his feet were bound with some sort of electric cable. Accused No. 1 and Achmat Gamieldien's family were locked in separate bedrooms. The

doors of these rooms were kicked open by Igshaan and his son. Accused No. 1 and her daughter were on the bed crying. Accused No 1's father and brother also appeared on the scene and the father shouted "*Taliep, skrik wakker*" and then asked Accused No. 1 "*How much money did they take, what happened, how much money did they take?*" Accused No. 1 apparently answered but Igshaan did not hear what was said. Igshaan found the circumstances suspicious and told his son that they, the Dirks, had killed his brother.

14. It is apparent from Igshaan's evidence, as well as that of other witnesses, that the deceased's children from his earlier marriage spent alternate weeks with their mother and the deceased. However, after the stabbing incident in April 2006, they continued to visit their father but no longer slept at 101 Grasmere Street. Igshaan expressed views on the deterioration of his brother's relationship with Accused No. 1. These are highly subjective views and I am reluctant to place any weight upon them because of his intense hostility towards Accused No. 1.

15. Igshaan also testified with regard to his brother's financial affairs.

Although he was the executor of his brother's estate, his evidence in this regard is somewhat garbled. The deceased apparently had about R18 000 in an account also operated by his wife. Save for that, there was little else. No immovable property was registered in his name and 101 Grasmere Street was in the name of Accused No. 1's family. It seems that they lived from the money they got from Dirk Fruit, a Namibian company or business which belonged to Accused No. 1's family. Money earned by the deceased from his musical endeavours was, it appears, invested with Dirk Fruit.

16. I shall not place any reliance upon hearsay testimony by this witness unless it is corroborated by other admissible evidence.

17. Some details of what happened that night at 101 Grasmere Street emerge from the testimony of Insaaf Gamieldien, Accused No. 1's daughter-in-law. She also testified about the activities of the occupants of the house on the preceding days.

18. Insaaf was temporarily resident at 101 Grasmere Street as she had just given birth to her first child and needed help with the baby. She

confirms that Accused No. 1 and the deceased were sleeping in separate bedrooms at the time. The deceased left for London on 2 December 2006 and returned on 14 December 2006. He was fetched at the airport by Accused No. 1. The next day, that is the 15<sup>th</sup>, he and his son Azhar took part in a concert at the Luxurama Theatre. Accused No. 1 only attended the second half of the show as she had been ill that day and only wanted to see the deceased and his son sing.

19. On 16 December 2006 the deceased went to the 21<sup>st</sup> birthday party of Accused No. 1's sister's twins. Accused No. 1 herself did not attend the party. When Insaaf got back from the party, the deceased was already home. He was in one of the children's bedrooms with Accused No. 1. As she was not well he was with her praying in a rhythmic chant known as a "*thikr*". Insaaf retired to her room and, with her husband, watched a movie and fell asleep.

20. Later that night they were woken up by Accused No. 1 and an unknown man whose face was covered with a woollen balaclava and he had on white woollen gloves. Accused No. 1 switched on the bedroom light and

shouted to Achmat that the man was there to rob them and wanted money and jewellery. The unknown man had a firearm in his left hand. He held it casually and it was not pointed at anybody. At one stage he told Insaaf and her husband that they must not try anything or get out of the bed. He took their cell phones, wristwatches, cameras and the other items listed in the indictment. He did not take her credit cards and, surprisingly, he did not go through her jewellery box. Accused No. 1 merely stood at the side of the bed crying. The robber wanted them to leave the bedroom but when the baby started moaning he left them behind and locked the door from the outside. Accused No. 1 was, however, taken out. He held her by her arm and she walked out. About 2 or 3 minutes later she heard a gunshot and then footsteps running down the stairs. She also heard the front gate banging and a car pulling away.

21. Accused No. 1 then shouted asking whether they were locked in and where the deceased was. Achmat told her to call Soeker and also gave her Walleed Dirk's number. They also shouted for Koekie. When Koekie came up the stairs she said there was something wrong with the deceased. Shortly thereafter Igshaan and the others were on the scene.

22. Insaaf was not subjected to lengthy cross-examination. While Mr von Lieres was examining this witness it emerged that Walleed Dirk's car was the first to pull up at the house. This is not particularly significant as the events occurred at a rapid pace at that stage. In any event we know from Igshaan's evidence that he was the first to enter the house. What is surprising is that Mr Konstabel, who appeared on behalf of Accused No. 4, asked this witness no questions. Of cardinal importance to his client's case is the suggestion that he left the house before the shooting. The evidence of this witness is that she heard more than one person leaving after the shooting. This aspect of her evidence was not challenged or clarified by cross-examination.

23. No one was arrested for these offences until 6 months later when Hendricks eventually confessed to the police of his involvement therein and agreed to testify on behalf of the State. That decision resulted in the present accused being arrested and charged. Hendricks was in protective custody and before testifying in this matter he was warned in terms of section 204 of the Act. Bluntly stated he gave evidence to obtain immunity

for himself and quite clearly has a possible motive to tell lies. In the circumstances this court is acutely aware of the need to approach his evidence with caution and to look for corroborative evidence implicating the accused and other safeguards which reduce the risk of a wrong conviction.

24. Hendricks is not an impressive individual. He appeared dishevelled in court and sat in an awkward position, largely because of the bullet-proof vest he was wearing, consistently looking ahead of him and away from counsel, the accused and the public gallery. His evidence, however, was fairly coherent and logical and he did not convey the impression that he was being less than frank.

25. Because of the importance of his evidence to the outcome of this case, I shall deal with it in some detail.

26. Hendricks was 42 years old and ran a small business selling take away food. He was known by the rather crude but not uncommon nickname "Piele". His school-going child attended the Sunnyside Primary School. Accused No. 1's young daughter was also at the same school. He knew

Accused No. 1 as a friend. His brother had worked for Dirk Fruit as a driver when he was involved in an accident which rendered him a paraplegic. This was about 24 years ago. He knew Accused No. 1 since about that time. Hendricks was friends with Accused No. 1's former husband, Mazaffar Effendi and they used to visit each other in their homes. Although they continued to make small talk whenever they met, he did not visit her at 101 Grasmere Street and did not know the deceased.

27. Accused No. 2 was a good friend of Hendricks for a number of years. Towards the end of 2006 Accused No. 2 came to stay at their house as he had no other place to stay. He met Accused No. 3 on one occasion when he came to their home to fetch spares for a car. He also occasionally saw Accused No. 3 at the mosque in Mandalay. He did not know Accused No. 4 at all.

28. Before the end of the last school term in 2006 Hendricks met Accused No. 1 at their children's school and asked for a loan of R10 000. He needed the money for his business. The money was given to him by Accused No. 1 at her home prior to the events giving rise to this trial occurring. The loan



was given without any security and he was to pay it back in amounts which his business could afford. He repaid the whole amount after the incident which led up to this trial. He says there were other people present when he went to her home to repay his debt but is unable to say whether they saw him paying the money.

29. In any event, shortly after schools closed on 1 December 2006 Accused No. 1 sent her best friend Mymoena Bedford ("Bedford") to his house to obtain his cell phone number. He was not home but his brother gave Bedford the number. Accused No. 1 then phoned him and asked that he come and see her. He called at her home a few days later. She inquired from him whether he knew someone who could "do a hit" for her. He understood this to mean killing someone on her behalf. Although he dismissed her request at first, Hendricks relented when she pestered him with phone calls.

30. He approached Accused No. 2, who had recently been released from jail and was then staying at his house, for help in this regard. Accused No. 1 kept on phoning him to enquire if someone had been found to do the

“job”. Hendricks was unable to report any progress until Accused No. 2 told him that he had found someone. He did not ask who it was but told Accused No. 1 that a friend had found someone to implement her plan. She then asked him to come to her house.

31. At her home Accused No. 1 informed Hendricks that it was her husband who had to be killed. She asked that the deceased be shot and mentioned that she would open the gate for whoever was doing the job. Accused No. 1 complained to Hendricks that the deceased had done a deal in which he had lost a lot of money. She also indicated that they were going to get divorced and that the deceased would get half of all their money. She asked that the job be done after the deceased returned from London and told Hendricks that she would telephonically advise him precisely when it could be done. The payment to be made to the assassins was also discussed. She suggested that they be paid R100 000, of which R30 000 was to be available in the safe in the house and the balance was to be paid later. She promised to compensate Hendricks after everything was done and the insurance policies had been paid out.

32. The first lot of people selected by Accused No. 2 for this job were three young men residing in Hanover Park. A few days prior to 14 December 2006 Hendricks took Accused No. 2 to Hanover Park to see these men. They then took the men to Athlone and showed them where the deceased resided. Their role as potential assassins was, however, handicapped by the fact that they lacked transport.

33. On 14 December 2006 Accused No. 1 phoned Hendricks from the airport and informed him that the deceased was about to return from London and that she was there to fetch him. Furthermore, she wanted the deceased killed on their way home and it had to look like a hi-jacking. Hendricks phoned Accused No. 2 who told him that he was unable to get hold of the men who were to do the job. Accused No. 1 again phoned Hendricks when the deceased's plane was delayed but, it appears, Accused No. 2 still could not get the Hanover Park people together as they did not have any transport.

34. There was a similar problem the next night. On 15 December 2006 Accused No. 1 again called Hendricks. She told him that the deceased

would be at the Luxurama Theatre that night and wanted him killed when he left the theatre. Hendricks called Accused No. 2 and once again he could not get hold of the men.

35. Later the same night Accused No. 2 arrived with Accused No. 3 at Hendricks' home and told him that he had now made arrangements with different people to do the job. Accused No. 2 was in his sister's car and Accused No. 3 in a bakkie. Besides greeting Accused No. 3, he did not speak to him. He left it to Accused No. 2 to show them where the deceased lived.

36. Earlier the same night, that is after the Luxurama concert, Accused No. 1 telephonically informed him that the deceased would be going to a 21<sup>st</sup> birthday party on 16 December 2006 and would be home early. Thereafter he would either be in his studio or watching television. She wanted the job done then and told him that everybody would be home by ten that evening. Hendricks gave this information to Accused No. 2.

37. During this time Accused No. 1 phoned him continuously. He was

unable to say how many calls were made between them but there were many.

38. During the course of the evening on 16 December 2006 Accused No. 1 called Hendricks on several occasions. He tried to call Accused No. 2 but could not get hold of him. He eventually called "redial" on his second phone. This phone was sometimes used by Accused No. 2 when he did not have airtime and the last number dialled was that of one of the other persons involved in the hit. Hendricks spoke to him and found out that they were on their way to 101 Grasmere Street.

39. When Hendricks told Accused No. 1 that the people who would carry out the hit were on the way, she told him that it is only the deceased who must be shot and no-one else must be injured. He was also told that the deceased would be either in his studio on the ground floor or watching television on the upper floor. Hendricks gave this information to Accused No. 2.

40. The deceased's *janazah*, that is Muslim burial, took place on 17

December 2006. Hendricks heard from Accused No. 1 later that night. She indicated to him that she needed a chance to get the money. Two days later he was telephonically advised that he could get the money. This he did on 19 December 2006. When he got to 101 Grasmere Street, Bedford was there. She asked why he was visiting during Accused No. 1's period of *iddah*. Accused No. 1 then came down the stairs and told her it was okay and that she wanted to chat with him. Accused No. 1 then took Hendricks into the dining room where she gave him R70 000,00 in cash.

41. Hendricks took the money and during the evening he handed the full amount over to Accused No. 2 who took some of the money and gave the rest back to him. Accused No. 2 was to come back for more money whenever he needed it. With the money he took, Accused No. 2 bought himself a motor car and he bought Hendricks a light delivery van for which he paid R15 000,00.

42. He had more contact with Accused No. 1 in the subsequent weeks. This was when the police were questioning the suspects. Accused No. 1 would call him after one of them had been questioned by the police and

they would discuss what to tell the police. When he was first questioned about the telephonic contact between them, he and Accused No. 1 decided to tell the police that they had a relationship. As a result, when they were questioned at the same time by the police, they gave this explanation. He later told the police that he was trying to sell a diamond ring for her. He testified that on an earlier occasion she had asked him to sell a diamond ring. Accused No. 1 wanted R80 000 for the ring and he could pocket whatever amount he got in excess of that. He could not sell the ring and it was returned to her.

43. Hendricks testified further that his first statement to the police was made when he was arrested for the unlawful possession of a firearm which he inherited from his father but failed to register in his name. He obtained the services of an attorney, a Mr Arnold, and was released on bail. Attorney Arnold also went to see Superintendent Wagter ("Wagter") about this case. He then advised Hendricks that the police had enough evidence against him and that he should either come clean or raise about R20 000 to R30 000 in case he was locked up. He went to see Accused No. 1 about this and she agreed to arrange the money. The next day he was contacted by

Accused No. 1's father and told to collect R20 000 from the father's house. After he was placed in the witness protection programme, attorney Arnold deposited the money in his son's account. Hendricks then gave a full statement to Wagter and from that date he was kept in protective custody.

44. After this he co-operated fully with the police. At one stage he attempted to lead Accused No. 2, who was then staying somewhere in Strandfontein, into a trap at the shopping centre in Mitchells Plain. He arranged to meet him at Cash Crusaders in the centre while he waited in the shop with a number of police.

45. Accused No. 1's telephone number was saved on his cell phone under her nickname, Nade, and that of Accused No. 2 under his nickname, Rah.

46. Hendricks also says that he met Accused No. 1 on one occasion at her brother's home in Gordon's Bay. This was after the incident and while the police were investigating this case. He was told to go to her brother's home to tell her what the police had asked him and to decide upon a response. This was the stage when they decided to advance the story of a diamond



deal.

47. The R20 000 was given to him to pay as bail if he should be arrested on this case. When he was arrested on the firearm case, Accused No. 1 urged him to go with her family members to see an attorney, Mr Norman Snitcher. Attorney Snitcher, however, told him to remain outside and he did not take part in their discussions.

48. Ms Riley also led this witness on certain cell phone calls received by him. These are the calls reflected on exhibit "F". Hendricks confirms that this exhibit correctly records the calls made between Accused No. 1's cell phone and his. On 13 December 2006 nine calls were made. On 14 December 2006 a further 26 calls were made of which 4 were from the Cape Town International Airport. 14 December was the day the deceased returned from London and these calls were made when Accused No. 1 wanted to know whether he had found people to do the "job". On 15 December 2006 four calls were made and then on 16 December 2006, the day the deceased was killed, 10 calls were made of which nine were in the evening. The first call to him thereafter was made at 26 minutes to

midnight on 17 December 2006, that is, on the day of the *janazah*.

49. The witness also confirmed the correctness of exhibits "M" and "N". These are his cell phone records for the numbers 0729229617 and 0743402038. It appears that Accused No. 2's cell number was 0720109819.

On 13 December 2006 Hendricks received a call from Accused No. 1 and after this he made two calls to Accused No. 2's number. The next day, 14 December 2006, he again phoned Accused No. 2's number after communicating with Accused No. 1. On the same day, Hendricks phoned Accused No. 1 on three occasions and then Accused No. 2's number. At 31 minutes past seven in the evening, he again phoned Accused No. 2.

50. On the day of the murder, that is 16 December 2006, Hendricks received a call from Accused No. 1 at 10h16. He phoned Accused No. 2's number at 16h58. After this he communicated with Accused No. 1 at 20h11 and then phoned Accused No. 2's number at 20h15 and again at 20h20. Hendricks again phoned Accused No. 1 at 21h20, 21h25 and 21h29. After this Accused No. 1 and he communicated at 22h23. Hendricks then phoned Accused No. 2's number at 22h26 and then again he phoned Accused No. 1

at 22h30 and 23h03 and Accused No. 1 phoned him at 23h26. Just after midnight, at 21 minutes after midnight, a call between him and Accused No. 2 followed.

51. Hendricks was subjected to a long and gruelling cross-examination by Mr von Lieres. Although apparent discrepancies emerged, as inevitably happens in such cases, the essential features of his version of events remained intact and plausible.

52. He conceded under cross-examination that he had also borrowed money from Accused No. 1 on a previous occasion a long time ago. On that occasion he had borrowed R20 000 and she had kept his bakkie as security. When he repaid the debt he got his vehicle back. He was allowed to repay the R20 000 as he could and she did not call to hear about the payments. Similarly, with regard to the recent loan of R10 000 there were no specific arrangements with regard to repayment. Though he had no knowledge about Accused No. 1 being serious about money, he concedes telling the police this when he was trying to give an innocent explanation for the calls she made to him.

53. Mr von Lieres spent some time on Hendricks' inability to explain why Accused No. 1 had to phone him to come and discuss the hit when she could just have waited for him to come when he made a payment. We know from later evidence that Bedford in fact went to Hendricks' house to get his cell phone number. Furthermore, Hendricks did not repay his debt over fixed periods. On the other hand it is apparent from all the evidence, that is if Accused No. 1's version is to be rejected, that she was in a hurry to have the "job" done.

54. Hendricks has more problems with exhibit "O", the statement he made to the police on 21 December 2006 when he knew that they were investigating the death of the deceased. It consists almost entirely of lies. He explains that he did it to protect himself and Accused No. 1. That may be an acceptable explanation but it certainly impacts upon his credibility. Another aspect of this statement which causes some concern is the averment that he borrowed R20 000 on two previous occasions and on a third occasion he borrowed R10 000. He then comments that she phoned him on one occasion when he fell behind with his payments.

55. Exhibit "P" is a further statement made by him to the police in which he told lies also to cover up for himself and Accused No. 1. This statement deals with the diamond story. Hendricks denied that there was any deal where Accused No. 1 had given him four diamonds to sell with the understanding that if he sold the diamonds at R250 000 he could get R10 000. This was the story that was discussed with attorney Norman Snitcher. He was sent out of the office when the attorney enquired who everyone was. He did not contradict Accused No. 1 when she mentioned the diamond deal because this was one of the stories they had made up to tell the police.

56. Hendricks seemed to suggest at one stage that he only contacted Accused No. 2 after he saw Accused No. 1 a second time about the hit. When Mr von Lieres put to him his earlier evidence in this regard, he conceded asking Accused No. 2 about finding someone to do the job as a result of Accused No. 1's persistent calls, that is, after the first visit in this regard.

57. Mr von Lieres then took this witness through everything that was said at the second meeting. Namely that she wanted the hit done on her husband and that she would pay R100 000, that the cameras on the perimeter of the house were not working, that she would see to it that the gate would be open, that no-one else must be injured and that she would look after him when everything was done. Mr von Lieres then pointed out to him certain differences between what he was saying in court and what was said in the statement, exhibit "Q", that is the statement made by him when he decided to speak the truth. Hendricks explained that he did not differentiate between the first and second occasion when he made the statement. It appears from the statement itself that he did differentiate between the two occasions. There seems to be some confusion in this regard.

58. Hendricks did not ask what he would get out of the job that Accused No. 1 wanted him to do. This is not as improbable as Mr von Lieres suggested it was, if one takes into account that he had on previous occasions borrowed R20 000 and R10 000 from her and, of course, she could land in trouble if she failed to pay him.

59. Mr von Lieres also put to this witness that as Accused No. 1 and the deceased were married in community of property, whether the deceased and Accused No. 1 divorced or if the deceased died, the accused would not be better off. I do not think the witness was in a position to answer these questions. I also do not agree with Mr von Lieres' allegations in this regard for reasons which are not pertinent at this stage.

60. Hendricks admitted knowing that he was busy with dangerous matters, that is, getting people to commit a murder, yet he persisted in what he was doing because Accused No. 1 had done him favours in the past such as lending him fairly large sums of money. He was also of the opinion that he would not really be involved in the murder because he would only be getting the people to do the act.

61. Mr von Lieres also put to this witness that there would have been insufficient time to set up the hi-jacking if the witness, i.e. Hendricks, was phoned at 09h31 and the deceased's plane was supposed to land at 10h30. There is no evidence which supports this proposition and, if the court is at

liberty to take judicial notice in this regard, Hanover Park is an area not far from the airport or, I assume, the deceased could have been intercepted anywhere along the road to Athlone. Hendricks could not say what would happen to the advance payment of R30 000 if there was to be a hi-jacking.

Perhaps this is an improbability, but is it significant? I suppose other means could have been employed to get the payment after the commission of the act.

62. A similar proposition with regard to the timing was put to Hendricks in respect of the proposed hit at the Luxurama. He was phoned at 20h30. The fact is we do not know when the show was to end. In any event, the hit could not be timeously arranged and furthermore Hendricks cannot be criticised if Accused No. 1 made unreasonable demands.

63. Hendricks admitted knowing Accused No. 1 for about 30 years. He denied borrowing R20 000 on two occasions and denied that Accused No. 1 was serious about her money and phoned people to pay. He denied he was given diamonds by her to sell or that she asked him to sell American dollars on her behalf. He also rejected Accused No. 1's version that she had given



him diamonds to sell or that she phoned him with increasing frequency because she was worried about the diamonds. He reiterated his evidence that the two of them had made up stories to tell the police.

64. Hendricks admitted that he was at no stage arrested in this case and that he only made his statement, exhibit "Q" after about 6 months. Mr von Lieres also put to him that he knew of the American dollars in the house, that it was his idea to rob the place and that something went wrong during the robbery and the deceased was killed.

65. I have highlighted some of the more important issues which arose during the cross-examination of Hendricks by Mr von Lieres. Not all the issues, or possible discrepancies raised by Mr von Lieres have been referred to herein, simply because it would not be practical to do so.

66. In her cross-examination of this witness, Ms Abrahams pointed out to Hendricks that in exhibit "Q" he had not mentioned the first group of people obtained by Accused No. 2 to commit the murder. His explanation was fairly simple. He had not mentioned them in his earlier statement because

they were not involved in the actual deed. A great deal of cross-examination on this aspect followed. It did not take the matter any further.

67. Hendricks conceded that he may have made a mistake by mentioning only one occasion on which he pressed "redial" to contact Accused No. 2 on 16 December 2006. He also confirmed phoning Accused No. 2 to meet him at the shopping centre in Mitchells Plain. This incident was set up so that he could point out Accused No. 2 to the police. Accused No. 2 arrived late and they collided when he was leaving the shop. Hendricks could not recall phoning Accused No. 2 and telling him that he was taking a long time to appear.

68. It appears that a number of calls were made from his Cell C phone, that is, with the number 0781698347, during the period 17 to 20 December 2006. Hendricks concedes this but says that it does not mean that he made all the calls.

69. With regard to the R70 000, it was apparent that Ms Abrahams misunderstood the evidence of Hendricks who did his best to explain that he

kept the rest of the money in safe custody for Accused No. 2. Ms Abrahams, if I understood her correctly, suggested that this arrangement did not make much sense. On the contrary, it seemed quite plausible.

70. It was finally put to Hendricks that he was falsely implicating Accused No. 2 for two reasons, namely the belief that Accused No. 2 was having an affair with his wife and the fact that Accused No. 2 cheated him in connection with money Accused No. 3 had brought for certain motor car spares. Hendricks denied these allegations.

