

IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, PORT ELIZABETH

CASE NUMBER: CC14/2017

Date delivered: 19 June 2018

In the matter between

THE STATE

and

NEALON REDHOUSE

Accused No. 1

DEON HARMSE

Accused No. 2

JUDGMENT

MAKAULA, J.

[1] A few minutes before she was mercilessly killed, the fourteen year old Aaliyah Angelic Tee (Aaliyah) read her parents a verse from the Bible. When she was fatally shot she was seated on a toilet seat with her back towards her killers, praying for her life and that of her parents to be spared. Nonetheless, she was shot through her head and left thigh and died on the spot. I shall revert to her cause of death.

[2] Mr Edmund Tee (Edmund), his wife, Mrs Candice Cecilia Tee (Candice) and Aaliyah, their daughter were on the evening of 7 June 2016 in the sanctity of their home about to sleep. They were disturbed by a hard knock on the front door. Someone demanded that they should open the door retorting that it was the police. Edmund answered the front door but could not open it because the key broke. The hard knock continued. Candice then heard a voice saying "Sorry, uncle Attie it is your turn". Edmund suspected that it might be the gangsters.

[3] Edmund pushed two couches against the front door trying to prevent those people from entering. I mention at this stage that had Edmund and Candice not done that, probably those people would not have broken and entered through the front door.

[4] Edmund thereafter went to the back door. He opened it and took a step outside and peeped around the corner of the house and came back. Candice instructed Aaliyah to remain in the bedroom.

[5] Candice proceeded towards the back door. As she was approaching it, she saw Edmund pushing against the back door, preventing someone from coming inside the house. The person at the door pointed her with a firearm. That person was standing outside in the doorway. At that time she was inside Aaliyah's room. She could see the back door from her position. The back door was 50 to 60 cm ajar. She noticed that the person pointing the firearm at

her was Accused 1. Accused 1 was pushing using his right shoulder and holding the firearm with his left hand. She testified that she could see clearly, because the room adjacent to the backroom was lit with an electric bulb. The light shone up to the back room.

[6] There was sufficient light, according to her which enabled her to properly see Accused 1. She testified that she knew Accused 1 from his early age because he used to play with her son who was at the time 16 years old. Effectively, she said she knew Accused 1 for 17 years. They were next door neighbours and she was a friend of his mother. She used to see Accused 1 almost every day as he would spend time at the smart shop which was opposite her house. As a result of that background and the light, she was able to identify Accused 1 at that stage.

[7] She testified that Accused 1 was wearing a black jacket and transparent safety goggles. He had nothing on his head. She further testified that she was three metres away from where they were at the door. She could not assist Edmund in pushing the door closed because she was afraid of the firearm Accused 1 was pointing her with.

[8] As the Accused 1 was pushing the door, she saw Accused 2 standing behind him. She knew Accused 2 as Kwas. Accused 2 was a friend of Accused 1 and he frequently visited her area because he and Accused 1 would stand and chat at the smart shop. She had known him for about a year.

[9] She testified that when Edmund was peeping at the corner of the house, she went back to the room where Aaliyah was. She found Aaliyah praying and she did not disturb her. She went back to see what was happening at the back room.

[10] She realised that the Accused were overpowering Edmund. She ran to the bathroom with Aaliyah. She opened the bathroom window and shouted to her neighbours for help. No one heard her. She turned away from the window and looked towards the door. She saw the Accused standing in front of her next to the washing machine in the bathroom. They were looking at her. They were three spaces away from her. The bathroom light was on. She heard Aaliyah pleading with them with both hands in a praying position, (both held in front of her chest) not to shoot. She grabbed Aaliyah and they knelt in front of the toilet. She heard one of them saying “skiet my broer”. The other one said “fok jou auntie”. Immediately after that she heard a gunshot going off. The sound was like a bomb going off close to her ears.

[11] After a while she felt “warm blood” as she put it. She felt that her legs were numb and wet because the toilet seat was broken. She lifted her head and turned to her left side. She saw Aaliyah lying on the floor bleeding from her ear. She put her hand on Aaliyah and said “take her Lord she is yours”. She sat next to her lifeless body and prayed. While still praying she heard a distant voice calling her name, Candice, Candice, Candice. She crawled out of the bathroom. She followed the direction of the voice until Aaliyah’s room. She got the strength to stand up. She looked at the back door and saw Edmund lying behind the door. Edmund asked her to come and assist him.

She told him to wait. She went to the bathroom and touched Aaliyah and felt that she was cold. There was a lot of blood flowing from her body. She called the emergency number 112. The recording of her call was played in court for the record. I hasten to mention that it was an emotional call which was not pleasant to listen to. Her hysterical voice asking for help was unbearable to listen to. She was demonstrably in pain and anguish. The police promptly responded to her call.

[12] Candice testified that the owner of the smart shop, Daniel was murdered some time before these offences were perpetrated against her family. She testified that on 3 May 2016 in the morning she witnessed the killing of a person she later learnt was Stahl Barry. She identified three of his killers. Aaliyah was at school and Edmund was in front of their house at the time. She did not give the police her statement about the incident because she was afraid of being killed.

