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

Case Number: CC21/2020

In the matter between:

The State

And

Jeremy Sias

Accused

JUDGMENT DELIVERED ON 26 JANUARY 2023

Baartman, J

[1] On Saturday 3 August 2019, M[...] C[...], 29 years old **(the deceased)**, died due to strangulation. At the time she lived on the farm V[...] R[...] **(the farm)**, Philippi, in the Western Cape where she stabled her 2 horses. She was passionate about show jumping and competed in local events. The deceased was also a manager at a bakery in Woodstock. The farm manager, Mr T[...] M[...] **(Mr TM[...])**, saw the deceased having a cigarette in front of her cottage at approximately 15h00 that afternoon. He was the last state witness to have seen her alive. On 8 August 2019, the deceased's severely battered body was discovered with soft blue ribbon tight around her neck and her hands and feet tied with similar ribbon.

[2] The state proffered four charges against the accused, a labourer on the farm. The counts were as follows: count one: robbery with aggravating

circumstances; count two: murder; count three: defeating the ends of justice; and count four: theft_. The accused pleaded not guilty to the charges and exercised his right to remain silent.

The evidence for the prosecution

[3] I do not attempt a literal summary of the evidence, although I have considered all of it.

G[...] C[...]

[4] Ms G[...] C[...] (**Ms C[...]**), the deceased's mother, lived in Knysna but was in daily contact with the deceased. On 3 August 2019, the deceased and Ms C[...] had WhatsApp contact; the deceased's last response was at approximately 17h00. Ms C[...] sent another WhatsApp message at 20h00 that did not go through. On 4 August 2019, Ms C[...] unsuccessfully attempted to make telephonic contact with the deceased, whereafter she raised the alarm with Mr M[...] and the bakery's staff.

[5] On 8 August 2019, Ms C[...] was able to identify the deceased by the ring she had worn since age 14. Predatory facial injuries had disfigured the deceased beyond recognition to her mother.

Mr T[...]M[...]

[6] On 3 August 2019, Mr T[...] M[...] spoke to the deceased who informed him that she had to deliver ribbons for a horse event. He left the farm around 08h00, returned at approximately 15h00. At approximately 18h00, when he was *en route* to get fast food, he noticed the deceased's puppy outside and took it to her front door; it was locked. He also noticed that the deceased's car was gone. After unsuccessful attempts to contact her telephonically, he took the puppy to the main house where someone would further attempt to contact the deceased.

[7] The next morning, after Ms C[...] had contacted him, he attempted again unsuccessfully to contact the deceased. He confirmed that the accused was employed at the farm and that his duties included general maintenance on the farm,

such as raking the sand arenas where the horses trained. He confirmed that the accused would in the course of his employment drive a tractor and a quad bike but denied that the accused drove the trucks.

Ms Fernandez

[8] On 3 August 2019, Ms Fernandez, a traffic officer, **(Ms Fernandez)** was part of a roadblock set up in Wynberg Main Road aimed at preventing drunk driving. The officers started the operation at 18h00 on 3 August and intended to continue until 03h00 the next day. At 22h51, the accused, accompanied by four passengers, drove the deceased's vehicle through the roadblock. Ms Fernandez stopped him and after ascertaining that he had consumed alcohol, she took him to Mr van Niekerk **(Mr van Niekerk)**, the traffic officer who administered the breathalyser test that evening. The accused broke loose and ran away with police and traffic officers in hot pursuit. When they brought him back, a few minutes later, the accused complained that he had been injured and pointed to his left rib cage. He had no visible injuries. One of the officers, Ms Fernandez could not say who, reported that the accused fell while running away.

[9] The breathalyser test indicated that the accused was under the legal limit and so could leave; however, as he was not a licensed driver, he could not drive the vehicle away. Ms Fernandez left the accused while he was making arrangements for a licensed driver to move the vehicle. At the time, Mr van Niekerk had the keys to the motor vehicle. She got involved with another driver and saw the accused waving at her as he drove off.

[10] On Monday, 5 August 2019, Ms Fernandez learnt from her supervisors that the vehicle had been involved in a suspected kidnapping. Thereafter Ms Fernandez gave an oral account of the events at the roadblock to police at the Philippi police station and later attested to an affidavit at Muizenberg police station. Ms Fernandez denied that she had fabricated her version about the accused's complaint to protect colleagues who had assaulted the accused.

Mr van Niekerk

[11] Mr van Niekerk confirmed that he had administered the breathalyser test in the joint operation with the South African Police Services (**SAPS**). He heard shouting, "Daar gaan hy", from which he deduced that someone had run off. A few minutes later, Ms Fernandez brought the accused, who complained to him of pain in his rib area. He performed the breathalyser test which indicated that the accused's blood alcohol level was within the legal limit, so the accused was free to go. The keys to the accused's vehicle were on his motorcycle together with other keys. He did not know who returned the keys to the accused. The next day, his supervisor requested the log sheet that had been compiled at the roadblock and informed him about a missing person connected to a vehicle that had gone through the roadblock.

Mr C[...]

[12] Mr C[...] was a driver at the bakery at the time and lived in Wynberg. The deceased was his supervisor. On 3 August 2019 at approximately 23h00, Mr C[...] went out buy a cooldrink when he saw the deceased's motor vehicle parked at the roadblock. He went to investigate and recognised the puppy's blanket in the vehicle. He approached the occupants who rebuffed him. He unsuccessfully attempted to contact the deceased and then reported his discomfort about the situation to the police at the roadblock. They were not persuaded so he walked up to the police station and reported his suspicions but as the vehicle had not been reported stolen, the police were not interested.

[13] The next morning, Mr C[...] reported the events to the bakery management which caused them to go to Wynberg police station and so the search, already in progress, continued.

Mr Azur

[14] Mr Azur (**Mr Azur**) lived in E[...] informal settlement in Philippi, next to his grandmother with whom the accused, his four children and partner Ms Jaydeen Azur (**Ms Azur**), the witness's sister, lived. On 3 August 2019, the accused

arrived home in a motor vehicle that he claimed belonged to his employer's son. On the accused's invitation, Mr Azur and his partner, Ms Sauls, Ms Azur and Ms Chavonne (**Ms Chavonne**), a mutual friend, got into the vehicle. The accused took them to a tavern where they had some beer. At the accused's suggestion, they went to Wiggets, a night club in Wynberg. *En route* to Wiggets, the accused stopped at an ATM and then at a KFC outlet whereafter they were stopped in the roadblock. He confirmed the events at the roadblock, whereafter the accused drove them away. Thereafter, the accused gave him two cellular telephones: an LG and a Samsung. He realised that they were expensive cellular telephones and asked the accused where he had got them. The accused told him not to worry. He saw a picture of a woman on a horse on the LG phone but was unable to open the phone. He admitted that he used the Samsung telephone.

[15] After the roadblock, they returned to the tavern in E[...]. The accused disappeared for a while and on his return, Mr Azur noticed that something was amiss and asked the accused about his nervous behaviour. The accused did not respond; instead, he noticeably increased his consumption of alcohol. Mr Azur said, 'Hy het net begin drink, drink.' Once at home, the accused took the cellular telephones, smashed both with a brick and threw them onto the roof of their home. He also threw a brown bag onto the roof.

[16] On Sunday, the accused went to work and, on his return, he told Mr Azur that the knife was in a safe place. The accused did not respond when the witness enquired what he meant. On Monday, the accused went to work and returned at approximately 17h00; shortly thereafter, the police arrived and took him into custody.

[17] The next day, the police took Mr Azur into custody and held him for 3 days at Lansdowne police station. In that time, a police officer threatened that Mr Azur would not be released until the accused told them where the body was. Mr Azur denied any knowledge of a deceased person and was released 3 days later. The police arrived again, at which time he told them about the items hidden on the roof. The police seized the items.

[18] Mr Azur said that the accused, although in custody, had been in regular telephonic contact with Ms Azur and that he had spoken to the accused the day before he testified. The accused had threatened him and demanded that Mr Azur change his statement. Mr Azur admitted that he knew the accused would not have been able to afford the expensive cellular telephones and that the accused had appeared stressed. He admitted that he suspected the cellular telephones belonged to the woman depicted on the LG cellular telephone.

[19] It was put to Mr Azur that he and the accused had burned the ATM cards that belonged to the deceased on Sunday while the accused was on his lunch break. He denied it.

Ms F[...]

[20] Ms M[...] F[...] (**Ms F[...]**) is Mr Azur's grandmother. The accused and his family lived with her. She confirmed the accused's arrest and that the police later returned and searched his room with her permission.

Mr J[...] M[...]

[21] Mr J[...] M[...] (**Mr J[...] M[...]**), the accused's employer and owner of the farm, confirmed that the accused lived and worked on the farm as a general labourer and that he did maintenance work, for which he mostly used non-licensed vehicles such as a tractor and a quad bike. The accused had on occasion been in trouble for unauthorised use of these vehicles. He had treated it as a young man getting up to mischief. He said that he and his family had a good relationship with the accused who was part of a third generation on the farm. He was unsure when the accused had moved into Ms F[...]’s premises.

[22] He was unsure whether he had seen the deceased on 3 August 2019, although while at the hospital that evening, his mother-in-law had telephonically informed them that the deceased had left her puppy unattended outside. That was unusual for her and his wife had unsuccessfully attempted to contact the deceased.

[23] Once they realised that the deceased was missing, they looked at the eight security cameras on the farm. He identified the accused depicted on footage at 16h28 on 3 August 2019. The video footage indicated that deceased's car was also still on the farm at 18h24; however, the witness could not say whether the accused was still on the farm at that time.