71. At this stage, Mr von Lieres sought the permission of the court to put certain further questions to the witness. This was allowed. In response to the additional allegations put to him, Hendricks denied that he had told Nanny – the Petersen's other domestic assistant – to tell Accused No. 1 that he had returned the diamonds to her if the police enquired about them. He added that Accused No. 1 had told Nanny to say that.

72. Cross-examination of this witness by Mr Scott and Mr Konstabel did not take this matter any further.

73. Tagmeeda Johnson, the deceased's sister, was also called to testify on behalf of the State. Ms Riley indicated to the court that portions of the evidence of this witness would be hearsay and sought permission to have it admitted in evidence. Mr von Lieres objected to this evidence being presented. The court decided to hear the evidence and indicated that it would decide upon the cogency of the evidence, and the weight, if any, to be attached to it at a later stage in these proceedings.

74. This court was called upon to exercise its discretion as envisaged in section 3(1) (c) of The Law of Evidence Amendment Act 45 of 1988. This section affords the court a wider discretion when it comes to admitting hearsay evidence. It permits the admission of hearsay evidence if it is in the interests of justice to do so after having regard to several factors listed in the said section. The hearsay evidence, in this instance, was to be led to show a possible motive on the part of Accused No. 1 to have her husband killed. There was other evidence to the effect that the deceased was a private person whose tribulations were not publicly known. This witness was in a position to corroborate the evidence of Hendricks, the section 204

witness, with regard to the deceased's contemplated divorce and its financial consequences.

75. Ultimately, the evidence of this witness was not of any real significance in this matter. She spoke of her good relationship with her brother which we do not have any reason to doubt. She also confirmed what another witness had already said, namely that the deceased was a very private person. However, her view of the deceased's marriage to Accused No. 1, like that of her brother Igshaan, was clouded by an obvious dislike for Accused No. 1 and it is accordingly difficult to entertain her view in this regard as objective evidence.

76. A large part of her evidence related to the incident on 13 April 2006, that is, 8 months before his death, when Accused No. 1 stabbed the deceased with a knife. Her evidence of this occurrence is hearsay and of such little relevance that it can be safely disregarded. In any event, there is more direct evidence of the stabbing from one of the other witnesses. It is, however, not in dispute that the deceased spent the night in hospital after he was stabbed and Accused No. 1 received treatment at a private clinic for

three weeks thereafter. There is also other evidence that from that date Accused No. 1 and the deceased also slept in separate bedrooms.

77. Mr von Lieres put to this witness that Accused No. 1 had been receiving treatment for depression before the stabbing incident and that the incident took place on the same night she was discharged from the Gatesville Medical Centre where she had been treated for depression. It was also put to this witness that Accused No. 1 does not deny stabbing the deceased but does not know how it happened. When testifying herself Accused No. 1 did not quite admit that she stabbed the deceased. She maintained that she did not know what happened.

78. There was nothing else of significance in the evidence of this witness and she was not cross-examined by counsel for the other accused.

79. Before dealing in some detail with the cell phone records and the expert testimony in this regard, I refer briefly to some of the other witnesses who testified on behalf of the State.

80. Mrs Ma'atoema Groenemeyer ("Ma'atoema") also one of the deceased's sisters, testified that at about 23h30 on 16 December 2006 she received a call from Accused No. 1 who told her "we have been robbed and Taliep has been shot". The telephone records show that this call was made at 23h51. She was unable to contact the police on 10111 and chose to drive with her husband to the Athlone Police Station. On the way to the police station she called Igshaan who lives nearer to 101 Grasmere Street. At the police station she met with a Munaaz Lawrence who contacted the flying squad via radio. Attempts were also made to contact Accused No. 1 on her cell phone and landline. They then heard police sirens moving in the direction of 101 Grasmere Street and left the police station. This witness also testified about a conversation she had with Accused No. 1 two or three weeks after the incident when Accused No. 1 allegedly told her what had happened. As the witness never mentioned this conversation to the police or at the bail hearing, the court is reluctant to place any reliance thereon and elects not to do so.

81. Munaaz Lawrence, from the Athlone Police Station, also testified. She essentially confirmed what was said by Ma'atoema. She was cross-

examined on her statement in which she had recorded that Ma'atoema mentioned hearing a shot go off during the call she received from Accused No. 1. She conceded a possible error in this regard in that the statement was made two weeks after the incident had taken place.

82. Reference has already been made to Mymoena Bedford. She described her relationship with Accused No. 1 as sisterly. On 18 November 2006 she received a call from Accused No. 1 who asked her to obtain a contact number for Hendricks who lived about two streets away from her. She collected the number from his brother and gave it to Accused No. 1. She was asked under cross-examination how she remembered the date of Accused No. 1's call. Her reply was to the effect that it was her sister's birthday and she recalls they had eaten out. She confronted Accused No. 1 about her supposed relationship with Hendricks which she had been told at an interview with the police. She did not know who Hendricks was. At 101 Grasmere Street Koekie reminded her of the incident 2 or 3 days after the *janazah* when she ordered a man to leave the house because of Accused No. 1 then being under *iddah*. Bedford did not believe that Accused No. 1 would have an affair with "someone like that" who was "classless" – the



latter being a comment not entirely without merit. In any event, Accused No. 1 told her that Hendricks owed her money and also sold diamonds for her. Furthermore, that he came to the house to repay the money. On one occasion she witnessed Hendricks handing over money to Accused No. 1. She testified that on an earlier occasion Accused No. 1 had asked her to have a diamond ring valued and to find a buyer for it. She had the ring valued – for R100 000 – but did not find a buyer. Except for that instance, she knew of no other diamond deals.

83. The evidence of Fatima Achmat ("Achmat") relates to the large sum of money allegedly given by Accused No. 1 to Hendricks on 19 December 2006. Achmat is the managing director of a property business and a business associate and friend of Accused No. 1. Accused No. 1 was employed by the same business. Her salary was structured in such a way that she would receive a monthly salary of R50 000 – whatever her commission – and the balance would be entered in a loan account. On 19 December 2006 Achmat was telephonically contacted by Accused No. 1 who wanted assistance to withdraw cash from her bank account. Achmat was unable to assist that day and asked her brother to attend to the matter.

About a week later she spoke to Accused No. 1 who told her if there were any enquiries about the money Achmat must say that she had borrowed the money. Accused No. 1's explanation for this request was that she did not want people to know she had money as they pestered her for loans. Mr von Lieres informed the Court that Accused No. 1 did not dispute that R100 000 was cashed by a Shafiek Kamish at FNB Athlone on 19 December 2006. As a result of this concession by Mr von Lieres, it was unnecessary to call any further witnesses with regard to the cashing of the R100 000 by Accused No. 1.

84. The evidence of Jawaahier Petersen ("Jawaahier") is possibly of some importance as she is in a position to give direct evidence about the stabbing incident and, I suppose, the family living arrangements.

85. Jawaahier, who is the second eldest child born of the marriage between the deceased and his first wife, was working as a cosmetic consultant at that stage. She and her siblings lived with one parent for two weeks and then with the other for two weeks. This arrangement became more flexible as they grew older. When she reached the age of 18 she

went to live permanently at 101 Grasmere Street – she was 22 years old when she testified. This arrangement came to an end when Accused No. 1 was discharged from the Crescent Clinic pursuant to the events of 13 April 2006.

86. On the aforementioned date Jawaahier came home from work just after eleven that evening. Accused No. 1 was in bed and the deceased was taking ablutions in preparation for his evening prayer. She and Accused No. 1 discussed the deceased's upcoming birthday on 15 April. Accused No. 1 appeared normal, that is her speech was not slurred and her eyes droopy as would be the case when she was medicated.

87. Almost 30 minutes later her sister Fatima told her that she had heard their father making a noise. As she did not wish to intrude upon the deceased and his wife she stood outside the door and heard him saying "No, Najwa". He did not sound right. She entered the room which was dark except for the blue light from a small television set which was on. There were no blankets on the bed and she could not see the deceased or Accused No. 1. She called out "Dad, where are you?" He told her to switch

on the light but not to freak.

88. When the lights went on she saw Accused No. 1 in a praying or kneeling position with the deceased behind her, holding her hands away from him. Accused No. 1 had a knife in her left hand pointed towards the deceased. Everything was covered in blood and Accused No. 1 appeared "demonic" making strange noises.

89. The witness asked who was bleeding but received no reply. The deceased told her to call Accused No. 1's late father. Jawaahier first called the Gatesville Medical Centre before calling Accused No. 1's father. Both the deceased and Accused No. 1 were taken to the medical centre. The deceased was discharged the next day and Accused No. 1 was admitted to the Crescent Clinic for about 3 weeks. After her discharge from Crescent Clinic, Accused No. 1 slept in one of the other bedrooms while the deceased slept in the main bedroom. The witness no longer felt comfortable with Accused No. 1 and moved out. The other children continued to stay over but less frequently and eventually only visited their father but did not stay over. She agreed with defence counsel that on the night of the incident

Accused No. 1 was “zombie like” but added that she can also make her eyes like that.

90. The policeman responsible for investigating the financial affairs of the deceased, Captain Wayne van Tonder, was a poor witness and seemed to come apart under cross-examination. It appears that he spent the last 5 years of his professional career at the Provincial Organised Crime Unit – Bellville South. He established that no immovable property or vehicles were registered in the name of the deceased. Quite surprisingly, he could not ascertain in whose name 101 Grasmere Street was registered. The deceased only had an Absa account in which the following deposits were made for the period 2004 to 2007:

2004	R 95 607,00
2005	R425 895,65
2006	R427 756,67
2007	R 5 822,00

Payments from the account were made largely for policies and to SAMRO, the agency for performing arts, and to David Kramer. It appears that from 2001 large sums of money earned by the deceased were paid over either to

Accused No. 1 or to Dirk Fruit. Though Accused No. 1 had a number of accounts, Capt van Tonder limited his investigation to the FNB account in Athlone and an account held by her in Oshakati, Namibia. The latter account showed a balance of R259 963,00 on 6 September 2006. He was aware of the policy valued at R5,3 million of which Zaynab was the beneficiary. This had not been paid out to the knowledge of the witness but Accused No. 1 had made a request for the money to be paid into a Namibian account. Under cross-examination it appeared that the financial investigation was only completed a week before his testimony, the witness had not spoken to the attorney or the financial broker involved and was unaware that a trust was created for Zaynab, the beneficiary of the policy. He knew of the policies taken out against the life of the deceased where Accused No. 1 was the beneficiary. He became aware at a later stage in the investigation of the power of attorney held by Accused No. 1 and had not interviewed either Accused No. 1 or her legal representatives.

91. The deceased's partner, David Julian Kramer ("Kramer"), the person with whom he created musicals and songs for over two decades was also a witness for the state. He was called largely to explain certain aspects of the

deceased's financial affairs. The deceased and Kramer often produced shows together which they financed themselves. The deceased's contribution in more recent years was paid with cheques signed by Accused No. 1. At the deceased's request, his share of the profits was paid either to "N Petersen" or to "Dirk Fruit". This was the position from about 2001.

92. The events leading to the examination of Accused No. 1's cell phone records and the link to Hendricks, appear from the evidence of Superintendent Piet Viljoen ("Viljoen"). He is a highly experienced police officer and on 17 December 2006 he received a request for assistance in this matter. At about 10h00 he went to 101 Grasmere Street. He met Accused No. 1 in a bedroom where she was being supported by other people. He introduced himself to her and asked what had happened. She told him they had been robbed. He noticed that she had two cell phones in her possession. She described the robbery to him and took him to a safe and told him that the robbers had taken money from it. He noted some jewellery, watches, handheld computers and old paper money still in the safe. He found this strange as these were items currently popular with housebreakers. When requested to, Accused No. 1 gave him her two cell

phones and asked what he was going to do with them. He replied that it was for further investigation. She then asked that he return the Nokia as she used the phone for her business. When he refused she asked whether she could get a number from the phone. He gave her the phone. Captain Kenneth Speed ("Speed") then arrived and Viljoen asked him to photograph the contents of the safe and take possession of the cell phones.

93. Later at his office Viljoen withdrew information from the two cell phones obtained from Accused No. 1 and, by means of a special computer programme for this purpose, he found that the last three numbers dialled on 16 December 2006 from the Nokia phone were 0839297647 (Aeesha) at 00h22, 0828610054 (Fayruz) at 21h31 and 0761775529 (Madeegha) at 22h23. From the detailed particulars of calls made from this phone it appeared that one number that had been phoned was not reflected on the phone calls saved in the phone. This number was stored in the phonebook of the phone as that belonging to one "Fahiem Piele". The number actually saved by Accused No. 1 under the name "Fahiem Piele" was 0729229617. It belonged to a cell phone of Fahiem Hendricks. When Viljoen analysed it, he found that this number had been phoned from the Nokia cell phone



about 10 times on 16 December 2006. It seems that these calls must have been removed from Accused No. 1's phone at some stage before she handed it over to Speed.

94. During cross-examination by Mr von Lieres, it appeared that this witness only made a statement on 1 April 2008. In this statement he stated that the 10 calls from Accused No. 1's phone were made to Hendricks on 17 December 2006. This is an obvious error. It was on 17 December 2006 that he noticed the calls made the previous day, that is, on 16 December 2006.

95. Viljoen also explained that Accused No. 1's Nokia is able to log 20 incoming calls, 20 outgoing calls and 20 missed calls. Information of the last call she made on 16 December 2006 should therefore still have been reflected on her phone when he analysed it.

96. Viljoen agreed that while he told the court that his evidence has always been accepted by the courts, on one occasion in the Cape Town regional court it was not accepted because the telephone number he

referred to did not compare with the number contained in the Telkom list of calls.

97. Mr von Lieres put to this witness that the items left in the safe during the robbery were of no value to house robbers. Viljoen advanced several reasons why some or all of these items would not have been left behind by house robbers.

98. It was Speed's function to trace stolen property and investigate stolen cell phones. On 17 December 2006 he was given the further duty of investigating the security features at 101 Grasmere Street. He took photographs of the security measures at the house and compiled a bundle which was handed up as an exhibit. As he was told that the entrance control at the front gate did not work, he tested the gate and found it to be in good working order. The closed circuit television cameras on the property, as well as the electric fencing, were switched off.

99. Speed was called back by Viljoen to collect the two cell phones and to photograph the contents of the safe. After taking the photographs he found

that the Nokia phone was not where he had left it. He asked Viljoen about this and was told that Accused No. 1 had asked for it. He retrieved the phone from her and both phones were taken to the offices of the police.

100. The detailed records of calls made on Accused No. 1's phones were obtained by Speed from the relevant cell phone companies. He also dealt in his evidence with the duration and frequency of the calls between Accused No. 1 and Hendricks for the period 13 to 17 December 2006.

101. Under cross-examination by Mr von Lieres, Speed indicated that he had asked both Hendricks and Accused No. 1 about the frequent number of calls between them. They first said it was all about a diamond transaction and later because they were having an affair. According to Speed no one living in the house was tested for firearm residue because at that stage none of them were suspects. He testified that for such a test to be really reliable it must be taken within two hours after a firearm has been discharged.

102. Mr von Lieres also endeavoured to point out in his cross-examination

of this witness that Accused No. 1 did not only phone Hendricks during the period 13 to 17 December 2006, the implication being that there was nothing unusual about the frequency of their calls over this period. The actual details, as they appear from exhibit "M", paint a different picture. The calls between them for the period 4 to 20 December 2006 were as follows:

4 December 2006	-	no calls
5 December 2006	-	no calls
6 December 2006	-	no calls
7 December 2006	-	no calls
8 December 2006	-	2 calls
9 December 2006	-	1 call
10 December 2006	-	2 calls
11 December 2006	-	no calls
12 December 2006	-	no calls
13 December 2006	-	6 calls
14 December 2006	-	26 calls
15 December 2006	-	4 calls
16 December 2006	-	10 calls

17 December 2006	-	1 call
18 December 2006	-	4 calls
19 December 2006	-	2 calls
20 December 2006	-	1 call

103. The detailed cell phone records of some of the accused and Hendricks were made available to the court by witnesses whose evidence was formal in nature and not disputed. Of greater importance to this case was the evidence of Peter Schmitz ("Schmitz"), a scientist currently employed in the Logistics and Decision Support Department of the Council for Scientific and Industrial Research ("the CSIR"). He does, as he puts it, spatial analysis from satellite data to GPS collected and cell phone data. In this case he was asked to plot the spatial and temporal paths of the accused at the time of this incident. Once he was in possession of the cell phone call data records he was able to determine the location of the cell towers. The calls made and received were linked to the towers that were used and a line was then drawn between the two towers. The usage of the towers gave an indication of how the people moved through space and the time of these calls gave an indication of what time of the day the call was made.

104. In this instance Schmitz drew maps showing the calls made and received by the relevant parties, collated calls which may be of importance in this case, prepared graphs of calls made and reflected the calls he studied in a line graph to show the frequency of the calls. These items were handed up in evidence as exhibits "YY1-6". His aerial photograph of the area in which 101 Grasmere Street is located also shows the direction of the nearest towers to the house and the towers used on 8 January 2007 when Capt Dryden made cell phone calls from different rooms in the house. For instance, if a call was made from the main bedroom, that is the deceased's room, the Kewtown 3 tower was activated. Whereas if the call was made from the room Accused No. 1 was said to have slept in that night, the Crawford 1 tower was activated.

105. Each call made by the *dramatis personae* herein is given on the line graph or time line (exhibit "YY1") a sequence ID number in chronological order as the calls appear on the time line. Consequently the information reflected on the time line with the tables of calls provides a great deal of information relevant to the State's case against the accused. This is best

illustrated by the sequence of calls during the 24 hours from 00h00 on 16 December 2006 and 00h00 on 17 December 2006, that is, the period when the deceased was murdered. A single call from Accused No. 1 to Hendricks at 10h16 resulted in a spate of calls necessitating an expanded time line:

- 16h56 – Accused No. 2 phoned Accused No. 3
- 16h58 – Accused No. 2 contacted Hendricks
- 17h51 – Accused No. 2 phoned Accused No. 3
- 20h11 – Accused No. 1 phoned Hendricks
- 20h15 – Hendricks contacted Accused No. 2
- 20h19 – Accused No. 2 phoned Accused No. 3
- 20h20 – Accused No. 2 contacted Hendricks
- 21h20 – Accused No. 1 contacted Hendricks
- 21h23 – Accused No. 1 contacted Hendricks again
- 21h24 – Accused No. 2 phoned Accused No. 3
- 21h25 – Accused No. 2 phoned Hendricks
- 21h29 – Accused No. 1 phoned Hendricks
- 22h06 – Accused No. 1 phoned Hendricks
- 22h20 – Accused No. 1 phoned Hendricks
- 22h23 – Hendricks phoned Accused No. 2

- 22h25 – Accused No. 2 phoned Accused No. 3
- 22h26 – Accused No. 2 contacted Hendricks
- 22h27 – Hendricks phoned Accused No. 3
- 22h36 – Accused No. 1 contacted Hendricks
- 22h40 – Hendricks phoned Accused No. 3
- 22h54 – Hendricks contacted Accused No. 2
- 23h00 – Accused No. 3 phoned Hendricks
- 23h03 – Accused No.1 phoned Hendricks
- 23h12 – Hendricks phoned Accused No. 2
- 23h13 – Accused No. 2 phoned Hendricks
- 23h21 – Hendricks phoned Accused No. 3
- 23h24 – Accused No. 3 phoned Hendricks
- 23h26 – Accused No. 1 contacted Hendricks
- 23h27 – Hendricks contacted Accused No. 3
- 23h27 – Hendricks contacted Accused No. 3
- 23h31 – Hendricks phoned Accused No. 2

106. In summary, Schmitz's data reflects that on 13 December 2006 Accused No. 1 phoned Hendricks on 7 occasions, he phoned Accused No. 2



once and Accused No. 2 phoned him once.

107. On 14 December 2006 Accused No. 1 phoned Hendricks 26 times and he phoned Accused No. 2 twice.

108. On 15 December 2006 Accused No. 1 phoned Hendricks on four occasions, he phoned Accused No. 2 on three occasions, Accused No. 3 contacted him twice, Accused No. 2 phoned Accused No. 3 on 7 occasions and Accused No. 3 phoned Accused No. 2 once.

109. On 16 December 2006 Accused No.1 phoned Hendricks 10 times, he phoned Accused No. 2 on five occasions, he phoned Accused No.3 four times, Accused No. 2 contacted Hendricks five times, Accused No. 2 phoned Accused No. 3 on 5 occasions and Accused No. 3 phoned Hendricks on two occasions.

110. On 17 December 2006 Hendricks, Accused No. 2 and Accused No. 3 were in contact with each other on four occasions between midnight and 00h31. Accused No. 2 had contacted Accused No. 3 twice at 14h32. The only other call was between Accused No. 1 and Hendricks at 23h34.

111. The remainder of the State's case dealt largely with the various statements made by the accused.

112. Captain Joash Dryden ("Dryden") is presently the investigating officer in this case. He was not the investigating officer on 18 December 2006 when he visited the crime scene on the instruction of Capt Morris. He was given the task of obtaining a witness statement from Accused No. 1.

113. He met Accused No. 1 in the main bedroom. After introducing himself he told her that he had come to take her statement. She agreed to make a statement and immediately started explaining that she had a medical condition and had been hospitalized on previous occasions. She also volunteered information about the incident in April 2006 when she had stabbed the deceased in the neck. She was calm throughout the interview and Capt Dryden found it strange that she immediately started talking about her medical condition and the stabbing incident without any prompting by him.

114. In any event, this statement was admitted in evidence as exhibit "RR". It is an exculpatory statement. Besides dealing with her medical problems and her relationship with the deceased, Accused No. 1 sets out in the statement her view of what happened that night in some detail. In effect, that she and her family were the victims of a robbery and that her husband was murdered by the robbers.

115. It appears that a second statement was made by Accused No. 1 on 12 January 2007. The making of this statement followed questioning of Accused No. 1 on 7 January 2007 with regard to her cell phone calls and loan to Hendricks. Accused No. 1 was taken from her home in the early hours of the morning, questioned by a team of police officers and, it seems, confronted with the explanations given by other witnesses, in particular Hendricks. The statement, however, was taken down 5 days later. There is no reason to question its voluntariness. It is an exculpatory statement dealing with Accused No. 1's good relationship with the deceased's first wife and the loan to Hendricks of R10 000,00. Though denying an intimate relationship with Hendricks, she mentions in her statement how Hendricks held and kissed her sometime in December 2006.

116. Dryden's evidence also dealt with the different towers registering the calls made from the various rooms in the house, the recovery of Insaaf's stolen cell phone and the purchase of motor vehicle by Accused No. 2 on 30 December 2006 for R10 000,00. He was also asked to assist Accused No. 1 to complete a form relating to a policy with Liberty Life which Accused No. 1 wanted to be paid into a Namibian bank account.

