



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape High Court, Kimberley)**

CASE NO: **CA&R 31/2016**
DATE HEARD: **06/06/2016**
DATE DELIVERED: **10/06/2016**

In the matter between:

MARTIN WILLIAMS

Appellant

and

THE STATE

Respondent

Coram: Olivier J et Murray AJ

JUDGMENT

Olivier J

- [1.] The half-clothed body of the deceased, the 23 year old Mr Adam Van Wyk, was found in a street in the dark of the night of 14 to 15 March 2008. At a later post-mortem examination the cause of death was found to be multiple stab wounds to the chest of the deceased. The appellant was arrested the next day. He later appeared in the Regional Court on charges of the robbery (with

aggravating circumstances) of an unknown amount of money from the deceased (count 1) and murder (count 2). He pleaded not guilty to both counts and exercised his right to remain silent. At the end of a protracted trial the appellant was convicted on the charge of murder. He was acquitted on the charge of robbery, on the basis that he was given the benefit of the doubt that the deceased may, despite having received his salary earlier that day, not have had money in his possession at the time of the attack on him. The Regional Magistrate found that there were no substantial and compelling circumstances which would justify a lesser sentence for the murder and imposed the prescribed sentence of 15 years imprisonment.

- [2.] The Regional Magistrate subsequently granted the appellant leave to appeal in respect of both the conviction and the sentence. It is not clear from the relevant judgment on what basis the Regional Magistrate decided that there would be reasonable prospects of success with such an appeal. Reference was made, by the Regional Magistrate, to submissions in heads of argument of the appellant's attorney at the time, but this does not form part of the record.
- [3.] Adv. Nel of Legal-Aid South Africa, in the best tradition of his profession, conceded that the Regional Magistrate had correctly accepted the evidence and version of the State witnesses, and rejected that of the appellant. Mr Nel is to be commended for this. The concession was properly motivated in his heads of argument, in a manner indicative of a thorough analysis of the record and the evidence and of an appreciation of the holistic approach which has to be adopted in the evaluation of evidence in a criminal trial like this.
- [4.] In cross-examination of the state witnesses it was initially merely denied that the appellant had been present when the deceased was attacked and killed. It was only after the closure of the state case that counsel who initially represented him was replaced and an alibi defence was raised.

- [5.] Mr Nel therefore restricted his argument, as far as the conviction is concerned, to the inference drawn by the Magistrate that the fatal wounds were inflicted by the appellant.
- [6.] On this basis it can, for purposes of the appeal and for consideration of Mr Nel's argument, be accepted that the deceased had walked down the street that particular night, and that the appellant had followed him. The witnesses Kock and Eland were at that stage sitting in a stationary vehicle in that street. When the deceased noticed the appellant following him he picked up his pace, but so did the appellant. The appellant caught up with the deceased and caused him to fall. The deceased then got up and ran away, with the appellant in pursuit. At that stage nobody else was present in the street. The two of them disappeared around the corner in the street, running down another street. The witnesses Kok and Eland tried to follow them, but experienced trouble to get their vehicle started. When they eventually arrived at the corner they were unable to see the deceased or the appellant.
- [7.] The body of the deceased was discovered not long thereafter, lying in the street down which he and the appellant had disappeared.
- [8.] In **S v Cwele and Another**¹ the approach to be followed in assessing circumstantial evidence was reaffirmed in paragraph [19]:

"In assessing circumstantial evidence one needs to be careful not to approach such evidence upon a piecemeal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by an accused is true. The evidence needs to be considered in

¹ 2013 (1) SACR 478 (SCA)

its totality. It is only then that one can apply the oft-quoted dictum in R v Blom 1939 AD 188 at 202-3, where reference is made to two cardinal rules of logic which cannot be ignored. These are, firstly, that the inference sought to be drawn must be consistent with all the proved facts and, secondly, the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn.'

The state must therefore satisfy the court, 'not that each separate fact is inconsistent with the innocence of the [appellants], but that the evidence as a whole is beyond reasonable doubt inconsistent with such evidence'".