Mr Fransman

[24] Mr Abraham Fransman (**Mr Fransman**) is a community leader in E[...] who at the time worked as a night security person at a local NGO. On 3 August 2019, while he was in Elim, his colleague telephonically informed him that the accused and Mr Azur were at the NGO. He spoke to both and learnt that the accused had a vehicle to sell. They arranged to meet later that evening. A few hours later, Mr Fransman met Mr Azur and the accused. The latter said that an employer from Stellenbosch had given him the vehicle. Mr Fransman was suspicious but nevertheless referred him to Mr Charles Daniels (**Mr Daniels**), a resident in E [...], as a potential buyer.

[25] The next day, Mr Fransman and Mr Daniel Petersen (**Mr Petersen**), another community leader, met the accused who was on his way home for lunch. The latter approached Mr Fransman, handed over an FNB bank card and pin number and requested him to draw R500 from the account. Mr Fransman knew that the accused would go back to work after lunch so he agreed as he often performed such tasks for members of the E[...] community. Mr Fransman unsuccessfully attempted to draw money from the card and destroyed it after the accused's arrest.

Mr Petersen

[26] Mr Petersen confirmed Mr Fransman's evidence in material terms.

Ms Azur

[27] Ms Azur, the accused's life partner, said that on 3 August 2019, a group of friends, consisting of the accused, Mr Azur, Ms Sauls and Ms Chavonne, had arranged to go to J[...], a tavern in E[...]. However, the accused was late, so they got worried and went in search of him. Fortunately, the accused, who was driving a motor vehicle, met them along the way. She said it was between 18h00 and 20h00. The accused said that the vehicle belonged to his employer's son. She confirmed that the group left in the vehicle, visited a local shebeen, consumed alcohol and was later stopped in a roadblock. They returned to J[...] after the incident at the roadblock. Later, the accused and Mr Azur left in the vehicle and returned on foot. The next day, Sunday, she asked the accused and Mr Azur about the cellular telephones in their possession. They told her not to worry. She said that they were still in a relationship after the accused's arrest and that they were still in contact with each other.

[28] She had been at the police station when the accused told them what had happened. She was upset as she suspected that it would be reported in the press.

Ms Sauls

[29] Ms Marianne Sauls (**Ms Sauls**) lived with Mr Azur, her boyfriend, next to the accused. They were on friendly terms and had arrangements to go out on Saturday, 3 August 2019. The accused was late coming from work; when he did arrive, it was already dark and misty but he had a motor vehicle in which they left for the evening out after the accused had changed his clothes. She confirmed the incident at the roadblock and that Mr C[...] had approached them, whereafter they had returned to the local shebeen. The accused bought beer at the shebeen and then left with Mr Azur. They returned without the vehicle.

Sergeant Flink

[30] On 5 August 2019 Sergeants Flink (**Sergeant Flink**) and Cekiso (**Sergeant Cekiso**) were doing crime prevention duties when Sergeant Flink noticed a white Toyota Auris motor vehicle without number plates. He pulled over the vehicle and

learnt that the two occupants were Mr Siraj Japhta (**Mr Japhta**) and Mr Daniels, the driver. The latter told him that they had acquired the motor vehicle from the accused and led the police to the accused. However, the accused denied any knowledge of the vehicle; therefore, the officers took the three men to Philippi police station where they learnt that the vehicle was connected to a missing person, whereupon the officers arrested the three men on a charge of possession of suspected stolen property.

Sergeant Cekiso

[31] Sergeant Cekiso confirmed the events that led to the accused's arrest in material terms, as testified to by Sergeant Flink.

Captain Petersen

[32] Captain Ashley Petersen (**Captain Petersen**), a member of SAPS for 37 years, was stationed at Grassy Park police station when this incident occurred. On 6 August 2019, he went to Philippi police station to interview three suspects who had been arrested for possession of the deceased's vehicle. Two of the arrested, Mr Japhta and Mr Daniels, were active gang members of the 6 Bob gang that operates in the Grassy Park area. Captain Petersen interviewed the two as well as the accused.

[33] The accused indicated that he had found the deceased's motor vehicle abandoned, whereafter he had picked up Mr Azur. Captain Petersen requested Colonel Sias, the Philippi branch commander, and Sergeant Basso (**Sergeant Basso**) to fetch Mr Azur. Thereafter, he interviewed Mr Azur who confirmed that the accused had been in possession of the deceased's motor vehicle and that the accused had given him an LG cellular telephone which he had later returned at the accused's request. The accused, so Mr Azur informed him, had also had a Samsung cellular telephone and that he had smashed both phones with a hammer and thrown them on the roof of his house. In addition, Mr Azur reported that the accused had an iPhone which he had flushed down the toilet.

[34] Captain Petersen took Mr Azur in search of the items and confiscated the phones, the LG and the Samsung, from the roof of the house which Mr Azur had pointed out. Inside the house, Captain Petersen confiscated a blood-spattered red hoody top, which according to Mr Azur, the accused had been wearing when he arrived with the deceased's motor vehicle. Under the bed, he found a female leather bag, a make-up bag and a blue blanket. Captain Petersen seized these items as well as a pair of brown hiking boots which, according to Mr Azur, belonged to the accused. The items were handed into the SAP13 register as exhibits. Captain Petersen said that Mr Azur was a person who could possibly shed light on the whereabouts of a missing person and was treated as such. He cooperated voluntarily.

[35] Mr Sibqa, the accused's counsel, put it to the witness that there had been a second T-shirt with blood spatter. The witness confirmed that both items had dry blood splatter on them. He was adamant that Mr Azur had told him that the accused had smashed the cellular telephones with a hammer instead of with a brick, as Mr Azur had testified in court.

Sergeant Barron

[36] On 6 August 2019, Sergeant Barron (**Sergeant Barron**) accompanied Captain Petersen to Phillippi police station to interview the persons detained in connection with the possession of the deceased's motor vehicle. He said that Mr Daniels, one of the three detainees, had told them that the accused had been in possession of the motor vehicle, whereafter they interviewed the accused who referred them to Mr Azur. He corroborated Captain Petersen's evidence in material terms.

Doctor Kirk

[37] On 12 August 2019, Doctor Kirk (**Dr Kirk**), a pathologist in the employee of the Health Department, performed the *post-mortem* examination on the deceased. He concluded that she had died of ligature strangulation. He found blue ribbon around her neck which he said had been used to strangle her. She had predatory injuries on her face and rats had eaten off her right ear. The deceased's

arms were tied with soft blue ribbon behind her back. The deceased had also sustained a blow to the head which had caused deep, frontal scalp bruising. The chief *post-mortem* findings were as follows:

- 'a. A ligature abrasion horizontally encircling the upper neck with underlying haemorrhages in the soft tissues of the neck.
- b. Bilateral subconjunctival haemorrhages.
- c. Abrasions to the nose and left cheek.
- d. Frontal deep scalp bruising with bilateral peri-orbital haematomas.
- e. Post-mortem predation injuries of the right side of the face.

5... I conclude that the cause of death was **Ligature Strangulation.**'

Trial within a trial

[38] On 6 June 2022, the prosecutor, Ms van Wyk, indicated that she intended to lead evidence of a pointing out, 'the preamble, the notes and everything with regard to the pointing out'. Ms van Wyk further indicated that the parties had been unable to reach agreement in respect of the pointing out and requested that the evidence of the pointing out be dealt with in a trial within a trial.

[39] Mr Sibda, the defence counsel, replied as follows:

'... It has always been our position that we are objecting to the notes that were taken down. It is a *bit* of an unusual matter, *it* is not that the defence is outright placing the pointing out in dispute but the notes that go with it that are attached to that portion we are placing in dispute'.

[40] Ms van Wyk was adamant and emphasised that 'everything goes together with regard to the preamble, the notes and everything with regard to the pointing

out'.

[41] I then ruled that the evidence in respect of the pointing out would be dealt with in a trial within a trial. Both parties understood the ruling and Sergeant Basso was called as the first witness in the trial within a trial. I deal with the dispute that arose in respect of that ruling below.

Sergeant Basso

[42] On 6 August 2019, Sergeant Basso, the investigating officer in this matter, interviewed the accused who indicated that he wanted the 'mother of his children' present. Sergeant Basso fetched Ms Azur from her home and after informing the accused of his rights, took his statement. The accused elected to tell what had happened while he gave details of the events that had led to his arrest; Ms Azur got upset and left the room.

[43] Once he had the accused's version, Sergeant Basso made the following arrangements in preparation for the pointing out: the accused to be medically examined at Heideveld hospital; Captain Pickard (**Captain Pickard**) from Steenberg SAPS to conduct the pointing out; and an official photographer from the SAPS's LCRC unit to record the process. None of the officers arranged had been involved in the investigation of the matter.

[44] Sergeant Basso said that the accused co-operated voluntarily. In cross-examination, it was put to Sergeant Basso that the accused had been assaulted on the evening of his arrest. The witness could not confirm the allegation seeing that he had not been present nor had the accused reported the incident to him. The witness could also not comment on the allegation that dogs had been set on the accused and that he had had to remove his jacket to avoid being bitten by the dogs. Furthermore, the witness was unable to comment on the allegation that a police officer had held a gun against Mr Daniels' head.

[45] Counsel put it to the witness that the combined effect of the assaults had caused the accused to be terrified. The witness could not comment. The witness

also could not comment on the allegation that a police officer had allegedly told the accused that he was a sangoma and had encouraged the accused to say where the deceased's body was. These terrifying encounters had caused the accused to tell the police where he had found the motor vehicle. Sergeant Basso had no knowledge of the allegations.

[46] The witness said that he had booked the accused out of the cells and drove with him to the farm where the incident allegedly took place. The accused pointed out the gate where he had allegedly found the abandoned vehicle. The accused persisted with that version so Sergeant Basso took him back to the police cells.

