

Verslagwaardig:	JA/NEE
Sirkuleer onder Regters:	JA/NEE
Sirkuleer onder Landdroste:	JA/NEE

**IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA
IN THE HIGH COURT OF SOUTH AFRICA
(Noord-Kaapse Afdeling / Northern Cape Division)**

Case Nr: K/S 50/03

In the case between:

THE STATE

And

CHRISTO BRIAN FORTUNE

JUDGMENT

TLALETSI, AJ:

INTRODUCTION

1. Mr Fortune is arraigned before this Court on 31 (Thirty One) Charges. I will not repeat the allegations contained in these charges. Suffice it to summarize them as follows:

- a) Assault with intend to cause grievous bodily harm – 1 count.
- b) Robbery with aggravating circumstances as defined in Section 1 of Act 51 of 1977 – 4 counts.
- c) Contravention of Sec 32(1)(a) of Act 75 of 1969 – unlawful

possession of machine firearm, R5 rifle – 1 count.

d) Contravention of Sec 2 of Act 75 of 1969 unlawful

possession firearms (9 mm P 38 and 9 mm Z88) - 2 counts.

e) Contravention of Sec 36 of Act 75 of 1969 – 1 count.

f) Contravention of Sec 39(1)(i) of Act 75 of 1969 (Pointing of firearm) – 1 count.

g) Contravention of Section 32(1)(e) of Act 75 of 1969 – 1 count.

h) Attempted Murder – 17 counts

i) Murder – 4 counts

2. *To all these charges Mr Fortune pleaded not guilty. He is assisted by Mr Schreuder. Exhibit 'A' is a written plea explanation signed by him. The basis of his defence is that as a result of an incident with his wife on the day of the incident, he lost total control over himself and cannot recall what he commenced (aangevang). He had no intention or aim to kill, injure or cause any damage. This statement is dated*

14th August 2003.

3. Inspector Shaun Vivian Graham Jacobs is a police officer stationed at Kuruman in the Criminal Record Centre. He is a trained official photographer. He has been in the police service for 12 years and for 3 years in the Record Centre. After attending the scene at Postmasburg where he took photographs he compiled photo albums which have been useful to this court by revealing the scene and proper understanding of the area.

Exhibit 'B' is Aerial photographs of Postmasburg area with the following points marked on this album.

- Point 1 - SAPS Postmasburg
- Point 2 - Toms Café
- Point 3 - Postmasburg Tavern
- Point 4 - Postmasburg Liquor Store and Shone Street
- Point 5 - Score Supermarket
- Point 6 - Schoeman Motors premises
- Point 7 - Station Road, Newtown
- Point 8 - Place where the accused was arrested.

I will revert back to these points in more details at a later stage as the evidence progresses.

AT HOME

4. Francis Claudine Fortune is Mr Fortune's wife. They have been married for about 5½ years and they have two children, a girl

aged 7 and a boy aged 4 years. She is a police officer stationed at Postmasburg Police Station. Her evidence against her husband is only admissible in so far as it relate to the charge in which she is the complainant which is assault her with intend to cause grievous bodily harm.

5. *On the 1st July 2002 in the afternoon, the accused found his wife at home with their children. According to her he was not himself; or did not appear as usual. He had an expression on his face. A quarrel ensued and the accused assaulted her with open hands. She ran to the bedroom and pinned her on the bed. He strangled her. She managed to escape and went to the street. After some 10 – 15 minutes he came and attacked her with a knife threatening to kill her. Her finger was injured by the knife. He locked himself in the house. She phoned for help. Her grandfather Paul Molaole and her uncle, Nico Koopman came. They were present when she packed her clothes as well as the children as the accused quietly sat on the bed.*

6. She sustained the following injuries: Swollen and blue cheek, broken lip, cut wound on the finger, and scratch marks on the neck. These injuries are consistent with the manner in which she described the assault. Rev Koopman who is also a lecturer at Stellenbosch University in theology confirms his presence at the Fortune's residence. He stated that they found Mrs Fortune together with the children. He knocked for some time and the accused ultimately opened the door. He was holding his cheek as if he was injured. The accused and his wife were angry and he calmed them down. The grandfather spoke strongly with the accused for having injured his wife and causing the children to stay outside in the cold. Rev Koopman agreed with the accused to meet the following day to try and resolve their differences.
7. Mrs Fortune and the children left with Rev Koopman and the grandfather. As she was supposed to report for duty that afternoon, she tried to phone the Police Station to report her condition which made it impossible for her to go to work. Later

she received a call from her husband on her cellphone. She gave the phone to Rev Koopman at the request of the accused. According to Rev Koopman the accused told him that he has killed 20 people and he has 8 bullets left with which he is going to blast his brains. He pleaded with him not to do it and wait for their appointment the following day. The accused told him that it is already late and nobody want to listen to him. The accused phoned twice and on both occasions he spoke to him. It was put to him that the accused will deny ever speaking to Rev Koopman on the phone. Mrs Fortune identified the steak knife which her husband had as being similar to a knife in Exhibit B2 photo 34 – It is a sharp knife with a black handle.

8. The accused is a former police officer and was stationed at Upington and later at Postmasburg. He has been unemployed for almost 2½ years. During their marriage he never showed any emotions or mental blackout. On this day her husband was smelling of alcohol – He was not very drunk. He appeared angry. She conceded to what Mr Schreuder on behalf of the accused put to her that her husband made attempts to secure

employment at various places without any success. This affected him adversely. He was depressed. He was once treated in Bloemfontein by a psychologist for depression. This was before he lost his employment as a police officer. According to her the cause of the depression could have been work pressure like many police officers including herself. He liked his job as a police officer.

9. He is a reserved person and would not open up easily when he had problems. Her husband accused her of an extra marital affair with one Jacques Brandt which she refuted. It is not necessary to make any finding in this regard. On this day there was a stage in which she was in the company of this man and it is possible that her husband could have seen them together. She says he gave her a lift to a hairdresser. She says ever since her husband was unemployed he felt very insecured with her. He feared that Jacques Brandt was taking her away from him. Mr Fortune liked his children and spent some time with them.

