IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS121/2013

DATE: 2016-02-17

In the matter between

THE STATE

en

LAUGHTON & OTHERS Accused

J U D G M E N T (CONTINUE)

RANCHOD J: At the end of the State's case the accused applied for their discharge in terms of Section 174 of the Criminal Procedure Act. At that stage the court discharged them, as I indicated at the beginning of the judgment, on certain counts and said that the reasons would be furnished later. For the sake of the record, this court discharged accused 1 on counts 1, 3 and 4, and it discharged accused 2 and accused 3 on counts 1, 2, 3, 4, 5 and 6. The reason for the discharge was that the State failed to adduce evidence in respect of these counts upon which a reasonable man might convict.

I proceed then with the continuation of the judgment as far as the defence case is concerned. Accused 1 elected to take the stand and testified. The evidence-in-chief was lengthy and the cross-examination even more so. Accused 1 confirmed that he knew Mr Poul Toft-Nielson who was introduced to him in 1998 whilst they were still in school. He knew Dirk Reinecke since high school and they matriculated in 1992. Accused 1 said he met Mr Sandor Eygid in 1989 at the Johannesburg Technical College. Sandor introduced him to Mr Conway Brown and Mr Mark Eardley. He also knew a Mr Duncan Heath.

10 Accused 1 testified that he completed two years' compulsory military training and left with the rank of second lieutenant. He said he joined SSC Investigations where Sandor was employed, Andrè Coetzer and Duncan Heath were also employed there, but shortly thereafter he together with Heath and Coetzer formed their own investigations company called Laughton, Heath and Coetzer CC, but that lasted only until 1994 and accused 1 thereafter joined Shield Investigations.

During 1992, whilst he was in Matric, accused 1 witnessed an armed robbery. He shot and killed one of the robbers, he was charged with the killing, but it was later withdrawn.

20 Accused 1 further said he met Carel Ranger, that is accused 3, in March 1993 through Coetzer who was a police reservist. He also met Candice Vanessa Anderson in early 1993 who later became his first wife. During 1995 whilst employed by Shield Investigations he was assigned to provide security to Clarence Carter, a visiting American musician, at the various venues he was going to perform at. He was

assigned six guards to assist him. He mentioned all their names, including that of one Godfrey when testifying.

Accused 1 further testified that Godfrey asked for his help to fetch a relative from Vereeniging Hospital who was to be dropped off at Klipriver. He agreed and eventually enlisted the help of accused 3 to guide him to the hospital, as he did not know the route. Accused 2 joined them as he had nothing to do and happened to be at the house of accused 3 when accused 1 arrived to pick up accused 3.

They went with Godfrey, fetched the lady from the hospital and
10 went to Mark Eardley's farm where Godfrey's uncle picked her up. This happened, says accused 1, in 1995 and he later produced a diary he says he kept at the time, which is EXHIBIT 13.

Accused 1 testified further that he had been arrested in 1997 in relation to the collection of money for a client of Shield Investigations, where he was employed at the time, from an interior decorations company. The charges were withdrawn. He resigned from Shield, apparently during 1997.

In 1998 he and Candice formed C & C Commercial Services - C and C standing for Carrington and Candice. It was an investigations
20 company. He and Candice lived at 11 Rathmines Road in Hawkins Estate, Norwood.

In December 1998 they travelled to Cape Town to meet Candice's friend, Mark Lister, and his business partner Dawson, to enter into a business venture expanding their investigations business into Cape Town or in the Cape. On 5 April 1999 the contract was signed in

Hermanus where Dawson resided. However this business venture only lasted from April to about August, September 1999.

Accused 1 said during May 1999 he was mostly in Cape Town, until the beginning of June 1999, and returned home only on weekends to be with Candice who ran the Johannesburg operation. Dirk Reinecke looked after their business during the time of the start up of the new business in Cape Town.

Accused 1 further said that he met Monique in late April 1999 through Dirk Reinecke who introduced her as a potential client. Monique told him she was the manager of a restaurant in Rosebank and her father, whose name she may have mentioned but he could not remember, told him they were losing food items, but could not identify any suspects. Accused 1 testified that he provided a quotation to Monique who said she would discuss it with her father.

Early in May 1999 Eric Lemkes called him while he was in Cape Town and told him to proceed with the investigation. Accused 1 said he referred Lemkes to Candice, who then rendered an undercover operation for Lemkes and she also reported directly to Lemkes. At the end of May 1999 Candice complained that she could not cope with the Johannesburg operations and she also suspected him of having a relationship with someone in Cape Town. He returned to Johannesburg, he says, in early June 1999.

Candice resigned from the close corporation and he took control of the Johannesburg office. He said his primary responsibility was to spend more time with his wife. On 12 June 1999 Candice attempted

suicide by shooting herself. A day or two later he asked Dirk Reinecke to supervise the cleaning company at his house who were to clean the blood which was all over the house, as he put it. Accused 1 testified further that while Candice was in hospital he spent all his time with her and only went home to shower and change clothes. He took a decision in June 1999 to divorce her and instituted proceedings in July.

Accused 1 said Andrè Coetzer and Sandor were never employed by C & C Commercial Services, even though their names appeared on the close corporation's letterhead. He explained that their names were put on the letterhead to create the impression that it was a stable business.

Accused 1's counsel referred him in his evidence-in-chief to a business card, which is EXHIBIT BY, that was handed up by Andrè Coetzer during his testimony in which Coetzer is referred to as the operations director. Accused 1 said Coetzer was never a director of the close corporation. It was part of a batch of business cards designed by a friend and that he had never promised Coetzer a share in the business.

Accused 1 said he had owned a white Mazda 323, but he changed over to a silver Mazda 323 in 1995 and in 1998 he bought a burgundy Mazda Astina. It looked almost purple in colour, he said.