[47] It was put to Sergeant Basso that Captain Petersen and Sergeant Barron had assaulted the accused, including making him sit on his knees, twisting his ears and repeatedly calling him a liar. The witness was unable to comment on the allegation. It was further put to Sergeant Basso that he had promised the accused that the matter would be finalised in the magistrate's court if he cooperated. The witness denied the allegation and the further allegation that he had promised that the accused would be released on bail.

[48] The witness could not confirm that the accused had told the doctor about the assaults. However, he was adamant that the accused had not complained to him about the alleged assaults.

[49] Before, Mr Sibda had finished his examination of Sergeant Basso, he said, 'There is no trial within a trial. We have not entered into a trial within a trial.' I responded, 'But we did start a trial within a trial.' Mr Sibda insisted, 'Now the trial within a trial did not commence because there is nothing in [Mr Basso's] testimony which I wish to challenge the admissibility of. There were no details given... There is nothing that [the prosecutor] handed in. I was waiting for that aspect.'

[50] Mr Sibda insisted that there was no need for a trial within a trial as the State did not lead the evidence he intended to object to. Misled, I responded, 'Fine, we are busy with a trial within a trial to the extent that [we started], that stopped and all this evidence is now within the main trial.'

[51] Ms van Wyk, horrified by the ruling, responded as follows, '...we entered into a trial within a trial on Monday. The witness that I was going to call now is the very same witness [Mr Sibda] dispute that I handed up this to come and testify about it.... [Mr Sibda] is aware of the fact that I am going to present this evidence. This is the preamble to the pointing out. I wanted to do that on Monday and [Mr Sibda] had a problem for [with it] being handed up. Then we entered into a trial within a trial.'

[52] After a long debate, I postponed the matter to obtain a transcript of the relevant proceedings which indicate that Sergeant Basso was the first witness in the trial within a trial. The parties addressed the court on 25 July and I ruled that the trial within a trial was to continue as the previous ruling ending that process was clearly wrong. Sergeant Basso's evidence thus remains in the trial within a trial; the State called 4 further witnesses whom I deal with below.

Captain Pickard

[53] Captain Winston Pickard (**Captain Pickard**) was stationed at Lentegur police station at the times relevant to this judgment. He was not involved in the investigation of this matter. On 7 August 2019, he responded to a request from Colonel Sias to assist with the pointing out in this matter. He met the accused at approximately 23h30 after the latter had returned from the doctor. Warrant Officer Abrahams (**W/O Abrahams**), an official photographer, was in the room with him and the accused. The accused appeared nervous but was in his full senses. He introduced himself to the accused and asked whether he knew why they were meeting. The accused responded that he wanted to do a pointing out.

[54] The defence objected to his evidence on the basis that the notes the witness took were done in violation of the accused's constitutional rights, that it was induced by assault and promises of a lesser sentence - that the matter would be disposed of in the magistrate's court- and that he would see his children again. SAPS members are alleged to have made the promises and perpetrated the assaults.

[55] The witness denied making any promises to the accused or assaulting him. However, the accused did tell him that he would receive a lesser sentence should he do the pointing out and that he would not go to prison for a long time and would be able to see his children again. The accused also said that he had been assaulted on his back and chest although the witness did not observe any injuries. The accused, however, did not say which officer had made the promises or had assaulted him.

[56] Nevertheless, the witness informed the accused of his rights and that he was not obliged to proceed with the pointing out. The accused indicated that he did not need an attorney for the pointing out process but that he would appoint one for the court proceedings. The accused indicated that he wanted to proceed with the pointing out. According to the witness, the accused said that he had been assaulted but not that it had been done to persuade him to do the pointing out. Therefore, the witness continued with the process when the accused said he wanted to proceed. In addition, the accused said that he wanted to proceed because he had killed someone. After the witness had taken down the accused's version, he enquired whether the accused still wanted to continue with the pointing out. He wanted to.

[57] Therefore, the witness, in the company of a police driver, W/O Abrahams and the accused left the police station in the direction the accused indicated.

[58] They stopped on a gravel road in Philippi as the accused had directed and walked after him into the bushes. It was dark but the accused seemed to know his way. In cross-examination, the witness said that he would not have proceeded with the pointing out if he had known that the accused had been forced. He was adamant that the accused wanted to proceed despite the complaint that he had been assaulted.

[59] The witness reiterated that the accused did not allege that the assault was a means to induce the pointing out. Instead, the accused said that he had killed a person and therefore he wanted to do the pointing out.

Constable Mhlakaza

[60] Constable Bangi Mhlakaza (**Constable Mhlakaza**) was stationed at Philippi police station at the times relevant to these proceedings. On 7 August 2019, the witness drove the accused and Captain Pickard to the crime scene; W/O Abrahams followed in a separate vehicle. The accused, whom the witness described as reserved, gave the directions to a farm area leading to a gravel road. Once they had alighted from the vehicle, the accused led the way, at a fast pace, until he pointed to where the body of the deceased was lying. The accused took a few steps back, which caused the witness to get hold of the accused from behind to prevent any attempt to escape. To his surprise, the accused turned around, embraced the witness, leaning with his face against the witness' shoulder, and said that he had not meant to kill her.

[61] They returned to the police station and later he took the accused for a second medical examination. He explained that an accused is ordinarily taken for an examination before and after a pointing out.

[62] In cross-examination, it was put to the witness that the accused did the pointing out voluntarily and that he had agreed that he was not assaulted at the time. Further, the accused took a few steps back after the pointing out and said that he was sorry that he had killed her. However, that utterance was due to a combination of being tired, having been assaulted and the promises made to him. The witness looked surprised at the statement and said that the accused had missed his calling and should have taken up acting as a career. The witness was adamant that the accused had acted voluntarily when in his presence although he could not deny the allegations of assault and threats. He said that the accused's face was on his right shoulder when the accused had hugged him and said that he had not meant to kill the deceased.

Warrant Officer van Antwerpen

[63] Warrant Officer van Antwerpen (**W/O van Antwerpen**) had been

stationed at Philippi SAPS for 10 years prior to the incident. He knew the accused as an employee at the farm as the owner was a friend of his. He had not been at work when the accused was arrested, being either on leave or on rest days. On his return, the Wednesday, he already knew about the deceased's disappearance from local reports. He turned down the allocation of the investigation to him as he had already been transferred to another district and was due to leave in approximately 2 months. However, he was prepared to assist and guide Sergeant Basso who was not as experienced.

[64] In that capacity, he attended an interrogation of the accused led by Sergeant Basso. At that stage, the police were investigating a missing person's report, not a murder, although the person had been missing for several days and there was urgency to the matter. Prior to the accused's interrogation, Mr Daniels and Mr Japhta had already told the police that the accused had arrived with the deceased's vehicle.

[65] He said that no promises had been made to the accused during the interrogation and that the accused had been uncooperative, although he got the impression that the accused had 'something on his mind'.

[66] He denied that the accused had been assaulted and that he had threatened the accused or implied that according to the DNA results of clothing seized at the accused's home, the deceased's blood was on the clothing. He said that the interrogation had been conducted in an open area where the police normally process arrestees. He could not respond to the accused's version of assault and promises made to him as it did not occur in his presence. He further said that he did not know about the clothing that had been seized from the accused's residence prior to testifying in court.

W/O Abrahams

[67] W/O Abrahams was the official photographer who video recorded the proceedings. He was in the room when Captain Pickard interviewed the accused, whom he said had appeared normal during the interview. He

accompanied the accused and Captain Pickard after the accused had indicated that he wanted to do the pointing out.

[68] The accused led the way to about 20 metres from where the deceased was found; he told Captain Pickard that the deceased was under the branches and then started crying. In cross-examination, it was put to him that the accused was tired due to lack of sleep and being in physical pain and anxious. The witness said that approximately 20 metres from where the deceased's body was, the accused became emotional and 'tears were running down his face', which was not induced by being tired. Instead, the gravity of the situation had moved him.

Sergeant Kwaityo

[69] On 7 August 2019, Sergeant Wayne Kwaityo (**Sergeant Kwaityo**) took the accused for a medical examination at Heideveld hospital. The accused was free from injury and did not complain about anything.

Captain Petersen

[70] Captain Petersen was stationed at Grassy Park at times relevant to these proceedings. He repeated his evidence given in the main trial in material respects.

[71] In cross-examination, it was put to the witness that he had interviewed the accused after the seizure at which time he had assaulted and threatened him. The witness was adamant that he had not interviewed the accused a second time. He said that the investigating officer was present when the items were seized and in the room where it was sealed. He suspected that the investigating officer could have brought the accused to the room while he was busy but denied that he had any contact with the accused. He said that the room was busy as several police officers came and went. He was adamant that he had no reason to interview the accused after the seizure as the Grassy Park police officers had completed their task and the further investigation was left to the investigating officer who was present.

Sergeant Barron

[72] Sergeant Barron confirmed that he accompanied Captain Petersen to Philippi police station where they interviewed the accused and thereafter Mr Azur, which led to the seizure of several items which they sealed in the boardroom. He too denied that the Grassy Park team had contact with the accused after the seizure and consequently denied the allegations of assault levelled at them.

Ms Fernandez

[73] Ms Fernandez repeated her evidence given in the main trial in material respects. In cross-examination, it was put to her that the accused had not complained about any injury. She was adamant, however, that the accused had complained.

Doctor Kajiker

[74] On 7 August 2019, Doctor Kajiker (**Dr Kajiker**) examined the accused at Heideveld hospital and made the following clinical findings:

- (a) Abrasion on back - healing
- (b) Tender over the rights ribs 5-6
- (c) Stable mental state.

[75] The accused reported that members of SAPS had assaulted him by kicking him in the chest and slapping him from Monday to Wednesday. The doctor prescribed Panado and Brufen for the pain over his chest and discharged the accused.