10. It was further put to her that according to Mr Fortune he was drunk and extremely angry because of Brand, and he burst. She confirmed that she remarked that she is going to consult a lawyer the following day to institute divorce proceedings. This was after the assault. This aspect is confirmed by Rev Koopman.
11. It was further put to her that all what the accused remembers is that that evening he phoned her on the cellphone and told her that his clothes were full of blood and he does not know how. She disputed this aspect. She says the accused asked her if she heard what he did, and demanded to speak to Mr Koopman as that was the reason for his call.

This is the evidence which was not disputed in cross examination regarding count 1. No version regarding the assault came from the accused.

THE DE WEE INCIDENT

12. Rosina De Wee is the complainant in count 7. Her evidence is similar to that of her husband Mr Willem De Wee. They were

from Kimberley traveling in a white Bantam bakkie. They loaded two soldiers whom they gave a lift. The bakkie stopped next to the bar and Mr De Wee alighted to attend to the passengers (soldiers), 3 children passed them running and got into a building and closed the door. Then the accused followed and uttered some words which meant that he is not taken seriously. He lifted a rifle and fired at their direction. Himself and the two soldiers took cover. They fled unharmed as he fired at the motor vehicle. Mrs De Wee was in the van sitting at the passenger seat when the shots were fired. One of the bullets struck the windscreen, dash board and went through the passenger door. A bullet tore Mrs De Wee's jacket which is valued in the region of R300,00 – R400,00. The van is the same as the one in Exhibit B4, photo 12. It is shown at the spot they parked it on arrival. The jacket is on photo 13 of B4. She confirmed the tear on the jacket. She did not sustain any injuries. Mr De Wee further testified that at the time when the accused fired the shots he was positioned at point CM on photo 11. Mr de Wee had just alighted from the van and was next to the driver's door which was open.

13. Photos 13 and 14 of Exhibit B 4 show a fawn or beige coat with a belt. It has an open cut or tear at the back almost right in the middle. It is the tear which the witnesses allege was caused by a bullet fired by the accused. On photo 12 there is a Ford Bantam, BHB 480 NC. At the windscreen on the right front portion is a mark. According to Mr De Wee the damages to this van amount to R6 756,04. He handed in a quotation from Voorspoed Panelbeaters dated 4/7/2002 as Exhibit 'C1' and the invoice in the amount of R750,00. The repairs quoted for are for the windscreen, dashboard and crash pad.
14. Mr De Wee cannot say if the accused was drunk or not. He knew him as a police officer but was not used to him. He did not appear relaxed or normal. He looked wild unlike the day when he testified and the accused sitting in Court.

AT POSTMASBURG POLICE STATION

15. That is the evidence with regard to count 7. The State's version

that the accused attempted to kill Rosina de Wee by shooting her with a firearm remain unassailed.

Sergeant Collen Charles Marius Lock testified with regard to counts 2, 3, 4, 5 and 6. He is 10 years in the police service and stationed at Potmasburg. On the 1st July 2002 he was at the police station in the office shown in Exhibit B1 photo 1. He was sitting at a chair at point EI. He heard somebody entering through the wooden door shown on the photo. When he looked back, he saw the accused. He greeted him. He was at point EJ which is between him and the steel safe at point EK. Sergeant Lock was busy working on the registers of the firearms as he was to hand over to the next shift that was to take over at 7 pm.

16. The accused drew a black handled steak knife and made an advance to stab him. He pushed the seat in which he was sitting backward in a bid to duck the stab. The seat has wheels. He jumped towards the wall. The accused pushed him

against the wall and advanced to stab him again. He ducked and fell against the wall. The accused dashed to the save and took out a pistol as well as the magazine. Sergeant Lock escaped through the wooden door and went to the Charge Office. He saw the accused through an opening between the Charge Office and that office, which had some iron bars. He saw him take more weapons from the save. He then looked around for the shift which was to take over in a bid to warn them about the accused. He could not find anybody. He met a colleague, Sessie Molele in her motor vehicle at the street. She is a member of the Criminal Investigation Division (CID). They traveled together to the CID offices where they met Captain Witbooi and made a report to him.

17. They drove back to the Charge Office. On the way they heard shots being fired but could not identify the place from which they were fired. They did not find the accused where he left him. They armed themselves and called for reinforcement of other members to conduct a search for the accused.

18. The accused was known to him as they worked together at Postmasburg. He could not notice anything wrong on his face or even a smell of alcohol. According to him the accused as an ex-policeman should have known that at that time it was shift change time and also that he stayed close to the Police Station with a gate in between the two yards.

19. They received information that he was traveling in a (white) golf and they looked for it without success. Later they heard that he was now traveling in a Jetta. As they feared that the accused might harm his wife, they went to her parental place to shift her to a secure and safe place. As they were in the company of the wife, her cellphone rang. They discovered that it was the accused and traced the numbers he called from to Beeshoek area. The search then moved to Beeshoek. The reinforcements had increased at this stage. Upon arrival at the entrance of Beeshoek mine they tried to block all the entrances to prevent any escape.

20. *They spotted a Toyota Corolla they learnt he was traveling on. As it drove past them they stopped it. Sergeant Lock was with his colleague, Inspector Pogisho Diphoko. He stopped about 9 metres towards them. Sergeant Lock went out through the left door of the motor vehicle. The accused then drove past them and stopped at point 8 (ii) of Exhibit B on photo 8. They stopped at point 8 (iii). The accused went out of the motor vehicle and ran towards the wall (precast wall) and jumped*

over. Shots were fired at his direction by Sergeant Lock about 2 – 3 shots with an R5. He then jumped back and screamed that “he is Christo”. Inspector King and John Boucher arrived and lit him with their motor vehicle’s headlamps. Inspector King instructed him to lie on the ground. He complied. He was searched and arrested. Both Inspector Diphoko and Mr Boucher confirm the place of the arrest and the shots that were fired. There is however a contradiction between the two as to who actually caused and effected the heroic arrest. The contradiction is immaterial as the arrest is not in dispute. I am not called upon to decide who should receive a reward, if any.