[13] Candice testified that she became aware that the Accused were members of a gang called Spotbouers. She confronted Accused 2 one day at the Smart Shop. At the time, she had been speaking to Daniel about the spate of killings which frustrated her. When she turned she saw Accused 2 standing behind her and asked from him when they would stop killing people. Accused 2 did not respond instead he looked at her. She said to him may “God bless you” and left the shop. She was talking to Accused 2 for the first time that day. She stated that on a certain day, a member of the Spotbouers by the name of Sella came to her house and assured Edmund that nothing would happen to them (meaning they were not going to be harmed).

[14] Edmund is the husband of Candice and the father of Aaliyah. He confirmed the evidence of Candice about the knock at the door up until the events at the back door. He testified that he realised that the people who were knocking at the door were not the police when he heard one of them saying "oom Attie it is your turn". He, with the assistance of Candice, pushed couches against the front door. He informed Candice that it was not the police but gangsters.

[15] He went to the back door and opened it. He stepped outside and peeped looking down the passage between his yard and the neighbour's. He saw Accused 1 walking in the passage towards him. They looked at each other. He saw his full face, as he put it. He looked at Accused 1 for a few seconds. Accused 1 turned and looked backwards. He said to someone who was following him, here are the people at the back of the house. He recognised that he was talking to Accused 2. They were approaching him.

[16] The passage was well illuminated because of the light that was emanating from the garage light, the light from the front of the shop and the street lights. He testified that Accused 1 was dressed in black and spotted safety goggles. He had nothing on his head. Accused 2 was also dressed in black and had nothing on his head. He looked Accused 1 for more than 5 seconds and Accused 2 for about three seconds while they were approaching him in the passage.

[17] Edmund went back to the house and closed the door. He stood against the door with his left shoulder pushing it. He did so because there was no security gate and the door was not strong. The accused kicked the door. The latch broke and they pushed the door. He pushed back preventing it to open. He asked "Ouens what do you want?, What have we done to you?" They did not respond. A left hand emerged through the door carrying a black firearm. A gunshot went off. He became weak and fell on a box that was behind the door. There was also a window frame behind the door.

[18] Accused 1 then got inside the room followed by Accused 2. They stood in front of him. They were two paces away. Accused started to shoot at him. Accused 2 had a firearm in his hand. After Accused 1 shot him, they both went through Aaliyah's room to the front room. He pretended to be dead by opening his eyes slightly.

[19] As they disappeared through the other rooms, he heard Candice screaming for help calling their neighbour. He heard gunshots and after a while the accused came back. He looked at them. They went out of the back door and left. He waited for a while until he could not hear their footsteps and called out for Candice. The latter came to him. She left again to call for help. Later the police arrived and he was taken by ambulance to Livingstone Hospital. After some days he learnt from his brother that Aaliyah had passed away.

[20] Edmund testified that he had known Accused 1 for 17 years thus confirming the evidence of Candice in this regard. Accused 1 was his next door neighbour and spent most of his time with his son. As Candice testified, he also saw the accused on the day of the incident passing in front of his home. They greeted each other. He knew Accused 2 for a period of a year. They used to see him at the Smart Shop or at Accused 1's home. He confirmed the evidence of Warrant Officer Blom about the photo identification parade.

[21] He thought the reason why the accused attacked them is because he and Candice had witnessed Stahl Barry being killed. Therefore, the accused wanted to eliminate them as witnesses in that case. On a certain occasion, he was approached by Justin who told him that he constantly phoned the police. Justin, Accused 1 and 2 were gangsters and belonged to the Spotbouers according to Edmund. He approached Sella who is the general or the leader of the Spotbouers. Sella assured him and Candice that nothing would happen to them because he was going to talk to the gang members.

[22] The evidence of Edmund was criticised based on the inconsistencies between his statement and his testimony in court. In his statement, Edmund said whilst pushing against the door a right hand appeared through the door and a shot was fired. In court he testified that it was the left hand. To me nothing turns on the aspect. He testified that he might have made a mistake in his statement because it was not possible for a right hand to have been used because the door, as one faced it, opened towards the left hand side. This explanation is plausible in the circumstances.

[23] He was further criticised for having mentioned in his statement that Candice went outside and stood at the fence or boundary wall and called for her neighbour to come and help. Edmund testified that was a mistake. I agree with Edmund in this regard. Candice could not have been able to leave the house for two reasons. Firstly, the front door could not open because the door was locked as the key had broken. Secondly, immediately after Edmund peeped around the corner, he came back to the house and closed the door. The pushing against the door started which culminated in the attacker gaining entry. This inconsistency therefore is immaterial and what appears in the statement is not logical.

[24] Edmund was further taken to task about him saying in his statement to the police that immediately after he was shot he saw four people. What transpired after the statement is not consistent with the photo identification parade in which Edmund spoke of and identified two people. In court he also mentioned two people. It is understandable in the circumstances that Edmund might have been confused by the four legs he observed while lying on the floor. Nothing turns on the criticism of his evidence in this regard.