He met Lemkes several times after 12 June until August 1999 relating to the Cranks investigation which had gone on for only two to three weeks when Lemkes cancelled it.

In August 1999, says accused 1, he met Lemkes, unwisely, as

he put it. Monique had told him that Lemkes wanted to discuss new information that he, Lemkes, had obtained. Lemkes told him a woman called Ruth had wronged him and wanted someone to kill her. Accused 1 says he staged the killing of Ruth and gave Lemkes one or two photos and Lemkes was thrilled. He did not charge Lemkes for the service. The other photos he later handed to Jane for safekeeping.

He had a brief relationship, he says, with Monique in 2000, but prior to that Andrè Coetzer dated Monique. In September 1999 Coetzer was arrested for robbery and Monique paid his bail money in his, that is accused 1's presence.

At the end of October 1999 Monique arranged a birthday party for Coetzer, whose birthday is on 3 November. Accused 1, accused 2 and accused 3 and also accused 3's now former wife, and Dirk Reinecke and Monique as well as Monique's brother and sister were there. EXHIBIT BG is the photo depicting these persons.

Accused 1 further testified that Coetzer had a relationship with Monique for four months until December 1999 whereafter he, that is accused 1, accompanied Monique to Thailand and returned on 3 January 2000. He visited her again in February and in April 2000 when he was joined by Dirk Reinecke who paid for his own expenses. Accused 1 denies that he and Dirk Reinecke stayed at the Sandton Hotel prior to leaving for Thailand.

He said he met Jane Smythe in August 2000 and later married her. Accused 1 said that Lemkes threatened him with death and suffering after Monique and her siblings left South Africa. He believed

that Lemkes had arranged for private investigators to follow him.

He was arrested in 2001 for a robbery at Lemkes' home in the year 2000 when money was stolen. Lemkes implicated him in the robbery after Lemkes had obtained letters or statements from Monique in which she implicated accused 1 in the robbery. This is referred to in EXHIBIT DS, the statement of Eric Lemkes. Bail was granted, but he was promptly rearrested and bail was again granted on 13 July 2001 in that matter which related to a jewellery shop robbery, after he had been in custody for two weeks.

10 Accused 1 related other incidents, such as a shooting incident at his house when a man fired six shots, gunshots at him. He attributed that to Lemkes.

Accused 1 confirmed that he was convicted for perjury in 2003 after pleading guilty with regard to an Audi TT motor vehicle which he had hired and then reported it stolen. He also mentioned that Lemkes had sent Brad Cotton to extort R1 million from him, in return for which Lemkes would drop 'everything' as the witness put it. He further said that in 2002, 2003 Lemkes had approached Poul Toft-Nielson to kill him, that is accused 1.

20 Accused 1 denied having heard or contributing to any discussion relating to 'the digging up of petunias' during a trip overseas in February 2004. During 2007 and 2008 he was involved in a business with Conway Brown manufacturing snorkelling equipment, later in 2009 he started an online feature called Naked Motoring.

He was arrested for the current matter on 8 May 2012. During

his questioning by the police a Laubscher and Green were also involved, he said. Ms Betty Ketani's identity document was produced by Laubscher and Captain Fagan later joined them. From the nature of the questions he was asked about Monique, the Cranks investigation, accused 2 and accused 3 and Conway Brown, he realised that Lemkes was behind it, he says. During questioning by Captain Fagan nothing was written down and no document was shown to him.

In March 2014, that is after this trial commenced, he laid a charge against Lemkes for defeating the ends of justice and for fraud. *10* He also laid a charge against the investigating officer in this matter, Captain van Wyk, relating to Van Wyk's conduct at the Johannesburg Magistrate's Court.

Accused 1 denied any knowledge of EXHIBIT G, although he said the signatures thereon look similar to his. He was taken through the letter almost line by line by his counsel. He attributed the grammar in the letter to be more of that of Poul Toft-Nielson. Later he said it could have been written by Conway Brown or even Andrè Coetzer. He said the only time he played the night paintball game referred to in EXHIBIT G was in the Fourways area.

20 Accused 1 denied some of the facts reflected in EXHIBIT G3, EXHIBIT G4 and EXHIBIT G5 and confessed and avoided some of the other facts therein. The details of this are contained in the record of these proceedings.

Accused 1 further testified and admitted that the handwriting on EXHIBIT M is his handwriting. EXHIBIT M is the envelope he gave to

Jane Laughton for safekeeping in which were the manipulated or doctored photographs of Ruth Mncube.

He further confirmed that his signature appears on EXHIBIT AL4 and up to and including AL8. Accused 1 further testified and denied any involvement in the kidnapping and the killing of Ms Betty Ketani as mentioned in Conway Brown's Section 105A statement, which is EXHIBIT AO. Accused 1 said that he was in Cape Town at the time.

Accused 1 also denied the contents of EXHIBIT A51, A52 and A53, the statements of Conway Brown to Colonel Neethling and a magistrate. Accused 1 further denied any knowledge of the contents of Poul Toft-Nielson's Section 105A statement, being EXHIBIT AW1, AW2 and AW3. Accused 1 said that his romantic relationship with Monique only began in the year 2000 after she had moved to Thailand.

Accused 1 admitted posting photographs of himself on facebook which depicted him in military uniform as a first lieutenant, which are EXHIBIT DP1 up to and including EXHIBIT DP7 and EXHIBIT DQ.

Accused 1 further testified that Captain van Wyk had presented an incomplete record of his, that is accused 1's military history. Accused 1 testified further that the white coat mentioned by Jane Laughton was obtained by him from Impala Platinum Mine when he did security work for that company.

Accused 1 further denied that he could have introduced Monique to Andrè Coetzer before 10 June 1999 as stated in Coetzer's statement of that date as he, that is accused 1, had only introduced Coetzer to Monique some two weeks after Candice's attempted suicide on 12 June

1999.