21. *The Head of Logistics, Ms Hansen, at Postmasburg Police Station testified. She checked the registers and the save on the 2nd July 2002. She discovered that the records and the inventory as at the morning of the 1st July 2002 reconciled. However the records after the incident of the 1st July 2002 did not reconcile. She discovered the following items missing:*

1. 1 X R5 Rifle serial no 348167,
2. 9 mm Parabellum P38 with serial number 431183,
3. 9 mm Parabellum Z88, serial no Q100881,
4. 2 X R5 magazine with 60 rounds.
5. P38 magazine with 8 rounds
6. 3 X Z88 magazine with 38 rounds.

These items are the same as those listed in count 2 in the Chargesheet. There is no evidence tendered to dispute these allegations as a result of her evidence as corroborated by Sergeant Lock remain uncontroverted.

THE RED GOLF INCIDENT

22. Sabel Pauline Esau, Hendrich Horatio Bessies and Dirk Khuduga Mocwane know the accused very well. The former two were in his company at Vliegveld where they all enjoyed some liquor on the previous Saturday. They never quarreled or had problems.

23. On Monday, Mr Esau gave Messrs Bessies and Mocwane a lift

to town. He met them on his way to town. Mr Bessies sat on the front passenger seat and Mocwane at the rear seat of the red Golf. Mr Bessies was to be offloaded next to the Bar. As they approached the accused emerged from a corner and fired shots at their motor vehicle. The driver had no time to switch the engine off. He got out of the motor vehicle and fled to the direction of the Police Station. Mr Mocwane who is a police officer at Postmasburg also fled from the motor vehicle after having hid himself for cover next to the rear wheel. Mr Bessies took cover beneath the dashboard as the shots were being fired.

24. The firing stopped and he saw the accused next to the motor vehicle. Bessies opened the door and stood between the motor vehicle and the open door. He saw the accused having an R5 rifle and a pistol in his hands. He pressed the pistol against his head on the side and ordered him to leave. He later pleaded with him to take the motor vehicle and leave. He was frightened and helpless. The accused left him, got into the car and drove off as Bessies ran away.

25. This incident took place at Exhibit B point no 1. Exhibit B 6 photo 1 shows the Red Golf. Photos 12, 13, 14 show bullet marks on the motor vehicle. They were on the bonnet as well

as the front passenger door. They were all fired when Bessies was still in the motor vehicle. No shots were fired after Bessies alighted from the motor vehicle.

26. According to all these three witnesses the accused looked normal and not drunk. At least Bessies observed him when he was close to him when he pressed the firearm against his head. Shirley Vorster in her evidence also made mention of the accused firing shots at the Red Golf belonging to Sabel Esau. This evidence reveal that the accused robbed this motor vehicle using the firearms which were in his possession.

5 STER TAKE AWAYS AND CAFÉ

27. Mr Andries Jacobus Burger is a victim in count 29. He is the owner of the Motel at Postmaburg. At about 6.45 pm he was at 5 Ster Take Aways and Café when he heard a gunshot. He then ordered his staff to close the Café and the Bottle Store and informed the police about what he heard. He went outside and stood next to the wall on the side of the Café on photo 6 of

Exhibit B6. Photo 11 shows the scene or area of 5 Ster Take Aways and Café and Andrisha Liquor Store. He was standing at point CH. He saw the petrol attendant pass followed by a person. This person left the petrol attendant and pointed a firearm at him. He ordered him to get out from where he was hiding. It looked like an R4 rifle. He obeyed the instruction. He ordered him to get into a motor vehicle which was parked at point DG next to the Bottlestore on photo 11. A person came walking along the street and the accused went to him and spoke to him. Mr Burger then drove away to the Police Station. As it was dark he could not identify this person.

28. From the Police Station he phoned his staff to lock the business. The shot he heard was at the filling station which is 40 – 50 m away from the Motel. This person held him by his jacket and pointed him with the firearm. He did not smell any liquor from him. It was a (red) Hilux Bakkie which had just parked there. He did not know the owner of the motorvehicle. This is the evidence relating to count 29 being pointing the complainant with an R5-automatic rifle. There is no evidence that contradict or discredit the witness.

THE REINECKE FAMILY INCIDENT

29. Mr Diederick Johannes Reinecke and Mrs Reinecke testified as victims in count 8. Mr Reinecke is the owner of S M

Construction, and on this day he traveled with his wife in a van to a function which was to start at 7 pm at the Hotel. They stopped at a 4 way stop shown on Exhibit B, photo 3 at point H. They saw a person next to the Bottle store on their opposite side having a firearm in his hand. He was next to a white small van having a canopy. As their Van entered the 4 way intersection, the person looked at them and pointed a finger at them. With the right hand he raised a firearm and fired 3 shots at them. Mr Reinecke pinned his wife downwards and fled. He stopped next to the Hotel. They discovered a bullet mark on the left side of the van. He identified the van and place where he stopped at Exhibit B4 photo 15. The shot is shown on photo 16 and the repairs would cost about R800,00. He is corroborated by his wife on these events. They were in the van when the shots were fired.

TOMS Café

30. Inspector Ben Phete is a police officer stationed at Postmasburg in the Criminal Investigation Division. On this day he was in the company of his wife driving a motor vehicle from

the telephone booths next to the road. As he drove slowly next to Toms Café, he saw the accused walk past a metallic blue Mazda motor vehicle bearing GP registration number plates. He noticed that it was the accused and was having a rifle in his hand. The accused entered Toms Café. Inspector Phete heard two shot being fired inside the Café. He saw him again emerging from that place and firing shots and ran to the western direction. He informed inspector Trevor Olivier.

31. His evidence joins in with that of Mr Abednego Bear who is a victim in count 11 as well as other witnesses who testified about the events at Toms Café. The accused did not appear drunk to him. He was normal.
32. Inside Toms Café Betta Barends saw the accused who is known to her enter the shop and stood next to the cool drink refrigerators. She noticed the two firearms, one small and one big. She then called her colleague Shirly Vorster who was in the kitchen to come and see. She came, looked at the accused and went back to the kitchen. The accused demanded a cool

drink and Mrs Dauth, the owner, told him he can have it. He took a cool drink from the fridge and placed it on the counter. She called Ms Vorster again from the kitchen and she came. The accused then fired two shots on the floor. They then fled to the back at the kitchen. Those who fled were Ms Barends, Vorster and two black persons who were in the shop. It is not clear whether any shot was fired directly at them. As they were out at the back they heard Mrs Dauth scream that he shot her. She came running to them and they assisted her. According to Mr Barends she was holding her left upper arm towards the shoulder and it was bleeding. She send her for a handbag which she went to fetch at the counter after the firing of bullets had stopped. They switched off the lights and later when they discovered that the accused had left, they switched the light on.