[25] Warrant Officer Lambertus Jacobs Blom conducted a photo identification parade while Edmund was still in hospital. A video footage of that parade was exhibited. In the photo parade Edmund pointed at the accused as the people who attacked him and his family. He identified Accused 2 as the shooter, something which he later corrected in court.

He stated that he made a mistake, he was shot at by Accused 1. Accused 2 was present and also in possession of a firearm at the time.

[26] Quinton Gould, a Constable in the South African Police Service (SAPS), was the first to arrive at the scene. He met with Candice outside their house. He could not easily get into the house through the back door. He discovered that it was blocked by Edmund who lay injured behind the door. The door was partially opened. He was seating in a box and leaning against the wall. Aaliyah was lying in a pool of blood in the toilet. He attempted to calm Candice who was crying and hysterical at the time. He secured the crime scene and communicated with the SAPS radio control room reporting about the crime scene and conveying some of the information he received from Candice and Edmund about what occurred. Edmund was in pain at the time he spoke with him.

[27] Edmund told him that he was attacked by four men, amongst them was Nealon and Kwas, i.e. Accused 1 and 2 respectively. He further testified that there was light in the doorway of the back door and in the back room where Edmund was lying behind the door.

[28] On 08 June 2016 at 02h25 Warrant Officer Philip Roedolf Bekker, investigated the crime scene in this matter. The scene was pointed out to him by Warrant Officer Phillips and Constable Gould. He evaluated the scene for evidential possibilities and documented his findings and observations in a video recording and photographs.. He processed the scene for forensic evidence and other impression evidence. Warrant Officer Bekker is a Bloodstain Pattern Analyst and Crime Scene Reconstruction Analyst. It is not in dispute that he is an expert in his field. He reconstructed the scene and

made a bloodstain analysis. He recovered amongst others, the following exhibits which he sealed in various seal bags:

- 2 cartridge cases found outside the house at backdoor threshold;
- 3 cartridge cases found inside house in backroom at backdoor;
- 2 cartridge cases found inside the house in bathroom in the bathtub;
- 2 bullet fragments found in a pool of blood under the Aaliyah in the bathroom;
- 1 bullet found inside the bathroom in a plastic container under the toilet bowl.

[29] The chain evidence in respect of these cartridges has not been disputed by the Accused. These cartridges were registered under CAS 97/06/16.

[30] I should hasten to mention that the evidence of Candice and Edmund regarding the lighting of the backroom where Edmund was shot is confirmed by Warrant Officer Bekker. The latter testified as follows in this regard:

“Bedroom 2” There is a light that was on. There was only a divider in between the two rooms, so that is bedroom 2 and backroom. That provided enough illumination for me for instance on the crime scene not to take the photos with the assistance of an additional torch. I have only focused with the available illumination in the room and that is normally an

indication that the human eye can also observe very good in that illumination . . . If the back door was open, as is visible on image 25, the light from these two rooms, the bedroom and the backroom, would have spilled out into the area and it would have been illuminated”

The area he is referring to is that which is in front of the backdoor as it was opened and depicted in photo 25 of the photo album exhibited. It is the same area Candice testified that she saw Accused 1 and Accused 2 standing.

[31] Warrant Officer Bekker’s evidence is technical and accords with the post mortem findings of Dr Kalev. He took the height reflected by Dr Kalev and created two mannequins (as depicted in the picture below) on a computer programme and superimposed them onto Aaliyah’s photo as she was lying on the floor of the bathroom. He used Anatomical limitations of a human body specifically a slender female of approximately 1,6 metres in length. This postulated Aaliyah in a blueish colour. The other is ‘greyish’ in colour and depicts Candice. He testified that he used various physical evidence that he collected and observed on the crime scene, bloodstain pattern analyses that he had done and the report of Dr Kalev, to use, establish variables and limitations as to the exact positioning of the bodies. Aaliyah, the blue mannequin, was sitting on the toilet with her knees in the direction of the bath, looking towards the wall and the mother which is the grey mannequin, was on her knees on the ground to the right of the toilet. Bekker testified:

“My Lord, please note that this is the only one instance, one single event, in a whole series of possible events and this specific event that I have chosen here is the one which I have got the most direct evidence of and that is the moment the gunshot wound to the head was sustained”.

The reconstructed scene is as follows:



[32] Warrant Officer Bekker, taking into account the post mortem findings of Dr Kalev that the bullet entered the right upper occipital bone of the skull travelling through the brain as well as the maxillary sinus cavity exiting on the left lower cheek, concluded that the bullet hit the wall above the cistern of the toilet and left a mark on the wall. He further concluded that the blood and mucus strands which were deposited on the wall were as a result of the bullet travelling through the maxillary sinus cavity thus taking with it mucus.