117. I refer briefly to the statements made by Accused No. 3 and Accused No. 4. These are inculpatory statements, if not confessions. Their admission in evidence was initially resisted. Somewhat dramatically, and in the course of a trial within a trial, Accused No. 3 conceded his guilt and the voluntariness of his statements and a pointing out. The opposition by Accused No. 4 to the admission of his statement also fell away.

118. Accused No. 3 first made a statement, exhibit "Y", on 20 June 2007. It was made to Superintendent Deon Spangenberg. In the statement he says that he was contacted by Accused No. 2 who told him about a woman who wanted her husband "*van die kant gemaak*". He understood this to

mean that the man should be killed. He was told that the woman wanted the job done quickly and asked if he had a firearm. He was promised payment of R50 000,00. The money would be in the house. Subsequent thereto he was repeatedly called by Hendricks and Accused No. 2. When Hendricks called him again on 16 December 2006, he thought he could enter the house, take the money and leave. He and Accused No. 4 then drove to a Sadick Kriel to borrow a firearm and from his place they proceeded to 101 Grasmere Street where they entered the house and found the deceased in an upstairs lounge watching television. They grabbed the deceased and tied him up. Their intention was to rob the occupants of the house and leave.

119. Accused No. 1 then appeared on the scene, showed him where the safe was and gave him a bag of money. He then asked for jewellery, watches and cell phones. She indicated the room where her son slept. The people in that room had certain items taken from them and he locked their door from the outside.

120. He went back to the deceased who was lying on the floor and

Accused No. 4 was with him. Accused No. 1 complained that they must now finish and shoot the deceased. He went to the other rooms looking for jewellery. Accused No. 1 persisted with her request that the deceased must be shot. He found a large pillow, folded it double and put the pistol inside it. He told Accused No. 4 to leave and told Accused No. 1 to shoot the deceased herself. She grabbed the gun and he covered it with the pillow. Accused No. 4 was by then out of the house. A shot went off. He locked Accused No. 1 in her room and left the house. While driving away, he threw away his balaclava and gloves. The money from the safe was R27 000,00 and he got about R2 000,00 from the other occupants in the house. Two days after the robbery he gave Accused No. 2 R4 000,00 and Accused No. 4 R6 000,00. The rest of the money he spent himself.

121. On 2 June 2007 he also pointed out 101 Grasmere Street to Superintendent Aspeling as well as different parts in the house, where the different events, referred to in his confession, took place. The record of his pointing out is exhibit "Z".

122. During the period 27 to 30 June 2007 he wrote a comprehensive

statement repeating his earlier confession in much greater detail. The statement as well as several pages commence with “786” – the numerical representation of the *basmalla*, the prayer said by Muslims on the commencement of tasks. The statement itself is interspersed with verses from the Holy Quran.

123. In his statement Accused No. 3 recalls that when he was informed by Hendricks and Accused No. 2 of the details of what was to be done, Accused No. 4 was not present. He also told Accused No. 4 that they had a job to rob the house and that the woman of the house would be opening the gate and door for them as they wanted to claim money from their insurance. Accused No. 4 was not told that someone had to be killed. On the night of the incident, when he left Achmat’s room, the woman hung on to his arm saying “*julle moet hom skiet, julle moet hom skiet*”. Thereafter he told Accused No. 4 to go and “be on the look out”. He put the gun in the centre of the pillow, felt Accused No. 1’s hand between his and a shot went off.

124. Furthermore, in his statement Accused No. 3 begs for forgiveness

from God, various members of his own family and, of course, the deceased's family. He prays for the deceased as well.

125. After the admission of these statements, Accused No. 3 also made a number of admissions which amount to a summary of his statements.

126. In his statement, exhibit "Y", Accused No. 4 admitted going to the scene of the deceased's death with Accused No. 3. He was at all times under the impression that they were going to rob a house. When he restrained the deceased he told him nothing was going to happen to him. It appeared from the seriousness of his face that the deceased knew he was going to die. This was also apparent from the way he was praying. A woman appeared on the scene. He slapped the woman but was told by Accused No. 3 that she was assisting them. Accused No. 3 and the woman went to another part of the home. When they returned the woman begged that the deceased be shot. He went downstairs and was out of the house when he heard a shot. He also did not know who fired the shot.

127. The statements which appear to be confessions made by the two



accused are only admissible against them. What is contained in them does not constitute evidence against any co-accused. (See section 219 of the Act).

128. When the State closed its case, only counsel for Accused No. 4 asked for the discharge of his client and only on the alternative charge of conspiracy. The application was dismissed. It is unnecessary to furnish any reasons for this decision.

129. Mr Engelbrecht called Accused No. 1 to testify.

130. Accused No. 1 gave evidence which merits close scrutiny. She obtained a Junior Certificate at school, completed a year at a teachers' training college and then started working as a receptionist at Galaxy TV. She was later employed at Old Mutual until she joined the family business, Dirk Fruit. They buy fruit, vegetables and groceries in South Africa and sell it in Namibia.

131. Accused No. 1 suffers from depression for which she has been

receiving treatment for approximately 5 years. She was hospitalized on several occasions at various institutions such as the Gatesville Medical Centre, the Kenilworth Medical Centre and the Crescent Clinic. Her last psychiatrist was Dr George. She was also treated by doctors Chetty and Fortuin. She remembers taking an anti-depressant called Fluoxetine which caused her to be off balance. About 3 or 4 years ago she attempted suicide by taking an overdose of tablets. Since then the deceased kept her medicine and administered it as prescribed by her doctor. If he was away, this task would be given to someone else.

132. In April 2006 she stabbed the deceased but is unable to remember what happened.

133. In the past she also had seizures. These stopped about two years ago when she was given electroconvulsive therapy. During November and December 2006 she was still being treated for depression. She was also taking sleeping tablets because of insomnia.

134. At the time of her arrest she earned a salary from a property firm

called SAFIN and her monthly income was R100 000,00. At that stage two houses and a flat were registered in her name. The one house belonged to her brother, the other to her mother and the flat to SAFIN. The house where she and the deceased resided - 101 Grasmere Street, Athlone - belonged to her eldest brother, Moegamat Yusuf Dirk.

135. She did not receive any financial help from the deceased and operated her own bank accounts, two in Cape Town and one in Namibia. In or about 2000 she and the deceased reached an agreement that she would control their financial affairs. The deceased gave her a power of attorney to this effect.

136. She agreed with Kramer that he, Kramer, on instructions of the deceased, paid certain amounts into her or the company's bank account in Namibia. The money would be changed into US Dollars. On different occasions she advanced money for shows staged by the deceased and Kramer as the deceased had no money of his own. She received the deceased's profits from the shows and transferred the money to the his bank account. The deceased paid for one insurance policy from this

account.

137. He had no fixed income. The only income he had was from the shows he did with Kramer. She did not provide any further information with regard to the deceased's financial position, for example, whether the deceased did any shows on his own or whether he sold any CD's.

138. Accused No. 1 married the deceased on three occasions. The first occasion was during June 1997 in Fish Hoek where none of their family members were present. She is unable to provide the name of the Imam that married them. On the second occasion, the marriage took place on 14<sup>th</sup> of September 1997 at her father's home in Athlone. Only the deceased's father attended the ceremony. Her family did not attend because of instructions from the deceased. No reasons were provided for this second marriage. During 2000 or 2002 they married again. On this occasion it was a civil marriage before a magistrate in Wynberg "because by then we trusted each other and you know...". Besides normal differences, according to Accused No. 1, their marriage was a good one. The deceased's children from his previous marriage stayed with them for a week and then with their

mother for a week until the stabbing incident. The deceased's eldest daughter, Jawaahier, did not sleep at their house after that incident. Accused No. 1's own children stayed with them until the deceased died. Their daughter, Zaynab, also stayed with them.

139. After the stabbing incident they slept in separate bedrooms. The deceased remained in the main bedroom (F on the plan in exhibit "A"). She slept in the bedroom marked C on the plan in exhibit "A". This arrangement was for sleeping purposes only. For all other purposes they shared the main bedroom and its *en suite* bathroom. The deceased and Zaynab slept in the main bedroom with the door locked. Accused No. 1 and the deceased came to this arrangement because the deceased's eldest daughter, Jawaahier, was apparently afraid that Accused No. 1 would injure the deceased again and wanted them to sleep in separate bedrooms. According to Accused No. 1 the stabbing incident had no effect on their marital relationship.

140. When the deceased returned from London on 14 December 2006 he raised the subject of them going to London and Paris because he had a

production running in London.

141. Accused No. 1 confirmed earlier evidence of the different security measures installed at their home. They had an arrangement that the last person to get home would lock the door – apparently the back door to the kitchen - as pointed out during the inspection *in loco*. On 16 December 2006 Accused No. 1, the deceased, Soeker, Zaynab, Achmat Gamieldien and his wife Insaaf, were at home. Suleiman, her other son, had not yet come home. This was the first time Suleiman was mentioned. The deceased would usually check all the doors and windows to see that they were closed and locked. The deceased would not have been able to switch the alarm on because Suleiman was still out. The surveillance cameras were switched off. She did not know how the electric fence works.

142. She testified that she knew Fahiem Hendricks for 25 to 30 years at that stage. He and her second husband worked together and were good friends. On a previous occasion Hendricks obtained a loan of R20 000,00 from her. She did not know for what he needed the money. On the first occasion he left his bakkie with her as security. The loans were repaid. She

did not require him to pay any interest on the amounts he borrowed but she had to phone him regularly to make payments and said that "you have to pester him to make payments". She did so because it was her money and money is important to her. When a person borrowed money from her she would just write down the amount that was repaid and deduct it from what was owed. When questioned by the court on this aspect she became very vague on whether it was she or the business that lends the money. All that is clear is that Hendricks was not the only one to obtain a loan.

143. A couple of years after Hendricks borrowed a second R20 000,00 he asked her for a loan for R10 000,00. He said he had bought a café and needed the money to buy stock. He said that he would repay it on a daily basis depending on his takings during the day. He came to her home the next day to collect the money and then told her that he was struggling because a guy she knew very well took all his mechanics tools. Hendricks, however, did not start to pay his debt. She then asked Bedford to get his cell phone number which she did. She then phoned him and he made some payments. She recorded these payments in a book, exhibit "Z", which was later confiscated by the police. After the book was confiscated Hendricks

still came to her house to make payments. He was still in dire financial straits because “this person” she knew very well had taken his tools. It now appeared that “this person” was her previous husband. Because of this she offered him 4 polished diamonds to sell on her behalf. If he was able to sell them for R250 000,00 he could keep R10 000,00 as his commission. She was prepared to give these valuable diamonds to him because they give even larger amounts to people they know. The deceased was at home at this stage and wasn’t very happy with this transaction.

144. The deceased never really got involved in any of the business deals. If he did, he gave instructions and she would deal with it. The deceased, however, would give the broker instructions on what was to be done and she would “do everything else”. On a question by Mr Engelbgrecht if that was why she had “mandate, power of attorney” she answered “Yes. And he also had power of attorney over my stuff”. This aspect was not investigated any further. The money in the deceased’s bank account in Namibia was used to buy dollars from Dirk Fruit who get paid in dollars in Angola or buy dollars on the Namibian/Angolan border. The US Dollars were then brought back to South Africa where they were sold on the black market. These



transactions would all be in cash. You could make a profit, she said, of 20 cents to a rand on each dollar.

145. It was at this stage when Accused No. 1's memory started fading. She could not remember the date when she handed the diamonds to Hendricks save to say that it was before the deceased left for London. She was not sure how long before the deceased left she gave the diamonds to Hendricks.

146. When she gave Hendricks the diamonds she told him that she could also give him some dollars to sell when he brought the money for the diamonds. She had the dollars in her safe and they belonged to her father. She kept it there because of two robberies at her father's house. After giving the diamonds to Hendricks she phoned him to hear about her money and the diamonds. On 13 December 2006 Hendricks informed her that he had found a buyer and had handed the diamonds to the buyer. This was when she started to panic. She did not know where Hendricks would keep the diamonds or if he had a safe at his home. It seems logical that Hendricks would have had to inform people that he in fact had diamonds to

sell. This would put him in danger of being robbed. This apparently did not worry her. It was only when he handed over the diamonds to a buyer that she started worrying.

147. The deceased returned from London on 14 December 2006. Accused No. 1 went to the airport to pick him up. The flight was delayed and the plane was in the parking bay only at 11h20 and the deceased came through the checkpoint at 12h12 where she met him. While waiting at the airport she phoned Hendricks to find out about her money. The number of calls to him was occasioned by the fact that would phone him and he would say she must phone him back in 15 or 20 minutes. This caused her to panic because he had told her the previous day that the man was going to bring the money and he had already handed the man the diamonds. On their way home from the airport she again phoned Hendricks in the presence of the deceased. He became upset about Hendricks causing her to worry and become ill. She called Hendricks repeatedly on 14 December 2006.

148. Accused No. 1 could not recall leaving her bedroom on 15 December 2006. She thinks she had the flu. That evening the deceased and his son

were performing in a show at the Luxurama. She was taken there by her son Suleiman to see the part of the show when the deceased performed. She returned home with the deceased. On their way back she phoned Hendricks to find out if he had received the money.

149. Accused No. 1 did not feel well on the morning of 16 December 2006. She had migraine and stayed in bed. This was the day of the 21<sup>st</sup> birthday party which she did not attend. She phoned Hendricks again but could not remember what time. Hendricks would either say that she must phone him back or that he would phone her back or that the buyer is bringing the money or that he is just busy on the other phone. The last time she phoned him he said he had the money and would bring it at 11h00 the next day. She took her medicine before going to bed. The deceased administered it. They made *thikr* together before he gave Accused No. 1 her medicine. Together with Soeker they had cake from the party and tea in the kitchen before she went off to bed.

150. The deceased had a good relationship with Accused No. 1's family, with his own family and everybody else. She also had a good relationship

with his family but after the death of the deceased until her arrest she only had a relationship with his father and his sister Ma'atoema.

151. They were married in community of property. She did not have any knowledge of the deceased wanting to divorce her. She realized that if they got divorced he would get 50% of what she owned. She would also be entitled to 50% of his property but he had nothing on his name because he had lost most of the money he made through shows with Kramer on bad deals. She would give him money and he would lose it on bad dollar deals, diamond deals and other money making schemes. On two occasions she gave him R2 million. Two imams phoned her afterwards and advised her not to give the deceased any more money. The one was Sheikh Malie. The other was just an ordinary person – not really an imam.

152. The tablets she took on the night of the incident made her sleepy. When she retired to bed Zaynab was already sleeping in the main bedroom. It takes about 2 to 3 hours for the medicine to take effect and she would then fall asleep.

153. She had kept on phoning Hendricks that day because he repeatedly said that the guy is on his way with the money. Eventually Hendricks told her that he had the money and she went to lie down and fell asleep.

154. She was woken up by a guy (the first intruder) wearing a balaclava, holding a gun to her head and asking her for money. There was sufficient light in the room from the bathroom to see him. At that stage she wasn't fast asleep as she had not been sleeping for a long time. She was fully conscious when she woke up and was aware of what was happening. The medicine she had taken could have had an effect but she "was aware of what was happening" and started panicking. He asked her for money and she got up and went out of the room towards the TV room. She can't remember if she answered him when he asked for money. The intruder followed behind her but she could not remember if the gun was held against her body.

155. In the TV room she saw the deceased sitting on his knees on the floor with something in his mouth. She noticed a little blood from his mouth or nose on his upper lip. There was a male person (the second intruder) with

the deceased. The other person was also wearing a balaclava. She was unable to recall the clothes they had on. She could not remember if one intruder was taller or shorter than the other. The second intruder was standing behind the deceased but she could not remember if he was armed and added "not that I saw". She bent down, put her arms around the deceased, hugged him, asked them not to hurt the deceased and said that she would give them all the money. She then went to the main bedroom followed by the person who woke her up, went to the safe and handed him the money. The money was in a carrier bag in the safe. It was R40 000,00 in R100,00 notes and US \$300 000,00 packaged in six parcels. The dollars belonged to her father. The first intruder then took her watch from her arm and asked her if there were more people in the house.

156. She took him to the room where her son, Achmat, his wife Insaaf, and their baby slept. On their way she saw the deceased lying flat on his stomach on the floor in the TV room. She entered her son's room with the first intruder following her with the weapon. The bed light in the room was on. The first intruder took their cell phones. She could not remember where he took them from. She thought he also took some jewelry and as

well as money from the pocket of her son's trousers which were lying on the floor. The intruder wanted to take them all out of the room but the baby started crying. He took only her, Accused No. 1, out of the room. He then locked the others in their room. She did not know what the intruder did with the key to her son's room. He took her to the main bedroom and locked her in. He did not tie her up but just locked her in her room.

157. She panicked and was crying when the intruder locked her in the room. Her daughter, Zaynab, was with her in the room and woke up. She remembered phoning her sister-in-law, Ma'atoema, by landline. She told Ma'atoema that they were being robbed. However, while she was speaking to Ma'atoema she heard a shot go off. She went to the door and started screaming to the deceased, Achmat and Insaaf. The deceased did not answer. Her son shouted at her to phone Soeker. She also phoned her brother who in turn phoned her father. She did not phone the police because Ma'atoema said she would do so.

158. Later the doors to both the main bedroom and her son Achmat's room were kicked down. She does not know by whom. She remembered hearing

her father calling her from outside the room enquiring if she was okay but cannot remember if she responded or spoke to him.

159. She wanted to leave the room to see the deceased, Achmat, Insaaf and the baby but they kept pushing her back into the room. When she was eventually taken out of the room to Soeker's flat she could not see the deceased because he was covered. She could not remember what her emotional state was when she went to Soeker's flat. She could not recall seeing inspector Hermanus or doctor Moosa in Soeker's flat that night. She was unaware of getting an injection that night. She could only recall being in the back of Soeker's flat and everybody coming to her. She remembered phoning her sister-in-law, Soeker and her brother and sister. She could not remember what she did that night. She could not remember giving Hermanus an explanation of what happened that night. She only remembers what happened the next day.

160. She could not recall the first person she spoke to on 17 December 2006. The deceased's *janazah* was during that afternoon. As far as she could recall she was in Soeker's flat the whole day.



161. She remembered Captain Dryden of the police coming to see her on Monday 19 December 2006. It was in the morning but she was unable to say what time. She made a statement to him explaining what happened. Dryden did not explain her rights to her and took the statement away when she had signed it. She described her mental health to Dryden but did not know if she volunteered it or whether he asked her.

162. She next saw Hendricks on the Wednesday when he brought the money. According to Muslim custom she was not supposed to have any contact with males but this was business. They did their business in the entrance hall and the dining room. She agreed that her sister-in-law, Ma'atoema, came to her and asked her to swear by her father that she had nothing to do with the deceased's death. She, however, denied that she told Ma'atoema that the deceased was brought by gunpoint to "their" room.

163. On the Friday after Hendricks brought her the R240 000-00, her brother came to fetch her to go to his holiday house in Gordon's Bay with several members of the family. When her brother came to fetch her she

was waiting for Hendricks to come and make a payment on the R10 000,00 loan. After Hendricks arrived, her brother, Shamiel, and Hendricks discussed the selling of Shamiel's shop in the Strand. Hendricks went to Gordon's Bay on the Saturday to see the shop. During the day she had a general discussion with Hendricks about duvet sets and a diamond ring she could give him to sell. Late at night, past midnight, when she was already asleep, the police phoned her and asked her to come to the police station for questioning. Because she did not know how to get there they came to fetch her. At the Bellville South police station about 10 to 15 policemen questioned her until the early morning about her telephone calls to Hendricks and if she had a relationship with him. Her rights were not explained to her. She told them she phoned Hendricks because of the money he owed her. She did not tell them about the diamond deal because she thought it was illegal to sell diamonds without a license. Hendricks was brought in later and told the police in her presence that they had a relationship. She agreed because she did not want to mention the diamonds.

164. At a later stage her father took them all to see an attorney, Snitcher,

who told them that it was not illegal to deal in cut diamonds. When Capt Dryden and Supt Wagter came to question her again she told them about the diamond deal. Hendricks was with them on the day when they were taken to Snitcher by her father.

165. After that Hendricks still came to her house regularly "to pay the money" and to enquire if she had any deals for him. After she told the police about the diamonds Dryden and Wagter came to her house to question her about the diamonds but she phoned her father who arranged that they would meet at the police station. They met with Snitcher at the police station. He did not want her to answer any questions.

166. The diamond ring she gave to Hendricks to sell she got from a friend of hers for R50 000,00 and told Hendricks that he could get a commission if he sold it for R120 000,00. Hendricks did not succeed in selling it and the ring was returned to her.

167. She denied that she killed the deceased or played any part in his death whatsoever.

168. After the incident her father, who still assisted at Dirk Fruit and dealt in motor vehicles as a sideline at that stage, wanted R100 000,00. She wrote out a cheque and it was cashed on 19 December 2006. She gave the cash to her father. The practice of giving money to family members was common amongst them.

169. She denied removing any numbers from her cell phone. She had only one cell phone. She did not tell Hendricks what to say when he was questioned by the police in connection with this case. She did not commit any act to assist in the commission of the offences for which she was indicted. She did not protect Hendricks from being arrested on those charges nor did she give Hendricks any reason to believe she wanted the deceased killed.

170. Under cross-examination by Mr Scott Accused No. 1 conceded that she did not see Accused No. 3's face on the night of the incident. She agreed that if one did not have a remote control and a key to the back door it would be "extremely difficult" for a person to just walk into the house.

She was unable to dispute it if Accused No. 3 testified that he just walked into the house through the front door. The conclusion that someone from the inside must have opened the front gate and door for the robbers becomes almost inescapable. I shall revert to this aspect in due course.

171. If Accused No. 3 testified that he was in regular contact with Hendricks, Accused No. 1 could not dispute this.

172. She denied that she came out of the main bedroom while accused 3 and 4 were busy with the deceased in the TV room and that she approached them. She denied being present when the deceased was injured.

173. She also denied that the deceased tried to head butt her when she hugged him or that Accused No. 4 smacked her. According to Accused No. 1 the other accused asked her for the money and she pleaded with them not to hurt the deceased. She did not suggest to them that she would give them the money. She was forced to go to the safe by the intruder who was holding a gun.

174. Accused No. 1 conceded that both she and the deceased knew where the key to the safe was and did not know if the intruders asked the deceased for the key to the safe. According to her there was R40 000,00 to R50 000,00 in South African currency in the safe as well as US \$300 000. The money was in a carrier bag in the safe. The intruder kept the carrier bag in his hands at all times.

175. From the main bedroom they went to Accused No. 1's son's bedroom. The intruder still had the gun in his one hand. She opened the door to her son's bedroom for the intruder. She took him there because the intruder wanted to know if there was anyone else in the house. There was a dim light on in that room. The intruder walked behind her as they went into the son's room. She was unable to say how it happened that her son, Achmat, and Insaaf woke up. She just told them to give everything they have. It is possible that she could have gone to Insaaf to calm her. She does not remember if she saw the fire arm and the bag. She was unable to recall how the intruder took money from Achmat's trousers pocket. When asked if the intruder had looked into the bag she gave him, she said that she did not think so. She did not know if the intruder left the bag anywhere while

they were in her son's room.