- [9.] This does not, however, mean that fanciful and speculative inferences will have to be excluded before an inference can be drawn beyond reasonable doubt.

"The fact that a number of inferences can be drawn from a certain fact, taken in isolation, does not mean that in every case the State, in order to discharge the onus which rests upon it, is obliged, ... 'to indulge in conjecture and find an answer to every possible inference which ingenuity may suggest any more than the Court is called on to seek speculative explanations for conduct which on the face of it is incriminating'".²

² S v Dos Santos and Another 2010 (2) SACR 382 (SCA) para [34]

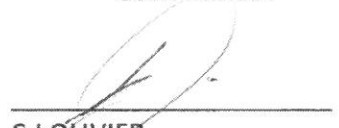
- [10.] The approach which a court of appeal will follow in respect of a trial court's factual findings is trite. They will not readily be interfered with, and indeed only where the record shows such findings to be clearly wrong³.
- [11.] In my view there is no basis at all for interfering with the inference drawn by the Regional Magistrate, namely that the appellant was the person who had attacked and killed the deceased. The appellant's version, and his belated alibi defence, was clearly false and Mr Nel wisely did not argue that the Regional Magistrate had erred in rejecting it as such. The appellant had the opportunity to play open cards about what had transpired between him and the deceased after they had disappeared around the corner and down the street where the body of the deceased was subsequently discovered. That information would have been within the peculiar knowledge of the appellant and, once his false version had been rejected, he had not been entitled to speculation in his favour⁴.
- [12.] The appellant had various relevant previous convictions. He had previously on no less than three occasions been convicted of assault with intent to commit grievous bodily harm, and also once on a charge of robbery. He had been out on parole, after having served sentences of 5 years imprisonment and 3 years imprisonment in respect of convictions of robbery and assault with intent to commit grievous bodily harm, when he committed the present crime.
- [13.] The attack on the deceased was brutal. No less than 8 stab wounds were inflicted on a person who was heavily under the influence of alcohol, to such an extent that he was staggering. The deceased therefore clearly posed an easy target. The attack was completely unprovoked and when the deceased tried to run away the appellant relentlessly followed him and stabbed him to death.

³ Compare *S v Monyane and Others* 2008 (1) SACR 543 (SCA) para [15]; *S v Kekana* 2013 (1) SACR 101 (SCA) para [8]

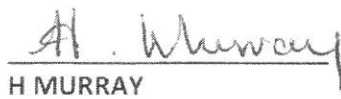
⁴ Compare *S v Mkhize* 1999 (2) SACR 632 (W)

- [14.] The Regional Magistrate accepted that the appellant had consumed alcohol, but because of his false denial of involvement there was no evidence on his part of what role that may have played in the crime. The Regional Magistrate concluded that, in the circumstances, an appropriate sentence would indeed have been imprisonment for a period of 18 years, but because of the fact that the appellant had spent in 2 years and 6 months in custody awaiting trial, imposed only the prescribed sentence of 15 years imprisonment.
- [15.] Mr Nel, once again responsibly and correctly, conceded that he could not point out any misdirection committed by the Regional Magistrate in assessing whether there were substantial and compelling circumstances which would justify a lesser sentence⁵.
- [16.] In my view the appeal should in respect of both the conviction and the sentence be dismissed and the following order is therefore made:

**THE APPEAL IS DISMISSED AND THE CONVICTION AND SENTENCE ARE
CONFIRMED.**


C J OLIVIER
JUDGE
NORTHERN CAPE DIVISION

I concur.


H MURRAY
ACTING JUDGE
NORTHERN CAPE DIVISION

⁵ Compare *S v PB* 2013 (2) SACR 533 (SCA) para [20]

For the Appellant: Adv. V.Z. Nel
(Legal-Aid, Kimberley, Northern Cape)

For the Respondent: Adv N.A. Mxabo
(Office of the Director of Public Prosecutions, Northern Cape)