Accused 1 admitted in evidence-in-chief that he had a collection of military uniforms, including a camouflage jacket from Switzerland and an old SAP badge and a tunic that reflects the full rank of a general with the insignia.

He also testified that Leon Rehrl had a conversation with Poul Toft-Nielson during 2002 when Poul Toft-Nielson told Rehrl about a document that would bring down accused 1.

After his testimony accused 1 called Mr Dawid Swanepoel to testify as an expert to challenge the DNA evidence of the state. Mr Swanepoel testified that his highest qualification is an Honours degree in biochemistry. He has no qualification in mathematics and statistics. He is employed by Lancet Laboratories, a pathology laboratory.

He conceded under cross-examination that his title, namely Human Identification Specialist, is a title he bestowed upon himself together with his colleagues. He agreed that there is no such official title that is obtained by studying towards a degree, in other words it was a self-made title. He has limited experience in the extraction of degraded DNA and he has no experience in regard to DNA recovered from bones 12 years after their burial. He said he has not previously testified in court in relation to a DNA statistical comparison report in a criminal case. His only experience was one re-test he had performed.

During cross-examination he could not indicate the number of loci matches required in South Africa before the DNA could be regarded

as conclusive proof of identity. Instead of using the remaining bone samples and conducting his own tests Mr Swanepoel chose to dispute the DNA report from the ICMP by using the test results from the ICMP. Without proper inquiry, he stated that the results obtained by the ICMP were compromised because it used expired re-agents in the testing process, yet he admitted he has no experience in the use of expired re-agents and could not comment on the impact it would have, if any, on the results of the DNA test. The State led evidence to show that no expired re-agents were used by the ICMP.

10 It is evident that this witness did not conduct a proper inquiry and he was willing to comment and provide an opinion without checking his facts. There simply is no scientific basis for his opinion in contrast to that of the State witnesses in relation to the DNA evidence. As I said earlier, counsel for accused 1 conceded in the written heads of argument that the testing at the ICMP was flawless. In the result the report of Mr Swanepoel, which is EXHIBIT EN, is considered unreliable.

It is important to note though that Mr Swanepoel conceded that partial alleles are considered by certain laboratories and that if he took at least one of the partial alleles into consideration his calculation that *20* the bone sample is 252 times more likely to be that of the biological parent of the parent from whom control samples were taken, would yield a result of 781, in contrast the ICMP test yielded the result of 4740.

It is this court's view that the result of the ICMP is more reliable and accepts it as such. As I said earlier, this court keeps in mind the cautionary rule noted by the ICMP and Professor Parsons that the result

is not conclusive and must be considered together with other evidence.

Mr Swanepoel conceded that even if the likelihood ratio was 252 as contended for by him, this would be important circumstantial evidence in determining identity.

Mr Mark Charles Eardley testified that he knew Sandor Eygid, accused 1, Conway Brown, Dirk Reinecke and Poul Toft-Nielson and further that accused 1 and Sandor were very good friends. He said under cross-examination that access to his farm, referred to as Eardley's farm, could be gained during the day in his absence.

10 Mr Leon Rehrl testified that he met accused 1 around 2001 to 2002 through Jane Laughton to whom he had previously been married. Mr Rehrl said accused 1 introduced him to Poul Toft-Nielson, with whom he got on well. Mr Rehrl said he did not like Dirk Reinecke, whom he called a bully. He also knew Conway Brown.

Mr Rehrl further testified that in 2004 he and Dirk Reinecke were in a pub where Mr Reinecke told him about a letter which appears to blame accused 1 for a murder he did not commit. This version of Mr Rehrl is highly improbable. He testified that he did not like Mr Reinecke and was not his friend, yet he would have this court *20* believe that he went up to Reinecke who was sitting alone drinking in a pub and Reinecke volunteered this information to him.

Mr Rehrl conceded under cross-examination that Dirk Reinecke was a very good friend of accused 1 at that time. It therefore seems inconceivable that Reinecke would volunteer such information to a comparative stranger rather than inform accused 1 directly. It is to be

noted that Mr Reinecke denied having met Mr Rehrl and having such a conversation. In the court's view Mr Rehrl was a poor witness and his evidence is not accepted by the court.

Mr Cecil Greenfield testified in accordance with his report, which is EXHIBIT ES and annexure ES1 that was handed in dated 15 February 2014. He called himself a Questioned Document Examiner.

He firstly concluded on behalf of the defence of accused 1 that the disputed signatures as described could well have been written by accused 1, however he could not say it with any degree of certainty. He secondly concluded that the result of the comparison test he made with the known writings of Mr Conway Brown, was that he was unable to find evidence which suggests that the disputed writings were written by Conway Brown. In other words that Conway Brown was not the author of EXHIBIT G3, EXHIBIT G4 and EXHIBIT G5. These conclusions are in broad terms in line with the conclusion reached by Colonel van der Hammen, the State's handwriting expert, whose evidence this court accepts.

Accused 2, Mr Dawid Johannes Ranger, testified that in 1999 he was shift commander and area commander in the SAPS and has 17 years' experience in the Police Force. He was stationed at various police stations, including Douglasdale and Randburg. After this witness' discharge in terms of Section 174 of the Criminal Procedure Act on certain counts the only remaining counts were counts 7 and 8, namely the kidnapping of Ms Betty Ketani and her murder in 1999 that he faced.

In short, accused 2 testified that in the year 1995 he had accompanied accused 1 and accused 3 together with another person to Vereeniging Hospital, they travelled in a kombi. He testified further that they had picked up a lady in a wheelchair and took her to Mark Eardley's farm, she was picked up there by another person who arrived there in a motor vehicle. They all then left Eardley's farm.