[33] Warrant Officer Bekker said that the bloodstain patterns on the wall next to where the bullet struck are called *misting*. The blood patterns are small one millimetre in diameter and consistent with splatters caused by the kinetic energy and the high velocity that occurs during a gunshot wound and the blood that is dispersed from the wound itself. He testified further that the two volumes of blood deposited on the lid of the cistern were deposited at once and not as a result of continuous dripping of blood. He concluded that the blood was expelled from the mouth of Aaliyah just after the bullet went out through the left side of the cheek. He concluded further that Aaliyah had her head elevated above the cistern. He found that there was no blood on the right edge of the cistern when in fact the area should have had bloodstains. He called it a void. To him, that was when Candice had her hand on that part of the cistern which caused the void.

[34] Warrant Officer Bekker, opined that the injury on the left thigh was sustained while Aaliyah was seating on the toilet seat. The bullet entered on top of the thigh exited on the side and hit the bottom of the cistern just above the toilet lid hence that part is broken. The blood pattern on the front of the toilet seat, which he identified as a transfer stain or contact stain, occurs when a bloodied object is in contact with another object and transfer the blood to that object. There were also signs of lateral movement in the transfer pattern which confirmed the positioning of the wound and proof that the wound was obtained while Aaliyah was sitting on the toilet seat, so he testified.

[35] Warrant Officer Bekker testified that drops on the toilet lid which he called vertical or gravity drops were from an elevated position and probably from the head. This, according to him, confirmed that Aaliyah was in a sitting position when she was shot at. The stain on the bath was the transfer of the hand from the cistern, i.e. where the void occurred, to the bath when Candice moved her right hand away from the position in which it was when the bullet that struck Aaliyah and exited.

[36] Warrant Officer Xola Baleni testified that he was attached to the National Intervention Unit. He was deployed in Port Elizabeth in July 2016. On 8 July 2016 at about 20h00 he was in Bethelsdorp when they received information from Crime Intelligence about people with firearms. It was conveyed to them that, that person was a wanted suspect in a murder case. They said the suspect was Nealon Redhouse. They proceeded to the address. They knocked and a girl answered the door and opened for them. They introduced themselves as police officers and requested to search the

room. She referred them to her boyfriend claiming that she was a visitor there. The girl told them that her boyfriend was Nealon Redhouse. He called out for him but there was no response. He went to the bedroom. He could see that there was a person under the bed. He lifted the bed and saw Accused 1. As he was introducing himself and stating the reason for being there, he saw a bullet proof vest, a defence force camouflage, cellphones, hand gloves, a firearm and ammunition. He asked whose items were those. Accused 1 said they belonged to his friend. What surprised him is that he did not know his friend's name and address. He questioned him and Accused 1 told him that he was 21 years old. He denied that Accused 1 was assaulted at the time he was arrested. He stated that the items together with the firearms and ammunition were found under the bed next to where he was hiding.

[37] Detective Sgt Conrad Goosen is the investigating officer in this matter. He testified that the firearm that was found in this matter that is CAS 97/06/16 was linked to various other cases i.e Bethelsdorp CAS 28/05/2016, Humansdorp CAS 105/05/16, and Bethelsdorp CAS 314/06/2016.

[38] Sergeant Goosen further testified that he obtained a second statement from Edmund because the latter was not happy about the contents of the first statement. He took a second statement from him. Sgt Goosen further handed a document from the Department of Correctional Services that proved that Accused No 2 was detained at St Albans Medium Correctional Centre from 20 June 2016. He was detained in connection with Bethelsdorp CAS 28/05/16. He testified that the date marked as the release date is initially a date when

further charges were added but in actual fact he has been in custody since 20 June 2016. Barry Stalh was murdered on 3 May 2016. He produced proof from St Albans Medium Correctional Centre that Accused 2 was detained from 5 February 2016 and released on 4 March 2016. Effectively, his testimony was that Accused 2 was not in custody from 4 March 2016 to 20 June 2016. He testified that according to the physical addresses given, Accused 1 and 2 lived about 450 metres from each other which was a five minutes walk.

[39] Warrant Officer Yolandi Schoeman is attached to the Ballistic Section of the SAPS. She was requested to test five cartridge cases which were found at the scene by Warrant Officer Bekker. She found that three of the five cartridges were fired from the same firearm and the two others from another firearm. In other words two firearms were used in shooting Edmund and Aaliyah that fateful evening.

[40] Warrant Officer Schoeman was also requested to compare exhibits from different CAS numbers. She testified that she compared three cartridge cases found in the Bethelsdorp CAS 97/06/2016 and one cartridge case retrieved from Bethelsdorp CAS 28/05/2016. She concluded that the four cartridge cases, even though found in different scenes were fired from the same firearm. The three cartridge cases according to the sketch plan and the chain evidence were found by Warrant Officer Bekker in the backroom where Edmund was shot at. The other two cartridge cases which she alleged were fired from a different firearm were found by Warrant Officer Bekker in the bathtub where Aaliyah was shot and killed. She was further requested to

compare Lab 223503/16 i.e CAS 97/06/16 and Lab 155525/16 (5) in respect of CAS 28/05/16. Lab 223503/16 contained the following exhibits amongst others:

“4.1.1 Firearm Parrabellum Calibre fired cartridge cases marked
223503/16 A3, A6, A7, A14 and A15 respectively; “