176. She denied that she was taken to where the deceased was after Achmat and Insaaf were robbed. Her cell phone was not taken. The intruder took her to the main bedroom after robbing her children. She did not go to where the second intruder was with the deceased and denied asking them to do it downstairs and not upstairs.

177. A white object which may be a thin cushion or a duvet cover was pointed out to her on photo 15 and in photo 17 (exhibit "A"). She did not know what happened to it because she was taken "downstairs" – I think she meant to Soeker's flat. The next morning when she came up everything had been cleared up.

178. She did not see the intruder look into the carrier bag. All that was visible when you looked into the bag was South African money. She did not say to the intruder *"moenie worry nie, ons gaan dit môre uitsorteer"*.

179. While cross-examining Accused No. 1 Mr Konstabel questioned her on

whether she was present when the deceased was shot. She denied it. She also denied actually pulling the trigger.

180. From the cross-examination by Mr Konstabel it appeared that Accused No. 1 never phoned Accused No. 4, never had any dealings with him, never met him and accordingly there was no "quarrel" between them. As far as she knew the deceased also never had any dealings with Accused No. 4. On 16 December 2006 Accused No. 1 was suffering from depression and had migraine for two days. She actually slept for most of the day. The medicine she had taken caused her to be *"not really focused but she still knew who she was where she is and who is around her"*. There were only two intruders on that night. She did not speak to the intruder standing with the deceased and did not hear him speaking to the deceased.

181. The second intruder, I think we may accept that it was Accused No. 4, did not assist Accused No. 3 in taking anything, wasn't armed and threatened no-one. The last time she saw Accused No. 4 was when she came out of her son's room. (She received a phone call at about 23h26 and fell asleep about 5 minutes later). She did not mention it to the police that



there were US \$300 000-00 in the safe because they were not supposed to have so much dollars.

182. Once again she denied that she tried to hug the deceased and that he head butted her and that Accused No. 4 slapped her. She did not assist the intruders to tie the deceased up by holding him down. She denied that she asked "*Wanneer maak julle hom klaar? Hy moet vannaand geskiet word*" after she and Accused No. 3 had returned from her son, Achmat's bedroom. She also denied that Accused No. 4 indicated that he wanted nothing further to do with the incident and left before the deceased was shot. In view of the fact that there were no problems between Accused No. 4 and Accused No. 1, she was unable to say why Accused No. 4 would make up the allegations against her.

183. Ms Riley then subjected Accused No. 1 to a rigorous cross-examination.

184. Accused No. 1 admitted that during her first bail application Dr Fortuin incorrectly testified that she had attempted suicide on several occasions. It

seems that there was only one attempt. Accused No. 1 testified that she allowed that evidence to be given because she thought it would be to her advantage at her bail application.

185. With regard to the stabbing incident she confirmed that she remembered nothing but admitted telling her psychiatrist that she heard voices. That was her reason for stabbing the deceased. However, now she remembers nothing about the incident itself. She does not know if it is her medication that causes her not to remember things.

186. She confirmed that she phoned Hendricks on two occasions while the deceased was in the vehicle with her – on their way home from the airport on 14 December 2006 and from the Luxurama on 15 December 2006. The deceased must have heard what she said on both occasions. She estimated that it took more than 15 minutes from the airport to her home. The call on 14 December 2006 was picked up by the Langa base station and must therefore have been made on their way home from the airport at 12h14. Later on the same day at 12h36 she again made a call which was picked up by the Crawford base station. She says she spoke to Hendricks in the

presence of the deceased on both occasions but she could not remember if the second call was on their way home or from her home. When it was put to her that, in her evidence in chief, she said that she made the call to Hendricks in the car on the way home she remembered it.

187. On 15 December 2006 at 21h24 Accused No. 1 made a call from Wynberg where the Luxurama is situated. Thereafter she called Hendricks at 23h18 - still from Wynberg and at 00h22 she phoned Ayisha Petersen, also from Wynberg. After this call they traveled home. On being asked why, if she called Hendricks on their way home from the Luxurama at 23h18, they were still in Wynberg more than an hour later at 00h22, she explained that they stopped at a café to buy food and could not say how long it took to be served. She phoned him at 23h18 on 15 December 2006 to ask about the money and again on 16 December 2006 at 10h17 to ask him again about the money. When she phoned him on 15 December 2006 he said he did not have the money but told her he was going to get the money on 16 December 2006. That is why she phoned him again the next morning. She slept the whole day and phoned him again at 20h11 when he told her he would bring the money the following day (17 December 2006).

An hour later she phoned him again and then three minutes later, six minutes after that, then about an hour later at 22h06. She did not ask Hendricks who the person was to whom he sold the diamonds, where he lived or what he did because she trusted Hendricks (with R250 000,00s worth of diamonds) and Hendricks trusted the guy. If not, she would not have handed over the diamonds. As in all the other transactions where they dealt with people they just dealt with the person that owed them money even if the amounts involved are millions.

188. She agreed that there had been no contact with Hendricks for almost ten years but she lent him R10 000,00 without any security. She had to phone him two or three times when he failed to make payments. She also phoned him on previous occasions when she lent money to him and she had to put pressure on him to pay. She agreed that on this occasion he was struggling financially because he had set up a new business. Notwithstanding this, she trusted him with the diamonds because he knew somebody that would buy them. She took this big risk because they take big risks every day.

189. She gave him the loan of R10 000,00 interest free. She did not have any trouble to get her money back as she only phoned him once to ask when he was coming to pay. Shortly thereafter she gave him diamonds to the value of R250 000,00. She thought it a risk worth taking as a business person. She got these diamonds from a person called Boeta Albertyn who died in 2003. She kept the diamonds until the end of 2006 when she gave them to Hendricks. She asked him if he was interested in diamonds because that was what she had at that stage but she could also get him other deals. She did not offer him something smaller because the diamonds were all she had to sell at that stage.

190. In further cross-examination it emerged that there had been a problem between Hendricks and her previous husband, Effendi, who took all the tools Hendricks used as a mechanic. She said that she did not say that this was the reason why she decided to help him but Hendricks asked her for money to buy stock for his shop and during the discussion it came up that her ex-husband took his tools of trade. Despite testifying about this incident in her evidence in chief as well, she was unable to give any particulars about the incident when cross-examined. She decided first to

help him with the loan of R10 000,00 and afterwards with R250 000,00 worth of diamonds because with them, if somebody they knew came to them for help, they did so. She had granted SAFIN (SA Property Finance) - a firm where she was employed - a loan of R400 000,00. Her family members and others in the business also borrowed money from her. Her father asked her for R100 000,00 of his money that she had and she drew it from SAFIN and gave it to him on 19 December 2006. Hendricks brought her the R240 000,00 he owed her for the diamonds on 20 December 2006.

191. After she was locked in her room, but before any shots were fired, she first phoned Ma'atoema to report what was happening. She did so because she was very close to her. She then phoned someone else – the name she mentioned was indistinct. She did not phone the police even though the Athlone Police are fairly close to her house because Ma'atoema said she would phone them. Her last call to Hendricks was at 23h11. After she was locked up she called Dr Moosa's surgery, probably by mistake, at 23h50. She then phoned Ma'atoema at 23h51. She, however, cannot remember what she said to Ma'atoema. While talking to Ma'atoema she heard a shot go off. She told Ma'atoema that there was a robbery in progress but cannot

remember if she told her that the deceased had been tied up. She phoned Ma'atoema for help but could not remember what she told her. Ma'atoema heard the shot go off because she told her so later. Thereafter she called Soeker. She could not explain why she phoned him. She was unable to explain why she was unable to remember what occurred after the doors were kicked down and she was led downstairs. She was especially unaware of the fact that she spoke to captain Hermanus during the evening.

192. Accused No. 1 admitted that Captain Dryden came to see her on 18 December 2006, asked her questions and wrote down her answers. She confirmed that she gave him certain formal information about herself like her name, address, employment etc. She confirmed that she and Dryden met each other the first time on that day and that he would have had no knowledge about her medical history yet he recorded it accurately in her statement. She could, however, not remember if she gave her medical history to him – she must have given it to him. She did not know and could not remember why she told him about her medical history and that she once attempted to commit suicide. She also could not remember if she told him *"die feit dat ek vir Taliep raakgesteek het in sy nek het nie enige*

*kwaade gevoelens tussen ons veroorsaak nie*". She also did not know why she told him about it.

193. With regard to the sentence "Taliep was bang dat iets netnou saam met hom gebeur terwyl hy slaap" she said that she would not have said that to Dryden as it was Jawaahier that was afraid. She then had considerable difficulty trying to explain why she and the deceased were sleeping in different bedrooms and offered the unconvincing explanation that the deceased's daughter, Jawaahier, was afraid and wanted them to sleep apart and that the deceased had to lock his bedroom door. This is more unconvincing in view of the fact that Jawaahier did not stay with them after the stabbing incident.

194. After telling Dryden in her statement what happened in the kitchen after the 21<sup>st</sup> party which they discussed, the statement reads that she said "*Daar was geen konflik tussen ons tydens ons gesprekke nie*". She could think of no reason why this should be in the statement or why Dryden would have asked her about it. She agreed that she did not describe all the telephone calls she made during that night.



195. In her evidence-in-chief she testified that she was just about to sleep when she was woken up by the intruder. In her statement to Dryden she stated "*ek was in 'n diep slaap toe ek wakker geword het.*" However, she made a note on her copy of the statement that "*ek was nie in 'n diep slaap nie*" and could not say why her advocate did not put this to Dryden. She got out of the bed because the intruder asked her where the money was. The gun was held against her head. After she got up he walked behind her with the gun. She did not tell Dryden that she went to give the deceased a hug because she was confused when she made the statement. Although she was scared of the man with the gun who wanted money she still went to the deceased to try and give him a hug because he was right there by her. She stopped by the deceased, gave him a hug and asked them not to hurt him and that she would give them all the money. She did not consider the possibility that she might be shot if she hugged the deceased. She once again denied that he tried to head butt her.

196. She was unable to say why the robbers did not ask the deceased for the money and run away. If she had said in her statement to Dryden "*ek het gesien dat 'n onbekende man by Taliep is wie op die vloer lê. Ek weet*

*nie hoe Taliep gelê het nie*”, this would be wrong. She was unable to say if this is what she actually told Dryden or if he wrote it down wrongly. She pointed it out to her legal team. She was confused when she made the statement because she was on medication. She was unable to say why she became confused from her medication on this day and not on other days.

197. Her evidence about the start of the robbery seems to indicate that she co-operated with the robbers. They did not ask the deceased for money but just tied him up. When she was woken she was not threatened in any way but immediately co-operated when asked for money. She went to the deceased to hug him as she walked past him even with a firearm in her back. Did she know what was expected of her and how did the intruders know that she would co-operate but not the deceased?

198. When she was asked why she had said she was confused when she made the statement to Dryden she said she was confused because she was on medication. She confirmed that it was the same medication she took before the incident. When asked why the medication made her confused on the day she made the statement but not on other days she changed her

evidence to say that she got more medication on that day. She was, however, unable to remember what more medication she got as her son, Achmat, gave her the medicine. It is important to note that according to her Achmat got the medicine from a locked cupboard. Achmat later testified that when the deceased was not available, he was given the task of seeing to her medicine. When he went to work he would put the three doses she had to take during the day in three different Tupperware containers and give it all to her. It follows logically that she would then administer the medication herself and would know if she was taking her normal medication. On the day of the incident she was given more medicine than had been prescribed by Dr George but on 18 December she took her normal medication and may have taken an additional pill. Her normal medicine makes her confused.

199. When she takes her daily medicine she can sometimes remember things and other times not. During the first few days she was not in the right state of mind because of what had happened and because of her medicine.

200. The money she gave the intruder was in a carrier bag, not a bank bag as recorded by Dryden. She raised it with her defence counsel but they did not raise it in cross-examination. From the room - where she gave the bag with money to the intruder - she went to Achmat's room. The intruder was behind her with the gun, which was not pressed in her back. She could not remember the gun held against her head at any stage when they entered the room. In her statement she said "*Die gun was nog steeds teen my kop vasgehou terwyl ek my seun se kamerdeur oopgemaak het.*" She agreed and says that was the position before they opened the door. In Achmat's room the intruder went to Achmat's side of the bed. She was unable to remember if he pointed the gun at anyone in the room. In her statement to Dryden she said "*My seun, Achmat Gamieldien, en sy vrou was ook gedreig deur die verdagte*". By using the word "gedreig" she did not mean they were threatened but that he asked or requested them for their money, jewelry and cell phones. She did not know if that was the typical behaviour of a robber. She could not remember if he had pointed the firearm at anyone in the room.

201. Ms Riley, in cross-examination pointed out to Accused No. 1 that

Dryden had recorded in her statement *"Nadat die verdagte gevat het wat hy kon het my seun se kamerdeur gesluit van buite en vir my by die hoofslaapkamer van Taliep ingestoot en die deur ook van buite gesluit"* which she agreed was correct. According to her statement she told Dryden that *"(k)ort daarna het ek 'n skoot hoor afgaan en daar was 'n doodse stilte. Ek het toe onmiddelik vir Taliep se suster, naamlik Ma'atoema Groenmeyer, op haar huis telefoon gebel, naamlik 021 6375300. Ek het vir haar gesê dat hulle is besig om ons te rob en dat ek 'n skoot gehoor het"*. She also told her defence team that this was incorrect but they failed to cross-examine Dryden on that point. She agreed that what she had said in her statement to Dryden corroborated the evidence Ma'atoema gave on behalf of the state, namely that Accused No. 1 phoned her on the night of the murder and said that they were being robbed and that a shot had been fired and that she (Accused No. 1) thought that the deceased had been shot. She informed her legal representatives that this evidence was incorrect and realized that this was a piece of very important evidence but could not explain why she had not urged her advocate to put the truth to Dryden.

202. She could not remember what she told Dryden as to how the robbers

had gained entry to the house. She could not even remember him asking her about it. According to her statement she said that she suspected that the deceased must have known the people because he would not have opened the door to anyone that late at night. At the time she thought the deceased must have opened the door because no-one else did.

203. She was unable to say why she told Dryden "*Daar was geen kwade gevoelens tussen my en Taliep nie. Sy familie kan dit ook bevestig. Ek ken almal van hulle se nommers. Ek het niks om weg te steek nie*", and could not remember what questions Dryden could have asked her that would have caused her to give him such an answer.

204. She told Dryden that R40 000,00 to R50 000,00 had been stolen from the safe but did not mention the dollars because on the day after the incident her father had said she shouldn't do so because they were not allowed to be in possession of such a lot of dollars . Even after she was arrested on 18 June 2007 and had become suspicious of Hendricks' role in the robbery, she still did not tell the police about the dollars although it could support her theory of Hendricks' involvement. She, however, told her

advocate “right from the beginning”. She agreed that the dollars were only mentioned at her second bail application.

205. She agreed in cross-examination that she allowed her legal representatives to place misleading evidence before the court at her bail application in order to obtain bail. When asked *“the question now in the light of what you also said that he (the deceased) dealt in diamonds and dollars on a small scale but you don’t know whether he did it in 2006, why did you allow this type of evidence that tarnished the reputation of the deceased to be placed on record? For what purpose?”* She replied that she had no answer. She could not confirm that the evidence was led during her bail application to create the impression that it was the deceased who was involved in diamond and dollar deals, that he had interacted with Hendricks and that a dodgy deal was the reason for his murder. She agreed that her evidence in the trial differed from that in her bail application but “that she told (her) attorneys from the beginning the story”. She did not know what the relevance of the deceased’s dealings was in this case.

206. When her father took her, her sisters and Hendricks to the attorney

Mr Snitcher, she informed him of her diamond dealings with Hendricks and the attorney told her that it wasn't illegal to sell polished diamonds. She did not tell the police the truth about the telephone calls when the police were questioning them. Instead she told them a lie i.e. that she and Hendricks had a relationship. She was unable to explain why she waited until the police came to question her again before she disclosed the truth.

207. The R240 000,00 she got from Hendricks for the diamonds that he sold on her behalf was kept by her father. If she needed money she would just send Suleiman to fetch some. She used to keep her father's dollars in the safe in her home because of the risk of her father's house being robbed again. She took the money from the sale of the diamonds to her father's place because the police were in and out taking photographs and fingerprints. She gave the money to her father to keep in his safe. She didn't put the money in the bank because they normally keep large amounts of cash at home. By the time she found out that the money was legal she had spent it already.

208. Hendricks's evidence that he did not bring her the R240 000,00 a few



days after the incident but was there to collect the rest of the promised R70 000,00 was wrong. She says she pointed this out to her counsel but Hendricks was not confronted with it in cross-examination.

209. The insurance money of R5.3 million for Zaynab was paid into her Namibian bank account because she hardly used that account . Although she had two accounts in SA she did not want Zaynab's money paid into her accounts but wanted an account to be opened for Zaynab. According to her broker the bank said that Zaynab was too young to open a bank account. She eventually decided that the money should be deposited in her Namibian account.

210. Accused No. 1 owns two houses as well as a unit (flat) belonging to SAFIN which was registered in her name. She was a "lead provider" (what ever that may be) at SAFIN and was paid a salary by them. Dirk Fruit operated from one of her houses in Cape Town and her father and mother stayed in the other one. Should she and the deceased divorce, he possessed nothing and would get 50% of all her property. The deceased would, however, not have taken the house Dirk Fruit operated from or the

house where her parents were living. He would also not have taken her flat because he knew it belonged to SAFIN. Although he would have been legally entitled to take half of what she owned he would not have done so. She first said that she never discussed her property and position in the case of a divorce with Hendricks but almost immediately after that conceded that she may have told him. She may have told him that when “they” started treating her like a suspect.

211. When questioned about the two R2million deals where the deceased allegedly lost money she knew or could remember that she borrowed the money from her family at the deceased’s request but was unable to give any further particulars. All other questions were answered with “I don’t know” or “I can’t remember”. When asked why the family would have given the deceased R2million after he had already lost R2million she merely said that “They didn’t refuse it”. She did not ask him how he lost the first R2million before going to her family again to borrow a further R2million.

212. Deceased did a TV program for Herman Binge of Kyknet. He was paid to do so. However, her memory once again, seemed to fail her. She could

not remember how much he was paid or if she received that money. He was paid hundreds of rand but she could not remember how many or give an estimate. She could also not remember when this had happened or in which account the money had been deposited. She did not know what had happened to the money. It is possible that the deceased could have received more than one payment for the show but she did not know. Most of the money the deceased earned was paid into the Dirk Fruit account. All his spare money would go into his account. She accepted what Kramer told the court when he testified that an amount of R370 000,00 was paid into the deceased's account but could not remember what happened to it.

213. When Accused No. 1 was cross-examined about the taking of money from the safe in the main bedroom she explained that she was allowed to go into the safe by the robber who did not search it himself. Although there were other valuables still in it the robber was satisfied when she handed him the bag of money. He did not ask if there was anything more for him to take or search for anything else. He only asked if there were any other persons in the house. This conduct appears inconsistent with that of a real robber. It created the impression that the robber knew that he just had to

go with her to get some money.

214. In Achmat's room the robber followed her into the room with the gun pointing downwards. He went to Achmat's side of the bed. She then lost all interest in the robber and went to Insaaf because she was in a state. This evidence is contradictory to that given by Insaaf and she was not cross-examined by the defense counsel on this aspect. Insaaf only saw a gun in the robber's possession and no carrier bag. This matter was also not contested in the cross-examination of Insaaf. She did not see what the robber did with the gun but was sure that Insaaf made a mistake if she said that the robber had only a gun and no carrier bag. Insaaf's evidence appeared more probable as taking cell phones, jewelry, cameras, money from a pair of jeans that had to be picked up from the floor and scratching through a handbag to look for money in it seemed rather impossible with a gun in one hand and a carrier bag in the other. It was not suggested that one of the two objects was even put down. Accused No. 1's evidence as to what occurred in the room is also more consistent with an arranged attack than a real robbery. One would have expected her to at least give some attention to what the robber was doing than merely calming her daughter-

in-law. She was not aware of the robber's presence when he came towards Insaaf's side of the bed and did not see what he was doing there. She also did not look around to see what was happening to her son, Achmat.

215. She agreed that after the intruders had taken the money from the safe and a few other items from Achmat's room, she was locked up in the main bedroom, Achmat and Insaaf were locked up in their room, the deceased was tied up, lying flat on the ground and did not present any danger to them when they shot the deceased. There seems to be no reason for this. She could only speculate that the deceased may have seen one of their faces. Her evidence in chief was, however, that she was woken up by an intruder wearing a balaclava and that the other intruder who was with the deceased was also wearing a balaclava. If that was so it was hardly likely that the deceased could have identified any one of them. It also appeared from the rest of the evidence that both intruders were unknown to the deceased. There seems to be no reason whatsoever for killing the deceased.

216. Finding herself in some difficulty to explain the incident Accused No. 1

mentioned a further possibility raised at her bail applications but not at the trial – namely that Hendricks was offered R250 000,00 by the Scorpions to implicate her in the murder. She obtained this information from Hendricks who told her about it and she believed him. Nonetheless, nothing was said about it earlier on in the trial and it appears most unlikely that such an offer was in fact made.

217. Some time was spent cross-examining her on the R20 000,00 that her father gave Hendricks to pay his legal representative. This aspect does not take the matter any further. I may mention at this stage that Accused No. 1's father has since died.

218. Questioning about the security systems at the house elicited the following responses. The burglar alarm could only be switched on if all the windows and doors were closed. Accused No. 1 did not phone the alarm people because she was unaware if the number of the business was available in the room. The electric fence on the perimeter wall would also prevent a person from climbing over. She accepted that an intruder could only have gained entry to the property if someone had opened the small

gate in front of the house and the front door from the inside. She agreed that Achmat, Insaaf, the baby and Zaynab can be excluded as possibilities. That would leave Koekie, Accused No. 1 and the deceased. She stated that the deceased would have ensured that the doors were closed and locked before he went upstairs.

219. The robber locked her up in the main bedroom. Her cell phone was somewhere in the room where she had been sleeping. In the main bedroom was a Telkom landline phone as well as the deceased's cell phone. He, therefore, left her in a room with two phones by which she could contact the police speedily – not something an intelligent robber would do except, of course, if he knew that the victim was co-operating.

220. Accused No. 1 agreed that she withdrew R100 000,00 from her FNB account on the Tuesday after the incident. She asked the state witness Fatima Achmat of SAFIN to assist her in drawing the money. The money was for her father. She did not just write out a cheque and send her father or one of her sons to fetch the money because when she wanted to draw large amounts of money she usually got Fatima's brother or a "guy from the

company" (SAFIN) to cash the cheque . This money came from her own personal money.