33. Ms Barends says that Mr Dauth was lying behind the counter. Dr Calitz was called and attended to Mrs Dauth. According to Ms Vorster she noticed a pistol that the accused possessed on top of the counter. She says then Sabel Esau (Lux) came with a red Golf motor vehicle and Mr Fortune fired at the red Golf.

The owner of the shop Mrs Niemand came at a later stage. She knows accused very well as he married his cousin. The witness pointed at points in Exhibit B2 photo 2 where the accused was standing when the shots were fired. The firearm she saw on the counter is the same as the one on photo 32 of Exhibit B2.

34. Mrs Catharina Dauth who is the victim in count 12 corroborated Betta Barends and Shirley Vorster about the events at Toms Café. She knows the accused well as an ex-police officer who worked with their son Francois when he was a police reservist at Postmasburg. They evenly regarded him almost as a family friend. He was a friendly and pleasant person. Her husband wanted to close the door but it was too late as the accused managed to enter the Café. There were other people inside the shop. He put a firearm against his head but did not fire any shot as it was apparently empty according to her. Her husband tried to calm the people inside the shop. He at some stage lifted a telephone behind the counter in a bid to call the police. The accused shot him with the handgun as the telephone was

on his ear and hand. He fell behind the counter with his hand on his face. The accused demanded a cold drink in a rude manner. Mrs Dauth told him that he can have it. He took and drank one lemon twist soft drink and poured Mr Dauth on his head and face. He thereafter took what she called an automatic firearm and fired at random. He also leaned over the counter and shot her husband at close range.

35. As she was crawling past other people hiding behind the counter and moving past the sandwich stand the accused shot her on her right shoulder. He later left and was assisted by her colleagues and Dr Calitz and was ultimately taken to hospital.
36. Her hand was injured and even today she is right handed but cannot use this hand as she cannot lift it. She is still receiving medical treatment. This incident has traumatized her.
37. Mr John Boucher who is a police reservist confirms that when he entered Toms Café he saw Mr Dauth lying face down behind the counter. He also saw Mrs Dauth in the kitchen injured and

bleeding according to him he instructed the ladies who were assisting her to block the wound on the shoulder with her hand so that she should not bleed profusely.

38. Mr Abednigo Bear is a victim in count 11. He is a resident of Newtown, Postmasburg. On this day after buying his groceries at Score Supermarket he went to Tom's Café to buy sugar which was not available at Score Supermarket. After receiving the packet of sugar from the attendant, his foot was about 20 cm from the door, he heard a loud bang close by. He tried look around but fell outside the shop at point 'B' of Exhibit B2 photo 1. The bullet struck him whilst inside Toms Café. His groceries also fell from him. He then noticed a person standing next to him with a rifle pointed at him whilst lying on the ground. He was operating it and it made two roaring sounds as if it was empty. He identified the rifle as similar to Exhibit 4. He regained his consciousness and fled. He ultimately went to the hospital. His right upper arm was injured and described what he called an entry and an exit wounds. He is presently healed as he can use the hand, though at times he experience some

difficulties.

39. Although he did not know his assailant he saw him the same night when he was standing next to him with the rifle. The other witness who came to Toms Caffé after the shooting is Inspector Pogisho Diphoko. According to him inside the shop behind the counter he saw a white man shot, and also heard a woman crying in the kitchen. As he entered the kitchen he noticed that it was Francois Dauth's mother. He also noticed a 9 mm pistol and a knife with a black handle on the counter.

40. Exhibit D12 is a Medical Report by Dr J Veldsman on the 7/7/2002. It shows that Catharina Dauth had a shotwound on the right shoulder. There is no exit wound. The entry wound is on her back. The evidence is consistent with the injury.

Exhibit D2 is a report by the District Surgeon Dr G A Isaacs.

On the 5th July 2002 he examined the body of Francois Arnolds Dauth, victim in count 14. According to the district surgeon he discovered the following:

- a) Gunshot wound through the head with destruction of the right hemisphere and midbrain.
- b) Gunshot wound through the left hand.

- c) Gunshot wound through the left thigh with compound fracture femur.

The cause of death according to the doctor's findings is severe brain damage due to gunshot wound to the head.

SCORE SUPERMARKET

41. On the same evening Mr Erico Tofarides a salesman from Germiston was standing outside Score Supermarket with Mr Alfred Suren Johanssen, who was the store manager at Score at the time. They were busy smoking when they heard sounds of gunfire in the vicinity of Toms Café. They saw people running to different directions and screaming. In that commotion they noticed a man having a rifle in his hand firing shots and walking towards their direction. Shots were fired on air and at different directions.
42. As people ran towards their direction they went into the store and Mr Johanssen closed the doors. People kept on coming and entered the store. The manager closed the door at least two to three times after being opened by people who were

desperate for cover. The gun man forced the door open and entered the store. He started firing inside the store from the door and moved inside. One of the shots struck a telephone instrument on the pulpit which is about 1½ m high and used as an office. As it sparked fire it became clear to those who were in doubt that these were not blanks but live ammunition. Mr Johanssen hid himself at the office which is on the upper level of the store.

43. Mr Tofarides together with Mr Johannes Botha, an employee at Score supermarket took cover at fruit and vegetables stand inside the shop. This area is shown in Exhibit B5 photos 5, 9, 14 and 15. The gunman walked towards this area. The man noticed them and walked towards them. According to Mr Tofarides he stood up and raised his hands and requested the gunman to take it easy and talk. He then turned the rifle towards him. Seeing that he was serious he dived behind the fruit and vegetable shelves as the man fired two shots at him. He felt the bullets moving over his head. The gunman then turned and moved towards the other side of the store. There is

a bullet mark shown on photos 14 and 15 of Exhibit B5. The mark is on the refrigerators containing vegetables.