[41] In respect of Lab 155525/16 that in Bethelsdorp CAS 28/05/16, amongst other exhibits, contained:

“5.1 Thirty One Parrabellum Calibre fired cartridge cases
marked 155525/16 . . . A31 respectively”

[42] She concluded that:

“7.1 The cartridge cases mentioned in 4.1.1 marked 223503/16 A3,
A6, A7 (Bethelsdorp CAS 28/05/16) were fired in the same
firearm”

[43] She further testified that there was a firearm that was linked to both CAS numbers, she received Lab 259660/16 Bethelsdorp CAS 98/07/16 a 9mm Parabellum Calibre Feg Model PJK-9HP semi- automatic pistol with serial number 57234 amongst other exhibits. She testified the firearm functioned normally without any defects. She was requested by the investigating officer in the matter to make a comparison of various exhibits dealt with in various Lab numbers she concluded as follows:

“9.1 The cartridge cases mentioned and in 5.1 marked 155525/16 A31 (Bethelsdorp CAS 28/05/16) and 6.1 marked 223503/A3, A6, A7 (Bethelsdorp CAS 97/06/2016) were fired in the firearm mentioned in 4.1 – 9mm Parabellum Calibre Reg Model PJK – 9HP with serial number 57234 (Bethelsdorp Cas 98/07/2016)”.

[44] In other words, the firearm which was found in possession of Accused 1 by Warrant Officer Baleni was used in firing the empty cartridge cases found in the backroom where Edmund was shot at. Furthermore, the same firearm was used in firing the cartridge case which was found, at the scene of the shooting of Luciano Magilies. The inference which the State, correctly sought this court to draw is that the Tee family was attacked because, apart from Aaliyah, Edmund and Candice witnessed the shooting of Luciano Magilies.

TRIAL WITHIN A TRIAL:

[45] Lieutenant Colonel Michael Coenraad Grobler (Lt Col. Grobler) testified that he was 33 years in the SAPS and has been a commissioned officer for 24 years. At the time of his evidence, he was the Commander of the Provincial Organised Crime Gang Unit. He testified that on 9 July 2016 at 11h00 he took a warning statement from Accused 1 who gave his age as 21 years old. He filled in a Proforma Form for a warning statement in English even though Accused 1 was Afrikaans speaking. He translated it from English to Afrikaans and wrote the answers in Afrikaans. Having obtained the statement, he asked Accused 1 to initial and sign it where necessary.

[46] For purposes hereof, I shall not deal particularly with what is contained in the pro-forma form word for word. Lt Colonel Grobler testified that he advised Accused 1 of the charges he was facing and explained his constitutional rights. It was after he had informed Accused 1 that his powers in obtaining a statement were equivalent to those of a Magistrate. Amongst the rights explained Accused 1 indicated to him that he shall require the services of a Legal Aid attorney when the matter appeared in court. He elected to continue with the interview. Furthermore, Accused 1 told him that he was not willing to make a statement. He explained to Accused 1 that he had a right to put questions to him about the offences he was charged with. But Accused 1 had a right not to respond to those questions if he so wished. He further advised him that if he elected to answer he was going to note his answers in writing and may testify in court about them. Accused 1 answered in Afrikaans and said “Ja meneer, ek sal die vrae antwoord, ek verstaan my regte”.

[47] Lt Colonel Grobler noted than Accused 1 had a chafed mark on his head above the right eye and right wrist. He asked him how he sustained the injuries, The Accused said “Die polisie – beampte het my geslaan, toe ek arresteer is”. Accused 1 never indicated to him that he had been assaulted or forced to make a statement. He was sober at the time. Lt Colonel Grobler testified that as the Commander of his Unit, he knew the facts of the case he interviewed Accused 1 about because he inspects dockets in his unit. He was not specifically briefed about the facts and he remained as objective as he could when asking Accused 1.

[48] Under cross examination, Lt Colonel Grobler insisted that Accused 1 said he was 21 years. He denied that there was another police officer present during the interview. He stated that as proof that Accused 1 answered questions freely and voluntarily he said:

“... because you will see later that every answer he gives me leads to the next question. Now, I wouldn’t know that information unless I get it from him. So there is no such thing that he was not freely and voluntarily or under treat of assault or anything like that in my office; that is not so.” (SIC)

[49] He insisted that after questioning the Accused, he read the document back to him before he asked him to sign and initial where it was required. Having obtained a statement from him, he asked Captain Kriel to commission the statement and determine from Accused 1 whether he was satisfied with the statement.

[50] Captain Rio Bunhizer Kriel attached to the Provincial Organised Gang Unit testified that he had 28 years of service. He has been a detective for 26 years. He has been in the rank of a Captain for 23 years. He was asked to commission a statement by his colleague Lt Colonel Grobler. He enquired from Accused 1 whether he was satisfied with the questions and answers that were contained in his statement and he confirmed. He further asked if he read through the statement or it was read back to him by Lt Colonel Grobler and was satisfied with it. Accused 1 confirmed that it was read back to him. It was

the three of them in the office. Accused 1 did not inform him that he was forced to make the statement.