[76] In cross-examination, the doctor conceded that the accused had told her that he had been assaulted over several days. The doctor denied that she wanted to give as little credence as possible to the accused's version, as counsel

suggested. However, she fairly conceded that her notes could have been more comprehensive. She insisted that the accused had not complained of being hit on his back; instead, she had noticed the abrasion and therefore noted it in her findings. However, when pressed on the issue, she conceded that he might have complained about an assault on his back despite the way she had recorded it.

Doctor Wilson

[77] Doctor Mathew Wilson (**Dr Wilson**) had been on duty at Heideveld hospital on 8 August 2019 at 04h45 when the police brought the accused for an examination. The accused complained of a previous assault but did not report any new assault between 22h00 on 7 August 2019 and 04h45 on 8 August 2019. The accused, according to Dr Wilson, looked 'well, relatively healthy and not in any kind of distress'. The accused reported that it was painful when the witness palpated over his ribs. The doctor did not prescribe any medication.

[78] In cross-examination, the witness conceded that he had not observed signs of the accused's previous emotional outburst. His findings were consistent with an assault in the form of blunt trauma.

Sergeant Taswel Flink

[79] Sergeant Taswell Flink (**Sergeant Flint**), stationed at the Dog Unit, was on patrol duty alone in a vehicle on 5 August 2019. His colleagues, Sergeants Claasen and Cekiso were in a different vehicle with a dog assigned to Sergeant Claasen. The team pulled over a motor vehicle without number plates and the witness arrested the driver, Mr Daniels, and the passenger, Mr Japhta. The arrestees alleged that they had obtained the vehicle from the accused and took the police to the accused's residence. Sergeant Claasen arrested the accused and the three were taken to Philippi police station. They parked near to a carport on the police station's premises where the accused and Mr Daniels got into an altercation. The accused denied that he had left the vehicle with Mr Daniels. Therefore, Sergeant Flink took Mr Daniels into the police station leaving the accused and Mr Japhta with his colleagues. He

discovered from police data captures in the station that the vehicle was linked to a missing person report. The Dog Unit members did the necessary paperwork and after the trio had been detained in police cells, left the further investigation to the detectives.

[80] In thorough cross-examination, the witness denied that he had known before they arrived at the police station that the vehicle was linked to a missing person. He said that they had attempted to obtain information about the vehicle through the police radio but were unable to because the vehicle had, at that stage, not been circulated as it had not been reported stolen. He further denied that he had assaulted the accused or that his colleagues had done so. He was adamant that he took Mr Daniels away and that the accused remained behind and that nobody had assaulted the accused before he left with Mr Daniels. He said the accused would not have been received into the police cells if he had been assaulted; instead, he would first have had to receive medical attention.

[81] He said that the patrol dog, trained to bring suspects under control, had not been used to apprehend the accused, hence there would have been no reason to set the dog on him. Only Sergeant Claasen could have handled the dog. Sergeant Flink was adamant that the members of the Dog Unit's duty stopped once they had completed the administrative functions and the arrestees had been detained. He further denied that he had prior knowledge of the matter as the defence insisted that he had.

Sergeant Cekiso

[82] Sergeant Cekiso confirmed that he was part of the Dog Unit team that had pulled over the white Auris for driving without number plates. The two occupants of the vehicle led them to the accused as the person from whom they had obtained the vehicle. The accused denied the allegation, therefore the trio were arrested for possession of suspected stolen property and taken to Philippi police station.

[83] He confirmed that the accused and Mr Daniels had had an altercation in the parking area at Philippi police station but because they spoke Afrikaans, he could not

follow. He denied that either the accused or Mr Daniels had been assaulted in the parking area. He said that Sergeant Flink had left the police and suspects in the parking lot and obtained information about the vehicle inside the police station. On Sergeant Flink's return, he informed them that the vehicle was linked to a missing woman. On receipt of that information, the arrestees were booked into the police cells.

[84] He said that he learnt a few days after the arrest that the vehicle seized was connected to a high-profile case and felt pride that their team had assisted in cracking the case. He said that an 'APB', a police radio notification, had been circulated about the missing woman and that all police in the Western Cape were aware thereof. Despite this knowledge, he only connected the vehicle seized to the high-profile case a few days after the seizure.

Sergeant Claasen

[85] Sergeant Claasen confirmed that he was the dog handler and part of the team that had arrested the accused after suspects pulled over in a motor vehicle without number plates had implicated him. He confirmed that the accused and two others had been taken to Philippi police station and arrested for possession of suspected stolen property. He confirmed that there had been an altercation between the accused and Mr Daniels but said that he did not hear what it was about. He simply did not pay attention. Sergeant Flink intervened in the altercation and separated the two before taking Mr Daniels into the police station with him.

[86] He said that they only learnt at the police station that the vehicle was connected to a missing woman. He also denied that he knew about the 'APB', saying that they worked shifts and that he only became aware of the significance of the vehicle in the high-profile matter a few days after the arrest. He denied setting the patrol dog on the accused and the further assaults alleged. He was adamant that the Dog Unit did not get involved in the investigation of the matter.

Investigating officer recalled

[87] When recalled, Sergeant Basso said that he had been on stand-by duty when the police had first received the complaint about the deceased being missing. He followed up and obtained outstanding details. He confirmed that the details of the deceased's vehicle were recorded in the docket.

[88] He confirmed that he considered the possibility of robbery, injury or even death of the missing person. He treated the matter as urgent and had discussed it with his colleagues. He confirmed that he had fetched Ms Azur at the accused's request.

[89] The accused's version was put to the witness as follows; the accused had taken the vehicle found abandoned at the second gate for a joy ride; he had intended to return the vehicle and further that:

'but he also used the card to buy Kentucky and alcohol and he and his friend basically just were going to have a nice evening. That was his intention and that is what he had done... But, where things took a horrific turn is in the early hours of the morning, just before he planned to return the vehicle, he made the discovery of [the deceased's] body in the boot... he knew that he was going to be found guilty of taking the vehicle, taking the cards....And he also knew that he had disposed of the [deceased's] body, when he ought to have gone to the police....He knew... the mere disposing of the body was wrong. He ought to have gone to the police.... Now... he was heavily influenced by promises that you made to him.'

[90] The witness denied making any promises to the accused, including that the accused would be released on bail. He further denied that he had not informed the accused of his rights to legal representation. He said that the accused had not told him about the assaults he is alleged to have suffered. He was also not aware that Mr Daniels had allegedly been threatened with a firearm and that this had terrified the accused. He further denied that the accused had been told that DNA samples indicated that the deceased's blood was on his clothes. He further denied that W/O van Antwerpen had slapped the accused in his presence.

[91] The witness said, 'After I had spoken to [the accused] he said there is something that he needs to tell me, but, he would like his girlfriend to be present.' The warning statement was taken when the accused's girlfriend was present.

The defence case in the trial within a trial

[92] The accused testified and called Mr Daniels. I deal with both their evidence below but do not undertake a literal summary although I have considered all the evidence.

Mr Jeremy Sias

[93] The accused, a 30-year-old father of 4 children, said that he was in a relationship with Ms Azur with whom he was living at times relevant to this judgment. He confirmed his employment on the farm and professed very good relations with his employer. He had known the deceased. He said that he was at Mr Azur's home, on 5 August 2019 at approximately 19h00, when the police had arrived and arrested him. He was taken to the police station in a motor vehicle. Two police officers were in the vehicle, one of whom showed him a photograph on a cellular telephone depicting the deceased. The officer told him 'Jy beter praat, waar is M[...] C[...]?' He denied knowledge of her whereabouts. The police officer then gave him the distance between the gravel and the tar road to reconsider his answer. When he failed to respond further the officer threatened him saying, 'Ons sal sien.'

[94] Once at the police station, he and Mr Daniels got into an altercation when the latter denied giving the deceased's vehicle to Mr Daniels. The police handcuffed them together and started assaulting the accused when he insisted that he had not given the vehicle to Mr Daniels and that he did not know the whereabouts of the deceased. While he was still tied to Mr Daniels, Sergeant Flink hit the accused with a wooden pole on his ribs. He described the wooden pole as square and 60 centimetres long. The assault continued, which included hitting the accused on his chest with a fist and Sergeant Cekiso hitting Mr Daniels and kicking the accused's feet out from under him. Then the police dog was set on them and the dog bit the accused's shoes; fortunately, he managed to pull his toes back and avoid being bitten.

[95] Mr Daniels was not so fortunate; he was bitten on the stomach. All the while, the police urged them to say where the deceased was. In addition, a member of the Dog Unit held a gun against Mr Daniels' head, which terrified the accused. Sergeant Basso arrived after the assault and showed them a picture depicting Mr Fransman at an ATM and wanted to know whether they knew the man depicted. They were still outside on the police premises where the assault had taken place when they spoke to Sergeant Basso. Thereafter, they were detained in the police cells.

[96] On Tuesday, 6 August 2019, Sergeants Basso and Christo took the accused's fingerprints and Sergeant Basso urged the accused to talk saying, 'Why would Mr Daniels say he got the car from you?' The accused responded that he had found the vehicle at the farm's gate when he was on his way to collect food for his dog. He went with Sergeant Basso and showed him where he had found the vehicle. He also told the police that he had found 3 cellular telephones and a brown handbag inside the vehicle.

[97] Later that day, Captain Petersen and Sergeant Barron, the Grassy Park police officers, took him out of the cell. He told them what he had already told Sergeant Basso, whereafter he was taken back to his cell. Later that day, Sergeant Barron and Captain Petersen returned and took the accused to a room where several forensic bags, containing, among others, cellular telephones were displayed. This time, Captain Petersen and Sergeant Barron urged the accused to talk because the items had apparently been seized from his home. They insisted that he knew where the deceased was.