44. Messrs Tofarides and Botha and a third person moved towards the back of the long vegetable refrigerator and took cover there. A shot was fired towards their direction. He crawled down the passage. They heard something falling which they believed to be an empty magazine. They reached the butchery section of the store where they hid themselves inside the cooling room with cacauses.
45. On the other section of the store, Mr Joshua Monyamani, who is an employee of Score supermarket, was busy with his duties at the bakery when the gunman entered the store and fired shots. He recognized this man as Fortune who was a friendly police officer who once arrested him for drunkenness. He saw him pull the magazine off his firearm and refilled it. It was a big gun which is foldable. The man started to fire at all directions. He then started to move to his direction. As he was 15 – 20 paces Mr Monyamani ran into the bread oven and hid himself

therein and closed the oven door. When he got inside the oven the gunman was not shooting. He spent about 15 minutes in that unpleasant heat of the oven. He went out when it was quiet. He saw the gunman walk out of the shop. He saw the man having a big gun as well as a small gun. He then informed other people that he is gone and people who were in the butchery cooling room got out after making sure that it was an employee who called them out and not a trap.

46. No one was shot inside the store. To these four witnesses, i.e. Tofarides, Johanssen, Monyamani and Botha, the accused did not appear drunk, he appeared normal but angry. Mr Erico Tofarides is the complainant in count 10, Mr Johannes Botha is the complainant in count 9. Both Messrs Monyamani and Johanssen are not complainants.

47. Mr John Boucher in his testimony saw Mr Fortune heading towards Score Supermarket having a pistol and a rifle which could either be an R4 or R5 in his hands firing shots. He saw him enter Score Supermarket. He also saw him leaving Score

Supermarket. He further saw a white lady coming out of Score Supermarket holding her leg. The identity of this woman has not been revealed to this Court as well as the circumstances relating to her injury if any. Inspector Edward Vertuin discovered 9 empty cartridges at Score Supermarket.

POSTMASBURG TAVERN

48. Martin Visser, a 21 year old man is a victim in count 18. On this day he was sent to town to draw some money. As he was walking along the street he heard gunshot sounds. He saw a person with one big gun and two small guns. He turned to the direction of Score Supermarket. He looked at this person approaching him. He then fired a shot that struck him on his right shoulder. He fell. He stood up and ran into the tavern.

49. This person also entered the tavern. The man shot him on his left arm and the bullet went through up to his stomach. He then lost his consciousness and only saw himself at the hospital. The two small guns were on his waist submerged from the

trouser and the big gun in his two hands. He did not know the person at the time. He pointed him in Court. He received medical treatment at Kimberley Hospital. He was admitted for 27 days, discharged and attended the dressing of his wounds for 2 weeks at Postmasburg Hospital. He was operated on the stomach and he experience pains at times on the operated area and the wound.

50. *Exhibit D10 is a form J88 or Medico-legal examination report completed by a Medical Practioner named Cesar Carees Ramon on the 1st July 2002 at 23h50. The person examined is Martin Visser whose clothes had blood spots. He had wounds on his shoulder, abdomen and forearm. They are gun shots which are life threatening without medical attention, according to the doctor. His mental health and emotional status is described as shocked.*
51. Mr Tembuxolo Cedric Mdokwe was in the company of his friend Bruce Bosman. He stood at the door of the tavern. Mr Bosman

had entered the Tavern to buy cigarettes at the counter. As he stood there he saw a man who appeared to be fighting with a woman at Toms Café area. The woman ran away from him towards the telephone's area. The person came towards the tavern having a big gun shooting at random. Mr Mdokwe ran inside the tavern to warn his friend about this person and for them to leave. His friend did not take him serious. He was sharing the cigarette with other people. Someone took him serious and ran out. He also made an attempt to run out but only to find out that he was late as the gunman was now close to the tavern. He warned Mr Bosman to go for cover and he himself took cover behind a pillar inside the tavern. A few seconds later a person fired shots into the tavern from the door. The many people who were inside the tavern ran around screaming and looking for cover. The shooting inside the tavern stopped. He heard shots being fired outside.

52. He discovered Bruce Bosman, also known as Taxi on top of a pile of people bleeding profusely. He shook him but did not respond. He then left him and jumped out of the building

through a toilet window. There was a high wall and where he was he did not feel safe. He then ascended the wall and hid himself at the roof of the Tavern building. He was joined by somebody at the roof. The police came and cordoned the place. Fearing to jump down the front of the building as he ran the risk of breaking his legs or being mistaken for the gunman and be shot by the police, he returned into the tavern the way he went out. He injured his leg in the process of ascending the wall.

53. He knew the accused as a good and friendly person and earlier that day the accused was at his caravan where he invited him for a braai meat. The accused and someone else were drinking two 375 ml bottles of Richelieu brandy, two halves in local parlance.

Phenyo Bruce Bosman's body was seen by the District

Surgeon on the 5th July 2002 at 09h30. According to Exhibit

D4 he had died 97.9 hours prior to the examination. The body

had:

i) Gunshot wound through right buttock

ii) *Gunshot wound left lower back, deflected of 3rd lumbar vertebra, through the mesentery of the small bowel, right lobe of liver, diaphragm, right lower lobe of lung, Rib 8 and lodged in muscle of right lateral chest.*

The cause of death is described as Hypovolaemic shock due to gunshot wounds through right lung, lower right kidney and mesentery of small bowel. Mr Bruce Bosman is the victim in count 22.

54. *Mr Isaac January was inside the Tavern when the shots were fired. He was seated at the 3rd table from the corner. He hid himself under the table. He could see a person having a long gun and a small one. This person was wearing white takkies and a pair of jeans trousers. After the shots were fired by this man he saw people lying on the floor. The gunman went outside, and returned into the tavern. He looked around and*

left again. They discovered a long gun magazine which they handed over to the police. The table he occupied is shown in Exhibit B2 photo 2 and is covered with a Castle Lager table cloth.