Mr Carel James Ranger, who is accused 3 in this matter, joined the Police Force in December 1990 as a student officer. In December 1991 up to 1997 he was stationed at Rosebank Police Station. He was
10 transferred to Randburg Police Station. He was suspended in September 1999 and took his discharge in the year 2000. Accused 3, like accused 2, only faces count 7 and 8. His evidence in essence is the same as that of accused 2.

Ms EL Earnshaw was called by accused 3 to testify on his behalf. She testified that accused 3 is her ex-son-in-law. She owned a timeshare unit at Mabula Lodge during 1999 and produced a share certificate confirming it. It is EXHIBIT EW.

Ms Irnshaw testified that from Friday 7 May 1999 to Friday 14 May 1999 accused 3 had spent time at Mabula Lodge with her and
20 her family. However this period is outside the period of the offences accused 3 is charged with. Her evidence can therefore not take the matter any further.

Mr Poul Toft-Nielson was recalled by counsel for accused 1. Mr Toft-Nielson denied meeting Mr Dirk Reinecke during 2002 at the Spur at Northgate Shopping Centre, he also denied meeting Mr Leon

Rehrl on 8 May 2012.

Mr JJM Dawson testified after the State applied to reopen its case, which was granted as the State sought to rebut accused 1's alibi which he raised during his testimony. Mr Dawson testified that he knows accused 1 through Mr Mark Lister. Mr Dawson said he also knows Ms Karin Griffin who dated Mark Lister.

Mark Lister approached him during March 1999, he said, to start a franchise called Commercial Services Cape, a company doing investigations. He had already known Lister for four to five years. *10* Mr Dawson said he resided in Hermanus from 1998 to the year 2000. Dawson's evidence contradicts that of accused 1 that their discussions about starting with franchise operation commenced in December 1998. Dawson also contradicts accused 1's evidence that they had several discussions after December 1998 over a period of time until the agreement was signed on 5 April 1999.

Mr Dawson further said that he had no contact with accused 1 in person during May and June 1999. He also testified that accused 1 did not report at his, that is Dawson's office in Hermanus during the five week period in May to June 1999 as testified to by accused 1. *20* Mr Dawson further stated that Mark Lister also did not reside in Cape Town from the date the contract was signed, as testified to by accused 1.

In this court's view that there does not appear to be any objective reason or motivation for Dawson to be untruthful. He appeared to the court to be a credible and reliable witness,

notwithstanding his testimony that he did not write any reports for accused 1, but then conceded under cross-examination that he did write one report.

Ms Karin Griffin was also called by the State in rebuttal of the alibi. She testified that she knows accused 1, whom she met through her boyfriend at the time Mr Mark Lister around 1998 in Johannesburg. She said she knows Mark Lister from her schooldays. Ms Griffin testified that during 1999 Mark Lister had been in Johannesburg and had never been to Cape Town for a period of five to six weeks. He only went for one or two days to Cape Town. This is contrary to accused 1's testimony that Mark Lister had moved to Cape Town in 1999. This court has no reason to reject her evidence, which is found to be reliable and credible.

At this stage in the judgment I will deal with a few issues that had arisen during the course of the trial and for which reasons had to be furnished.

Firstly, the reason for admitting EXHIBIT CY, which is the hospital records of Ms Candice Laughton. The State had sought to introduce pages 2, 31 and 72 of the hospital records of Ms Candice Laughton into evidence. The State submitted that the purpose for seeking the admission was to corroborate EXHIBIT G in relation to the suicide attempt of Ms Candice Laughton. The defence did not oppose the handing in of page 2.

As far as page 31 is concerned Dr Pak was called to testify in relation to the contents, which were notes he had made of his

consultations with Ms Candice Laughton. Page 71 was a letter or fax of the alleged signature of accused 1 thereon.

It was this Court's view that it was, as provided for in Section 3 of the Law of Evidence Amendment Act 45 of 1998, in the interest of justice that the evidence be admitted and therefore allowed it. The ruling was then that as long as the cross-examination was not directed at the proof of the contents thereof

There was also the issue of the admissibility of various disputed documents. This court is of the view that the remaining disputed documents by both the State and the defence respectively are inadmissible, as they were not proven.

Then there was at one stage an application by the accused to compel the State to provide a further statement from the witness Mr Themba Tshabalala. This application was, as State counsel said at the time, a novel application by the accused. No authority could be provided by the defence for making such an application. There is no requirement in the Criminal Procedure Act that a written statement should be obtained before a witness is called to testify.

Satchwell J held in *S v Sebejani & Others,* 1997(1), SACR 626(W) at 629(h) to (i), inter alia, that a statement need not be in writing. I respectfully align myself with the view of the learned judge.

Written heads of argument were provided by the parties, as had been arranged, and counsel for accused 1 for the first time raised in their written heads of argument in respect of the trial that the Court must make a number of special entries in terms of Section 317 of the Criminal

Procedure Act.

The first thing to be noted is that no applications were made during the course of the trial for any such special entries to be made. The first alleged ground of irregularity is that this court allowed Captain Briers to hand in certain forensic bags as evidence, despite opposition of accused 1. This issue was the subject of extensive argument and this court had made an interlocutory ruling that the State was permitted to hand them in and I gave my reasons for allowing the State to hand them in at the time. This may be the subject of an appeal, but in my view is not a ground for noting a special entry. The application is therefore refused.

The second ground relates to Professor Parsons testifying without having first provided an expert report. I am of the view that the failure to provide an expert report does not constitute an irregularity *per se*. Professor Parsons provided oral testimony and referred to slides and also to the Statistical Comparison Report which had been provided to the defence.

It is to be noted that Parsons arrived from overseas with the Statistical Comparison Report which contained in essence the expert report of Professor Parsons. The trial was adjourned for a few days to afford the defence an opportunity to study the report and to consult with their own DNA experts before cross-examination. It should also be noted that the cross-examination that followed was extensive and thorough. It can therefore not be argued that accused 1 was in any way prejudiced. The application for a special entry on this ground is

therefore refused.