221. Accused No. 1 agreed that starting on 4 December 2006, she made only 5 calls to Hendricks, 2 on 8 December 2006 at 21h03 and at 21h43, 1 on 9 December 2006 at 16h45 and 2 on 10 December 2006 at 16h04 and 16h34 respectively. No further calls were made until 12 December 2006. These calls were all made after she handed the diamonds over to him. She only made these relatively few calls compared to later because by 12 December 2006 he had not yet handed the diamonds over to a buyer.

222. When questioned by the court she indicated that she would have done nothing if Hendricks had taken the diamonds and run away with them, thereby causing her a loss of a quarter million rand. She did not show Hendricks the diamonds and request him to find a buyer and bring him to her house to see the diamonds because that is not the way diamond deals are done.

223. Further cross-examination by Ms Riley established that Accused No. 1



had phoned Hendricks on 13 December 2006 at 10h27 and he then told her that he had found a buyer and was waiting for the money. He said the money was to be brought on that day. On 13 December 2006 at 18h29 and 18h55 she again phoned Hendricks but the guy had not yet brought the money. Then at 19h43 she phoned Hendricks again to find out that he had not got it as yet. She also phoned Hendricks on that day at 20h44, 20h45, 20h47 and 20h48 for the same purpose and received the same answers. Notwithstanding the fact that Hendricks told her that the buyer was a very good friend of his she, at no stage during any of these 6 calls, attempted to get any particulars about the buyer from Hendricks and was unable to provide any explanation for this omission.

224. Ms Riley pointed out the pattern relating to the phone calls of Accused No. 1 when examining the detailed billing of Hendricks, exhibit "M". Accused No. 1 was unable to explain why Hendricks phoned Accused No. 2 and 3 on several occasions after she had phoned Hendricks. At no stage did Hendricks tell her that these people were involved in the diamond deal.

225. On 17 December 2006, the day of the *janazah*, Accused No. 1 rang

Hendricks at 23h34:48 and spoke to him for 99 seconds. By then he had already informed her that he had the money for the diamonds. She says she phoned him because she had not heard anything from him that day. This was her concern on the day her husband was buried.

226. Hendricks brought the R240 000,00 (for the diamonds) to her on Wednesday 20 December 2006. On the previous day she received the R100 000-00 that she had withdrawn from her own account. It was put to her that on 20 December 2006 signals from Hendricks's cell phone were not picked up by any of the cell phone base stations close to her home. She submitted that Hendricks, however, brought the money to her at about 10h00 or 11h00 on the Wednesday 20 December 2006. It is not possible that she is making a mistake because if she received the R240 000,00 on Tuesday 19 December 2006 she would not have withdrawn R100 000-00 for her father but would have given him the money from the R240 000,00.

227. On the night of 16 December Accused No. 1 did not move around in the house before she was woken up by the intruder. She went to the *en suite* bathroom in the main bedroom, had a bath and then went to the room

where she slept. She first made a few calls on her cell phone, went to sleep and was woken up by the intruder. It is possible that she moved from her room to the main bedroom before she went to sleep. She was unable to remember if she had. The cell phone calls she made at 20h11 and 21h20 that were picked up by the Kewtown 3 base station could only have been made from the main bedroom. A call made at 21h23 was picked up by the Crawford 1 base station and must have been made from the room where she slept. Then she made a call at 22h06 that was picked up by the Kewtown base station – thus from the main bedroom, at 22h36 from the main bedroom (Kewtown), at 23h03 still from the main bedroom (Kewtown) and then at 23h26 from the room where she slept. She accordingly must have moved around “anywhere upstairs” during that period.

228. The buzzers that open the front gate are situated downstairs and in the main bedroom. At 23h03 Accused No. 1 was in the main bedroom where the one buzzer is situated and was back in the room where she slept at 23h26 when she made her last call of the day to Hendricks. In view of Soeker’s evidence that she left the kitchen to have a bath about ten to fifteen minutes after nine and her evidence that she did not come

downstairs again after that, she must have been upstairs in the main bedroom when she made her first call of the evening to Hendricks at 21h20. She took her bath immediately after she went upstairs. She could not remember what she was doing in the main bedroom again at 23h03 when she phoned Hendricks from there.

229. When re-examined by her counsel, Accused No. 1 said she felt shocked, traumatized and confused the night of the incident. She did not know how robbers behave when entering a dwelling or a house. She did not know if the electric fence was switched on or off on that night. She estimated that the robbers could have been in the house for 15, 20 to 30 minutes. The landline phone in the main bedroom was visible as you enter the room on the pedestal next to the bed.

230. The Court established that Accused No. 1 was on the staff of SAFIN. In the beginning, when she was paid R50 000-00 she was registered as a tax payer. During those months when she received R100 000,00 per month it was not reflected on her tax return. She did not disclose to the receiver of revenue that she received ±R1,6 million during the year and a half

instead of R50 000,00 per month. She received big amounts of money ranging from R100 000,00 to R400 000,00 but books of account for the disposal of this money were not kept. She agreed that she had dealt in millions of rand without ever keeping any books of account because she knew the people who owed them money. On the business side they kept records but on the personal side, whoever borrowed money from her or her brother – they did not keep a record of that. She agreed that she dealt with money on a large scale purely on the basis of trust.

231. She agreed that Hendricks was not a very sophisticated person and that he was her former husband's friend. She gave Hendricks R250 000,00 worth of diamonds without any guarantee because it was a private deal.

232. In the room where she was sleeping the intruder did not tell her not to make any calls and did not ask her for her cell phone. He did, however, take her son and daughter's cell phones. He took all types of small items from Achmat and Insaaf but did not look into her safe when he was right there on the spot.

233. The court tried to clear the matter of the cushion but was unable to determine conclusively whether there was a pillow on the scene or not.

234. There is no reason to assume that the electric fence would not have been on that night – it was usually on at all times. In view of this somebody must have let the intruders in on that night. Without inside help no-one would have been capable of entering the premises. There were only three in the house that could possibly have let the robbers in. Accused No. 1 assumed that it was the deceased that opened the door to the attackers. This was unlikely unless he knew the attackers.

235. Mr. Engelbrecht was given a further opportunity to question this witness.

236. His questions were directed purely to the object lying in photo 17 of exhibit "A" but did not take the matter any further as to whether it was a cushion, a pillow, a duvet or anything else.

237. Dr. Leon Wagner ("Wagner") was called by Mr Engelbrecht on behalf

of Accused No. 1. He is a forensic pathologist, a collector of fire-arms, a hunter and had training in military arms. He retired as a Chief State Pathologist in 1999.

238. Wagner had available to him the photo album exhibit "A", a copy of the post mortem report exhibit "D", a report by a ballistic expert, Sgt Roberts, exhibit "JJJ", a CD made at the scene whilst the deceased was still on the scene and a CD made whilst Accused No. 3 was pointing out the scene to the police, exhibit "1" as well as the transcript of Accused No. 3's explanation during his pointing out. He also had regard to both statements by Accused No. 3, exhibits "W" and "Y". He accepted the correctness of the post mortem and ballistic reports.

239. The entry and exit wounds are typical of a small calibre fire-arm. The entrance wound had been altered before it was photographed as the hair had apparently been shaved off. In doing this any soot that may have been present would have been removed. If soot was present the shot must have been fired from 20 to 25 centimeters. Because the pathologist reported burns around the entrance wound the shot must have been fired a

maximum of 10 centimeters away to cause burn marks and a deposit of soot.

240. If one takes into account the way deceased was lying, he would not have been able to move the moment the shot went through his neck. The shot must have been fired from his left hand side upwards. It could not have been fired from the direction of the stairs as indicated by accused 3 during his pointing out. In that case the shot would have been fired from the top of deceased's head.

241. During his confession Accused No. 3 pointed out how the gun was fired from inside a cushion. According to Wagner, if this actually happened there could not have been burn marks or soot present at the entrance wound.

242. Using a cushion when firing the shot would have dampened the sound. The witness was of the view that in such a case Soeker would not have heard a sharp crack and Insaaf a bang. The sounds heard by the witnesses indicate that a cushion could not have been used. The object



visible to the left of the pool of blood in photograph 15 of exhibit "A" can be a duvet but not a continental pillow, which is thicker.

243. Cross-examined by Ms Galloway, the witness conceded that it is difficult to say from what angle the shot was fired. He judged from the ballistic evidence the distance the shot was fired from. A shot fired from an angle of 15° would cause the bullet to ricochet. A person who was in the house would hear the shot clearer than one outside. Burning of the wound is not clearly visible on photos 44 and 45 but a slight discoloration is visible outside the red ring around the wound. Shooting through the hair of the deceased would have filtered away soot to a large extent.

244. Mr Engelbrecht also called Peter John Burgers as a defence witness.

245. He is a pharmacist with a good knowledge of the side effects of drugs administered in South Africa. He is also an admitted advocate of this court. He was asked to analyse the drugs prescribed to Accused No. 1. He was provided with a prescription, exhibit "ZZ". From this extract he drew up a chart, exhibit "AAA", of what Accused No. 1 was taking during the period

the deceased was killed.

246. On 16 December 2006 Accused No. 1 was taking the following prescribed medicine: Prohexal 20 mg two in the morning; Alzam 0.5 mg three times daily; Seroquel 500mg at night and Z-dorm, two tablets at night. Prohexal is an antidepressant and the dosage is within normal limits but can induce sleeplessness. Seroquel is an antipsychotic often used for the treatment of schizophrenia but also for the treatment of bipolar disorder. Use of these tablets would make the patient to become calmer. Alzam is a drug used to treat anxiety and stress associated with depression. The patient would become less worried about life, would become distanced from reality, show vagueness and memory lapses. Seroquel could increase the effects of Alzam. Z-dorm is a sleeping tablet. The manufacturer recommends one tablet at night but the witness was surprised to learn that two tablets at night were prescribed which could cause the patient to drift off into deep sleep.

247. If the medication was taken as prescribed its effect would probably be that the patient, woken up in the middle of the night, would be confused,

disorientated and not lucid. Furthermore, a common side effect of electroconvulsive therapy is frequent memory lapses that only resolve months after the treatment. In his conclusion he states that:

*"(g)iven the cocktail of medications given to the patient on the night in question, combined with possible memory lapses occasioned by the earlier ECT in April of 2006, it is entirely possible and probable that the client experienced confusion, disorientation and memory lapses/losses at the time of the alleged murder".*

248. This may be so but we must take into account that Accused No. 1 suffered her worst memory lapses, according to her own evidence when being cross-examined, not during the night of 16 December 2006, but later the next day.

249. Cross-examined by Ms Riley, the witness admitted to drawing up two reports for defence counsel. The first report was a draft report. Thereafter he did more research and drew up the report now before court. A third report may differ from the one he handed up as exhibit "AAA". He admitted that in his first report he said that it was the ECT that caused the memory

lapses and not the medication. In his second report he said that both could cause memory lapses. He reached this conclusion pursuant to further research on the internet. Alzam takes about 5 to 30 minutes to take effect while Z-dorm takes about an hour before the patient is in a deep sleep.

250. The witness conceded that he could not dispute experts who say that ECT does not cause memory lapses.

251. It was put to this witness that Accused No. 1's own psychiatrist, Dr Chris George, in a report to her previous legal representative, Snitcher, stated that she responded well to the EC-treatment, exhibit "E" of the bail application. On being referred to Valkenburg Hospital for observation in terms of section 79(2) of Act 51 of 1977, the panel appointed by the state to observe Accused No. 1 reported:

*"(s)he was able to give good account of her self at all times. Her thoughts were clear, rational and logical. Although she declined to give an account [of the events surrounding the deceased's death], she insisted that she had a vivid memory of the events during the alleged offence."*

Dr. George, the psychiatrist appointed by her at her observation, makes no mention of her memory lapses in his report. The witness indicated that he could not comment on what happened during her observation. He was also unable to comment on an observation made by Dr Bredenkamp who conducted interviews with Accused No. 1 at the Breederivier Female Prison on 23 October 2007 and whose report was handed in as exhibit "BBB2" in which he said "*(a)andag en konsentrasie asook kort- en langtermyn geheue was binne normale perke.*"

252. Mr Engelbrecht then called Achmat Gamieldien to testify.

253. He is the son of Accused No. 1 and married to Insaaf, the earlier State witness. Except for the following his evidence does not really deviate from that given by his wife and where it actually differs it does not have any adverse effect on her credibility.

254. He did not mention that Accused No. 1 shouted at them that they are here to rob them and wanted money and jewellery. Insaaf did not mention that Accused No. 1 was crying all the time she was in their room.

255. Furthermore Achmat mentioned the intruder having a carrier bag in his possession. In this respect his evidence is similar to that of Accused No.

1. He further stated that the intruder actually put the carrier down on the floor.

256. Mr Konstabel, in this instance, put to the witness his client's version that the intruders left the house at different times. More significantly, that Accused No. 4 left the house before the shot was fired.

257. The court will approach the evidence of this witness with some circumspection as he was called to testify in support of his mother. Furthermore, he sat in court while some of the other witnesses were testifying.

258. Ms Abrahams called Accused No. 2 to testify.

259. At the time of the incident Accused No. 2 was self employed as a plumber. He also drove a pickup truck on behalf of Hendricks' brother,

Ebrahim. At the time of his arrest he was staying with his sister in Wynberg because of marital problems. During December 2006 he stayed in Crawford with the Hendricks family.

260. Hendricks then had a take away shop and also drove a tow truck on a part time basis. During the daytime and in the absence of Hendricks, Accused No. 2 used to discuss his marital problems with Hendricks' wife who did not work. At first Hendricks did not mind but later told him not to speak to his wife in his absence. Thereafter Accused No. 2 used to speak to her at night in Hendricks' presence.

261. He agreed with the evidence that he and Hendricks called each other on their cell phones. Although he was unable to give particulars these calls could have been in connection with tow-in contracts or money that he owed Hendricks. He was paid 50% of the fees they got for a tow-in. Hendricks' brother paid him regularly but Hendricks himself often failed to do so.

262. He did not know Accused No. 4 personally but knew Accused No. 3 for 3-5 years. He saw Accused No. 3 twice before this incident. On the first

occasion he saw Accused No. 3 at a panel shop. On the second occasion, on 15 December 2006, Hendricks told him that a person would be coming to collect a computer box and wires and had to pay R4 300,00 for it. He remembered the date because two weeks later he bought another vehicle. It turned out that this person was Accused No. 3 who collected the parts and gave him the R4 300,00. Accused No. 2, however, decided to keep the money. He told Hendricks that Accused No. 3 did not give him the money. He knew that Accused No. 3 had a 1400 bakkie that needed spare parts and he had a similar bakkie that had been damaged in an accident. He told Accused No. 3 that he was not going to give Hendricks the money and that they could do a deal in connection with the parts of his bakkie. When Hendricks confronted him, he denied that Accused No. 3 had given him the money and thereafter never slept "there". I must assume by "there" he means the Hendricks home. He did not deny that there were a lot of telephone calls between him and Hendricks on 16 December 2006. When asked the reasons for these calls he said *"(i)t can be there was pick-ups and it can be in connection with the money. But I can't tell you exactly which call is which"*. He never used Hendricks' phone.



263. The first time he was questioned in connection with this case was in January 2007. He received a call from Hendricks informing him that there was a pick-up and that he should come to a mall in Mitchells Plain. When he got to the mall Hendricks just walked past him after which he was detained and "*locked up*" by the police. He was not told the reason for his arrest. They took him to Bellville South Police Station and said that they were going to question him in connection with a murder case. He had a cell phone in his possession and they said it was an illegal phone. He was taken to the Mitchells Plain court but released the following afternoon.

264. Accused No. 2 denied Hendricks' evidence that he was involved with the murder giving rise to this trial. He thought Hendricks involved him in this trial because he was locked up previously for 15, 16 months awaiting trial after which the case against him was withdrawn. (Apparently the charge on which he was held awaiting trial had nothing to do with this case). Accused No. 2 added that "*(i)t can be that he thought he can cover all his tracks up, and I will be the easiest one in it because I was an awaiting trial prisoner.*" He also thought that Hendricks was incriminating him because of his friendship with his wife. Hendricks confronted him on

one occasion saying that he did not like the fact that Accused No. 2 and his wife were so close.

265. Mr Scott, on behalf of Accused No. 3, cross-examined Accused No. 2. Accused No. 2 had been in custody for 15 months and was released in November 2006 – thus before the incident. He discussed the deal about the bakkie with Accused No. 3 on the day he came to fetch the parts belonging to Hendricks. He later agreed that he sold the bakkie to Nazeem Jacobs but added that he still had the gearbox and motor in his possession. On the day when Accused No. 3 came to fetch the parts at Hendricks' place, Accused No. 2 told him he had problems with his bakkie and enquired if he still had the spare parts. He was unable to give the exact date when this happened although he was quite sure in his evidence in chief that this was on 15 December 2006.

266. He agreed that he had Accused No. 3's cell phone number. He got it from Hendricks. He agreed that he called Accused No. 3 on Friday 15 December 2006 to come and get the parts because it was getting late and he wanted to go to Mosque.

267. He denied that he drove to "a certain spot" with Hendricks and Accused No. 3 on 15 December 2006 and that his girlfriend was with them.

He did not have a girlfriend at that stage but had lots of friends. When the court pointed out to him that he was not answering the question he conceded that he did have a girlfriend. He did not dispute that Accused No. 3 sat in the vehicle on 15 December 2006 – it was when he came to fetch the parts. Accused No. 2 was in the vehicle on the verge of pulling out to go to the Mosque when Accused No. 3 arrived and got into the car asking for the parts. He told Accused No. 3 that they were in the boot, got out, took them out and both got back into the car. He then counted the money. He denied that he and Accused No. 3 and Hendricks were simultaneously present at Hendricks' house on that day.

268. He called Accused No. 3 on his cell phone two or three times on 15 December 2006 to tell him he was going to keep the money and not give it to Hendricks. He called three times because the first time he ran out of airtime. The second time he continued the conversation about not paying the money to Hendricks. He was unable to say exactly what they discussed

the third time but it had to do with the parts. He wanted Accused No. 3 to tell Hendricks that he was still going to pay the money but that he had not done so at that stage.

269. He denied that he, Hendricks and Accused No. 3, at any stage discussed a hit. Hendricks at no stage said that he did not want the witness to do the hit because the two of them were too close and could be connected to each other. He had money after 16 December 2006. He obtained the money which was meant for Hendricks from Accused No. 3, he did some plumbing work and he took an advance on a plumbing job that he had to do. He did not receive any money from Hendricks. He received calls from Hendricks because Hendricks needed his money.

270. Accused No. 2 denied having indicated that he would shoot the victim himself but he did not have a firearm. Nor did he instruct Accused No. 3 to get one.

271. Mr Konstabel, on behalf of Accused No. 4, cross-examined Accused No. 2. He did not know Accused No. 4 and had never seen him before. It

was possible that Accused No. 4 saw him at Accused No. 3's place when both of them were there at the same time but he had not noticed Accused No. 4. It is, however, impossible that Accused No. 4 had seen him at Hendricks' place where he, that is, Accused No. 2, Hendricks and Accused No. 3 discussed something and Accused No. 4 was told to wait for a while they were away for a few minutes.

272. During cross-examination by Ms Galloway for the State, Accused No. 2 stated that he had seen Accused No. 3 quite often in the past when he went to a panel shop of a friend where Accused No. 3 used to help out. Immediately before the murder he had only seen Accused No. 3 twice - once when he was in discussion with Hendricks and on the second occasion when he came to get the parts. He had not seen Accused No. 3 anywhere else.

273. At first Hendricks had no problems with him speaking to his wife in his absence but later Hendricks did not want him to do so if he was not present. After that he only spoke to her in Hendricks' presence.

274. He remembered the date Accused No. 3 collected the spare parts, to wit 15 December 2006, because he bought a vehicle two weeks after this incident. It was a Honda that he bought from Nazeem Jacobs, the same person he sold the bakkie to. He paid R10 000,00 for it. He used the R4 300,00 he had stolen from Hendricks, he had some money, he did some plumbing work and he took an advance on work he was about to do. No one else gave him money to buy the vehicle.

275. After the theft of the money he did not sleep at Hendricks' house again. He slept at his sister's house in Wynberg. He actually paid to stay at Hendricks' house even though Hendricks did not pay him. He did not work for Hendricks, but for his brother, Ebrahim. Hendricks would only pay him when he got a tow-in job and then gave it to him, Accused No. 2, because the clients would pay Hendricks in such a case. When asked by Ms Galloway *"If it is his brother's client, then you work for his brother, if it is Fahiem's client, you work for Fahiem, isn't that correct?"* he answered *"But the vehicles don't belong to Fahiem."* He added that Hendricks worked there, it was his brother's business, and the tow trucks belonged to his brother. He insisted that he didn't work for Hendricks but for his brother

but if the clients were Hendricks' clients Hendricks had to pay him which he frequently failed to do.

276. Accused No. 2 called Accused No. 3 two or three times on 15 December 2006. On the first occasion he ran out of airtime. He was then asked *"So, do I understand your evidence correctly sir, you then called him again?"* He answered *"It can be"*. When pressed to explain what he meant by this answer he merely admitted that he phoned Accused No. 3 a second time. He told Accused No. 3 that he was not going to pay Hendricks for the parts that Accused No. 3 had collected. The third call, according to Accused No. 2, could have been in connection with the parts that he needed. He was unable to recall this conversation and could not say what exactly it was about. He did not tell Accused No. 3 about the parts during the first or second call because he ran out of airtime. He did not run out of airtime during the second call. He cannot exactly remember what they talked about during the first call but he knew the money was the most important thing and the parts but was unable to say in which conversation the parts were discussed.

277. He spoke to Hendricks about the money Hendricks owed him. It was on two, maybe three occasions. This was for  $\pm$  seven to eight pick ups. Hendricks sometimes told him that he was waiting for clients to pay him. That was the only reason Hendricks gave him for not paying. He never thought that Hendricks would not pay him. He was satisfied to wait for his payment but it was starting to take too long. Every time he asked Hendricks about payment he was satisfied with the reasons given to him.

278. He said the fact that he had stolen Hendricks' money was the only real issue between them. Immediately thereafter he said that was not the only issue. The fact that he spoke to Hendricks' wife was the major issue because Hendricks confronted him about it. Although he complied with Hendricks' request he could see that the issue was not resolved because he could see Hendricks did not trust him. These were the only reasons he could furnish why Hendricks was implicating him in this murder case. The fact that Hendricks assisted the police to arrest him could also be a reason why Hendricks sought to implicate him.

279. It became obvious that Accused No. 2 was being deliberately vague.



He preferred to answer simple question with "it could be" or "it is possible" and by changing his evidence as he saw fit, for instance the reasons why Hendricks implicated him in these crimes. The court still does not know what Accused No. 2's case is in this regard – was it because he spoke to Hendricks' wife, because of the money he owed Hendricks or because of anything else. Moreover the reasons given by him for phoning Accused No. 3 three times on 15 December 2006 are not entirely clear because he gave different reasons depending on the questions put to him.

