

IN THE SOUTH GAUTENG HIGH COURT, (JOHANNESBURG)

(REPUBLIC OF SOUTH AFRICA)

Case No: 252/2012

In the matter:

THE STATE

versus

CONWAY BROWN

ACCUSED 2

---

AGREEMENT IN TERMS OF SECTION 105A(1) OF ACT 51 OF 1977

---

A. INTRODUCTION

1. WHEREAS Accused 2 (hereinafter referred to as the Accused) has been informed, in terms of Section 105A (2)(a), that he has the right to:
  - 1.1 Be presumed innocent until proven guilty beyond reasonable doubt;
  - 1.2 Remain silent and not to testify during the proceedings; and
  - 1.3 Not to be compelled to give self-incriminating evidence.

2. WHEREAS the Deputy Director of Public Prosecutions, Advocate HJ Broodryk SC, has been duly authorised in writing by the National Director of Public Prosecutions, as required by Section 105A of Act 51 of 1977, to negotiate and enter into a formal Plea and Sentence Agreement with the Accused. (A copy of the authorisation is attached as per Annexure "A");
3. The Accused, who is legally represented herein by Mr Nardus Grove from the firm Nardus Grove Attorneys has negotiated and entered into this Plea and Sentence Agreement in respect of the offences for which he may be convicted, based on the charges, as well as just sentences for such offences to be imposed by the above Honourable Court;
4. WHEREAS the State has consulted, in terms of Section 105A (1)(b)(ii), with the police official, Captain van Wyk, charged with the investigation of this case, in respect of the terms of the Plea and Sentence Agreement and is satisfied with the terms thereof including the proposed sentence;
5. WHEREAS the State has consulted with the family of the deceased, Thandiwe Betty Ketani and afforded them the opportunity to make representations, in terms of Section 105A (1)(b)(iii).
6. The accused freely and voluntarily, whilst being in his sound and sober senses admits to guilt in respect of the following:

Count 6: Attempted Murder of Thandiwe Betty Ketani and

Count 8: Accessory after the fact to murder of the deceased, Thandiwe Betty Ketani.

26/1

7. The Deputy Director of Public Prosecutions is prepared to accept the plea of guilty as aforementioned.

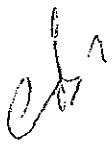
8. AND WHEREAS the prosecution, before entering into the said agreement consulted with the investigating officer, to wit Captain Gerhardus Stephanus Van Wyk, as attested by his signature:-

  
CAPTAIN GS VAN WYK

9. AND WHEREAS an opportunity was granted to the family of the deceased to wit the brother of the deceased, Mr. Mankinki Eric Kula, to make representation pertaining to the content and the agreement. The brother of the deceased, the aforesaid Mr. Kula agrees with the terms of the plea and sentence agreement, as attested to by his signature:-

  
MANKINKI ERIC KULA

10. NOW THEREFORE in this agreement the parties hereto set out the terms of the agreement, the substantial facts of the matter and all other facts relevant to the agreed sentence as well as certain admissions made by the accused.



B. THE TERMS OF THE AGREEMENT

AD CHARGES

11. The State will require the Accused to plead guilty as follows:

Count 6: Guilty to an Attempted Murder of the deceased.

Count 8: Guilty, in terms of Section 257 of the Criminal Procedure Act 51 of 1977, as an accessory after the fact to murder.

The remaining charges are to be withdrawn.

12. The Accused has made a full and frank disclosure pertaining to his involvement in the matter. The Accused has provided the State with a full and detailed affidavit pertaining to his and other person's involvement in the attempted murder and murder of the deceased. The Accused will give his co-operation as a witness in the trial that will follow.

C. THE SUBSTANTIAL FACTS OF THE MATTER

13. During the 1990's the accused and his family lived in a flat in Rosettenville. His wife befriended a lady by the name of Linda who also lived in the same block of flats.

14. Linda had a boyfriend Sandor, who visited her at the flat. The accused and Sandor became friends. During the years that followed, Sandor introduced the <sup>accused</sup> deceased to Carrington Laughton (hereinafter referred to as Carrington).

15. Carrington was a Private Investigator. At one stage Carrington assisted the accused with gaining employment at Shield Investigators where he (Carrington) worked. The accused left Shield Investigators and moved to Durban.
16. After a while he returned to Johannesburg. On his return to Johannesburg, he frequently had contact with Sandor and Carrington. Through Sandor and Carrington, he met Paul Nielsen (hereinafter referred to as Paul) and Dirk Reinecke (hereinafter referred as Dirk) well as Monique Neeteson Lemkes (hereinafter referred to as Monique). He also met Sandor's best friend, one Mark, who lived on a farm.
17. During May 1999, Carrington phoned him one night and told him that he needed help with something and that he (the Accused) must meet him on the side of the R59 Highway past the Blockhouse One Stop Garage. The accused took his toolbox with and met Carrington on the way. The accused observed a vehicle parked on the side of the road just past the Blockhouse One Stop Garage, but did not recognise the vehicle as it was not Carrington's vehicle. The accused observed a man getting out of the car, and realised that it was Carrington. Carrington climbed back into the car. The accused pulled up next to him and rolled the window down and asked him what was up. Carrington asked the accused to follow him. The accused agreed and followed him.
18. Either the first or second turnoff after the Blockhouse One Stop Garage, the accused and Carrington turned off the highway. Shortly thereafter they drove on a dirt road. They stopped after Carrington had made a u- turn. The accused stopped with his vehicle facing that of Carrington. The accused climbed out , and went to Carrington's vehicle, where he observed him (Carrington) standing