[98] The accused steadfastly denied that he knew the whereabouts of the deceased, whereupon Sergeant Barron made the accused sit on his knees, looked him in the eye, twisted his ears and accused him of lying. Captain Petersen then kicked and hit the accused with his fist. He too accused him of lying. On 7 August 2019, Sergeant Basso and W/O van Antwerpen took the accused out of the cells. The latter urged the accused to tell the truth and said that the deceased's blood had

been found on the accused's clothing. The accused denied that it was the deceased's blood and instead indicated that it was Ms Saul's blood on the clothing. W/O van Antwerpen then slapped the accused and called him a liar before taking him back to his cell.

[99] A few hours later, a policeman claiming to be like a sangoma, slapped the accused and urged him to talk. In the cell, Mr Japhta also urged the accused to talk. Then Sergeant Basso took the accused out of the cell and urged him to tell the truth. He insisted that he knew no more than he had already divulged. Sergeant Basso then warned the accused that he would never see his children again if he refused to co-operate; however, if he talked, he would only serve a few years and see his children again. Sergeant Basso explained that the accused would not be tried in the high court or the regional court; instead, his case would be finalised in the lower court. He confirmed that Sergeant Basso had informed him of his rights to legal representation and that he had indicated that he understood. However, he did not understand; he 'just wanted to get it done'. 'Ek het gedink dat ek wil net klaarkry.' It was at that point that he thought of getting Ms Azur to the police station. 'En daar het ek vir horn gese het hy moet my meisie gaan haal.'

[100] Once Ms Azur was present, Sergeant Basso said: 'Right you can talk now' to which the accused persisted with his denial. 'Ek het horn gese but ek weet van niks af nie... Ek het vir [Ms Azur] voor horn gese dat sien jy wat try die beamppte om te doen.' The officer was angered, took out a white page on which he wrote the court hierarchy and pointed to the high court and said that the accused would never see his children again if he was tried in the high court. However, if he told the truth, the matter would be disposed of in the lower court, bail would be set and the sentence imposed would not be lengthy imprisonment.

[101] The accused then agreed but persisted with his denial. 'Meneer wil he mos nou ek moet die waarheid praat, maar ek weet nie... waar die vroumens is nie.' However, the thought of a short prison time and seeing his children again persuaded him. In addition, he would be released on bail so he would be able to arrange a loan from his cousin and so secure his children in his absence. Therefore, he informed

Sergeant Basso that he would talk. Thereafter, Sergeant Basso took his statement. Later he was examined by the doctor to whom he reported the assault he had suffered. The accused said he was taken to the doctor who asked about his injuries and he had told her about his ribs. After she had examined him, the doctor sent him for X-rays and prescribed pain medication. On his return to the police station, Sergeant Basso met him and assured him that he would be released on bail. He was taken to a room where he met a plain-clothed police officer who said that he was 'an upcoming judge' and that he was not working with the police. The officer read his rights to him and he indicated that he understood, although he did not. The officer asked many questions most of which the accused confirmed and then the officer surprised him by asking whether he wanted to point out the body. The accused said he would. They went to the place the accused had indicated and he pointed the body out but did not want to go near it.

[102] In cross-examination, the accused said that he knew which cottage the deceased had rented and that he had seen her with the vehicle in question. He had seen her a week before the incident. On 3 August 2019, he had arrived at work at 08h00 and left at 10h00 but did not recall seeing the deceased in that time. He returned to work at 15h00 and left between 16h40 and 16h45. He left the farm through the fence about 600 metres from the gate. He did not go home; instead, he went to a shebeen and then returned to the farm to collect dog food but on the way, came across the abandoned motor vehicle. It was dusk and misty at the time so he did not recognise the vehicle as belonging to the deceased. He found the deceased's handbag under the seat and recognised her from the identity document therein. He tried the deceased's birthday date as a pin to draw money, as he uses his as his pin; fortunately, it was a hit. He drew R500 at approximately 20h00-21h00 and went home. Thereafter, a group of friends accompanied him to Wynberg, but he was stopped in a roadblock, ran off and was apprehended by someone at the nightclub. The police bent the accused's arm behind his back so that he bent forward onto the bonnet of the police van; they then pushed him onto the bonnet and handcuffed him.

[103] He denied that he had complained to Ms Fernandez about an injury. Although his employer was like a father to him, he did not approach him as that would have caused the employer to see the accused in a different light. He conceded

that he was serving self-interest at the time. He confirmed his version of the assault as it had been put to the witnesses, which included the blow to his rib cage with the wooden pole. He could not say whether he had any marks over his ribs. The assault left him with abrasions on his wrists but he did not tell the doctors about it as it was not serious. He was adamant that the police officer had put a gun to Mr Daniels' head and Captain Petersen had kicked him in his ribcage while he was on his knees.

[104] He was not sure whether he had volunteered the information about finding the cellular telephones in the car or whether the police asked him about it. He said that he got Ms Azur to the police station so that she could see what the police were doing to him. Sergeant Basso brazenly made promises to the accused in front of Ms Azur that he would get bail and his matter would be disposed of in the lower court. He was shocked when asked whether he would be prepared to point out the body, because until then no one had mentioned the body, they only wanted him to say where M[...] C[...] was. However, he agreed to show where the body was because of the promises Sergeant Basso had made to him. The utterances made at the pointing out were lies for Sergeant Basso's benefit; however, the emotional outburst was genuine heartfelt emotion. '

Mr Daniels

[105] Mr Daniels said that the accused, his wife, his sister-in-law and Mr Azur brought the deceased's vehicle to his home late one evening. After he agreed to find a buyer for the vehicle, the accused and his passengers removed a box of wine and Kentucky from it and left. He confirmed that he and Mr Japhta were in the deceased's motor vehicle when members of the Dog Unit apprehended them. The police took them to Philippi police station where the police assaulted them while they were handcuffed. The police wanted to know where the woman was. As they did not know, he led the police to the accused as the person from whom he had received the vehicle.

[106] The police detained the accused and took them all to Philippi police station where they viciously assaulted the accused and Mr Daniels. Among others, the

police used a bulky white pole to assault the accused. They were also kicked causing both to land on the ground. The accused and Mr Daniels were handcuffed and dragged on the ground. The police wanted to know the whereabouts of the woman and set the dogs on them when the information was not forthcoming. Mr Daniels was 'pinched' on the stomach by the dog. He showed a tiny scar on his stomach caused by the dog. He did not receive medical attention because it was not a serious 'pinch' [knyp]. The dogs tore the accused's gum boots.

[107] Afterwards, the police took their statements and detained them in the holding cells. The next day, officers from Grassy Park police station, Sergeant Barron and Captain Petersen, interrogated them because they were known in that jurisdiction. At that stage, the accused went to point out where he had found the vehicle so the Grassy Park officers did not return. They were charged with murder, theft of a motor vehicle and defeating the ends of justice, denied bail and detained at Pollsmoor prison, where the wardens also assaulted them. The situation was so bad that they had to hide among the other inmates to escape the wardens.

[108] In cross-examination, he was adamant that the police did not hold a gun to his head as he would have remembered that. However, he remembered that the police set a dog on them and that he had sustained a wound that did not bleed. He explained that blood had accumulated under the skin causing a bruise which was not painful.

[109] He said there were at least 4 dogs. He was sure about this as the dogs had jumped against the window and barked as he passed the 4 or 5 cars on the scene. The police swung the pole towards them, like a cricket bat; fortunately, he was able to dodge the blows but the accused was hit.

[110] After the defence had closed its case, I admitted the evidence and indicated that I would give my reasons in the main judgment.

Reasons for ruling evidence admissible

[111] The investigating officer gave a credible account of his involvement with the accused. The accused said that he had something to say but wanted Ms Azur present. The witness fetched her and, in her presence, the accused gave his version which upset Ms Azur so much that she walked out. At that stage, the accused was seemingly in control of his decided course of action. He indicated that he understood his rights to legal representation and said that he just wanted to proceed. It is far-fetched to suggest that the investigating officer would in Ms Azur's presence make promises to the accused and even more outrageous to suggest that the accused called for her so that she could hear that the police were up to no good.

[112] The Grassy Park police officers were there specifically to interrogate Mr Daniels and Mr Japhta. Mr Daniels admitted that they were known in that jurisdiction and therefore the officers were there. They interrogated the accused to confirm the versions received from Mr Daniels and Mr Japhta. The accused referred them to Mr Azur, which led to the seizure of the deceased's belongings. The Grassy Park officers had no reason to further involve themselves in the investigation. Both were credible witnesses and I accept their versions. The investigating officer was present and had to take care of the necessary follow-up investigation.

[113] Similarly, members of the Dog Unit were doing routine patrol. The elaborate assault levelled at them has no merit. I accept that a missing person must cause a sense of urgency with the police. However, what is alleged to have happened here is implausible. As the officers explained, they connected their arrest to the high profile matter several days later. Investigating the matter was never part of their duties. The suggestion that they went beyond the call of duty is not born out by the facts.

[114] The medical evidence supports the version that the accused sustained blunt force trauma to his rib cage. Ms Fernandez said that the accused complained that he had sustained an injury in that area. At the time, the deceased's vehicle had not yet been reported as stolen. No missing person's report had been filed. I accept that the officer only heard about the connection between the vehicle and the missing person the next day. The accused's

behaviour, arrogantly waving at the officer as he drove off without a licence. is reason enough for her to have recalled the incident the next day. Before he drove off, Mr C[...] had reported his discomfort about the deceased's motor vehicle to law enforcement officers at the road block when Ms Fernandez was busy dealing with the driver of the vehicle. The witness was credible and made a good impression. I accept that the accused pointed to his rib cage and indicated that he had sustained an injury.