The third application for a special entry in terms of Section 317 is that Mr Themba Tshabalala and the Section 105A witnesses had testified in relation to certain aspects which were not stated in their respective statements in the police docket. This court will refer later in its judgment to this issue about the purpose of a police statement. The application on this ground is refused.

The fourth ground for applying for a Section 317 entry is that the court had not made a ruling on the admissibility of certain documents or exhibits. Firstly it should be noted that the accused did not apply at the end of the State's case for a determination of this issue. Secondly, they also did not apply for a special entry to be made at the time.

The vast majority of these exhibits were in any event introduced by the defence, and not the State. It was in my view the duty of the defence to obtain clarity as to the evidential value of the documents. In any event, once a document is handed in and accepted provisionally and evidence is not later led to prove it, such document is as a matter of law inadmissible unless the court rules otherwise. The application on this ground is also refused.

The fifth ground for applying for a Section 317 entry is that this court failed to provide a judgment detailing the basis upon which the court had come to its conclusion in discharging the accused on some of the charges.

It is so that no reasons for judgment was delivered at the time relating to the discharge of the accused in terms of Section 174 of the

Criminal Procedure Act on some of the counts. This issue, again, was not raised and no reasons were requested at the relevant time and no application in terms of Section 317 was made at that time. In any event, the ruling was in favour of the accused, the court having acquitted them on several charges. The accused at that stage knew which charges they had to answer to - they were aware of the charges prior to the commencement of the trial and therefore could not have been prejudiced. The application on this ground is also refused.

The sixth ground is that the defence were denied a running
10 transcript of the trial, whereas the State and the Court were provided with it. There is in my view no duty upon the Court or the State to provide a transcript to the defence, and I had said so during the course of the argument in this respect during the trial. The defence, or for that matter any party having an interest in the matter is at liberty to obtain it. If the defence was unable to do so it was not an irregularity on the part of the Court, the application on this ground is also refused.

In my view all these grounds for the noting of entries in terms of Section 317 of the Criminal Procedure Act are frivolous and vexatious.

I return then to the evaluation of the evidence. Mr Werner
20 Nortje's evidence was essentially factual. He appeared confident in giving evidence and gave the impression of being reliable. There is no suggestion that he had any interest in this case other than delivering of the documents he had discovered in 21A Leo Street, Kenilworth, to the proper authority. I find his evidence to be credible and I find his explanation as to why he did not hand EXHIBIT G and EXHIBIT H to the

police directly, but through his co-worker Mr Andreas Stefano, reasonable and acceptable.

Mr Conway Brown's explanation about how EXHIBIT G and EXHIBIT H came to be where they were found by Nortje corroborates Nortje's evidence. The evidence that Mr Brown gave subsequently is corroborated by the contents of EXHIBIT G. Other evidence that corroborates the testimony of Mr Brown is the DNA evidence, furthermore the way Mr Conway Brown received EXHIBIT G together with some of the other items corresponds with the contents of EXHIBIT G.

Although Mr Brown is a single witness and an accomplice of accused 1 in respect of the attempted murder of Ms Betty Ketani and the cautionary rule would apply, his evidence is corroborated by EXHIBIT G.

Brown's evidence of his role after the death of the deceased is corroborated by EXHIBIT G and other witnesses. Even if I were to apply the cautionary rule, I find his evidence to be clear and frank and reliable on the issues, the pertinent issues in this trial. I say this bearing in mind that this court is aware that Mr Brown had, like the other Section 105A witnesses, lied in certain respects, but they in this Court's view were not material to the pertinent issues in this trial.

Ms Claudia Bisso was erudite competent and helpful to the Court. Her evidence was objective and impartial. I have no doubt as to her reliability and credibility.

Captain Briers was challenged by the defence, who alleged that

by opening the sealed evidence bags of the control samples of Ms Ketani's children, the chain of evidence was broken. However his explanation as to why he did so and the manner in which he resealed the samples was in my view perfectly reasonable and the Court accepts that in this respect the chain was not broken. This Court found Captain Briers to be a reliable witness.

Brigadier Ras was a central figure in the chain of evidence, showing the movement of the bone samples and the control samples in their respective bags from the police officers to the ICMP. We find her evidence reliable and credible. In our view there was no indication of such chain having been broken whilst the samples were under her control.

Anna Billick's testimony was thorough and detailed. Her technical knowledge was impressive. Her job specifically consisted in making sure that all the processes involved were correct and to this effect she signed her approval on the report, which is EXHIBIT AK. Her evidence is accepted by the Court.

Dr Parsons had all the necessary qualifications to be an impressive witnesses in the processes necessary in the matching of DNA in this matter. His final opinion contained in the report, Exhibit AK, is objective and is accepted by the Court.

Colonel van der Hammen covered numerous and comprehensive aspects relating to handwriting and questioned documents. His report was objective and fair and is accepted by the Court.

EXHIBIT G As mentioned before EXHIBIT G is the central exhibit in this matter. It has already been corroborated by a number of the abovementioned witnesses, more particularly by the finding of the ICMP report in relation to Betty Ketani where it is stated that:

> "Assuming that the three children used as a reference, each have different fathers, the DNA results are 4740 times more likely if they originated from Ms Betty Ketani then if they originated from another unrelated individual in the general population."

EXHIBIT G's authenticity is supported by the evidence of Colonel van der Hammen. Some material facts contained in EXHIBIT G are the same facts as testified to by Conway Brown.

Mr Poul Toft-Nielson, like Mr Brown, was also an accomplice of accused 1 in relation to the excavation and disposal of the body. His evidence is corroborated by Brown. Mr Toft-Nielson is clearly no angel. However, in respect to the evidence he gave in this matter this Court is satisfied that he has told the truth with regard to the exhumation and disposal of the body of the deceased. His evidence further corroborates EXHIBIT G in that the same facts are mentioned there.