CHM

there supporting a person. Carrington instructed the accused to assist him and he pushed the person towards the accused. The accused realised that it was a short female person and that her hands were tied behind her back. Her head was however covered. Carrington used a silver metal shaft, similar to a knitting needle, and stabbed the female person on the right side of her head or neck, causing her to drop to the ground. Carrington then immediately started walking towards his vehicle. The accused left the body where she collapsed.

19. The legal principle of common purpose was explained to the accused by his legal representative and the accused agrees that his actions amounted to common purpose to commit an attempted murder on the deceased. He actively participated in holding the deceased while Carrington was stabbing her. Once she dropped to the ground the accused and Carrington left her for dead. At no time did the accused disassociate himself from the actions of Carrington.
  
20. A few weeks later, the accused received a telephone call from Carrington, informing him that the person they "killed" had in fact not died that night, as they did not do a good job but that she died only the previous night. Carrington informed the accused that Monique and another guy were on the farm with the deceased and that they intended burying the person on the farm of Mark Eardlerly. Carrington informed the accused that his wife had shot herself trying to commit suicide and that he could not be there on the farm to supervise the situation. The accused went to the farm where he found a white Kombi/Minivan parked parallel to a old bus on the farm. The accused observed Monique and a guy with long hair on the side of the van. When he approached Monique, she told him that the person had died the previous night and that they needed to bury the body.

CDM

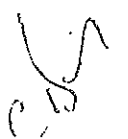
21. After a heated discussion, it was decided to move the deceased to the house of the accused where the body would be buried in his garden. Before the accused left, he peeped into the van and saw a body on the floor of the van covered with a blanket or some sort of cover. Monique and the gentleman with long hair climbed into the van and followed the Accused to his house. The body was buried at the previous home of the accused at 21A Leo Street, Kennilworth.
  
22. A hole was dug directly behind the garage in the garden. Monique suggested that cement be used to cover it so that animals cannot dig it up. The accused went to buy cement, sand and stone premix. When he returned to the back of the house, the body was already in the hole and was covered with some sort of a hospital sheet. He noticed black curly hair sticking out from underneath the blanket. It was clear to the Accused that it was the body of a woman. The accused mixed the cement and filled the hole. The accused covered the remaining section with sand and fixed the garden so no one would know what had happened.
  
23. Later the same day the accused met Carrington at Nandos where the accused confirmed to Carrington that the body was buried. To the best of the accused recollection, Monique and the long haired guy (who assisted in the burial of the body) were also present at the meeting.
  
24. During approximately 2001, the accused was called by Dirk informing him that Carrington was in trouble with the law. The accused met Dirk at McDonald's in Rosettnville, and Dirk handed him a package that he was to keep as things were "hot" on Carrington's side.

25. The package contained inter alia the letter which is in the possession of the police. The accused put the letter under a loose carpet in his house.
26. At a later stage Carrington telephoned the accused and informed him that the body had to be moved. The accused, assisted by Paul, removed the remains of the deceased. As they were removing the concrete there was a strong smell. Jeyes Fluid, mixed with petrol, was thrown on the cement to mask the smell. The cement was broken up as they removed it and placed it in thick blue plastic bags which were sealed and stored under a tarpaulin cover in the backyard. The accused noticed some bones as they broke the cement.
27. Early the next morning, the accused and Paul removed all the remains from the hole and placed them in blue bags. Carrington arrived with a car with a trailer. The trailer was unhooked and pushed into the garage where it was loaded with the blue bags containing the remains of the deceased and covered with the canvas to conceal the bags. They drove to a dumpsite in Turffontein where Paul, Carrington and the accused emptied the bags.

D. THE FACTS RELEVANT TO THE AGREED SENTENCE

**AGGRAVATING CIRCUMSTANCES**

28. The following aggravating circumstances were taken into consideration:
- a) The nature of the offence is such, that it was both brutal and heinous.
  - b) The accused assisted the perpetrators before and after the murder.



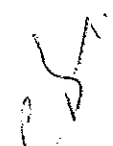


- c) He knowingly assisted in concealing the murder.
- d) His actions were callous, he buried the body of the deceased for approximately four years in his own garden.
- e) He only came to the fore, once the confession letter was uncovered at the property he rented. Prior to this he made no attempt to report the offence.
- f) The evidence implicating him in the commission of the offence of accessory after the fact to the murder of the deceased, is substantial and overwhelming.
- g) He has made no attempt to make amends with the family of the deceased.
- h) He will be left to resume his life, whilst the lives of the deceased and her children will be changed forever.
- i) His actions perpetuated, contributed to the trauma suffered by the family of the deceased, as they remained unaware of her death, and remained hopeful for 13 years, that she would return.
- j) As a result of his actions, the family of the deceased have been deprived of the opportunity of burying the body of the deceased.
- k) The accused has a previous conviction for a Contravention of the Liquor Act in respect of which an acknowledgement of debt fine of R10,000.00 was imposed. This offence was committed by the Accused

in the execution of his official duties in the cause and scope of his employment.