[51] Accused 1 testified that he was approached by Lt Colonel Grobler in the presence of Captain Kriel to make a statement. Lt Colonel Grobler asked for his age. He told him that he was 17 years old. He denied that he gave his age out to him as 21 years. He testified that Lt Colonel Grobler explained the legal rights that he enjoyed as an arrestee but did not go through the entire document with him. He further testified that he informed him that he was not willing to answer questions. But he went ahead and asked him. He showed him that he had an injury above the left eye lid, an injury around the left wrist and on the lower lip of his mouth. He testified that during the interview, Captain Kriel threatened to cut his 'tottie' meaning his penis, if he did not sign the document. In fact he said he was threatened throughout the whole process of filling in the document.

[52] It is only during cross examination of Accused 1 that the details of the threat by Captain Kriel surfaced. Accused 1 testified that Captain Kriel had a sharp iron which was approximately 40 centimetres with which he threatened to cut his penis. Lt Colonel Grobler was laughing and encouraging Captain Kriel to cut off his penis. He testified that when Captain Kriel testified, he was not aware that he is the same person who threatened him. He only recognised him when he was leaving the witness stand, hence he did not give instructions to his Counsel about this aspect. He could not explain why the detail of the threat was not put to Lt Colonel Grobler and Captain Kriel.

[53] It was put to Lt Colonel Grobler that he got Accused 1's age from the docket that was there. But under Accused 1's cross examination, he stated that he did not know where he got his age from because he did not or look at any document. He however, confirmed that the signature and initials on the statement were his. Initially, Accused 1 testified that he was threatened to sign the document. Later during cross-examination, he said he was threatened after each question to give an answer. He further testified that his pants were pulled down, he was not wearing underwear and Captain Kriel instructed him to place his penis on the table. This detail was never put to the witnesses at all.

[54] I ruled after the trial within a trial that the statement was freely and voluntarily made and therefore admissible. I undertook to furnish my reasons at this stage of the proceedings. These are now my reasons. The evidence presented by the State comes from two highly ranked Officers who collectively have 64 years of experience. Their evidence was simple and straight forward with no contradictions at all. The role played by Captain Kriel was minimal but very important. This evidence speaks for itself. I need not repeat it. The questions asked of him were shot and of a general nature. Accused 1 alleges that they were three in the office. Captain Kriel placed himself in that Office and stated that he found the Accused only with Lt Colonel Grobler.

[55] It is inconceivable in the circumstances for Advocate Coetzern, Counsel for Accused 1, who is an able legal representative, to have failed to

put the version of Accused 1 to both officers. Especially if Accused 1 was aware of the detail of the torture at the time of their testimonies. The detail of the torture is an afterthought.

[56] The detail of the version of the torture more especially the role played by the second person, should have been put to Lt Colonel Grobler. That confirms that this version of cutting Accused 1's penis by Captain Kriel is false and not even an afterthought. Continually, during trial, Accused 1 would give instructions to his Counsel. Assuming, as he alleged, recognised Captain Kriel when leaving the witness stand, nothing prevented him from bringing that to the attention of Ms Coetzern who by all means knows what she would have done in the circumstances. I reject his version that he was threatened and humiliated by Captain Kriel and Lt Colonel Grobler into making the statement. The statement was freely and voluntarily obtained from Accused 1.

[57] The relevant portion of the statement was read into the record after I had made the ruling. The essence of the statement is about the relationship between Accused 1 and the Tee family. The questioning established that Accused 1 knew Aaliyah. He grew up with her brother. They are neighbours and he used to play at her home. Edmund knew him very well. He grew up in front of him. He was at Humansdorp at the time of the death of Aaliyah at his friend's house. The questioning further dealt with Accused 1's arrest. He answered that he was arrested at a friend's place. He had been there for three days because he was hiding away from the 'army' because he got word that they wanted to arrest him. He had been moving from house to house for

two weeks. The police arrived at the house where he was with his girlfriend and fired gunshots. He was afraid. He hid under a cabinet. They searched the house and found a fire arm, magazine and a bullet proof vest. The fire arm belonged to his friend Eschol and it was found in his room. He did not use the fire arm and it was not used in the commission of an offence.

[58] Accused 1 testified in his defence. He stated that he was born on 24 November 1998 and was 17 years old at the time of his arrest. He lived at No [...] B Drive in Extension 31, Bethelsdorp and was a next door neighbour of the Tee family. He lived with his mother, stepfather and five siblings. He said that he had known Accused 2 for a period of a year at the time of his arrest. He used to spend time with him at the smart shop. He testified that he knew Candice and Edmund very well. He grew up in front of them. He regularly visited their house as he was a friend of their son. He and Zano attended the same school i.e Strelitzia. He used to fight a lot with Zano at school over child issues. He never quarrelled with Candice and Edmund.