Ms Ruth Mncube came across as a reliable and honest witness in relation to her testimony about the attempted kidnapping of her person. In this respect she corroborates the facts contained in EXHIBIT G.

Mr Andrè Coetzer, like Mr Poul Toft-Nielson, is no angel.

However he has no reason to implicate persons who appear to be his friends. His evidence in relation to Mr Themba Tshabalala and Mr Ndaba Mbebe is accepted by the Court. Such evidence corroborates the facts contained in EXHIBIT G.

Mr Dirk Reinecke corroborates the evidence of Andrè Coetzer that he, together with Reinecke and accused 1, accused 2 and accused 3, as well as Monique, took part in the searches conducted in Hillbrow related to the Cranks investigation. This again corroborates EXHIBIT G. Mr Reinecke testified that there was a medical supply company close to the home of accused 1. This was corroborated by the testimony of Captain van Wyk. This further corroborates EXHIBIT G that the wheelchair was hired in the name of C Anderson.

Mr Themba Tshabalala and Mr Ndaba Mbebe testified about their kidnapping and assaults. This testimony corroborates EXHIBIT G again.

Although I have mentioned numerous evidentiary elements which corroborate the authenticity and the authorship of EXHIBIT G, each one taken on its own may not be sufficient to be conclusive. However, if they are taken all together then the result is overwhelmingly in favour of EXHIBIT G being the genuine article and the author thereof being accused 1.

Accused 1's plea explanation at the commencement of the trial was that he was set up by Lemkes. Captain van Wyk testified that at no stage during the course of the investigation did accused 1 provide a version consistent with his plea explanation. The evidence led by

accused 1 does not support his plea explanation in that he produced no evidence that at least from 2001 to his arrest in 2012 anything material or concrete happened to him that could be attributed to Lemkes.

During his evidence-in-chief accused 1 for the first time raised an alibi in that during the period May 1999 until the beginning of June 1999 he was mostly in Cape Town. His evidence is contradicted by Mr Dawson and Ms Griffin, as well as EXHIBIT G. His alibi was not pertinently put to any of the State witnesses and he blamed his legal representatives, who, he said, advised him not to disclose it earlier.

10 It was also during accused 1's evidence-in-chief that he for the first time said that it was in 1995 that he had gone to Vereeniging Hospital together with accused 2 and accused 3 as well as a person called Godfrey to uplift a lady called Mary and took her in a Kombi to Eardley's farm where she was picked up by one Shadrack.

It is to be noted that accused 1 did not mention to the police or the investigating officer when he was arrested in 2012 that such trip took place in 1995, neither did he mention it during his bail application in 2012. However in EXHIBIT G mention is made of the uplifting of Betty Ketani from the Kopanong Hospital in Vereeniging in 1999.

20 It is apparent from his testimony that accused 1 on a number of occasions distances himself from key events implicating him in the offences for which he is indicted. For example, his alibi that he was mostly in May and early June 1999 and not in Johannesburg. He also distances himself from the kidnapping of Ms Betty Ketani in 1999 by referring to a similar incident occurring in 1995. Accused 1 also

distances himself from the Cranks investigation by stating that it was Candice Laughton who had handled it and who had reported directly to Lemkes.

Further, accused 1 distances himself from a romantic relationship with Monique during May and June 1999 and shifts it to early 2000 whilst some of the State witnesses testified that his romantic relationship commenced at least from April 1999. In addition accused 1 testified that at the end of May 1999 his wife suspected him of having a relationship, but that it was with someone in Cape Town.

10 Accused 1 also distances himself from the disposal of the body of the deceased by stating that he had spent all his time with his wife Candice in the hospital after his attempted suicide. He said he only went home to shower and change clothes. Accused 1 admits having doctored certain photographs to show Lemkes that Ruth Mncube had been killed when in fact it was not so. This is referred to in EXHIBIT G where it is stated that the photos were placed in an envelope marked ‘Ruth” and this further corroborates EXHIBIT G.

Captain van Wyk testified that four firearms were found to be registered in the name of accused 1. Ms Jane Laughton and
20 Mr Conway Brown testified that accused 1 referred to one of the firearms as Luigi. This again corroborates EXHIBIT G where reference is made to four firearms, including one called Luigi.

Accused 1 was not an impressive witness, although he was confident and easy-going during his evidence-in-chief. He testified in a controlled manner. However in cross-examination he became evasive

and argumentative. As will be apparent by now, his evidence was fraught with inconsistencies and improbabilities. Accused 1 was a poor witness, his evidence is rejected as false beyond reasonable doubt.

Accused 2 and accused 3's versions in respect of the charges of kidnapping and murder of Ms Betty Ketani are aligned with that of accused 1, being that the uplifting of a lady from Vereeniging Hospital occurred in 1995 and not 1999. These versions fly in the face of their own respective affidavits in support of their bail applications in which they admit having uplifted a female person with accused 1 during 1999.

They tried to explain these contradictions by averring misunderstandings with their legal representatives during the time of their bail applications. However that does not explain the fact that they had several opportunities thereafter to rectify the alleged incorrect year in which they went with Accused 1 to Vereeniging Hospital. They did not do so, for example, at the subsequent bail application and bail application on new facts or at any bail application during the course of the trial. It was also not raised when State counsel in this matter handed up their affidavits used in their bail proceedings and read them into the record at the commencement of the trial. It was raised for the first time during their respective evidence-in-chief.

Both accused 2 and accused 3 were poor witnesses and their evidence that the incident happened in 1995 and not 1999, is rejected as being false beyond reasonable doubt.