- l) The deceased was 36 years old at the time of her disappearance.
- m) The actions of the accused robbed the family of the deceased of a mother, sister and daughter.
- n) The deceased was a single mother of three, the oldest was seventeen years old and the youngest of her children was not even a year old at the time of her disappearance.
- o) She was employed at Crank Restaurant and was a sole breadwinner to her three children.
- p) After her disappearance the three children had to be taken care of by the mother of the deceased.
- q) The mother of the deceased died during 2004, without any knowledge of her daughters whereabouts. The children of the deceased were then taken care of by the rest of the family.

#### MITIGATING CIRCUMSTANCES

- 29. The accused is forty- three years of age and a South African Citizen.
  - 30. He is married with two children, aged 17 and 26 respectively.
  - 31. The accused is not a person with a violent history.
- 

32. He has been in custody for more than 15 months as an awaiting trial prisoner. He never applied for bail as he always intended to plead guilty and was advised that it would be to his advantage to effectively start serving time immediately.
33. The accused was employed by Carrington, who had a hold on him.
34. The accused was involved by Carrington in the attempted murder without prior knowledge and was as a result innocently drawn into the commissioning of the attempted murder.
35. The accused will continue with his employment at Carnival Foods as site manager upon his release from prison.
36. After the letter purportedly drawn up by Carrington was un-covered, the accused co-operated with the police and thereafter made a confession statement and a pointing – out. His co-operation was extremely valuable in unravelling a crime of more than 12 years ago where no body was found.
37. The accused is willing to testify as a State witness in the trial against his co-accused and has produced an affidavit in this regard.

E. THE AGREED SENTENCE

38. It is recorded that the State and the representatives of the accused and the complainant have had extensive negotiations and discussions with regard to the charge and have considered the following factors:

- 39.1 The length of the trial potentially involved should the accused plead not guilty;
- 39.2 The burden to the prosecution and to the court of being engaged in such a lengthy trial.
- 39.3 A number of factors considered on a 'without prejudice' basis.

F. THE AGREED SENTENCE

39. The interest that the State has in securing a conviction against the accused, that interest having a number of purposes which are:

- 40.1 The interest of the State in securing a conviction on the charge because of its seriousness.
- 40.2 The society will be satisfied that the perpetrators were brought to book.
- 40.3 The family and loved ones of the deceased had an interest and say in an appropriate sentence.

41 NOW THEREFORE the parties have agreed in terms of Section 105A of the Criminal Procedure Act that an appropriate sentence in respect of the accused would be:

- 41.1 In respect of Count 6: The accused is sentenced to 5 years imprisonment, suspended for 5 years on the following conditions:-



1.) That the accused is not convicted of murder, attempted murder or assault with intent to do grievous bodily harm committed during the period of suspension, and for which offence a sentence of direct imprisonment is imposed.

2.) That the accused testifies frankly and honestly in respect of the matters referred to in his statement.

41.2 In respect of Count 8: The accused is sentenced to 5 years imprisonment in terms of Sec 276 (1)(i) of the Criminal Procedure Act, No 51 of 1977.

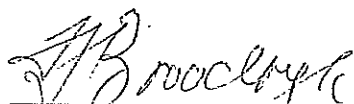
SIGNED at JOHANNESBURG on THIS <sup>1<sup>st</sup></sup> DAY of JULY 2013.



CONWAY BROWN  
Accused 2



NARDUS GROVE  
Attorney for the accused



H J BROODRYK SC  
Deputy Director of Public Prosecutions  
South Gauteng High Court  
Johannesburg





The National Prosecuting Authority of South Africa  
gumya bhelele Labeishutshisi Bo-Azansi Afrika  
Die Nasionale vervolgingsgesag van Suid-Afrika

**AUTHORISATION IN TERMS OF SECTION 105A (1)(a) OF CRIMINAL**

**PROCEDURE ACT, 1977 (ACT NO. 51 OF 1977)**

I, Menzi Simelane, National Director of Public Prosecutions, in terms of Section 105A (1)(a) of the Criminal Procedure Act, 1977, hereby authorise HERMAN JACOBUS BROODRYK, SENIOR DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS to negotiate and to enter into plea and sentence agreements in respect of matters over which he has jurisdiction within the SOUTH GAUTENG HIGH COURT.

This authorisation is subject to the Policy Directives Issued in terms of Section 105(A) (11) of the Criminal Procedure Act, 1977, read with Section 179(5)(b) of the Constitution.

GIVEN AT PRETORIA ON THIS THE 22<sup>nd</sup> DAY OF July 2010.

ADV. M. SIMELANE  
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