280. However, Ms Galloway then delivered her most telling blow. It was a list compiled by her of the cell phone calls between Accused No. 1, Accused No. 2 and Accused No. 3. The list consisted of calls extracted from the cell phone records of the parties. It was admitted in evidence as exhibit "CCC". Accused No. 2 was referred to the many calls made by Accused No. 1 to Hendricks, after which Hendricks then phoned him (Accused No. 2), and he either returned Hendricks' calls before or after he called Accused No. 3. He was unable to explain why these calls were made but added that the sequence of the calls between them may have been purely coincidental. The calls between him and Hendricks were, he repeated, mostly about car

tow-ins, the money he owed Hendricks or “a lot of things”

281. The calls made between Hendricks, Accused No. 2, Accused No. 3 and Accused No. 1 amounted to three on 13 December 2006, 4 on 14 December 2006, 16 on 15 December 2006, 30 on 16 December 2006 (the day the deceased was killed) and 4 on 17 December 2006. Accused No. 2 was unable to furnish a cogent, if any, explanation for the large number of calls.

282. Accused No. 3 was also called to testify. This accused did not know Accused No. 1 before the night the deceased was killed. He knew Accused No. 2 from seeing him at his brother’s workshop. He denied having any dealings with Accused No. 2 or that he gave him R4 300,00 to give to Hendricks. At one stage he had to take a loom and a gearbox that he had stored at Hendricks’ place to Sadick Kriel. It was then that Kriel gave him his telephone number and directions how to get to his house. Hendricks did not phone him and instruct him to give money to Accused No. 2. He did not owe Hendricks any money. All the calls he got from Accused No. 2 were about obtaining a gun and a motor vehicle to use when the deceased was to be killed.

283. Accused No. 2 phoned him one evening and told him about the people who wanted to be robbed. Accused No. 2 also phoned him repeatedly to give him instructions on how to drive to Hendricks's house where they were to meet. Hendricks' name was not mentioned. This could have been on the Friday before the murder but he thought it was the Wednesday. Accused No. 4 was with him. When he followed Accused No. 2's instructions he eventually realized he was at Hendricks' place. This was late at night, past nine or ten. He and Accused No. 4 arrived there in his 1400 bakkie. Accused No. 4 remained in the vehicle while he, Accused No. 2 and Hendricks stood in the driveway to Hendricks' place. There Hendricks told him, in the presence of Accused No. 2, that he had a friend who was having a lot of trouble with her husband and she needed people to stage a robbery at their house and kill the man, making it look like a robbery gone wrong. It was said that she would assist them and that there would be between R50 000-00 and R70 000-00 available as payment.

284. They left in Accused No. 2's Honda to view the house. Accused No.2 drove, his girlfriend sat in front with him while Accused No.3 and Hendricks

sat at the back. He then took them to 101 Grasmere Street in Athlone where Hendricks explained to him that he should first look for the deceased in the studio because he is in the musical industry and spent most of his time in the studio. Hendricks also told them that the lady would open the gate and front door for them and switch the cameras off. They drove back to Hendricks' home where he told Hendricks that the money was not enough. Hendricks sent an SMS, received an answering call and told the caller that he had found people to do the job but that they wanted at least R150 000-00. He did not contact the lady by phone himself.

285. He told them that he was not prepared to shoot someone for money. Accused No. 2 said he would do the shooting but Hendricks said that he preferred Accused No. 2 not doing the shooting as they were too close. During this conversation Accused No. 4 remained in Accused No. 3's bakkie, in other words he was not party to this conversation. This incident could have taken place on 15 December 2006 as it was mentioned that the people would be attending a 21<sup>st</sup> birthday the next day and the hit had to be done after they had returned from the party.

286. Accused No. 3 was referred to exhibit "CCC". According to it the first call he got from Accused No. 2 was on 15 December 2006 at about 23h10. He agreed and pointed out that when he wrote his own (handwritten) statement he did not have a calendar available in the cells. He arrived at Hendricks' place after the last call he received from Accused No. 2 on 15 December 2006 as reflected on exhibit "CCC".

287. During the late afternoon on 16 December 2006 he received a call from Accused No. 2 enquiring whether he had found a gun. During the evening, while he and Accused No. 4 were test driving the bakkie he decided that as he was now getting too many calls about the lady wanting them to finish the job and the money was available, he decided to go to Kriel's place to get the gun. This he did. He phoned Hendricks to hear where Accused No. 2 was but Hendricks told him Accused No. 2 was on his way to Strandfontein and that he would have to do something else to finish the job. He decided to do it himself. He thought they could get away with it if they were to arrive, hold up the inhabitants, rob them, assault the deceased and leave without killing anyone. He told Accused No. 4 on their way to the house that they were to rob the people at the house who would

then claim their loss from insurance. Accused No. 4 did not know about the gun before they entered the house. Before they entered the property they covered their faces with scarves because Hendricks told him that the lady of the house did not want to see their faces.

288. The front gate was ajar as was the front door of the house when they entered. Accused No. 4 went to look towards the kitchen but did not find the deceased there. Having found nothing downstairs they went up and found the deceased sitting there watching TV with his back towards them. He said to the deceased "stand up, hands up, we are here to rob your place." He had his firearm in his hand. Accused No. 4 had seen the weapon as they entered the house. They grabbed the deceased's arms and bent them behind his back. His hands were tied with cable ties. Accused No. 1 came out of the main bedroom towards them. She went to the deceased and tried to hug him but he attempted to head butt her. Accused No. 4 kicked the deceased in his face causing him to fall backwards. Because of the deceased falling over backwards and him still holding on to the deceased he had to put the firearm down to prevent himself from falling with the deceased. They turned the deceased over on his stomach. His

face and mouth were bleeding but Accused No. 1 went to him and kissed him and said something to him. Accused No. 3 could not hear what was said as the deceased was crying bitterly. They decided to tie him up as he was moving about too much. They used the table cloth on the coffee table to do this. At this stage his firearm was still lying on the settee. He held the deceased down with his knees in his back while Accused No. 1 and Accused No. 4 tied the deceased's feet.

289. He lifted Accused No. 1 up and asked her where the safe was. He followed her to the main bedroom. Before they entered she told him that her baby was sleeping in the room and he mustn't make a noise. The room was dark. They went through it to the bathroom where there was still some water in the bath and a ring of candles on the edge of the bath, giving the only light in the room. Accused No. 1 led him through the bathroom, opened a cupboard, bent down to a safe, took out a bag, she gave it to him. He tried to see what else was in the safe but there was insufficient light and she was spoiling his view. The bag she gave to him was a white material bank bag. She told him that there was R27 000,00 in the bag. He peeked and saw that there was real money in the bag. He told her that the

R27 000,00 was not the amount they discussed with Hendricks. She said they had got the money they came for and must now finish the man. He saw that there were new R100 and R200 notes in the bag. There were no American dollars in it. He folded the bag and put it in his pocket.

290. After leaving the main bedroom he told her that for it to look like a real robbery they should take other things as well, like jewellery and cell phones. She took off her watch and gave it to him. He asked her if there were other people in the house. She then told him that her son and his wife were in another bedroom and took him there. He waited for her to open the door and followed her into the room with the firearm in his hand. She switched on the light. The son, Achmat, and his wife, Insaaf, were awake. Accused No. 1 moved straight to Insaaf to calm her and he went to Achmat's side of the bed. Insaaf started crying and Accused No. 1 went to her to calm her down. He told them that they were about six people robbing the house and if they cooperated no-one would be injured. He took two cell phones and two watches from the table next to Achmat's side of the bed. He picked up a pair of jeans lying on the floor, searched the pockets and took the money from the pockets. It was about R1 600.00. He also got a



camera from Insaaf's side of the bed. When they entered the room he pointed the gun at them. As he was about to leave the room he noticed the baby in the cot. He bent down and kissed the baby on the forehead. Insaaf picked up the baby who started to cry. He told them to come over to the main bedroom because he wanted to lock them all up together but they asked to stay in their room as the baby was crying. He locked them in their room leaving the key in the lock on the outside of the door.

291. Accused No. 1 left the room before him and waited for him while he locked the door. He wanted to look for other valuable things in the house and Accused No. 1 walked arm in arm with him urging him to finish off with the man, to shoot him and to shoot him tonight (*"kom julle moet nou klaarmaak met die man, julle moet hom skiet, julle moet hom vannaand skiet"*). She was on his left and he had the gun in his right hand. He went into a room which appeared to be a boy's room while Accused No. 1 waited outside. When he came out he saw the deceased lying on the floor. It appeared that Accused No. 4 had put one of his gloves into the deceased's mouth and he was looking at them. They walked past the deceased and he removed the glove from the deceased's mouth. He immediately started

reciting the *kalima* – the Islamic statement of belief. Accused No. 4 was sitting on his knees next to the deceased. It looked as if he was speaking to the deceased. He had toilet paper or tissues which he was using to wipe the blood and tears from the deceased's face. A part of Accused No. 4's scarf came loose from his face and some of his sweat drops fell to the floor. Accused No. 3 told Accused No. 4 to wipe the sweat from the floor with the glove so as to avoid DNA identification.

292. Accused No.1 asked them not to shoot the deceased there but to take him down to the ground floor and shoot him there. Accused No.4 stood up, started towards the stairs, saying he had not come there for that purpose. The woman was still asking him to shoot the deceased. Accused No. 3 told Accused No. 4 to go out and to act as lookout ("*vang 'n pos*"). He realized that the woman was very desperate to have the deceased killed for whatever reason. Because the deceased repeatedly uttered *Allahu Akbar* – (God is great) and recited the *kalima* in his presence, he could not go so far as to hit the deceased. He turned around and went to another room and looked on the bed but did not find a pillow big enough for the gun. He also looked in the cupboard but found no pillows on the shelves. Then he saw a

pillow on the floor of the cupboard and took it. He put the gun in the pillow and folded it over the firearm. He held the firearm in the folded pillow pointing downwards. Accused No.1 was standing next to him. She inserted her hand into the folded pillow – as demonstrated in court, put her hand over his left hand and a shot went off. They were standing about 2 steps from the deceased at this stage. He pushed her away towards the main bedroom and locked her in, throwing the key towards the Gamieldiens' bedroom. He left but had to jump over the pillow to get to the stairs.

293. He left the house and closed the front door and front gate. He found Accused No. 4 in the bakkie. They drove towards Kriel's place. As they were driving he noticed that the slide of the gun was still slightly open and that the shell of the cartridge was not expelled from the loading chamber. He removed it from the chamber and, from frustration, because he did not intend killing a person, started chewing it. He later spat it out of the window. On their way to Kriel's place he took the money from the bag and put it in his pocket. He took the other items which he had taken from the house in the bag, except for one cell phone he thinks, and threw it away. At Kriel's place he returned the gun and they had coffee. He gave Accused

No. 4 R6 000,00 of the money and Accused No. 2 R4 000,00. Accused No. 2 wanted more money because he was under the impression that there would be R100 000,00 involved but when he told Accused No.2 what he got, he accepted the money and said he would talk to Hendricks about it. This was about 2 or 3 days after the incident. Accused No.2 must have known that the deceased had been killed and that the money was taken from that home. He informed Hendricks – who met him at a branch of Nando's - about his troubles with the money. He wanted to tell Hendricks about the money but Hendricks said he did not want to know anything and the less he knew of the events in that house the better.

294. Later, after Friday prayers he noticed Hendricks waiting for him. Hendricks told him not to worry, the police had been questioning Accused No. 1 about the phone calls she made to Hendricks and that she told them that he owed her money and she was phoning to get her money back. He also said that Accused No. 1 was going to give them more money but Accused No. 3 declined and said he no longer wanted anything to do with the incident. He also told Hendricks that he still had the cell phones from the scene to make Hendricks aware of the fact that he could still be

connected to the scene to prevent them from getting rid of him. At a later stage he again met Hendricks at the Mandalay Mosque. Hendricks told him that the police did not believe their story about the money but that they had decided to say they were having an affair. Hendricks asked him if he couldn't put the cell phones somewhere and lead the police off their track. He decided that he would do it. On a third occasion Hendricks told him that the police were harassing them again and that they had decided to say that Accused No. 1 gave him diamonds and had phoned him about them. At one stage Hendricks also told him not to worry if the police arrested Accused No. 1 - she would pretend to be mad.

295. Hendricks lied if he said he did not know Accused No. 3. He wrote a complete statement out of his own volition shortly after he was arrested. He did so because he wasn't satisfied with what he had said in his previous 2 statements and that there were several matters that he still wanted to reveal. He did so because he was feeling bad and ashamed and wanted to make peace.

296. Mr Scott indicated that he was finished with his witness, however,

Accused No. 3 indicated to the court that he had a further matter that he wanted to bring to the notice of the court. He informed the court that since his arrest there were attempts made to bribe him to get Accused No. 1 out of the case. These allegations were almost entirely based on hearsay evidence and can be safely ignored.

297. After his rather prolonged and repetitive evidence-in-chief Accused No. 3 was cross-examined by Mr Engelbrecht.

298. Accused No. 3 explained that he made one statement to superintendent Aspeling when he went to the scene and pointed out certain places, handed in as exhibit "Z"; one statement to superintendent Spangenberg when he made what is commonly known as a confession, handed in as exhibit "Y". Over and above these statements he wrote what he calls a 15 page letter to record everything that happened in detail, handed in as exhibit "AA". In his cross-examination of Accused No. 3 Mr. Engelbrecht concentrated mainly on contradictions between his evidence-in-chief and his statements and contradictions between statements put to the other witnesses by his counsel and his own evidence.

299. In his earlier evidence he stated that Accused No. 4 had been outside the house, or not present when the deceased was shot. When Accused No. 1 was cross-examined by Accused No. 3's counsel, it was put to her that she and Accused No. 4 were standing in the TV room when he, Accused No. 3, returned with the cushion. In his statement to the police, exhibit "Y", he says he told supt. Spangenberg that he wanted Accused No. 4 to go down to keep a look out after he got the pillow from the room. He maintained that what he was saying in court was the truth. The handwritten statement was made by him with the intention of supplementing the statement made to the police because he realized that the first statement was not entirely correct and complete. He decided to make this statement freely and voluntarily. He admitted disputing the admissibility of the statement in the aborted trial-within-a-trial and explained that he had a constitutional right to test the state's case against him.

300. He was given instructions to get a gun to use during the hit. Both Accused No. 2 and Hendricks asked him to get a firearm. He agreed that his counsel put it to Accused No. 2 that he, Accused No. 2, had asked

Accused No. 3 to obtain a firearm. It was not put to anyone that Hendricks also asked him to do it. He did not point this out to his counsel because they had discussed the hit together.

301. Accused No. 2 phoned him on 15 December 2006 to tell him that there were people who wanted to be robbed and that they must meet because they should not discuss such matters over the phone. In his statement, exhibit "Y, he, however, stated that he received this phone call on 7 December 2006. This, he says, was incorrect because he did not have a calendar or cell phone records available when writing his statement. Further on in the same statement he recorded that Accused No. 2 and Hendricks phoned him the whole week enquiring if he had managed to get a firearm. Although he now stated that Hendricks and Accused No. 2 went to show him the house on 15 December 2006, he said in his statement, exhibit "Y", that *"nou onthou ek op die dag dat Fahiem op die 7de vir my die huis gaan wys het."* He agreed this was said to supt. Spannenberg but it was not the truth.

302. According to Accused No. 2, Hendricks was lying when he testified



that he only discussed the hit with Accused No. 2 and no-one else.

303. He did not mention in his statement, exhibit "Y", that Accused No. 1 helped to tie the deceased's feet. It was because of such omissions that he wrote his own statement, exhibit "AA". At first he had thought it unrealistic that Accused No. 1 would have become so involved in the deceased's death.

304. Mr. Engelbrecht dealt with the matter of the scarves or balaclavas but not much turns on this evidence.

305. Accused No. 3 said he intended to go to this house to rob the inhabitants although Hendricks said that the wife wanted her husband killed and that it must be made to look like a robbery gone wrong. He decided to contain the deceased by tying him up so as to prevent him from raising an alarm. They used cable ties to tie his hands. He confirmed that his counsel first put to Accused No. 1 that the deceased head butted her away and later that deceased tried to head butt her away and that counsel was wrong in putting it to the witness that deceased tried to head butt her.

306. Insaaf Gamielien was correct in her evidence when she said that, with the baby crying, he decided not to take them to another room to be locked up as this would cause too many problems. Achmat suggested that they be locked up in their room and he and Accused No. 1 decided to leave them there and lock them in their own room. He agreed that during his evidence-in-chief he did not mention the fact that anyone else but Achmat said anything about leaving them there. He did not do so because he did not think it was important.

307. He was then questioned about his meetings and discussions with Hendricks after the murder and it was pointed out to him that his version did not correspond with Hendricks' evidence and that his version was not put to Hendricks during cross-examination by his counsel. He did not instruct his counsel to question Hendricks on it because, at that stage, he already knew that the cell phone records would show that Hendricks was lying.

308. Sometime was spent on Accused No. 3 saying that two linked cable ties were used to tie the deceased's hands behind his back. In cross-

examination he stated that only one was used.

309. He noticed that there was a glove in the deceased's mouth after he came from Achmat's room. The glove was later removed from his mouth. If a state witness saw a piece of cloth in the deceased's mouth he would accept it. A lot of cross-examination about the cloth followed without taking the matter any further.

310. The witness was unable to explain why it was necessary for the people who arrived after the murder to kick down the doors if he left the key to the Gamieldien's room in the key hole or threw the key to the main bedroom in the direction of the other bedroom.

311. When it was pointed out to him that he said in his statement, exhibit "Y", that Accused No. 4 kicked the deceased in the face because he refused to lie down on the floor, he said that he had already explained that this statement was not entirely correct. He did not really mind not telling the whole truth when making a statement because he knew that he would be giving evidence in court where he could tell the truth. He also said that he

was very emotional when he made the statement.

312. He was questioned about the demonstration on video as to how the deceased was shot. He did not sound convincing in this regard. If we take into account the later evidence of inspector Dicks and the wounds reflected in the post-mortem report - from the left hand side of the neck, slightly upwards towards the head – Accused No. 3's version of the shooting is open to some doubt.

313. In dealing with the admissions made by Accused No. 3 Mr. Engelbrecht raised several examples where his evidence differed from the formal admissions he had made. Accused No. 3 said he met Hendricks and Accused No. 2 at Hendricks' place on 13 December 2006 not on 15 or 7 December. He informed his counsel that the date was incorrect but did not think it was important. In his admissions he explained that he and Accused No. 2 went to Hendricks' place because there was a woman that was prepared to pay R150 000,00 for a hit on her husband. According to him, this was wrong – the amount mentioned was the amount they wanted and it was communicated by Hendricks to Accused No. 1.

314. With reference to the cell phone records the last call made by Accused No. 2 to him on 15 December 2006 was made at 17 minutes to 12. This was before he arrived at Hendricks' house because Accused No. 2 was still giving him directions to get there. It was only after that, that they took him to see the house. Hendricks spoke to Accused No. 1 about the money when they had gathered at his house before they left to see the victim's house and again afterwards. It was pointed out to him that the timing of the calls was not consistent with the cell phone records. He could not explain this difference.

315. It was also pointed out that in his admissions he stated that Accused No. 1 helped them to bind the deceased and that she then accompanied him to the Gamieldiens' room for the robbery and that they then went to the main bedroom where he received the money. He explained that this version was not quite correct.

316. When questioned about the video where he showed how the deceased was killed he had difficulty in explaining what actually happened.

He also admitted that he had threatened the Gamieldiens with the gun by pointing it at them to scare them.

317. For the rest of his cross-examination by Mr. Engelbrecht, Accused No. 3, for the most part, denied Accused No. 1's version.

318. Ms Abrahams cross-examined Accused No. 3.

319. Initially Accused No. 3 was just asked to repeat his evidence-in-chief. He once more denied that he went to Hendricks' place on 15 December 2006 to collect a loom and computer box or that he gave Accused No. 2 R4 300-00 to give to Hendricks. He gave Accused No. 2 R4 000-00 after the incident on 19 December 2006, it being part of the money obtained during the course of the robbery and murder. The computer box and loom belonged to him and he sold it to a Boeta Ismael Gabier for R2 500,00.

320. He became involved in this matter when Accused No. 2 phoned him and requested him to get a firearm. He was interested in the money. He thought Accused No. 2 asked him to get a firearm because Accused No. 2

may have had problems obtaining one. He was not satisfied with the R50 000-00 to R70 000-00 on offer and said he wanted R150 000-00 in advance. He, however, went through with the plan because Accused No. 2 repeatedly phoned him, told him of Hendricks' complaint that the lady was waiting, that the money was available and that it would just be a matter of in and out.

321. On the night of 16 December 2006 he got the firearm from Kriel and phoned Hendricks to find out where Accused No. 2 was. He was told that Accused No. 2 was on his way to Strandfontein. He did not phone Accused No. 2 himself because he did not have airtime on his cell phone. He asked Hendricks who returned his call and told him that Accused No. 2 was on his way to Strandfontein. Hendricks phoned him at 27 minutes past eleven. The next time he spoke to Hendricks was when he phoned Hendricks from Kriel's place at eight minutes past twelve on the morning of 17 December 2006. This was after he had punched in airtime on his phone. He did not punch in airtime before the incident to phone Accused No. 2 to find out where he was because it wasn't important to him.

322. He fetched the pillow because Accused No. 1 asked him not to make a

noise as her baby was asleep in the main bedroom. He wanted to give her the pillow to see if she was prepared to shoot the deceased. He wasn't prepared to do her dirty work. If he knew that there was any ammunition in the firearm he would have left the place with Accused No. 4. When the shot was fired they were standing next to deceased towards his head to the left. It was not the place he pointed out on the video. He said to Accused No. 1 that she should do it herself, he did not tell her to shoot the deceased herself.

323. Cross-examination by Mr Konstabel amounted to a repetition of what Accused No. 3 had said. He agreed with everything except for the fact that he took out the firearm downstairs in the house and not while they were mounting the stairs.

324. Cross-examination by Ms Riley revealed the following.

325. On the evening in question Accused No. 1 did not appear to be sleepy or unsteady on her feet. She appeared to be normal but anxious and hurried. At one stage she became upset because he was taking so long to



shoot the deceased.

326. He confirmed that he was prepared to plead guilty on two occasions but that the state did not want to accept his plea. His legal adviser said that he should plead "not guilty" and test the state's case, which he did.

327. He confirmed that he was approached by Accused No. 1 who tried to bribe him "*om haar uit die saak uit te praat*". He reported the matter to the investigating officer.

328. He regarded Hendricks as the coordinator of everything that had happened. He would have preferred to see Hendricks also charged but was satisfied that he had eventually spoken up.

329. He was questioned at length about Accused No. 4's involvement in the case. He first informed Accused No. 4 while they were driving from the Athlone robots to 101 Grasmere Street, Athlone. After they stopped they put on gloves and covered their faces with scarves that had been in the cubby-hole. They also took the cable ties that were lying on the dashboard.