55. Among the people who were inside the Tavern is his relative Reuben Holele. He is also known as Konke. At the time of the shooting the deceased was standing next to the snooker table. He identified the body of a person in photos 6 and 7 of Exhibit 3 as the body of Reuben Holele. Exhibit D3 is a report of the District Surgeon and a Forensic Medical Officer, Dr George Albertus Isaacs who examined the body of Reuben Holele on the 5th June 2002 at Upington. According to the report he discovered the following:

- 1. Gunshot wound through sternum, left Lobe of Liver, Mesentery of small bowel and lodged in buttock.*
- 2. Gunshot right shoulder through right lung and lodged in right lobe of liver.*
- 3. Gunshot wound through left lung posteriory.*

The findings reveal the cause of death as Hypovolaemic shock due to gunshot wounds through lungs and liver.

56. Mr January knows the accused and on the day of the incident he was at the tavern at about 15 hrs. He played snooker and did not notice if he drank any liquor. He does not know if the accused and the deceased knew each other. His evidence related in particular to Count 21, being the murder of Reuben Holele.
57. Ms Angelina Ranthaka, was also at the Tavern. When she heard the sound of the gunshot she ran towards the area of the toilets together with other people. She joined the people who jumped out of the building through the toilet window. On the outside she made an attempt to climb over a wall but lost consciousness. When she regained her consciousness she discovered herself to be lying there alone. She recollected that she went out of the building through the toilet window. She felt her clothes to be wet on the left waist. She lifted her jacket to inspect her body. She discovered a wound on her waist. She

screamed for help and two policemen arrived and assisted her. She was taken to Kimberley hospital where they discovered another wound on her body. She spent two months in hospital and after that she attended treatment for two weeks. The wounds are not completely healed as she experiences some pains at times. She did not see the person who shot her.

58. *Exhibit D8 is a Medical report completed by Dr E Blom. The latter examined the complainant on the 1st July 2002 at Kimberley Hospital complex. The clothes were bloodied and gunshot wounds were discovered, the entry and exit wounds. There was no active bleeding at the time. Ms Angeline Ranthaka is the complainant in count 17, that of Attempted Murder.*

59. Ms Sylvia Keolodile was present at the Tavern. She stood up and moved towards the counter to buy beers. She was facing the bar attendant lady. The latter screamed and told her to look back. As she tried to look back she was already shot. She fell

and the next moment she discovered herself at Kimberley Hospital. She was shot on the right side of the upper body. She also received treatment at Postmasburg.

Dr Calitz completed a medical report in which he noted clinical findings on 01/07/2002. He discovered a gunwound on the right lung with Pneumo-Hemotoratus. He also wrote the following remark:

"behandeling in Kimberley Hospitaal (uiters gevaarlike besering) Klemlut R"

60. Ms Keolodile testified further that the bullet is still in her body and says that she has been advised that it is risky to remove it. She did not see the person who shot her. She is the complainant in Count 16, being that of Attempted Murder.

61. *Mr Marius de Koker was sitting at the counter of the tavern consuming the beer he was invited for. The music was loud. As they were drinking one Malgas pulled him down and warned him about a shooting. He then hid behind a pillar and the table*

also covered them. There was pandemonium as the music played loud, people screamed and shots being fired. Sylvia fell on top of his leg. He pulled his leg with difficulty and later discovered that he was shot on the leg. He was transported to Postmasburg hospital in an ambulance. He was later taken to Kimberley Hospital where he was operated on the 10th July 2002 and discharged on 15 July 2002. He is not completely healed.

62. *He was seen by Dr Cesar Caras Ramons on the 1st July 2002 at Kimberley Hospital. The doctor completed Exhibit D11. He discovered a thigh gunshot wound without exit and femur fracture and artery cut. He did not know the accused before that day. He does not know why he was shot. He is the complainant in count 20 being that op Attempted Murder.*

63. *Mr Jan Johannes de Koker testified that he was also in the Tavern enjoying some beers. He heard gunshots and as he*

turned, he saw the accused who he knew to be a former policeman. He was standing at the door with a rifle in his hands. The latter pointed the rifle at him. He ducked but he was shot on the left upper arm. He fell onto the floor. The accused fired again and he shot him on the left lower rib.

64. *He was later carried to an ambulance and taken to Kimberley Hospital. He was admitted from the 1st of July 2002 to the 7th August 2002. He was readmitted on the 18th August 2002 for the purpose of conducting an operation. He never had problems with the accused, he knew him and that he was employed at Russels Furnishers.*

65. Inspector Edward Fortein who investigated the scenes as a forensic fieldworker attended at the tavern. He discovered at least 13 R5 empty cartridges at various places inside the tavern. He also discovered 5 X 9mm empty cartridges as well as an R5 rifle empty magazine.

SCOEMAN MOTORS

66. Messrs Gerhardus Witbooi and Anthony van Zyl are employed as petrol attendants at Schoeman Motors. The latter was busy serving a customer with diesel when a red golf driven by the accused arrived and stopped next to a pump. Mr Witbooi approached the motor vehicle with a view to assist. The driver got out of the motor vehicle. He told Mr Witbooi to fill up. He went around the motor vehicle to take the keys to open the petrol cap. The accused bowed into the motor vehicle and took out a firearm with his left hand. He put the firearm against his head and ordered him to fill up. He became frightened and offered him the money bag. The accused did not accept it and ordered him to fill up.

67. A white Jetta motor vehicle arrived at the petrol station. The accused directed his concentration at this motor vehicle. Mr Witbooi got an opportunity to warn Mr Van Zyl about the danger and they ran away. The accused fired shots at them and they

felt the bullets speeding past their heads. Mr Witbooi described it as fire or flame moving past him. He turned to the Motel for cover. Mr Van Zyl testified that he had to jump over a high fence and went straight to Newtown.

68. The driver of the white Jetta is Mr Jacob Visser. He testified that on arrival he waited for the petrol attendant to finish servicing the red Golf and for his turn to come. The accused looked at him and pointed a handgun at him and ordered him to stand still otherwise he will shoot him. The petrol attendant fled. The accused fired shots after the attendant. The latter fell and he does not know if he shot him. The accused then pointed the gun at his leg and shot him. He fell. The accused ordered him to stand up. He complied and his car keys fell. He picked them up. He ordered him to fill the car with petrol. The accused held his hand with the pump as he filled, with the firearm pointed at him with the other.