It needs to be mentioned that a considerable amount of the cross-examination of the State witnesses was directed at the fact that

some aspects of their evidence in Court were not contained in their various previous written statements. However, the authorities are clear. As stated in *S v Bruiners & 'n Ander*, 1998(2), SACR 432(SE), it is not the purpose of a statement to anticipate a witness' evidence in detail. In *S v Francis*, 1991(1), SACR 198(A), at 203 e to g, Smallberger JA held:

> "It is not necessarily expected of an accomplice before his evidence can be accepted that he should be wholelly consistent and wholelly reliable, or even wholelly truthful in all that he says. The ultimate test is whether, after due consideration of the accomplice's evidence with caution, which the law enjoins, the Court is satisfied beyond all reasonable doubt that in it's essential features the story which he tells is a true one. (*R v Kristusammy*, 1945(AD) ad 556)."

It is trite law that the State must prove its case beyond reasonable doubt-that does not mean proof beyond all shadow of a doubt. Insofar as an alibi is concerned the accused does not bear the onus to prove his or her alibi. It is the State which must disprove the alibi beyond reasonable doubt.

The State has presented a formidable case against the three accused. This Court is also mindful of the fact that a considerable amount of time has lapsed between the time of the death of the deceased and this trial. From the evidence this Court is satisfied that EXHIBIT G is genuine and that it's author is accused 1. This Court is

also satisfied that the probabilities are overwhelming that the bones found in the premises of 21A Leo Street, Kenilworth, are indeed those of Ms Betty Ketani. In respect of all the accused both direct and circumstantial evidence was led.

Insofar as the handwriting and signatures on EXHIBIT G3, G4 and G5 are concerned there is the evidence of the handwriting experts, as well as the evidence of the several State witnesses. In *S v Boesak*, 2001(1), SACR 633(SCA) at 649, the Court approved the rule in *R v Kruger*, 1941(OPD) 33, in which the Court held that:

> "The Court itself is allowed to compare the handwriting of an accused on the disputed letter with other genuine specimens of his signature. This is acknowledged in our law."

(See also Section 228 of the Criminal Procedure Act). I have examined the handwriting and signatures on EXHIBIT G with the undisputed specimens of accused 1's handwriting and signatures and I am satisfied that the handwriting and signatures on EXHIBIT G are those of accused 1.

With regard to count 8 the form that the intention takes in this murder is that of *dolus eventualis*, because accused 1 knew of the serious injury that Ms Betty Ketani had sustained previously so he must have foreseen that abandoning her in the old bus would result in her death and he reconciled himself to this eventuality.

In respect of accused 2 and accused 3 regarding count 8, the murder of Ms Thandiwe Betty Ketani, the Court is of the view that the

evidence does not support a verdict of murder, but rather a competent verdict of culpable homicide. There is no evidence that they were aware of the existing injuries sustained by Ms Betty Ketani when they left her in the bus structure on Eardley's farm and accordingly that they could have foreseen her death.

Accused 2 and accused 3 were negligent in that they, as experienced police officers with a duty of care, abandoned the deceased in an old bus in winter whilst she was obviously in a poor State of health.

10 In the result this Court is satisfied that the State has proven its case beyond a reasonable doubt against accused 1, accused 2 and accused 3. Please stand up, gentlemen.

Accused 1 is found guilty of count 2, the attempted kidnapping of Ms Ruth Mncube; count 5 kidnapping of Ms Thandiwe Betty Ketani, count 6 attempted murder of Thandiwe Betty Ketani, count 7 kidnapping of Ms Thandiwe Betty Ketani, and count 8 the murder of Ms Thandiwe Betty Ketani.

Accused 2 is found guilty on count 7 the kidnapping of Ms Thandiwe Betty Ketani. On count 8 accused 2 is found not guilty of *20* murder. He is found guilty of culpable homicide in respect of the death of Thandiwe Betty Ketani.

I turn then to accused 3. He too is found guilty on count 7, the kidnapping of Thandiwe Betty Ketani and on count 8 he is found not guilty of murder, but he is found guilty of culpable homicide in respect of the death of Thandiwe Betty Ketani.

- - - - - - - - - - - -

10

MR HODES: May it please the Court, M'Lord.

MR BROODRYK: May it please the Court, M'Lord.

COURT: I should deal with the Section 204 witness, Mr Andrè Coetzer.

20 In this Court's view... You may sit down. In this Court's view Mr Coetzer was already mentioned in the judgment as a reliable witness. This Court is of the view that he should be granted indemnity in respect of the two charges which he is facing.

MR BROODRYK: May it please the Court, M'Lord.

COURT: Mr Broodryk?

MR BROODRYK: Thank you, M'Lord. M'Lord, the next phase then is that of sentencing. Firstly the question of the SAP69, I think this is already common cause between the parties, but just on a formal aspect. Accused 1 was convicted of perjury on 14 March 2003.

COURT: One moment please. Yes? Thank you.

MR BROODRYK: Convicted on 14 May 2003 in the Randburg Regional Court of perjury. It is noted here that the date committed was 30 October 2001. The accused was sentenced to R3 000 or 12 months' imprisonment, as well as a, noted here in Afrikaans, a further three years suspended for three years on condition that he is not again convicted of perjury. Then also this previous conviction is in fact after the date of ...[intervenes].

COURT: That is what I wanted you to address me on.

MR BROODRYK: Yes, yes.

COURT: Because what the accused stands convicted for now is in relation to 1999.

MR BROODRYK: That is correct M'Lord, but there is authority that the court can still bear it in mind. In any event, it is part of the evidence before Court.

COURT: Yes.

MR BROODRYK: Because it reflects on the character of the accused. On a formal basis, I am not sure whether my learned friend will indicate if accused 1 accepts it, but I do not think it is in dispute, because he testified about it.

MR HODES: It is not in dispute M'Lord, I do not [indistinct].

COURT: Thank you. Thank you, Mr Hodes.