They wore the scarves because Hendricks told him the woman did not want to see their faces and they used the gloves to avoid leaving fingerprints on the scene.

330. Accused No. 4 saw the firearm before they went up the stairs. He did not ask why a firearm was involved. He decided not to leave the firearm in the bakkie because he realized that all the people in the house may not be in on the robbery. He took the firearm with him in order to bring the people to submission, if necessary, as he did not know what to expect.

331. He told Accused No. 4 that the people of the house wanted them to rob the house and would claim their losses from insurance. Accused No. 4 was present when he held the deceased up and helped to tie him up. Accused No. 4 kicked the deceased; it may have been to get the deceased to lie down on the floor. When he told Accused No. 4 that he must "*gaan vang 'n pos*" he meant that Accused No. 4 must go and keep a look out.

332. He knew Hendricks through Sadick Kriel. When referred to exhibit "WW" he agreed that the numbers appearing under "Dickie 1" and "Dickie

cell” are the cell phone numbers of Sadick Kriel. He also confirmed that the cell phone records, exhibit “WW”, show that he phoned Sadick at 22h06 on 16 December 2006. He was at home in Belhar. Nineteen minutes later he received a call from Accused No. 2, also in Belhar. These calls were made in connection with the firearm he was told to get. At 22h40 he got a call from Hendricks while he was still in Belhar. He started moving away from his home because the next call he got was from Sadick Kriel at 22h58 which was picked up by him from the Radnor Road station. These calls were also about the firearm. Immediately after the last call he phoned Hendricks to inform him that he was on his way to collect the firearm. From Sadick’s place they traveled towards 101 Grasmere Street. Hendricks phoned him to let him know that Accused No. 2 was on his way. In the last call he received, Hendricks told him that Accused No. 2 was actually on his way to Strandfontein.

333. On 19 December 2006 he gave R4 000,00 of the money he got from the house to Accused No. 2 after Accused No. 2 phoned him and arranged a meeting. He pointed out that the cell phone detailed billing showed that he and Accused No. 2 were in Lansdowne at the same time.

334. The cell phone billing also showed that he did indeed receive a call from Accused No. 1 at Heideveld at 23h43 on 15 December 2006. Further questions, about several other calls reflected in the detailed billing of the phones used by the *dramatis personae*, confirmed parts of Accused No. 3's evidence.

335. His evidence corresponds mainly with that of Hendricks. Even though he may not have pulled the trigger he agreed that he is just as guilty as the one who did it.

336. Mr Scott called Hermanus Johannes Dicks to testify on behalf of Accused No. 3. It is sufficiently clear from his *curriculum vitae*, exhibit "III", that he is highly qualified as a ballistics expert. He came to court well prepared to comment on the several matters he was asked to testify on; having prepared some visual material to confirm his opinions. He was in court when Dr. Wagner and Accused No. 3 testified. He did not agree with the evidence with regard to the abrasion ring that Wagner pointed out on the photos handed in as exhibit "A". He prepared an enlargement of photo

45, exhibit "A", showing the entrance wound, which he handed in as exhibit "DDD". He explained that the black colour that can be seen on the inside of the wound is the ring of abrasion. The purple parts, which are seen on the rim of the wound, show bruises caused by the bullet on entering the body. If it had been soot one would have expected propellant to be present as well. Soot can be washed off as probably happened in this case but if this was a very close or contact shot, propellant would have been visible in the bullet tract. If the shot had been fired from a little further away there would have been tattoo marks around the wound. These marks were caused by the burning propellant and cannot be washed off because the propellant causes small burn wounds on the skin. In order to assist the court he fired a few shots on the morning before testifying and photographed the results.

337. On the first photograph, exhibit "EEE", the result of a shot from 15cm, as suggested by Dr Wagner, is shown. The entrance wound is visible as well as the soot and the tattoo of burn marks are clearly visible. Photograph "FFF" shows the marks caused by a shot fired from a distance of 25cm. The soot is noticeably less than in exhibit "EEE" and the tattoo

pattern less dense and bigger. He then stood up straight next to the bag filled with Kevlar which was lying on the ground. The result is shown on exhibit "GGG". Tattoo marks can still be seen on the photograph. The Kevlar bag is about as high as a normal person lying on the ground. The witness is about 1,91 metres tall. He fired the shot at the Kevlar bag while standing directly next to it. His arm was extended down towards the bag. This evidence contradicts that of Dr Wagner who said that the shot could not have been fired from more than 15 cm away from the deceased.

338. No burn or tattoo marks are visible on exhibit "DDD" – the entrance wound in the deceased's neck. There could be two reasons for this. Tattoo marks were found after shots fired from a Z88 fire arm 9mm Parabellum from as far as 1 meter. The second reason could be interference by an intermediary target like, for instance, a shot fired through a pillow. Therefore, in this case the shot must have been fired from a distance (more than a meter) or there must have been an intermediary target.

339. The shot killing the deceased could not have been fired from 15 cm or less as one would then have found soot and propellant inside the entrance

wound.

340. He also made an enlargement of photo 22 of exhibit "A" showing the mark made by the bullet after passing through the deceased's body, exhibit "HHH". The formation of the damage to the tile which was caused by the bullet shows that the shot must have been fired from about  $10^{\circ}$  away from the vertical. The witness demonstrated how this could be shown using a doll and a straw. The shot must, accordingly, have been fired from almost directly above the deceased as he was lying on his stomach.

341. The witness also did not agree with Dr. Wagner that the portion of the casing of the bullet could not have broken off when it went through the vertebra. The piece found outside the wound stuck to the clothes of the deceased was so small and light that it would have remained stuck inside the body of the deceased. He thought that the piece of casing broke off when the bullet hit the tile and bounced back to stick to the deceased's clothes and the exit wound. He also did not agree with Dr. Wagner when he said that the sternal bone tissue could have caused deflection to occur making the extrapolation, of the exact position from which the handgun was

fired, very problematic. The weight of a 9 mm bullet leaving the barrel at a speed of 350 meter a second is relatively high. Any deflection in such a case will be minimal. He pointed out that you could shoot a 9mm bullet right through a motor vehicle which is made of metal.

342. He saw the demonstration by Accused No. 3 of how the arm was held in a folded pillow when the shot was fired. He agreed that it would be difficult to fire the arm from that position. It was quite possible that the pillow held in that position could have prevented the shell from being expelled from the breech of the gun.

343. Taking all into account he opined that the shot must have been fired through an intermediary target like a pillow.

344. After seeking an adjournment to consult with his expert, Mr Engelbrecht at a later stage cross-examined this witness. A section 212(4) statement made by sergeant Roberts, also a ballistics expert, was handed up as exhibit "JJJ". The witness did not agree with her observation that she saw evidence of blackening surrounding the hole. She made the wrong



observation, according to him, because there was no evidence of propellant in or around the entrance wound. The witness agreed with the observation in the post mortem report paragraph 4.2.1(a) stating that "*there is a surrounding ring of abrasion on the superior aspect of the wound*" but disagrees with Dr. Potelwa, who conducted the post mortem, when he found "*(t)here is burning of the skin around the entrance wound*". He confirmed that he did not see the body but only had the photographs available to him. He agreed that the gasses given off by the explosion would differ from gun to gun but not how often the barrel is cleaned. He agreed that if an intermediary target like a pillow was present, soot and propellant tattooing may not have been present in this case but there would still be a ring of abrasion. If the soot, however, passed through the pillow propellant burns would also have been present. He preferred not to give an opinion as to whether a pillow would have a silencing effect on the shot.

345. The evidence of Accused No. 4 was as follows:

346. In December 2006 he was effectively employed by Accused No. 3 whom he assisted in his air-conditioning business and in repairing motor

vehicles. He had not seen Accused No. 1 before 16 December 2006. He knew Accused No. 3 for a period of about two years before this incident. He had only seen Accused No. 2 at Accused No. 3's workshop or house but had not spoken to him.

347. On 15 December 2006 he was working in Accused No. 3's workshop until the evening when he was asked by Accused No. 3 to drive him to Athlone. When they got to a certain house in Athlone Accused No. 3 told him to wait there while he, that is, Accused No. 3 got out of the motorcar. It was late, past ten or before twelve at night. He saw Accused No. 3 talking to Hendricks and Accused No. 2. They then got into a Honda and drove off. He could not hear what they were talking about. Before they drove off Accused No. 3 told him to wait for him. When they returned he took Accused No. 3 home and then went home himself.

348. On 16 December 2006 Accused No. 3 came to the workshop and asked him to come to his home to work on his Golf and bakkie. They worked on these vehicles the whole day. The bakkie was having gearbox problems. They finished late that evening and took the bakkie for a test

drive. While they were conducting the test drive Accused No. 3 got a telephone call. He did not listen to what Accused No. 3 was saying. Accused No. 3 told him to take him home as he wanted to get his own car to go to Dickie, (Sadick Kriel). He told Accused No. 3 that as they were busy test driving the bakkie they might as well drive there with the bakkie. At Sadick's place Accused No. 3 said he was going in for a short while. Accused No. 4 remained in the vehicle. Accused No. 3 did not tell him what he was going to do there.

349. When Accused No. 3 came back he did not notice anything on him or in his possession. Accused No. 3 said they had to go to Athlone and told him where to go. On their way Accused No. 3 got another call. He did not hear what Accused No. 3 said but concentrated on the trouble with the gearbox. After they passed the police station in Athlone Accused No. 3 told him of people who wanted to be robbed to claim from insurance. Accused No. 3 told him the people wanted to be tied up and that was all. They would open the doors and gates. At the house Accused No. 3 again explained to him what was about to happen.

350. They went in. The gate and door were open as Accused No. 3 said it would be. Before going in he covered up his face with a scarf. Inside the house Accused No. 3 went to where the studio was and instructed him to look in the direction of the kitchen. They went up the stairs. When Accused No. 3 was on the second or third step he gestured to him to follow and it was then for the first time that he saw the firearm in Accused No. 3's possession. He did not know if it was a real gun. He was not told beforehand that there would be a firearm and he thought that the people wanted the robbery staged. At the top of the stairs they saw a man watching TV. He jumped up and put his hands up. He thought the man was waiting for them.

351. They tied the man up with his hands behind his back. While they were doing this Accused No. 1 came out of the main bedroom. She appeared to be wide awake. Accused No. 1 hugged the deceased and he head butted her. Accused No. 4 kicked the deceased because Accused No. 3 told him outside that the people in the house had agreed to be assaulted. Accused No. 3 and the deceased fell and he slapped Accused No. 1 because of what Accused No. 3 told him. Accused No. 3 stopped him from

assaulting Accused No. 1. He then took a "doily" and tied the deceased's feet with it. Accused No. 1 pointed to a hairdryer and it was used to tie the deceased's feet. While he was busy with deceased's feet his scarf came loose and both Accused No. 3 and Accused No. 1 saw a part of his face. After the deceased's feet were tied Accused No. 1 stood up and went to sit with the deceased. Accused No. 3 told him to wipe his sweat drops and he took Accused No. 1 by her arm and led her to the main bedroom. He could not hear what they were saying.

352. He heard the deceased crying and saw that he was bleeding from his mouth and his nose. He told the deceased that he did not intend to kick him so hard and that he was going to wipe the blood from his mouth and face. It was then that he took his glove off and wiped the blood from the deceased's mouth. It may be that at this stage he inserted a part of the glove into the deceased's mouth to stop the bleeding. Accused No. 3 and 1 were on their way towards the room in which Achmat and his wife were sleeping. A while later he saw Accused No. 1 and 3 come out of that room. He was busy trying to staunch the flow of blood from the deceased to see where the wound was. He saw Accused No. 3 close the door. He also saw

a box of tissues on the settee. He fetched it and returned to the deceased.

Accused No. 1 and 3 returned to where he was sitting with the deceased. He took some of the tissues and put them under the deceased's head because of the cold tiles.

353. Accused No. 1 asked Accused No. 3 when they were going to finish the deceased. At that stage the deceased asked him, Accused No. 4, not to kill him because he has children, and he told the deceased that no one was going to be killed. He stood up and asked Accused No. 3 what was going on because he did not come here to have anyone killed. Thereafter he started swearing and said that he did not want any thing more to do with what was going on. Accused No. 3 then told him to go and "*vang 'n pos*" and he again told Accused No. 3 to forget about him being a lookout.

354. He went out and got into the bakkie when he heard a sound like a boom. It did not sound like a gunshot to him. A while after he heard the boom Accused No. 3 came out and got into the bakkie. He saw the gun in Accused 3's hand and asked him what had happened. He says "*Ek vra vir hom wat de fok was daai? Hy sê vir my sy. Ek sê vir hom kyk hier man, ek*

*wil fokol meer verder hoor nie en so het ek gery”.*

355. From there they went to Sadick Kriel’s place and then home. At Sadick’s place Accused No. 3 went in and left him in the bakkie. He was later called in and had coffee with them. He saw a firearm lying on the table.

356. The next day he saw in the paper that Taliep Petersen had been murdered. He confronted Accused No. 3 who said it wasn’t him. Accused No. 4 was arrested in June 2007 and immediately made a statement.

357. Mr Engelbrecht cross-examined Accused No. 4. After the deceased’s hands were bound he resisted severely. Accused No. 4, however, still thought it was a staged robbery. He only realized that it wasn’t a staged robbery when Accused No. 1 urged them to kill the deceased. This was when the deceased pleaded not to be killed as he has children. He was arrested on 20 June 2007 at about 08h15 in the morning. He was taken to Supt. Barkhuizen later on the same day where he made a statement. He denied that he used the words “.....*en toe bam, boem hoor ek ’n skoot*” and

added that he would not have said "bam" and "boem" if he heard only one shot.

358. Accused No. 4 used to wear a scarf when he went out at night and the one he used that night was in the bakkie. The gloves were provided by Accused No. 3 for his employees to wear to protect their hands from sharp objects they may have to handle at work. The gloves are also worn to avoid your hands from becoming dirty when loading stuff at factories.

359. When Accused No. 3 came out of the house after he heard the shot he asked him what happened. He immediately assumed that something had happened and told Accused No. 3 that he did not want to know anything. He saw that the deceased had been murdered in the papers the next day. He did not put a glove into the mouth of the deceased; he used it to wipe some of the blood from the deceased's face. He then saw a box with tissues, fetched it "took the glove out" and used the tissues. He put the glove in his pocket.

360. When he saw the shell of the bullet he assumed that the gun had



been used. Accused No. 3 told him earlier during the day that there was an insurance job to be done but he only found out that this was to be a robbery when they arrived outside the house they intended to rob. He denied that he was trying to play down his part in the whole incident. That evening the firearm was not pointed at Accused No. 1 in his presence. Accused No. 1 took Accused No. 3 all over the house. He added that she acted almost like a tour guide.

361. He denied that Accused No. 1 was taken to the main bedroom directly from the Gamieldiens' room. He could not comment about what happened to the Gamieldiens.

362. When cross-examined by Ms Abrahams, Accused No. 4 conceded that he entered the house with the intention of taking part in a staged robbery. He did not think of forcing an entry into the house in order to make it look like a real robbery because Accused No. 3 had said that the people would leave the gate and door open. He was prepared to assault the people in the house because Accused No. 3 said they wanted to be assaulted to make the robbery look real. He thought the firearm was also part of the play

acting. He kicked the deceased but with the top part of his shoes. This could not have caused the footmark obviously made by the sole of a shoe. The deceased's mouth and nose bled after the kick. He was not making a mistake; he was sure he saw Accused No. 2 at Hendricks' place talking to Accused No. 3 and Hendricks on 15 December 2006. The rest of her cross-examination did not take the matter any further.

363. Mr Scott cross-examined Accused No. 4. When Accused No. 3 jumped into the bakkie after he heard the shot he asked him what had happened and Accused No. 3 started to say that "*she ....*" He stopped him and told Accused No. 3, that he did not want to hear anything further. When Accused No. 3 used the word "she" he assumed that he was referring to Accused No. 1 as he had just left Accused No. 1 in the house with Accused No. 3. He never saw a pillow. When he left he tried to convince Accused No. 3 to go with him but Accused No. 1 pulled Accused No. 3 back towards where the deceased was lying. He agreed that Accused No. 3 never pointed the firearm at Accused No. 1 to make her comply with his instructions. The firearm was always pointed downwards.

364. During cross-examination by Ms Galloway he stated that he only realized that matters weren't going the way he thought they would when Accused No. 1 and Accused No. 3 returned from the bedrooms and the shooting of the deceased was mentioned. Accused No. 3 came out of the house shortly after he, Accused No. 4, left. Accused No. 3 would not have had enough time to take money or other items from the house during that short period. By the time the shooting was mentioned the robbery must have been completed. He realized that there might be children in the house but did not know of the plans that had been made in this regard. The deceased jumped up from where he was sitting watching TV when he saw them and Accused No. 3 pointed the firearm at him and told him that it was a robbery. It was then that the deceased said something like "*My broers wat soek julle*" and "*Allah u Akbar*". He still thought that this was all in accordance with what had been previously discussed. He agreed the fact that deceased appeared to try to run away indicated that he was not in on an arranged robbery. He knew nothing about the deceased's wedding ring or wrist watch. There was an arrangement between him and Accused No. 3 that Accused No. 3 would pay him for the work done whenever he had money. He assumed that the R6 000,00 that Accused No. 3 gave him after

the incident was the money which Accused No. 3 owed him. On 16 December 2006 Accused No. 3 still owed him money and a few days later Accused No.3 paid him R6 000,00. He knew that Accused No. 3 had sold his Nissan Sentra and thought that the R6 000,00 was part of that money. Although he was very cross with Accused No. 3 because of the murder he did not go to the police because the attitude of the public made him afraid of what could happen.

365. Re-examination by Mr Konstabel did not take the matter any further.

366. When questioned by assessor Marais Accused No. 4 said he did not know Accused No. 1 or the deceased at all. He only knew the deceased from seeing him perform.

367. Questioning by the court established that he recognized the deceased when he was busy wiping the blood from his face. He never thought that he was taking part in a real robbery. It was only when Accused No. 1 mentioned shooting the deceased that he realized that something had gone wrong. While they were wrestling with the deceased he got the impression

that they may be busy with a real robbery.

368. It is against this background that the Court had to determine the guilt and innocence of the individual accused in respect of each of the charges with which they were indicted.

369. The State's principal witness in this case was Hendricks. As already noted, his evidence must be approached with a great deal of caution as he is a self-confessed accomplice. A cautionary rule of practice is applicable in respect of such a witness. It was most recently restated in **S v Scott-Crossley 2008 (1) SACR 223 (SCA) paragraph 7:**

***"The cautionary rule applying to accomplices was stated as follows by Holmes JA in S v Hlapezula and Others 1965 (4) SA 439 (A):***

***It is well settled that the testimony of an accomplice requires particular scrutiny because of the cumulative effect of the following factors. First, he is a self-confessed criminal. Second, various considerations may lead him falsely to implicate the accused, for example, a desire to shield a culprit or, particularly where he has not been sentenced, the hope of clemency. Third, by reason of his inside knowledge, he has a deceptive facility for convincing description – his only fiction being the***

***substitution of the accused for the culprit. Accordingly, even where sec. 257 of the Code has been satisfied, there has grown up a cautionary rule of practice requiring (a) recognition by the trial Court of the foregoing dangers, and (b) the safeguard of some factor reducing the risk of a wrong conviction, such as corroboration implicating the accused in the commission of the offence, or the absence of gainsaying evidence from him, or his mendacity as a witness, or the implication by the accomplice of someone near and dear to him ... Satisfaction of the cautionary rule does not necessarily warrant a conviction, for the ultimate requirement is proof beyond reasonable doubt, and this depends upon an appraisal of all the evidence and the degree of the safeguard aforementioned."***

370. The evidence of Hendricks was not without noteworthy blemishes. He is quite obviously not a very intelligent person. The circumstances in which he testified, and the fact that he spoke very softly, may cause one to be more critical about his evidence than is, perhaps, justified. However, on his own version, his first two statements to the police contain lies which were intentionally made to protect himself and Accused No. 1 against a possible prosecution. In fact, he initially omitted to mention the second statement. His evidence in court and the statements are substantially different.

371. Both the aforementioned statements by Hendricks were made to give an explanation, which was false, for the numerous calls between him and Accused No. 1. He alleged that one or more of these explanations were devised by him and Accused No. 1 jointly in order to deal with the queries being raised by the police.

372. The differences between his third statement - the section 204 statement - and his evidence in court are less significant. However, there are certain improbable features which Mr von Lieres sought to highlight with varying degrees of success. For instance, the fact that Hendricks sought to arrange the murder without any prior arrangement as to payment. He furnished an answer in this regard, which seems acceptable.

373. Of greater importance in evaluating Hendricks as a witness are the differences between his evidence and that of Accused No. 3. According to Accused No. 3, Hendricks was the person who issued him with the instruction to commit the offence. Hendricks testified that he did not speak to Accused No. 3 when planning the crime. He only spoke to Accused No.

2. Accused No. 3 also testified that Hendricks accompanied him and Accused No. 2 when the house of the deceased was shown to him. Hendricks denied this. He said that Accused No. 2 took Accused No. 3 to see the place and that he had previously shown the place to Accused No. 2 with the earlier group of potential assassins from Hanover Park. Then there are the meetings at the mosque which both agree were co-incidental. However, according to Accused No. 3 they had discussions about the investigation of the murder by the police. Hendricks testified that they merely greeted each other. He also denied any meeting between them at Nando's as was suggested by Accused No. 3.

374. Hendricks also testified that while the events leading up to the murder were in progress he spoke to Accused No. 2 on Accused No. 3's phone. He gave a rather complicated explanation of how he pushed the re-dial button on Accused No. 2's phone and got through to an unknown person, presumably Accused No. 3. Accused No. 3's evidence is somewhat different. He says that Hendricks was in direct contact with him. The problem with this evidence is that Accused No. 3's counsel did not put his client's version to Hendricks. Accused No. 3 himself gives an unsatisfactory



explanation for this. He says that he did not ask his counsel to dispute the evidence as he knew the cell phone records would bear him out.

375. I may mention that after Accused No. 3 allowed his confession to be admitted in evidence, Mr von Lieres indicated to the Court that he would seek the Court's indulgence at a later stage to recall Hendricks for further cross-examination. Neither he nor his successor elected to pursue this approach.

376. Ms Riley has sought to minimize these differences by suggesting they are not material. They are certainly of some significance. On the other hand, the evidence of Hendricks and Accused No. 3 was entirely consistent on the key issues which underpin this matter.

377. Although it seems that Hendricks has sought to distance himself from Accused No. 3 who, as we now know, was one of the intruders in the deceased's house the night he was murdered, his evidence was fairly logical and consistent and, as I have already stated, he did not give the Court the impression that he was being less than frank. However, he is an accomplice

whose evidence is susceptible to the criticism to which I have already referred. In the circumstances, one is obliged to approach his evidence with the degree of circumspection our law demands and to seek proper corroboration for it.