[115] The accused said that he had sustained abrasions on his wrist but did not mention them to the doctor who examined him and to whom he complained about the assault. The accused only indicated tenderness over his rib cage, which was an injury he had sustained when he ran from the roadblock. The accused's version of his traumatised state and compromised will is implausible in circumstances where he had Ms Azur brought to the police station to expose police malpractice. However, at the same time, he chose to lie about his understanding of his rights to legal representation. W/O van Antwerpen said that the accused was uncooperative. Thereafter, the Grassy Park officers described the accused as uncooperative. The officer conducting the pointing out told the accused that he was 'a judge in the making who was not working with the police'. Yet, the accused was not prepared to take him into his confidence; instead, he told him that he understood his rights and wanted to proceed despite the alleged assault.

[116] The version that the pointing out was voluntary but not the utterances is difficult to understand in these circumstances. The accused must have been tired and traumatised by the whole experience and visibly moved when the deceased's body was uncovered. In those circumstances, he had the presence of mind to stage a lie in the hope that the investigating officer would keep his promise. That suggestion is rejected is a lie. Instead, the accused, who blatantly lied about his understanding of his legal rights, demanded that his girlfriend be fetched before telling his version and selectively informed the doctors who examined him about his injuries, was manipulating the situation to suit his own needs. He displayed this trait when he testified that although his employer was

like a father to him, he did not take him into his confidence as that would have affected the way he would be viewed. The egocentricity displayed is at odds with the caring father image the accused professed.

[117] The accused did not hesitate to exaggerate; therefore he alleged that the police had pointed a gun at Mr Daniels' head. The latter's reaction to that version bears out the correctness of rejecting it. Mr Daniels was adamant that he would have remembered such an incident. The accused's version of the assault influencing his utterances at his voluntary pointing out is rejected. Mr Daniels' evidence supports that finding.

[118] Mr Daniels was also prone to exaggerating which included him saying that at Pollsmoor prison they had to hide among other inmates to escape being assaulted by prison wardens. Mr Daniels was not a credible witness.

[119] I was persuaded that the accused, in a calculated manner, voluntarily made the pointing out as he alleged, but also the utterances and explanation that accompanied the pointing out.

Main trial continued

Captain Pickard

[120] Captain Pickard conducted the pointing out. Exhibit P is the document he completed in the process. The document provides for the accused's right to legal representation to be explained. It is apparent from the document that the accused indicated that he understood his rights and wished to apply for legal aid. The witness conceded that some officers would have stopped the process at that point. However, he had been at pains to stress that the accused nevertheless wanted to continue with the pointing out.

[121] The accused further indicated that the police had assaulted him. 'Ek was aangerand en forseer deur die polisie, ek ken nie hul name.' When asked whether

he had been 'assaulted or threatened by any person to point out any scene... ', the accused replied that he had been and that those assaults had influenced him: 'Ja ek het iemand vermoor.' He further indicated that he had been injured on the chest and back. The accused further indicated that an unknown officer had promised that he would not go to prison: 'Ek gaan nie in die tronk nie ek ken nie sy naam nie.' He was then asked to 'what extent, if at all, did the promises lead to your decision to point anything out?' He replied that he thought the police had told him the truth and that he would not go to prison.

[122] He was then asked whether he had 'been influenced in any way by any person to point anything out?' He replied that he had attested to an affidavit in front of an unknown police captain who did not force him. 'Ek het 'n verklaring afgele by die kaptein. Hy het my nie gedwing nie.'

[123] The accused further indicated that he had been promised that he would see his children again and that he would not have to spend the rest of his life in prison. The witness conceded that he should have stopped the proceedings at various stages when the accused indicated that he had been assaulted and that officers had made promises to him.

Members of the Dog Unit

[124] Sergeants Flink and Claassen, both from the Dog Unit, confirmed the State's version in broad terms that members of the unit had stopped Mr Daniels who led them to the accused and that the latter denied that he had given the vehicle to Mr Daniels. They persisted that they knew nothing about the missing person connected to the vehicle at the time of the arrest. However, Sergeant Cekiso from the same unit, who was also present when Mr Daniels was apprehended, conceded in cross-examination that the previous night, a police notice had been issued therefore 'all SAPS knew of the missing person'.

Sergeant Basso recalled

[125] Sergeant Basso was recalled and denied that he had made any promises to the accused. He confirmed that the accused had indicated that he understood his rights to legal representation before the pointing out. The accused did not inform him that he had been assaulted. Instead, the accused said that he had something to tell but wanted his girlfriend present, whereupon Sergeant Basso fetched her. The accused gave his version in his girlfriend's presence.

[126] That concluded the evidence for the State.

Defence case

[127] The accused testified and broadly repeated his version, referred to above in the trial within a trial. He said that he left work shortly before 17h00 and went to the local shebeen where he consumed several beers, 4 to 5 x 750ml Black Label, with an acquaintance whose name he could not recall. After socialising in the shebeen, the accused remembered that he had left his dog's food on the farm. Although it was already dark and misty, he decided to fetch the dog food, which is how he found the abandoned car near the small gate, with the keys in the ignition. Due to being drunk and the weather conditions, he initially did not recognise it as the deceased's car. After he had taken the car for a ride, he searched under the seat where he found the deceased's handbag containing personal items. He tried the deceased's birthdate as a pin to draw money successfully from her account with which he bought liquor and fast food. He confirmed his earlier version that he had collected his girlfriend and some friends and that the police had stopped them in a roadblock on Wynberg Main Road. He ran from the roadblock and was subsequently apprehended. The police pushed his chest against the bonnet of the police van and handcuffed him. He denied that he had sustained the injury to his-ribcage in that process and that he had complained to Ms Fernandez about an injury to his rib cage. He repeated his evidence in the trial within a trial about how he had discovered the deceased's body.

[128] The police showed him a photograph depicting the deceased on a cellular telephone and wanted to know her whereabouts. He confirmed that he knew her but denied any knowledge of her whereabouts. He repeated the way the police had allegedly assaulted him as testified to in the trial within a trial.

Ms M[...]

[129] Ms L[...] M[...] (**Ms M[...]**) was on the list of state witnesses but was made available to the defence after the State had closed its case. The court was informed that the State had had difficulty in securing the witness and Mr Sibda indicated a subpoena would have to be issued to secure the witness for a consultation. At the time, he wanted to lead her evidence in respect of video footage.

[130] Ms M[...], co-owner of the farm V[...] R[...], had been on the farm for 32 years. She was actively involved in the horse-riding business conducted on the farm. She said that the deceased, who was very dear to her, had initially stabled one horse on the farm and rented a cottage. As the deceased was alone, the family would include her in most of their activities, such as dinner outings, and she had free access to the main house. The deceased was passionate about the riding industry and was the secretary for their local club. Initially, she managed her account well: rental, stable and jumping lessons for approximately R10 000 per month. In January 2018, she noticed the following changes in the deceased's behaviour:

- (a) She had lost an inordinate amount of weight.
- (b) She had access to large amounts of cash- R72 000 for a second horse and more riding/jumping sessions.
- (c) The deceased had left the farm between 03h00 and 03h30 intermittently. When Ms M[...] enquired, the deceased said that she had an early shift at the bakery. Ms M[...] accepted the explanation.
- (d) The deceased had informed her and others that she had stage 3 or 4 cancer and had to be hospitalised. When Ms M[...] offered to drive the

deceased to the hospital, she refused and instead preferred to use an Uber.

(e) The deceased also indicated that her mother would fetch her from hospital as she intended to convalesce in Knysna.

(f) The deceased returned 2 weeks later; apparently, she had made a full recovery. The deceased showed her wound covered with a dressing, which Ms M[...] described as a bandage extending from below the breast to above the pubic bone. Importantly, the deceased pointed and said, 'See the blood.' Ms M[...] was very sure that it was mercurochrome and not blood. She said that she knew mercurochrome well as her father had been a 'fanatic' and she in turn had used it on her 5 children.

(g) After the deceased had come into money and the two of them were in the arena on Wednesday at 15h00, she noticed 3 Malay men dressed in long white robes with white capes lingering near the gate. She thought they were watching the deceased, so she asked whether the deceased knew them. The deceased turned to look at the men but did not respond.

(h) Later, Ms M[...] learnt that someone, apparently not one of the 3 men, had come to the gate and enquired whether the deceased lived on the farm. At the deceased's next lesson, 3 men dressed similarly to the previous 3, appeared again and lingered near the arena. Ms M[...] summoned Mr M[...] and Mr T[...] M[...]. The men left when they appeared.

[131] On Saturday, 3 August 2019, the day of her disappearance, the deceased talked with Ms M[...] while the latter was busy with a lesson and told her that she had an early shift the next day. Therefore, when the alarm was raised about the deceased's absence on the Sunday, Ms M[...] asked a friend to pop in at the bakery and confirm that the deceased was well. It came as a surprise that the friend learnt that the deceased's shift had started at 07h30 and that she had never worked early morning shifts.

[132] Ms M[...] went into over-drive and learnt that the Pink Ladies would start a search for the deceased as soon as they had a police case number. Therefore, she sent Mr M[...] and a young French exchange student, 12 years old, to file a missing person's report at Philippi police station. However, the police refused to take the report from Mr T[...] M[...] as they questioned 'why a black man would report a white woman missing'. Ms M[...] had to go to the police station to get the report filed. Even then, the officer who attended to the complaint displayed a lackadaisical attitude. The officer took calls while they attempted, as a matter of urgency, to obtain the case number, and proceeded to take the complaint from the young French student who had arrived in the country 5 days earlier instead of from Mr T[...] M[...]. Eventually, she persuaded the officer to take the complaint from the adult black man.

[133] Next, Ms M[...] sent the deceased's photograph and that of the vehicle via WhatsApp to a police reservist at the Dog Unit. He circulated the images to members of the unit. The images were widely circulated on social media. That led to someone, on the Sunday, seeing and following the vehicle until it went into an informal settlement. Meanwhile, the persons following the car transmitted their pursuit on WhatsApp. The M[...] family and Mr T[...] M[...], among others, joined the unsuccessful pursuit as far as Grassy Park cemetery. At that stage, through Ms M[...], Philippi knew about the missing person and the photograph depicting the deceased had been widely circulated.