[59] He denied in his evidence in chief that he was a member of a gang. He stated that on the 7th June 2016 he went to her mother's friend's house i.e Aunt Courtney at about 17h00. He was with Aunt Courtney and her son Zandre Caesar. During the night, his mother arrived and told them that there was a shooting at the Tee's home. She and Aunt Courtney left. He remained with Zandre until the following morning. His house is up the street from Aunt Courtney's home.

[60] Accused 1 related an incident a few weeks before Aaliyah was killed. He and Accused 2 were at the smart shop. Edmund approached them alleging that he heard that they wanted to shoot him. Accused 1 assured him that was a lie because he would never shoot him. He suspected that it is because of that rumour that Edmund and Candice accuse him of killing Aaliyah and injuring Edmund. He was not with Accused 2 on the fateful night. He denied further that he was with him in the afternoon of that day. He did not meet with the Tee family that afternoon.

[61] Accused 1 admitted that he was arrested at a friend's house. He was with his girlfriend. On arrival, he, his girlfriend and his friend, i.e owner of the house, Eddie Mazene smoked oka pipe. After a while he and his girlfriend, went to the bedroom and started kissing. While in the process, the back door was kicked open and a sound like a gunshot went off. He jumped and stood next to the dressing table. Police came into the bedroom and handcuffed him and caused him to sit on the floor next to a single bed they had been sleeping on with his girlfriend. The police started to search the room. When they lifted the single bed, they found a gun, a box with ammunition and a blue bullet proof vest. The police started to assault him by kicking and trampling him with booted feet on the face, head and body. He was arrested and taken to Bethelsdorp police station. The police never explained his legal rights. His warning statement was obtained in the manner described above in the trial within a trial. He denied that he was at the Tee's home on the night of 7 June 2016.

[62] Under cross examination it became clear that Accused No 1 was not certain what time he got to Aunt Courtney's house. His defence Counsel put to Candice that he got to Aunt Courtney's house at 21h00. He changed to say that he made a mistake by saying he arrived at Aunt Courtney's home in the afternoon. When pressed further it became apparent that he did not know what time he arrived at Aunt Connie's home. He testified that after the report Aunt Courtney and his mother went down to Candice's house. He remained at Aunt Courtney's home until the following morning as alluded.

[63] It transpired during cross examination that Accused No 1 had many tattoos on his body. Inside his right hand it was written in capital letters RBN 26 standing for Robana which he translated to mean Intsizwa in Zulu. That is a strong young man. He testified that 26 is a group of gangsters that operate in prison. He confirmed, despite that he had initially testified that he did not belong to a gang group, that he belongs to the 26 gang group. On the left hand, he was wearing a tattoo which depicted a hand carrying a money bag with dollars inside it. On the right top part of the arm, it is written two and on the left top part of the arm it is written six. At his scapular or shoulders two firearms are depicted which are pointed at each other. On his belly button it is written 'thug live'. On the side of the neck there is a depiction of two fingers with a thumb touching on both and top of that an inscription of a tattoo reading "novae". The Accused said that matched with the intsizwa sign on his arm. He testified that he had to wear the tattoo 26 so as to be protected when he is in prison.

[64] Accused No 1 was informed during cross examination that the firearm which was found in his presence was linked ballistically to the murder of Aaliyah. The accused could not comment. He found it strange that Candice, Edmund, Warrant Officer Baleni and the other witnesses, implicated him. He further found it strange that the firearm used in killing Aaliyah was found in a house in which he was. He further could not explain why the police went to the house where he was found bearing in mind that Warrant Officer Baleni testified that they went there on information that Accused 1 and 2 were in that house. Accused No 1 did not call either Zandre or Aunt Courtney to corroborate his alibi.

[65] Accused 2 testified that he was born on 3 June 1993. Initially he stayed at his mother's house in Extension 31, Bethelsdorp. He moved to his sister's house because of police harassment. He testified that on the day of the incident he was not at the Tee's home. He was at his sister's place. He arrived at her place at about 17h00. He remained in doors until the following morning. He could not leave because he was afraid of her dogs which were vicious. He would be escorted out of the house whenever the dogs were not chained. He heard that there was a shooting at Edmund's house. He went there to see for himself. He joined people who were also standing next to Edmund's house. He left after some time.

[66] Accused 2 testified that the previous day, he was wearing a blue Nike top, black Levi jeans and brown Dakota shoes. He knew Edmund as a child he would walk pass his school. Edmund knew him as well. He used to talk to

Edmund. Edmund knew him by the nickname Kwas. He also knew his son, Zano from 2007. He knew Candice. He would talk to her when he came to buy liquor from her tavern. He would see them when they drove pass him in the street. He denied that he ever met Edmund and Candice at the smart shop. He did not meet them in the afternoon of the day of the incident. He was not in the company of Accused 1 on that day. He has never been at Accused 1's house and he in turn visited his house once in their life time.

[67] Accused No. 2 denied that he was involved in Stal's murder even though he stands accused of killing him. He denied that he was a member of the Spotbouers gang. He admitted that he spoke to Edmund once when the latter approached and told him that he heard rumours that they wanted to kill him. He denied knowledge of that rumour. He testified that he did not killed Aaliyah nor shot at Edmund. He had no ill feelings towards them and would not have a reason to attack them. He had a good relationship with them. He knew of another person who was called Kwas in Extension 31 but he has since died. He stated that he was arrested in the year 2011 and released in September 2015 and therefore could not have been involved in the killing of Stal.

