

**IN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE HIGH COURT, CAPE TOWN**

Case No. A10/2010

In the matter between

**WILLEM MEI**

Appellant

and

**THE STATE**

Respondent

**JUDGMENT DELIVERED 10 DECEMBER 2010**

**Engers AJ**

[1] Appellant appeared in the Oudtshoorn regional court on one charge of murder and one charge of assault with intent to cause grievous bodily harm. He was convicted on the murder charge, and acquitted on the other charge. He now appeals, with leave of the court a quo, against his conviction.

[2] The events in question took place on 8 December 2007 in the yard of a shebeen at the home of one Jan Adams in Oudtshoorn, referred to in the evidence as "Oom Joel se jaart". These events led to the death of Julian Avontuur. The post-mortem report lists the chief findings as: 1 stab wound on the left side of the back which penetrated the left lung, haemothorax and collapse of the left lung, 2 stab wounds into the soft tissue of the back. The contents of the post-mortem report were admitted by the appellant's legal representative.

[3] The appellant pleaded not guilty. In an explanatory statement, which was read into the record by his attorney, the appellant admitted having stabbed the deceased once, on the right side of his back, 2 cm from the midline. He denied being responsible for the other two stab wounds on the deceased, including the fatal one. He stated that the basis for his defence was necessity.

[4] The state called three witnesses, all eyewitnesses. The appellant testified and also called one witness.

[5] The first state witness, a 56 year old woman named Rose Simmers, described the events which unfolded in the yard. She arrived at the shebeen (between 3 and 4 in the afternoon) and was sitting and smoking on a long bench in the yard. The deceased arrived there with a toddler, bought some beer and sat drinking it on a crate in the yard. The appellant then arrived.

[6] The deceased finished drinking his last beer, picked up the toddler and walked towards the gate of the yard. The appellant went after him, and stabbed him three or four times in the back on his upper body. At this stage the deceased was still carrying the toddler in his arms in front of his body. After being stabbed, the deceased collapsed a short distance outside the gate.

[7] The second state witness was Christoffel Marenene (also known as "China"). He was present at the yard that day, drinking, and he too gave a version of the events leading to the stabbing. According to him, he was sitting on the long bench, and the deceased arrived and sat next to him, putting the toddler down. The appellant arrived with Adam Mei, who introduced the appellant as his (Adam's) brother. The appellant sat on the other side of



Marenene. Marenene recalls some sort of argument between the appellant and the deceased, but wasn't sure exactly what it was about. Marenene was by his own admission, very intoxicated, and sat with his head resting on his hands. He heard a voice make a crude remark, and when he lifted his head he saw the appellant take a knife out of his pocket. The deceased stood up, and grabbed the toddler and tried to run away. The appellant ran after him. Marenene saw what looked like the appellant hitting the deceased three or four times with the hand holding the knife.

[8] It is noteworthy that Simmers did not testify as to any argument which preceded the stabbing. That is one major point of difference between the two witnesses. Another is the fact that Marenene testified that Simmers was not present in the yard at the time when these events took place.

[9] The third state witness was Adam Mei, the brother of the appellant. He testified about a quarrel between the appellant and the deceased which had occurred at another shebeen, before they all moved on to Joel's yard. His version of the events at Joel's yard was that the appellant and deceased had continued their quarrel. While Adam was inside the house at the shebeen, he heard the appellant shouting that the deceased wouldn't stop. By the time Adam came into the yard, the stabbing had already occurred. He saw the deceased outside the gate of the yard, with a bloodstain on his back. Some friends of the deceased, who were in the street, went to him.

[10] The appellant testified as to the argument which took place, both before he got to Joel's yard shebeen, and while he was there. His version was that at some stage in the quarrel in Joel's yard, the deceased produced a knife and

stabbed him on the leg. He then grabbed the deceased's knife hand, and twisted it behind the deceased's back. While they were so struggling, the knife went into the deceased, inflicting a single stab wound. The appellant then got hold of the knife and threw it on the ground, while the deceased walked to the gate.

[11] The last witness was Mervyn Weyers, who testified that he went to Joel's shebeen that afternoon to buy a beer. He saw the deceased and the appellant arguing. He heard the appellant say "Jong, kyk wat doen jy" and he noticed some blood on the appellant's upper right leg. He then saw that the appellant had the deceased's arm in a grip behind the deceased's back. He saw nothing further because he left the premises at that point.

[12] Simmers' version of what she saw is detailed and lucid, and the magistrate accepted her as a good witness. It was put to her in cross-examination that she was not well-disposed towards the appellant, because of a previous incident involving another stabbing. She denied this. The latter incident had apparently taken place many years before, and the suggestion that she would manufacture evidence against the appellant seems very unlikely. All in all, this court cannot fault the magistrate's finding that Simmers was a reliable witness.