[134] The deceased's family enlisted a private investigator and Ms M[...] shared her knowledge with him and the police. Incredibly, the police saw her as a nuisance and after the accused had been apprehended, said that Ms M[...]’s evidence would weaken the case against the accused. Despite her best efforts, the police refused to take her evidence into consideration, which led her to email her details to the accused's legal representative. She was adamant that she was not called to testify.

[135] Mr Sibda, blown away by her evidence, did not lead her in respect of the video footage as he had intended. Instead, the State confronted her with annexure "I", still video footage depicting the accused on the using cocaine. The messages

bear out the correctness of that conclusion.

Details of message	Lives on a Hill (M[...])	J[...] M[...]
Search for Drugs CC1 -11 & 12 February 2018		
20:31	Drug hangovers are the worst	
21:05	I	Was it good (pleading face emoji)?
21:06	Was bloody amazing until I had to get up and adult at 07:30 this morning	
21:06		Do tell (pleading face emoji emoji)
21:07	(4 x face with tears of joy emoji)	
21:07	Don't do drugs is my wise advice	
21:07		Was it expensive?
21:08	(face with tears of joy moji) yes J[...] M[...] coke is not cheap	I
21:08	Just our drinks Bill was over 3k	
21:10	take 100 (wink emoji)	Never felt 3k before... I usually
21:13	(5 x face with tears of joy emoji)	
21:13	You are generally pretty sober too	
21:13	I was far from sober I'm fairly sure it was border line illegal	
21:14	Don't tell anyone about the drugs especially not nikki	

21:24	<p>I have grown really fond of our friendship J[...] M[...], I like that there's no potential awkward we might like each other stuff to get in the way (wide grin emoji) I enjoy our meme communications where we don't</p>
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Details of message	Lives on a Hill (M[...])	J[...] M[...]
	have to really talk (3 x face with tears of joy emoji)	
CC3 -12 February 2018		
21:02	Don't take large amounts of cocaine. The sweats that come afterwards are not worth it.	
21:03		Voice note
21:05	Those are very expensive brownies (face with tears of joy emoji)	
CC4-16 Jan 2019		
13:17	I must have a look at your jackets too. Mine is way too big now	
13:17		Stop losing weight (pleading face emoji)
13:18	Dude I'm like 10kg lighter and still fat	
CC2-17 Jan 2019		
15:56		Hey gangster
16:19	Sup homie	
16:27		You got the goods (eye emoji)
16:29	I	Running low on drugs
16:35	Huh	
16:53		Joking It's a joke
19:25	I'm so confused	

Mr Kawa

[139] Mr David Kawa, one of 3 grooms, was on the farm at times relevant to this judgment. However, his evidence did not take the matter any further. He saw neither the deceased nor the accused late afternoon on the day of her disappearance.

[140] That concluded the defence case.

Evaluation

[141] It is common cause that the accused disposed of the deceased's body and after his arrest pointed it out to the police. It is also common cause that the accused stole the deceased's motor vehicle and handed it to Mr ,Daniels to find a buyer. The accused further stole the deceased's personal items contained in her handbag. He further used bank cards found in the handbag to draw money from her bank accounts. The accused, however, denies killing the deceased; instead, he alleges that he found her body in the vehicle and in a state of shock disposed of it. It is important to bear in mind the following legal position articulated in 1930:¹

'It, is not, however, for the accused to prove honest dealing with the property, but for the prosecution to prove the reverse - ... and if an explanation be given which the jury think may be true, though they are not convinced that it is, they must _acquit, for the main burden of proof (i.e., beyond reasonable doubt) rests throughout upon the prosecution, and in this case, will not have been discharged.'

[142] In *S v V*², the court confirmed that position as follows:

'[3] ... It is trite that there is no obligation upon an accused person, where the State bears the *onus*, "to convince the court". If his version is reasonably possibly true he is entitled to his acquittal even though his explanation is improbable. A court is not entitled to convict unless it is satisfied not only that the explanation is improbable but that beyond any reasonable doubt it is false. It is permissible to look at the probabilities of the case to determine whether the accused's version is reasonably

¹ *Rex v Kumalo and Another* 1930 AD 193 p213.

² 2000 (1) SACR 453 (SCA).

possibly true but whether one subjectively believes him is not the test. As pointed out in many judgments of this Court and other courts the test is whether there is a reasonable possibility that the accused's evidence may be true.'

[143] The State relied on the pointing out and the utterances that the accused made in that process as proof that he had killed the deceased. In admitting the evidence of the pointing out, I considered that the accused's version was and remains that the pointing out was done voluntarily, despite the assaults on him. He admitted the utterances but said that they were made to persuade the investigating officer to keep his promise to arrange bail for the accused and a short prison sentence.

[144] The accused alleged that the members of the Dog Unit who arrested him questioned him about the deceased's whereabouts. He further alleged that a police officer had a photograph depicting the deceased on the officer's cellular telephone. The relevant state witnesses denied that version. The accused's version became more than a probability when I had regard to Ms M[...]s evidence that she had sent the image to a police reservist in the Dog Unit who had distributed it among his colleagues. Therefore, Sergeant Cekiso admitted that the police had sent out a notice informing officers of the missing person. In addition, Sergeant Basso went to the farm the day after the deceased had disappeared to follow up the missing person's report that had been filed. At that stage, the image had already been widely distributed.

[145] The relevance of the photograph depicting the deceased in the possession of the arresting officers is that, according to the defence, it prompted the assault that the accused and Mr Daniels had allegedly been subjected to at the time of their arrest. It now appears that their account of the assault, although exaggerated was not fabricated. This is so as both described a vicious attack; the accused, for example, adds that an officer held a gun against Mr Daniels' head. The latter, in denying that part of the attack added that he would have remembered if a gun had been held against his head. It must follow that the evidence of the utterances is now viewed differently, although, the accused made the pointing out willingly. It remains difficult to comprehend how the accused could have staged the utterance at the scene where the deceased's body was found. The video footage depicts the

accused overcome with emotion and then saying 'I did not mean to kill her.'

[146] Constable Mhlakaza, a credible witness, was openly taken aback by the allegation that the accused had acted under compulsion when he hugged him and with his face on his shoulder said that he did not intend to kill the deceased. That, to this witness, was a moment of heartfelt remorse.

[147] After members of the public had apprehended the accused, the police threw him onto the bonnet of the police van. The accused downplayed that incident, as that suited his narrative in exaggerating the circumstances of his arrest. I accept that the accused sustained some injury to the front of his torso in that process; that was his complaint to Ms Fernandez. When this traffic officer encountered the accused, the deceased had not yet been reported missing nor her vehicle reported stolen. The accused's account of the events at the roadblock is disingenuous. He said that he was drunk after he had had several 750ml containers of beer when he stumbled upon the deceased's car. Thereafter, he consumed more alcohol yet was able to outrun several law enforcement officers when he took off at the roadblock. Either the accused is lying about his state of sobriety or the fitness of those officers needs urgent attention. Both are probably true. Either way, the accused, who has been economical with the truth throughout, even lied about his identity when he was stopped in the roadblock. He identified himself as Jerome Adams. Ms Fernandez was a credible witness whose evidence about the accused's complaint was corroborated by Mr van Niekerk, the officer who administered the breathalyser test. Ms Sauls also testified that the accused had complained of being assaulted after they left the roadblock. I accept that the accused complained about an injury at the roadblock as Ms Fernandez testified.

[148] It is not clear whether that injury was aggravated by the subsequent treatment he suffered at the time of his arrest. Nevertheless, I now, with the benefit of Ms M[...]s evidence, accept that the accused suffered some injury although his account of it was exaggerated. I say this as the accused impressed as a calculated person who had acted throughout to promote self-interest, even using his children.

[149] The accused also reported the alleged assault to Captain Pickard, who testified in the trial within a trial that the accused did not indicate that the assault on him was directed at inducing the pointing out. However, the record of those proceedings indicates that the accused clearly indicated that promises had been made to him. I accept that the accused gave a convoluted account of why he decided to do the pointing out. However, from various answers, it was clear that the accused's version was that he had been induced by assault and promises to do the pointing out. Therefore, there is a reasonable possibility that the utterances were made in response to an assault and are 'irredeemably tainted by the assault'.³ It follows that the State's reliance on the utterances as evidence that the accused murdered the deceased is unsustainable.

[150] The State further sought to rely on circumstantial evidence suggesting that the only reasonable inference to be drawn from the circumstances of this matter is that the accused killed the deceased. The 'inference sought to be drawn must be consistent with all the proven facts and secondly, the proven facts should be such that they exclude every reasonable inference from them save the one sought to be drawn'. If not, that inference cannot be drawn.⁴

[151] Some officers sought to strengthen the State's case by omitting evidence that they thought might assist the accused. Officers boldly told Ms M[...] that information, relevant to this matter, would harm the case against the accused. In so doing, they breached their duty as officers to respect and uphold the law. The ease with which it was done suggests that accused persons remain at risk when up against the 'mighty arm of the state' and that the burden of proof resting on the State should not be eased. The police managed, with ease, to prevent the prosecution from leading Ms M[...]s evidence.

[152] Mr J[...] M[...] disclosed private communications between him and the deceased to his mother only after the deceased had been found. He did so as the

³ S v Mat/au and Another 2010 (2) SACR 342 (SCA) para 30; S v Tandwa and Others 2008 (1) SACR 613 (SCA) at paras 115 - 120.