[68] He testified that he had tattoos on his body. NWA which is on the inside of the right hand means he is a member of the 26 gang in prison. N stands for a glass which is a higher position in the gang, the W means a wire which meant top people in the gang. In general terms it meant that he was the ranked high in the hierarchy of the 26 gangs in prison. Accused 2 has also a

tattoo RDN meaning a Robane. A Robane is a robber, so he explained. There were coins which were tattooed with the number 26 in them. He also had tattoos which depicted stars. He testified that they proved that he was a glass and a leader of those below him in rank. There were more than fifty individuals who would report to him in prison.

[69] The issue to be decided in this matter is whether Edmund and Candice correctly identified the Accused. The answer to this question is yes they did. Both Candice and Edmund know the Accused well. I have dealt with their prior knowledge of the Accused above. That aspect was confirmed by the Accused. The lights were on at the time of the incident. The room was well lit and a human eye, as testified by Warrant Officer Bekker could easily see because the room was well illuminated. According to Warrant Officer Bekker even the doorway was light. This confirms the evidence of Edmund and Candice. Edmund immediately, whilst still at the scene informed Constable Gould who in turn conveyed the message through to the control room, that it was the Accused who attacked them. Edmund, whilst still in pain in hospital identified his assailants in the video photo parade as the Accused.

[70] The Tee Family had a painful experience, especially Candice who witnessed her child die, lying in a pool of blood but still, gave credible evidence. They were credible witnesses whose evidence was never shaken through cross examination. They did not contradict each other. I have dealt with the contradictions in the evidence of Edmund above. They are not material and are expected from an injured person who was left paralyzed.

Their demeanour was impeccable. They excelled in re-living the painful events of that fateful night. The trauma they suffered did not affect their credibility and ability to clearly explain what took place in their home.

[71] The evidence of the blood splatter and reconstruction of the scene by Warrant Officer Bekker, who did an excellent job in the circumstances, corroborated the evidence of Candice regarding the position Aaliyah was when she was killed. Edmund testified that he was shot by Accused 1 while Accused 2 was standing next to him holding a firearm. The empty cartridge cases picked up by Warrant Officer Bekker from the backroom were ballistically linked to the firearm found with Accused 1 when he was arrested. The two cartridge cases which were found in the bathtub where Aaliyah was killed were fired from a different firearm to those cartridge cases found in the backroom according to the ballistic evidence of Warrant Officer Yolandi Schoeman. This confirms the evidence of Edmund that both Accused were carrying a firearm each.

[72] As alluded Edmund and Candice believed that the Accused attacked them because they had witnessed the killing of Stahl Barry. The firearm found with Accused 1 is linked ballistically to the death of Stahl Barry as shown above. The belief they harboured is confirmed by the evidence in respect of the firearm. I am of the firm view that that was the motive of the attack on the Tee family. Candice testified that she got hold of Aaliyah and they turned their backs on the Accused. As stated in paragraph 9 above, one of the Accused said “fok jou Auntie” and the other said “skiet my broer”. This to me clearly

indicates that the Accused wanted to murder Candice. Candice and Aaliyah were in close proximity to each other. Two empty cartridge cases were found in the bathroom, two bullet fragments and one bullet were found in the bathroom as stated in paragraph 27 above. It is clear to me that when the Accused left they thought they had killed everybody. Edmund also pretended to be dead when the Accused walked passed him.

[73] Consequently, I found the Accused guilty of the following offences:

- Count 1: Contravention of Section 68(1) of the South African Police Services Act 68 of 1995 i.e presenting themselves as members of the South African Police Service whilst in actual fact they were not members.
- Count 2: Attempted Housebreaking with intent to commit murder.
- Count 3: Attempted murder of Edmund Tee
- Count 4: Housebreaking with intent to commit murder.
- Count 5: Murder
- Count 6: Attempted murder of Candice Tee.
- Count 7: Accused 1 is found guilty and Accused 2 not guilty and discharged
- Count 8: Accused 1 is found guilty and Accused 2 is found not guilty

[74] The Accused are facing one count of attempted housebreaking. I am not in a position to find that the State moved its case beyond reasonable doubt in this respect of the front door. Both Edmund and Candice testified

they heard a hard knock at the front door. The door was never broken nor an attempt to force it open. In respect of the back door. There was housebreaking. Accused forced their entry into the house by pushing the door open while Edmund was resisting. The State has proved housebreaking in respect of the backdoor.

M MAKAULA
JUDGE OF THE HIGH COURT

Counsel for the State:	Adv Sandan & Adv Landman Director of Public Prosecutions Port Elizabeth
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For Accused 1:	Adv J Coertzen Legal Aid Port Elizabeth
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For Accused 2: Instructed by:	Mr J Riley Legal Aid Port Elizabeth
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Conviction Delivered:	19 June 2018
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