When the car was full and having returned the pump, he demanded his car keys. He handed the keys to him. The accused then pointed him with the firearm and ordered him to

go. He jumped with one foot away from the accused. The accused drove off with the motor vehicle. He heard people's voices and he screamed for help. He was taken to hospital where he was admitted for a month. His thigh is not fully healed as it is painful at times. He has to attend checkup. He identified the white Jetta motor vehicle in Exhibit B7 photo 8 as his motor vehicle. When the accused robbed him of his motor vehicle, the left front wheel was not flat. The left front window was not broken and the car did not have a bullet mark. When the accused shot him on the thigh, he pointed the firearm directly at his thigh. He is the complainant in count 27 which is Attempted Murder and count 28 being Robbery of the motor vehicle with aggravating circumstances. Mr Gerhardus Witbooi is the complainant in count 26 and Mr Anthony van Zyl is the complainant in count 25. Both counts relate are Attempted Murder. At the scene the forensic fieldworker, Inspector Fortein discovered 3 9 mm empty cartridges; 1 X R5 empty cartridges on top of the Isuzu Van which Mr Van Zyl was serving.

THE OLYN FAMILY INCIDENT

69. The deceased Mr Donovan Patrick Olyn was driving his Corolla motor vehicle. He was accompanied by his wife Macdolene Olyn, brother and two children. They were to drop keys at their business, Arthed Tavern. As they were traveling Mr Fortune approached their vehicle driving a white Jetta belonging to Mr Visser. He collided and forced the Corolla out of the road. Mr Olyn went out to inspect what is happening. Mrs Olyn noticed Mr Fortune who she knew point a firearm at her late husband. The latter screamed at the accused to make him aware that it was himself Rasta, as he was commonly known. The accused shouted informing them that he is hijacking them. He then shot Mr Olyn at close range. His daughter screamed, asking the accused what her father had done for him to shoot him. Mrs Olyn told the children to flee as she also fled. When she looked back, she saw the accused pull her husband away from underneath the Corolla motor vehicle, and thereafter drove with the Corolla motor vehicle leaving the Jetta on the scene. They reported the matter to the police. The accused left pulling a

white trailer which was hooked unto their motor vehicle. The trailer was discovered by Captain Jan Witbooi next to Uitsig at Beeshoek. The Corolla motor vehicle is the one which the accused was driving at the time of his arrest at Beeshoek.

70. *Mr Donovan Patrick Olyn's body was examined by the forensic*

Medical officer, Dr George Albertus Isaacs on the 5th day of July 2002. According to Exhibit D5, the following wounds were discovered:

- i) Gunshot wound right clavicle through the mediastinum with transaction of right common carotid artery and trachea out through the left ribs 3 and 4 posteriorly.
- ii) Haeothorax left with 500 ml blood.

The cause of death is described as "Hypoalaemia shock due to gunshot wound through the mediastinum common carotid artery right and left lung."

The deceased is a victim in count 30, being murder as well as in count 31 being Robbery with aggravating circumstances.

71. Annexure “D” is a document handed in in terms of Section 220 of Act 51 of 1977. It contains admissions made by the accused. He admit the contents of the fact that the bodies of the deceased in the Murder counts did not sustain any injuries other than those found by the Forensic Medical Officer. The medical findings are also admitted as correct. Exhibit “D1” being the forensic result of the blood specimen of the accused indicate that the concentration of alcohol in the accused’s blood specimen was 0,13 g per 100 milliliters. This aspect is admitted by both the State and the defence.
72. The last witness for the State was Dr Sean Kaliski, a specialist Psychiatrist and Head of Psychiatric Unit at Valkenberg Hospital since 1996. His experience can in no way be questioned. He holds BA in Psychology and Law; MBCHB; London Fellow of College of Psychiatry; Masters Degree in Medicine and Psychiatry and PHD. He has a vast experience in the evaluation of defendants or accused persons in violent crime sent for evaluation. He led a team which evaluated and observed the accused and prepared a report handed in as

Exhibit 'E'. The nature of the enquiry included psychiatric interviews, physical examination, assessment by clinical psychologist, observation of ward psychiatric nursing staff and occupational therapist, social worker's report and information from the Court. Their conclusion is that:

1. Clinical Diagnosis: Not mentally ill.
2. He is not certifiable in terms of the Mental Health Act.
3. He is fit to stand trial in terms of Section 77(1), and
4. He was able to appreciate the wrongfulness of the alleged offence, and act accordingly.

73. The report also discloses the accused's background as having a long history of alcohol abuse and in 1998 he was admitted to Aurora Clinic for rehabilitation. He lost his employment in 1998. His drinking has accelerated; at the time of the alleged offence he had consumed liquor. He accused his wife of an extra marital relationship. He felt very angry.

DEFENCE CASE

74. *What has been set out above is the evidence as tendered by the State. The accused closed his case without tendering any evidence. It is within his rights not to testify and an adverse inference can only be drawn from the uncontroverted evidence*

*of the State and not from the accused's silence. See: **S v Brown**1996 (21) SACR 49 (NC).*

75. The accused's defence is that as a result of an incident with his wife on the day of the incident he lost total control over himself and cannot remember what he commenced. He had no intention to kill or injure anybody or cause damage. The details of the incident with his wife have not been disclosed in his plea explanation or in evidence. Reliance will be place on the proven and undisputed facts in the State case.

76. *The basis of the accused's defence is temporary non-pathological criminal incapacity. This can be inferred from the use of the words that he "lost total control over himself"and that "cannot remember what he started or did". Supreme Court of appeal has not settled what is referred to a confusion caused in interpreting previous decisions of the Supreme Court of Appeal and has restated the test in **S v Eadie**2002(1) SACR 663(A) at 666 a – d as follows. That the State bears the*

***onus**to prove that an accused person had criminal capacity at the relevant time. The approach is:*

(i) *in discharging the **onus**the State is assisted by the natural inference that in the absence of exceptional circumstances a sane person who engages in conduct which would ordinarily give rise to criminal liability, does so consciously and voluntarily;*

(ii) an accused person who raises such a defence is required to lay a foundation for it, sufficient at least to create a reasonable doubt on the point;

(iii) evidence in support of such a defence must be carefully scrutinised;

(iv) it is for the Court to decide the question of the accused's criminal capacity, having regard to the expert evidence and all the facts of the case, including the nature of the accused's actions during the relevant period.