⁴ R v Blom 1939 AD 188 p202-203; S v Reddy 1996 (2) SACR 1(A).

police wanted to know whether the deceased had been involved in drugs. The prosecutor's reaction to this evidence suggested that it had been deliberately kept from the prosecution. Therefore, the reason for that enquiry after the deceased had been found is not before court. It is not the duty of law enforcement officers to withhold evidence from the court that in their opinion might assist an accused. In doing so, they have probably inadvertently advanced the accused's cause instead of the cause of justice.

[153] The relevant officers should have been confronted with Ms M[...]’s version, from which it is now apparent that the Dog Unit was the first SAPS unit applying the required urgency to find the missing person. On the day that Ms M[...] sent the images to the reservist connected to the Dog Unit, the deceased's motor vehicle was spotted and followed to Grassy Park. In those circumstances, the urgency and panic that the defence suggested the Dog Unit displayed is no longer far-fetched. This is so as the experience at Philippi police station, where the officer seized with taking the missing person's report took time to indulge in petty racism and unrelated phone calls, is the unfortunate reality for many who find themselves in Mr T[...] M[...]’s position when he tried to file a missing person's report. Pressure from Ms M[...] and others caused the urgency that the officers are alleged to have displayed at the time of the arrest.

[154] It is important to bear in mind that the deceased is not on trial; the only relevance her apparent substance abuse has is that the police should have investigated whether there was any connection between her death and the murky drug world. Twice a group of 3 men appeared to have been observing the deceased while she had riding lessons. The deceased's behaviour suggested that she knew the men. In addition, Ms M[...] learnt that someone had enquired whether the deceased lived at the farm after the first group left. The second group left when Mr J[...] M[...] and Mr T[...] M[...] approached them.

[155] The deceased left home early that evening, apparently in such a hurry that she left her puppy unattended. It is apparent from the reaction of those close to her at the time, that it was unusual behaviour. At the time, the deceased, who previously had

access to large amounts of cash, had not paid her rent and had asked for an extension. The police suppressed the evidence as they realised that it might assist the accused's version; that was unconscionable. The deceased had intended, as she was entitled, to engage in undisclosed activities in the early hours of Sunday morning.

[156] Therefore, she told Ms M[...] that she had an early shift the next morning. She did not have an early shift. I accept that on the Sunday when Mr C[...] informed the bakery's staff about the circumstances in which he had encountered the deceased's vehicle the previous night and his unsuccessful attempts to make telephonic contact with her, they were concerned. Therefore, the owner went with Mr C[...] to Wynberg police station to report the matter. In those circumstances, it would have been acceptable for the staff to reveal the deceased's work schedule to the person Ms M[...] had sent to the bakery. At that stage, Ms M[...] believed that the deceased would be at work as she had told her the day before. The State has not sought to place a different schedule before court.

[157] Ms M[...] was a credible witness and displayed a commitment to 'fair play' that was remarkably absent in some officers who were involved in this matter. I accept that the deceased was 'very dear' to the witness. Although, she thought the accused's dealing with the deceased's body reprehensible, she wanted justice done. She described her relationship with the accused as an employment relationship. That did not deter her from contacting the accused's legal representative in a further attempt to place information she considered relevant before court. The information was relevant; the police had told her so. Mr J[...] M[...] was also a credible witness who was friendly with the deceased but like his mother wanted justice done.

[158] Mr Azur realised that he was in trouble for his part in dealing with the deceased's property. He, therefore, sought to minimise his involvement. Mr Azur and the accused are 'birds of a feather'. Mr Azur testified that the accused left the shebeen in the early hours of the morning and that he was visibly disturbed on his return, so much so that the witness wanted to know what was wrong. The accused then, according to witness, 'just started to drink' undiluted alcohol. I have no doubt that Mr Azur, consumed with self-interest, was not trying to assist the accused. It is

incidental that the evidence lends credence to the accused's version. The latter had maintained that the discovery of the deceased's body and his subsequent disposal thereof was the cause of his condition. I accept that the accused disposed of the deceased's body. There is nothing to suggest he did so before the night's drinking spree with his friends, although, it does not naturally follow that he only discovered the body when he said he did - equally, in the circumstances of this matter, that possibility cannot be ruled out.

[159] As indicated above, I do not have to believe the accused for his version to be reasonably possibly true. The accused's version of the events after he left work is suspicious. Ms Azur and his friends testified that they were waiting for the accused to return from work. They had previously arranged to go to the local tavern, J[...], on his return. The accused conveniently was unsure whether they had arranged to go. I accept that there was a prior arrangement among the accused, Ms Azur and their friends to visit J[...] that Saturday night. This is so as Ms Azur, who meant the accused no harm and testified that they were still in a relationship after his arrest, testified that they were waiting for the accused. He was late therefore they went in search of him and met him along the road. In those circumstances, it is curious that the accused would go to J[...] without them after work.

[160] It is further inexplicable that the accused would, after his late afternoon detour, knowing his partner and friends were waiting, decide to fetch dog food he did not really need at the time and fortuitously stumble onto the vehicle with a key in the ignition. His version becomes bizarre when he then goes to visit his future sister-in-law, just to greet her, knowing his partner had been expecting him home 2 hours earlier. However, this behaviour is not extraordinary when regard is had to the egotistical person described above. The accused did not mention his children once between leaving work and going to the shebeen with Ms Azur and their friends. The children became a convenient concern much later when he instructed Sergeant Basso to fetch 'the mother of his children'.

[161] The accused continued to behave in an erratic manner when he thereafter informed all who could make a difference that he had been assaulted by the police.

Captain Pickard conceded that other officers would have stopped the pointing out process once the accused alleged that he had been assaulted and that he had been promised bail and a short prison term. As indicated above, there is no onus on the accused. His version of how he found the body, in the circumstances of this matter where the police suppressed information, cannot be rejected as not reasonably possibly true. The prosecutor did not have the information and was embarrassed when Ms M[...] testified as she realised the import of the evidence on the State's case. Despite the prosecution's best efforts to discredit Ms M[...], she remained an utterly credible witness.

[162] There are disturbing features to this matter. The State at the outset sought several admissions in terms of section 220 of the Criminal Procedure Act, 51 of 1977. One of those was under the heading 'Post Mortem report' was sought as follows: '14. That the deceased died on 3 August 2019 as a result of "Ligature strangulation" which she sustained at the residence she rented at V[...] R[...]Stables ... '

[163] The accused objected, after initially signing it in the apparent belief that it had appeared from the *post mortem*. The admission had to be redone and now reads as follows:

'14. That the deceased died on 3 August 2019 as a result of "Ligature Strangulation".'

[164] There is nothing in the *post mortem* findings to suggest that the deceased sustained her injuries in her cottage. On the contrary, the State was in possession of video footage from which it is apparent that the deceased left the farm late afternoon in her motor vehicle. There is no evidence that she returned. Ms M[...] testified that the person who first entered the premises after the deceased's disappearance reported that 'nothing happened here'. That evidence was available to the State at an early stage of the investigation. The prosecution could not explain why that admission was sought.

[165] When a prosecutor seeks an admission, it can only be on the basis that the evidence exists or that the accused through a legal representative has indicated that he/she is prepared to make the admission. When the prosecution

indicated that the evidence existed in the *post mortem*, the defence was entitled to take that at face value. There must be a measure of trust between professionals that each will adhere to the most basic standard of ethics of the profession. The prosecutor could not explain why that admission was sought under *post mortem* as if it does not appear from the *post mortem* findings. This is an indication of the haste in which the State sought to obtain a conviction at all costs. In this case, the cost is to the administration of justice which had been brought into disrepute.

[166] As indicated above, the camera video footage depicting the accused leaving the farm in the direction and time he alleged have been omitted from what was made available to the defence and the court. There is no explanation for the omission other than that its presentation would not have advanced the State's case. The prosecution and the investigating team are reminded that they ought to be in pursuit of the truth and should not attempt to usurp the court's function. That does not mean being soft on crime. In this case, the result of that attempt has caused great injustice instead of advancing a just outcome in these proceedings.

[167] The further disturbing feature was the failure to have the blood- stained T-shirt seized from the accused's house sent for DNA analysis. The accused maintained from an early stage that Mr Azur had assaulted Ms Saul and that her blood had stained the T-shirt. Mr Azur denied that he had assaulted Ms Saul. The impression was therefore created that it might be the deceased's blood. The defence had to insist that the DNA analysis be done before the State acted. The result of the DNA test confirmed the accused's version. In the circumstances of this matter, having the T-shirt analysed ought to have been a basic step in this investigation. The defence suggests sinister motives for that failure. In the circumstances of this matter, I am unable to criticise that view.⁵

[168] In the circumstances, I am persuaded that the State did not meet its burden of proof to sustain a finding that the accused caused the deceased's death. Count 1: The accused is charged with robbery with aggravating

⁵ S v Teixeira 1980 (3) SA 755 A

circumstances: 'the aggravating circumstances by hitting her and/or strangling her and then with force took the following items from her... ' It follows that the State proved theft of the vehicle and items as a competent verdict on a charge of robbery.

[169] In respect of count 3, the State proffered a count of defeating the ends of justice in that the accused 'with intent to defeat or obstruct the course of justice, committed an act, to wit destroying items which belonged to the deceased; cellular phones and throwing the iPhone in the toilet to avoid detection by the authorities'. The accused went to great lengths to distance himself from the items. I am persuaded that the State met its burden of proof in respect of this count. Similarly, in respect of count 4, the State met its burden of proof. The accused admitted that he withdrew cash from the deceased's account and made the card and pin number available to others.

[170] I, for the reasons stated above find as follows:

- (a) Count. 1. Guilty of theft of motor vehicle and handbag with contents;
- (b) Count 2: Not guilty;
- (c) Count 3 Guilty of defeating the ends of justice;
- (d) Count 4: Guilty of theft.

Baartman, J