MR BROODRYK: Thank you, M'Lord. M'Lord, accused 2, there is a previous conviction for, under the Road Traffic Act, but that is so old, 1995, that in terms of Section 271(A) that will not be regarded as a previous conviction. Accused 3 has got no previous convictions, M'Lord.

COURT: Thank you.

MR BROODRYK: M'Lord, before my learned friend starts addressing Your Lordship, we have indicated in our indictment in terms of, in respect of count 8 that we rely on the provisions of Section 51(1) of Act 105 of 1977, the so-called Minimum Sentences Act which came into operation the previous year, I think in May of 1998, so this was already applicable.

M'Lord, Section 51(1) states that notwithstanding any other law, but subject to Subsection 3 and 6 a regional Court or a high Court shall sentence a person who is convicted of an offence referred to in Part 1 of Schedule 2 to imprisonment for life. I am dealing here with the murder count, M'Lord.

Part 1 of Schedule 2 refers to murder a) it was planned or premeditated, which is not the position here, b) the victim was one in law enforcement, which is not applicable, 2) the victim was a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1 to the Criminal Procedure Act at criminal proceedings in any Court, and here the State submits that the count of attempted murder of which the Court has convicted. Obviously

she would have been a witness likely to give material evidence with regard to that count.

But M'Lord, then it is also in respect of subparagraph D, the offence was committed by a person, group of persons or syndicate acting in execution or furtherance of a common purpose or conspiracy. M'Lord, just listening to the judgment, I am not sure that was explicitly stated, but the inference was made or our submission was that the Court can make such a finding and I will address the Court again in that regard that clearly there was at least a common purpose existing between the accused and that that would be obviously in respect of this count, it is only in respect of accused 1.

M'Lord, I will just say that the defence can be forewarned. I will address the Court later when my learned friend is finished with his argument and or evidence. The State does not intend to lead evidence at this stage.

COURT: Yes?

MR BROODRYK: Thank you, M'Lord.

COURT: Thank you, Mr Broodryk. Mr Hodes?

MR HODES: As the court pleases. M'Lord, it is the intention of accused 1 to call [indistinct] Thompson to testify in mitigation of sentence and he compiled a report on his behalf, a presentence report. Insofar as my learned friend contends that this falls under the Minimum Sentences Act by virtue of the principle of common purpose I reserve the right to address Your Lordship at a later stage. I am of the view *prima facie* that it is not the case and I will address Your Lordship

accordingly, but I have not prepared that at this stage.

My intention would be with the leave of the court M'Lord, to arrange a date for Ms Thompson to compile a report for accused 1, where after and after the evidence I will address the court on the law pertaining to the sentences to be applied.

COURT: Yes.

MR HODES: As Your Lordship pleases.

COURT: Thank you, Mr Hodes. Sorry Mr Hodes, how much time do you require to obtain the report and to make the necessary arrangements?

MR HODES: M'Lord, she would require the judgment and time to prepare. I think the norm is around six weeks.

COURT: Six weeks.

MR HODES: I am not certain. I was looking in April, May.

COURT: It seems to me it can be into the second term.

MR HODES: Yes, M'Lord. I was looking at the beginning of the second term. I do not know what Your Lordship's availability is.

COURT: Well, I will make myself available. Fortunately my duty roster for that term has not been prepared yet to my knowledge.

MR HODES: Thank you, M'Lord.

COURT: So I would inform the ...[intervenes].

MR HODES: M'Lord, I would request M'Lord, is that we telephone, we stand down to telephone Ms Thompson, her name is Ina Thompson, to get dates from her.

COURT: Yes.

MR HODES: Where after we will approach Your Lordship.

COURT: In the meantime I will also, my registrar will approach the Judge President just to confirm the dates.

MR HODES: Thank you, M'Lord.

COURT: Mr van Wyk?

MR VAN WYK: All from my said M'Lord, at this stage I believe I will call the two accused to come and testify in mitigation on behalf of themselves and perhaps the accused's wife [indistinct].

COURT: So that will obviously be at the ...[intervenes].

MR VAN WYK: [Indistinct]. As the court pleases.

COURT: Thank you, Mr van Wyk. Mr Broodryk, is there anything else?

MR BROODRYK: Well M'Lord, I have got no objection to the application for the postponement for the presentence report.

COURT: Yes.

MR BROODRYK: [Indistinct].

COURT: So what we will do now is just adjourn for 15 minutes and that will be sufficient time for Mr Hodes to find out and he can make the necessary, including my assessors' availability.

MR BROODRYK: May it please the court.

COURT: Although I am aware that during sentencing assessors are not full participants, but it has become practice that they stay in the proceedings to the end.

MR HODES: As Your Lordship pleases.

MR BROODRYK: Yes, M'Lord.

COURT: Thank you. The court adjourns.

COURT ADJOURNS [12:54] ~ ~ ~ [13:24] COURT RESUMES

MR HODES: May it please the court. M'Lord, I have spoken to the witness and as confirmed in chambers M'Lord, it would seem that the best date that suits everybody and the court would be 3 May to 6 May 2016.

COURT: Yes.

MR HODES: I will make, and I want to put on record, the report available as soon as it is ready. I have asked my witness Ms Thompson to make it available approximately one month before and then I will circulate it between my learned friend and Your Lordship and the assessors, for that matter.

COURT: Thank you, Mr Hodes. Do you confirm?

MR BROODRYK: I confirm the arrangement, M'Lord and the dates.

COURT: Thank you, Mr Broodryk. The matter is now postponed for sentencing proceedings to 3 May 2016 and the accused are remanded in custody.

MR BROODRYK: May it please the court.

COURT: The court adjourns.

MR HODES: As the court pleases.

MR VAN WYK: As the court pleases, M'Lord.

MATTER REMANDED TO 3 MAY 2016

COURT ADJOURNS [13:25]

- - - - - - - - - - - -