378. The cell phone records afford compelling corroboration of the State's case. It supports the evidence of Hendricks in several material respects. Its impact emerges graphically from the evidence of Peter Schmitz, a very competent witness whose evidence was not seriously challenged.

379. Mr Engelbrecht sought to avoid the obvious consequences of this evidence by loudly and brusquely asserting that matters which are common cause between the State and the accused cannot provide corroboration for matters in dispute. In support of this proposition he relied upon **S V Gentle 2005 (1) SACR 420 (SCA)**.

380. In this case the fact that the calls were made, is not in dispute. It would, in any event, be difficult to do so. Objective evidence establishes that the calls were made and when such calls were made. The dispute relates to why these calls were made. According to the accomplice

Hendricks the calls had to do with the pending attack upon the deceased. Accused No. 1, and also Accused No. 2, attempted to give innocuous explanations for these calls.

381. The timing, sequence and the location of the parties when making the calls, provide important indicators in the resolution of the issue in dispute. It is evidence from an independent source, not from the witness whose evidence is sought to be corroborated. On the issue in dispute it renders one version far less probable. This amounts to corroboration as envisaged in **S v Gentle**, (*supra*) at 430j-431a.

382. The number and sequence of the telephone calls have been referred to in some detail at an earlier stage in this judgment. Accused No. 1's brazen assertion that the calls -which were made up to a short while before her husband's murder- related solely to money deals, is most unlikely. Coupled with the calls being followed by Hendricks' with calls to the people carrying out the attack, her version becomes even less plausible. Accused No. 2 endeavoured to explain the sequence of the calls on the basis of co-incidence. Such co-incidence is far-fetched and incapable of fair minded

support.

383. The version furnished by Hendricks provides a logical framework for the calls. Each stage of his narrative is borne out by the cell phone records. The area where the respective parties find themselves when making or receiving the calls, such as the airport, or near the Luxurama, or in Athlone, is also consistent with Hendricks' version. Moreover the flurry of cell phone calls immediately before the attack on 101 Grasmere Street, between those involved on the version of Hendricks, Accused No. 3 and Accused No. 4.

384. I am, accordingly, of the view that the various cell phone records, and their collation and interpretation by the witness Schmitz, provide important support and corroboration for the evidence of Hendricks.

385. Further corroboration for Hendricks' version that Accused No. 1 gave the instruction for the commission of these crimes is to be found in the evidence of Accused No. 3 and, to a lesser extent, Accused No. 4. They are also accomplices and like the other accomplice may have a possible motive to lie. The Court is accordingly not relieved of the duty to examine their

evidence also with caution (See **S v Van Vreden 1969 (2) SA 524 (N) 531**).

386. The problems in Accused No. 3's evidence include the differences between his evidence and that of Hendricks and, in our view, he seeks to minimise his role in the actual killing. On the other hand, unlike Hendricks, he has not been promised, nor will he receive immunity and accepts that he is guilty of murder. Corroboration of his evidence is to be found in the evidence of the other accomplice, Accused No. 4, Hendricks and also the cell phone records.

387. Similar considerations apply in respect of Accused No. 4 although he does not admit to his involvement in the actual murder.

388. There are accordingly sufficient safeguards for the State's reliance upon Hendricks and the other accomplices for a finding that Accused No. 1 gave the instruction for the commission of these orders. That does not end the matter. The Court must still examine the evidence of the accused to determine if it is reasonably possible that she might be innocent.

389. Mr Engelbrecht urged the Court to brand Hendricks a liar and to reject his evidence as false. He focused on certain apparent discrepancies in the evidence of Hendricks in order to advance this argument.

390. Reference was made to the date on which the R70 000 was allegedly given by Accused No. 1 to Hendricks. He gives different dates, namely 18 and 19 December 2006. This is a wholly understandable error if one has regard to the fact that the witness gave his statement to the police 7 months after the incident. In these circumstances one would expect errors of this nature to appear in his testimony. Similarly, there are three apparently conflicting versions given by Hendricks of the reasons furnished by Accused No. 1 for the murder of her husband. There is some uncertainty in this regard and the court does not know whether different or additional reasons were given by Accused No. 1 for the attack.

390. This type of discrepancy, if such, hardly made Hendricks a lying witness as suggested by Mr Engelbrecht. At the end of the day Hendricks' version is the most consistent and logical explanation for what transpired

that fatal night at 101 Grasmere Street.

391. Much of the evidence given by the other State witnesses was not seriously disputed. Soeker was a reasonably independent witness, save for the assertion that Accused No. 1 and the deceased were on good terms. He premised this view on the terms of endearment used by them. The evidence overwhelmingly established that the deceased and Accused No. 1 were not sharing a common bedroom and had not done so for almost 9 months. The evidence of the deceased's brother and sisters is of diminished value largely because of its emotional nature and their obvious hostility towards Accused No. 1. Jawaahier Petersen appeared to be a credible witness. Her evidence was largely common cause. We have no reason to reject any aspect of her evidence. Bedford, Achmat, Kramer and the cell phone people were all good witnesses and their evidence was not seriously challenged, if at all.

392. The evidence of Insaaf Gamielien, the daughter-in-law of Accused No. 1, was subjected to some criticism by Mr Engelbrecht because of relatively minor differences between her version and that of her husband.

Woken up, robbed by an armed intruder late at night, with a baby crying and then being locked up, it is hardly surprising that she and her husband do not corroborate each other in minor details. Her evidence was also attacked because Accused No. 3 and Accused No. 4 testified that Accused No. 4 had already left the house when the shot was fired. She heard footsteps going down the steps after the shooting. Her impression was that it was two people. She may be mistaken in this regard. She did not see the people going down the stairs and did not insist that it was in fact more than one person. This criticism of her evidence is unfair. She was a good witness and there is no real reason to question her credibility.

393. Save for the one police officer to whose evidence I have already referred, that is, Van Tonder, the evidence of the witnesses attached to the police force were all reasonably good witnesses.

394. With regard to Captain Dryden it must be noted that he had some problems trying to explain why Accused No. 1 was questioned in the early hours of the morning on 7 January 2007. This practice may be undesirable but, on the other hand, it is of vital importance that serious crimes be



resolved speedily. This possible criticism of his conduct does not place in jeopardy his credibility.

395. Exhibit "RR", the first statement by Accused No. 1, was made at an earlier stage to Dryden when he was not as yet the investigating officer in this case. It was a day or two after the deceased's murder and although the police and some members of the deceased's family had found the circumstances surrounding his death suspicious, Accused No. 1 was not a suspect. The Court accepts Dryden's evidence that he was *bona fide* unaware that Accused No. 1 was a suspect at the time she made the statement. Mr Engelbrecht's principal grouse with regard to this statement is that Accused No. 1 was not informed of her right to silence and other such rights before the statement was taken down. He has two problems in this regard. Firstly, his predecessor, Mr von Lieres, did not object to the admission of the statement in evidence. The possibility is there that he did not object because it was an exculpatory statement which advanced the accused's innocence. More importantly, Accused No. 1, the widow of the deceased, was an eyewitness at least of the events which led up to the murder of the deceased. She was an important witness for the purposes of

investigating the crime. She was in effect a State witness and no rule of law requires witnesses to be warned of their rights in such circumstances.

396. Munaaz Lawrence mentioned in her statement that Ma'atoema heard a gunshot sound when she was speaking to Accused No. 1 on the night of the murder. In her evidence she states that she could be mistaken in this regard because she made her statement two weeks after the incident had occurred. Ma'atoema does not confirm this aspect, that is, hearing the gunshot, in her evidence. Accused No. 1 does not refer to it either in Exhibit "RR" or in her first bail application. It seems that she thereafter, somewhat opportunistically, latched on to this aspect for her own purposes.

397. The prosecution led a great deal of evidence with regard to the financial affairs of the deceased. The evidence was led to bolster its belief that Accused No. 1's role in this saga was based upon the wish to protect her financial interests in the event of a divorce. In other words, money was the motive for this heinous crime – even on the part of Accused No. 1. We know that Accused No. 1, on her own version, loved money. We also know that the marriage relationship between the parties was strained since the

stabbing incident. It is also quite apparent that in the event of a divorce the deceased would have some claim on Accused No. 1's not insignificant estate. However, the evidence with regard to a divorce, based largely on the evidence of the deceased's family members, is not borne out by any other more objective evidence. The deceased seems to have treated Accused No. 1 with great care and sympathy. He looked after her medication and made *thikr* with her to calm her down.

398. We are not entirely satisfied that, on the State's case, the alleged motive has been established beyond a reasonable doubt. While proof of a motive is not necessary to prove an offence, its absence is an element in favour of the accused.

399. Was this a genuine robbery? The facts underpinning this occurrence, militate against such a conclusion. Accused No. 3 only took the money Accused No. 1 handed to him. He did not attempt to look in the safe for other valuables or even more money. Accused No. 1 was left in her room with access to phones after or during the incident. She was in a position to immediately contact the police even while the so-called robbers were still in

the house. She did not, in fact, call the police. The robbery of the Gamieldiens did not involve any real violence or threats of violence. Then, for no apparent reason, the deceased, who was lying bound and helpless in the TV room, was shot and killed. The conduct of the robbers and that of Accused No. 1 points to the conclusion that the robbery was staged to hide the intruders' real reason for entering the house.

400. According to Mr Engelbrecht, the evidence of Accused No. 3 was destroyed because of his change of heart in accepting guilt and his expression of apology to his and the deceased's family. I fail to understand why an accused who wanted to plead guilty but whose plea was not accepted by the State, becomes a liar when he decides to take the blame. The fact that he wrote out his own statement does not mean that he is dishonest. From the contents of his statement one gets the impression that he has some *iman* to use the Muslim phrase - a person of belief in his faith. His evidence must, of course, be treated with caution because he is an accomplice. Moreover it seems that he places too much of the blame for the actual shooting on Accused No. 1 and, on the other hand, seeks to minimise the role of Accused No. 4.

401. The suggestion that he or Hendricks or both of them were involved in a conspiracy with the police to get at Accused No. 1 is palpable nonsense. There were references to the Scorpions being involved and offers of money. Placing reliance on such an argument, displays some desperation on the part of Mr Engelbrecht. I suppose anything is possible in the realm of ordinary human experience but the suggestion that the police would pay someone in these circumstances to wrongly implicate the innocent widow of a deceased, is clearly untenable. In any event, whether Scorpions or not, from which funds would the police access R250 000 (the figure suggested). This argument is devoid of any merit whatsoever.

402. I turn now to the evidence of the accused and the various witnesses called by one or more of them in support of their cases.

403. Accused No. 1 was quite patently an appalling witness. Her evidence, especially under cross-examination by Ms Riley, was neither logical nor consistent. It festers with lies.

404. I do not propose re-stating the various problems encountered by her while being cross-examined. Only some of the more salient features of her evidence will be referred to at this stage.

405. We know that the occupants of 101 Grasmere Street were very security conscious. There were extensive security features in place. Quite fortuitously, however, the security system was not in operation and the gate and door were open when the intruders sought entry to the house. The conclusion is inescapable that there was a Trojan horse in the home who facilitated their entry. The deceased was in the TV room and it was common cause that he would not have opened the door for strangers. That leaves Accused No. 1 and Koekie. Koekie, incidentally, has since died. It is unlikely that she would have opened the door without being instructed to do so. Accused No. 1 was in the main bedroom – the evidence suggests that she had taken a bath – shortly before the intruders arrived and it is possible to open the gate from that room. Hendricks testified that Accused No. 1 had assured him that the door and the gate would in fact be open. Accused No. 3 knew that the lady of the house would leave the door and gate open. Although there is no direct evidence that Accused No. 1 left the door and

gate open that night, the probabilities strongly favour such a conclusion.

406. According to Accused No. 1 the sole purpose of the robbery was to steal the US dollars in her possession. However, when the intruder was given the bag allegedly containing the dollars, he did not open the bag to check what was in it. He did not know whether Accused No. 1 had in fact given him dollars. If he already had the dollars for which he came – in his possession – why did he then go after other insignificant items? Furthermore, why did Accused No. 1 not simply tell him that there were US \$300 000 valued at over R2 million in the bag and it was accordingly not necessary to go into her son's room.

407. The allegation that there were at that stage US \$300 000 at Grasmere Street is itself open to considerable doubt. Neither Hendricks nor any of the other accused knew about it. Accused No. 3 denied that he ever got the dollars from her. Accused No. 1 did not mention the dollars in her initial statement to the police. The dollar story first surfaced at a late stage in Accused No. 1's bail application.

408. Another improbable aspect of her evidence was her financial relationship with Hendricks. She was prepared to lend Hendricks R10 000 although she had no contact with him for about 10 years. She knew he was struggling financially and on previous occasions had phoned him to make payments. Quite improbably she then handed over diamonds worth R250 000 to Hendricks. When told that he had handed over the diamonds to someone else, she made no enquiries with regard to the identity of the person.

409. While being cross-examined by Ms Riley, Accused No. 1 was unable to explain the large number of calls between her and Hendricks. It was put to Hendricks that she phoned him continuously "*very much over money*".

410. Despite being informed by attorney Snitcher that the diamond deals were legal, Hendricks was still given R20 000 by her family to pay for a lawyer.

411. According to Accused No. 3 he got a bank bag of money (±R27 000) which he put in his pocket. The testimony of Accused No. 1 is that he was



carrying the bag containing the cash (with US \$300 000 probably too big to put in his pocket) and the firearm. Despite this, he was able to perform all the actions described by the Gamieldiens.

412. I have, at an earlier stage in the judgment, already referred to the suggestion in the bail application that Accused No. 1 had attempted suicide more than once. This is untrue.

413. Accused No. 1 was unable to explain why she did not phone the police after she was locked up in the main bedroom. She phoned others who could not really assist her.

414. Her evidence about how the robbery started tends to show that she was co-operating with the robbers. She was not threatened by the robbers, they simply asked for the money which she gave to them. Strangely, they did not ask the deceased for money. Despite the gun held in her back she took the chance of hugging the deceased. Her own description of the events leads to the inevitable conclusion that she knew what was expected of her and they knew that she would co-operate.

415. When asked why she was confused the day she made the statement to Dryden she says it was the medicine she took. It was the same medicine she normally took. When it was pointed out to her that the medicine she normally took did not make her confused, she said that her son, Achmat, gave her more medicine that day. This also could not be correct as Achmat put her medicine for the day in three different containers and gave them all to her. It follows that she administered the medicine herself and should have known what she took.

416. One of the key criticisms of her evidence is her memory loss, whether feigned or real. The murder took place after she had taken her medicine and fallen asleep. According to the pharmacist (also an advocate) who testified on her behalf, at that stage the medicine must have had its worst effect on her memory. From the evidence it appears that with regard to the events that night her memory is clearer than otherwise. The psychiatrists who observed her in terms of section 79 (2) of Act 51 of 1977 indicate in their report that "*she insisted that she had a vivid memory of the events during the alleged offence*". They also found her thoughts to be clear,

rational and logical.

417. She did not answer certain questions, conveniently exhibited memory loss at times and on other occasions simply could not furnish answers.

418. The calls to and from Hendricks, especially the timing and frequency thereof, constitute a severe challenge to Accused No. 1's credibility. Her version - that she was phoning Hendricks so often in the hours leading up to the attack upon the deceased, and even thereafter, to pursue monetary transactions - is most unlikely and probably false.

419. There is, furthermore, the evidence of Viljoen that she deleted certain calls from her phone prior to it being handed over to the police. These calls were from Hendricks. Why did she elect to delete these calls? An obvious inference is that she was endeavouring to hide her relationship with Hendricks or, perhaps, her calls to him, immediately before the events which led to her husband's untimely death.

420. There are also the further problems in her evidence which appear

from the cross-examination by Ms Riley. I have dealt with them elsewhere in this judgment.

421. The evidence of her son, Achmat, does not advance Accused No. 1's case significantly, if at all.

422. Accused No. 2 admitted that he made all the calls which are shown on exhibit "NN" but gives an exculpatory explanation for these calls. His evidence was that Hendricks was falsely implicating him in the commission of these crimes.

423. The motive Accused No. 2 furnished for Hendricks drawing him into this matter, was his friendship with Hendricks' wife. Apparently the issue between them was resolved but he could read from Hendricks' body language that he was still not happy. Save for the money owed to Hendricks which he stole, he could advance no other possible reason for Hendricks to falsely implicate him in such serious crimes. This is a weak and improbable motive.

424. Accused No. 2 admits calling Accused No. 3, two or three times on 15 December 2006. He says that it was to inform Accused No. 3 that he was not going to give the money to Hendricks. Asked why he had to phone him two or three times simply to tell him that he was not going to give the money to Hendricks, he came up with the rather implausible explanation that he ran out of airtime during the first call, the second time he continued the conversation about not handing over Hendricks' money and the third call *"to do with the similar"*. Hendricks called him several times as he needed the money.

425. As mentioned earlier, Accused No. 2 was unable to furnish acceptable explanations for the sequence of calls as set out in exhibit "CCC". For instance, it was put to him that on 13 December 2006, Hendricks received a call from Accused No. 1 at 19h43. Hendricks then called him at 19h52. At 19h54 he called Hendricks. He says that Hendricks' call to him was about a pick-up. His call to Hendricks could have been to ask where the pick-up was. This answer was somewhat strange in that if Hendricks had called him about a pick-up would he not at the same time have told him about the location of the pick-up? The calls on 14 December 2006 are similar.

Accused No. 1 called Hendricks from the Cape Town International Airport at 11h51. At 11h52 Hendricks called him and spoke for 163 seconds. These calls, he says, were also about a pick-up. He is unable to say what the several other calls from Hendricks were about.

426. On the probabilities and in particular the pattern of phone calls made between 13 – 16 December 2006, Accused No. 2's version is so improbable that it cannot be reasonably possibly true. The pattern of calls and its time frame suggest in all probability no other explanation than the version advanced by Hendricks. Accused No. 2 simply could not explain why the calls became more and more in number and frequency the nearer it got to the time of the murder. He said it was co-incidental but then it is also co-incidental that the calls fit in perfectly with Hendricks' evidence.

427. Accused No. 2 was also in a position to purchase a motor vehicle two weeks after the date of this incident. He gives an explanation as to how he had acquired cash to purchase the vehicle. Part of the purchase price was the R4 300,00 he says he got from Accused No. 3 to hand over to Hendricks – the money he allegedly stole. Both Hendricks and Accused No. 3 deny

that the money was handed over to Accused No. 2 or that he stole any money due by Accused No. 3 to Hendricks. The stolen money is a convenient explanation both to explain Hendricks' alleged animosity towards him and to provide some reason for his sudden wealth. More importantly, he seeks to avoid the obvious inference that he purchased his vehicle with the money handed over to him by Hendricks as payment for his role in the murder. Accused No. 2's version with regard to the money he fortuitously acquired at the time of this incident is also most unlikely and not reasonably possibly true.

428. Accused No. 3 was also not an impressive witness when testifying, especially under cross-examination by Mr Engelbrecht. However, he acknowledged his guilt and his crucial role in the commission of these crimes. His version of what happened is also corroborated by the phone records, the evidence of Hendricks and the circumstances in which the offences were committed.

429. One aspect of his evidence is somewhat doubtful. He does not go so far as to say unequivocally that Accused No. 1 actually pulled the trigger.

He says that he had the gun in the pillow, she put her hands next to his and the shot went off. He says this more than once.

430. The evidence of both Wagner and Dicks is to the effect that the shot could not have been fired as demonstrated by Accused No. 3 on the DVD of the pointing out. Dicks, however, accepts that a pillow could have been used. Accused No. 1 says she wasn't in the TV room when the shot was fired.

431. There is also the evidence of Accused No. 3 that he did not intend to participate in the murder of the deceased. Yet he looks for a pillow, ostensibly to muffle the sound of the shot. In the circumstances, his averment that the killing of the deceased was not intended by him appears to be false.

432. It seems that either Accused No. 3 or Accused No. 1 fired the fatal shot. The Court cannot, however, come to any firm conclusion in this regard. The benefit of this doubt must accrue to the accused. Although the Court cannot find who pulled the trigger, it does not mean that the accused



did not participate in the murder.

433. On his own version, Accused No. 4 is quite patently guilty of participating in a robbery at 101 Grasmere Street. He concedes being there for the purposes of a false or feigned robbery and admits assaulting the deceased. Even if his version is correct, he must have realised when the deceased resisted that it was a genuine robbery.

434. Insofar as this accused is concerned the only issue is whether he is also guilty on the murder charge. Accused No. 3 confirms that Accused No. 4 was told that this was to be a robbery for insurance purposes, he did not know that Accused No. 3 had a gun until they were inside the house and, it seems, only became aware that someone was to be murdered when Accused No. 1 insisted that the deceased be shot. He endeavoured to disassociate himself at that stage and, in fact, left the house when Accused No. 3 told him to go and "*vang 'n pos*". This means to keep a lookout. He did not agree to do so but left the house. Accused No. 3 confirms this.

435. The evidence against Accused No. 4 in this regard is that of the

Gamieldiens who heard footsteps of two people leaving the house after the shot had been fired. Their evidence, however, is not conclusive. They did not see the people leaving the house. They are relying upon the sound of footsteps which may be misleading for a wide variety of reasons.

436. Accused No. 3 confirms that Accused No. 4 was at no stage party to any decision to murder the deceased. Accused No. 4 testified that when he became aware of what may happen, he questioned Accused No. 3 and Accused No. 1 about this and immediately left the house in a huff. Accused No. 3 corroborates his version that Accused No. 4 was not present when the shot was fired. The Court is obliged to accept this version and afford Accused No. 4 the benefit of the doubt which emerges with regard to his involvement.

437. Both Accused No. 1 and Accused No. 2 were abysmally poor witnesses. Their evidence is, especially with regard to the phone calls, patently false. The scenario sketched by Accused No. 1 of her several business dealings with Hendricks over the relevant period is not reasonably possibly true. The evidence viewed in its totality ineluctably points to the

pivotal role of Accused No. 1 in the murder of her husband.

438. Counts 4 and 5 amount to a duplication of offences. I shall treat them as a single offence.

439. In the result:

**Accused No. 1** is found GUILTY on count 1, the murder charge. On counts 2 and 3, the possession of the firearm and ammunition, she is found NOT GUILTY and discharged. On one count of robbery with aggravating circumstances she is found GUILTY.

**Accused No. 2** is found GUILTY on count 1, the murder charge. On counts 2 and 3, the possession of the firearm and ammunition, he is found NOT GUILTY and discharged. On one count of robbery with aggravating circumstances he is found GUILTY.

**Accused No. 3** is found GUILTY on counts 1, 2, 3 and on one count of robbery with aggravating circumstances.

**Accused No. 4** is found NOT GUILTY and discharged on counts 1, 2 and 3. He is found GUILTY on one count of robbery with aggravating circumstances.

440. This is the unanimous decision of the Court.

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DESAI J