[13] Notwithstanding Marenene's evidence, it is highly unlikely that Rose Simmers could have given such a clear and graphic account of events without being present. In addition, her presence in the yard was confirmed by Adam Mei. Accordingly, Marenene was mistaken in maintaining that Rose was not present.



[14] It is not difficult to find an explanation for Marenene's fallibility. According to his own evidence he was drunk and started feeling more and more light-headed (duiselig) at about the time that the appellant and deceased were exchanging words. In cross-examination as to how much he had to drink, he said that when he arrived at the shebeen he had already consumed some alcohol. He described his condition as moderately intoxicated. It is not entirely clear how much alcohol he consumed at the shebeen, but when he got up to see what had happened to the deceased he was one and a half glasses into the last litre of sweet wine that he had bought. The fact that he was at one stage compelled to rest his head on his hands for an unspecified length of time, because he felt so drunk, must cast doubt on his ability to observe and recall everything that was taking place around him. I am of the view that the magistrate was correct in approaching Marenene's evidence with considerable caution.

[15] Since Simmers and Marenene are the only two witnesses to the deceased being stabbed more than once, and because I have reservations about the reliability of Marenene, I would approach Simmers' evidence as to the stabbing as that of a single witness. It is trite law that, although it is certainly competent to convict on the evidence of a single witness, one must approach such evidence with caution.

[16] There are two points on which Simmers differs from the other witnesses. The first relates to the time at which these events took place. She put it at somewhere between 15h00 and 16h00, whereas the others put it a couple of hours later. The second is that Simmers did not observe any argument or struggle between the appellant and deceased prior to the stabbing.

[17] I do not consider the discrepancy as to the time as being material. From the record, it appears that this matter was postponed on numerous occasions. Following these several postponements, it was only in January 2009, more than a year after the incident, that the first witness testified. Further postponements ensued, and the evidence was concluded only in September 2009. This is a most unsatisfactory state of affairs, since it makes it more difficult for witnesses to recall the events accurately. It is understandable, in those circumstances, that memories might be less than perfect.

[18] It is more difficult to explain why Simmers did not witness any argument or quarrel between the appellant and the deceased. Marenene said under cross-examination about the quarrel: "Hulle het woorde gehad, maar nie so ernstig nie". It is thus quite possible that whatever was happening between the deceased and appellant might not have attracted her attention at that point. But her account of the events immediately before the stabbing and the stabbing itself, is very clear.

[19] The magistrate accepted Simmers as a good witness. It was put to her in cross-examination that she was not well-disposed towards the appellant, because of a previous incident involving another stabbing. She denied this. The latter incident had apparently taken place many years before, and the suggestion that she would manufacture evidence against the appellant seems very unlikely.

[20] The suggested bias as a result of the prior stabbing incident must be seen in the light of the version given by Simmers. Whilst a possible bias may well cause a witness to manufacture evidence or to colour one's evidence, this



does not seem to be the case with Simmers. In the unlikely event that she did carry some bias from the previous incident, she could easily have tailored her evidence implicate the appellant more directly. Instead she comes across as having given an objective and balanced account of what she saw.

[21] What satisfied me that Simmers' evidence should be accepted as reliable is the fact that it is borne out by the objective evidence of the wounds found on the deceased, namely three stab wounds on his back. These are totally consistent with the description of the stabbing by Simmers.

[22] All in all, this court cannot fault the magistrate's finding that Simmers was a reliable witness.

[23] It is, of course, not enough that Simmers' evidence is accepted as satisfactory. In order to convict the appellant, the magistrate had to find that his version of events could not be reasonably possibly true.

[24] The main difficulty with the appellant's version is that it does not and cannot account for there being three stab wounds on the deceased's body. If the appellant is to be believed, the deceased must have been stabbed twice, either before or after the appellant stabbed him. It can hardly have been before, because there is no evidence that he was stabbed (other than by the appellant) at Joel's yard. The first time any witness noticed a bloodstain on the deceased's back was after the appellant had stabbed him. It is also highly unlikely that the deceased could have carried on sitting and drinking if he had already received a stab wound penetrating his lung ( this aspect was not properly canvassed because the post-mortem report was entered as evidence

without calling the pathologist).

[25] Nor could the other two stab wounds have been inflicted by someone else after the appellant had stabbed the deceased. It was put in cross-examination to Simmers that when the deceased reached the gate of the yard, there were people there with whom the deceased was fighting. She denied it. That line of cross-examination was clearly intended to suggest that someone else might have at that stage inflicted the two further stab wounds. The evidence that was subsequently led, however, did not establish this. Adam Mei's evidence was that the deceased encountered friends of his, not enemies, outside the gate of the yard. And the appellant's evidence was to the same effect, saying that he saw the deceased chatting to his friend outside the gate.

[26] I accordingly conclude that the appellant's version of events cannot be reasonably possibly true, and that the magistrate correctly convicted the appellant of the murder of Julian Avontuur.

[27] I would dismiss the appeal.



**ENGERS AJ**

I agree



**ALLIE J**

And it is so ordered.