77. Mr Schreuder argued on behalf of the accused and submitted that there are circumstances which form the basis for the accused's defence. These aspects are all found in the State case and are common cause. The fact that the accused had marital problems and accused his wife of infidelity. Whether the accusation was false or not remained a perception which affected him adversely. He lost his employment as a police officer which he liked so much. All attempts to secure employment were unsuccessful. He has a history of alcohol abuse and on the day of the incident he had consumed alcohol. He was denied his opportunity to talk with Mr Koopman to address his problems by the presence of his wife and in-laws in the bedroom. There was a threat of divorce by the wife. His children were taken away from him. He was emotionally distressed.

78. *Mr Nekosie on behalf of the State argued that all the above*

*circumstances did not qualify the accused as a candidate for the defence of sane automatism. Dr Kaliski's evidence is of assistance. Incidentally he also testified in the case of **S v Eadie** and the test laid down by him met the Court's approval. This view is that a person claiming to have acted as the accused should have been in a state of sane automatism which is caused by a great deal of stress producing a state of internal tension building to a climax which in most cases is reached after enduring ongoing humiliation and abuse. It may be derived from epilepsy. During such a state a person's mind is absent. He is unable to engage in purposefully goal directed behaviour, which is not very well rehearsed. He/she usually claims amnesia. The defence according to him, has to be truly exceptional. It is a behavior which is stereotyped and should not last long. It must be of relatively brief duration. It will fit a person who incidentally by chance picks up a weapon next to him and over a second or minute strikes a person or per chance kills the victim.*

79. He testified that it is common for people to lose their temper and commit regrettable acts when they should have known better. He confirmed an example of a soccer player who tackles an opponent from behind blatantly in full view of the referee and his assistants and claim to be innocent. The accepted approach is to consider the accused's focused and goal-directed conduct before, during and after the incident in question in relation to his state of mind.

80. Considering the accused's conduct, once again as extracted from the State's evidence as I never had the benefit of the accused's version and evidence, the following aspects cannot be ignored:

1. the accused quarreled and assaulted his wife inside the house and she fled.
2. after a lapse of 10 – 15 minutes he goes outside and this time with a knife and fight her again outside, and cut her with the knife.
3. he returns to the house with the knife wherein he locked himself.
4. after a long time Rev Koopman came with his in-laws and after some talk and an agreement about an appointment for the following was concluded.
5. he stays alone in the house having been left calm by Rev. Koopman.

6. after sometime he takes the knife and walks to the Police Station.

7. with the knife he overpowers sergeant Lock and takes the arms and ammunition. This include a heavy automatic weapon.

8. he fires no shots at the Police Station. He walks up to the shopping complex.

9. he chooses his target places such as Toms Café, Tavern, Score Supermarket and Petrol filling station. At these places he knows there are people.

10. He secures transport and ensures that it has sufficient petrol.

11. he is in a position to phone his wife's cellphone and as Dr Kaliski says, he is able to punch the correct numbers into the phone.

12. He abandons a trailer which could have caused him inconvenience when he drives around.

13. From the evidence it seemed he chose Beeshoek Compound or mine area as a hiding place.

14. He invites Rev Koopman to see him at Beeshoek not himself going to him as he had the transport in the form of a Corolla motor vehicle.

15. he threatened to take his own life with bullets.

16. when he sees the police he runs away and stop when
shots are being fired.

17. he complies with the instructions when being arrested.

18. the possibility is that he knew that was is in danger when
he had no bullets left in his possession to resist arrest.

19. According to Dr Kaliski he was in a position to relate a step by step account of what happened and evenly contradicted state witnesses where necessary.

70. From what I have said it shows that the events endured for a long time which negative any idea of automatism. There is no evidence from his side to suggest when he regained the control over

himself. I am of the view that the accused was very angry on this day and that alcohol intake contributed to his frustrations. He decided to vent his anger by being violent and destructive. He performed all his actions with the presence of his mind. He could appreciate the wrongfulness of his actions and did not care about the consequences. He was in full control of himself because he was not acting in a state of automatism.

71. *The following words of the Supreme Court of appeal in **S v Eadie**(supra) at 690 c are instructive to this Court.*

“no self-respecting system of Law can excuse persons from criminal liability on the basis that they succumbed to temptation

...

One has free choice to succumb or to resist temptation. If one succumbs one must face the responsibility for the consequences.”

At p 693 g the Court had the following to say:-

“The deceased’s aggressive and provocative behavior did not entitle the appellant to behave as he did. It must now be clearly understood that an accused can only lack self-control when he is acting in a state of automatism. It is by its very nature a state that will be rarely encountered. In future, courts must be careful to rely on sound evidence and to apply the principles set out in the decisions of this Court. The message that much reach society is that consciously giving in to one’s anger or to other emotions and endangering the lives of motorists or other members of society will not be tolerated and will be met with the full force of the law.”

I am therefore satisfied that the State has succeeded in disproving

the defence of non pathological incapacity beyond a reasonable doubt.

Count 1: with Intention to Cause Grievous Bodily Harm

Both Mrs Fortune and Rev Koopman were reliable and satisfactory witness who corroborated each other in all material respects. The State has succeeded in proving the guilt of the accused beyond a reasonable doubt. The accused is **committed as charged**.

Count 2: with aggravating circumstances

Sergeant Lock being a single witness was a satisfactory and a reliable witness who did not contradict himself in any material respect. The evidence shows that the accused used a knife to rob a police officer of the items listed in the charge sheet at Postmasburg Community Service Centre. Inspector Hansen's evidence corroborates Sergeant Lock's evidence. The State has discharged its **onus** and as a result the accused is **convicted as charged**.

Counts 3 & 4: of Section 32(1)(a) read with Sections 1.32(7), 39(1)(h) and 39(2)(aA)(ii)(aa) of Act 75 of 1969.

There is overwhelming evidence by most of the State witnesses that the accused was in possession of an R5 machine rifle. There is evidence that he possessed 60 R5 ammunition. The evidence of Inspector S V G Jacobs that an R5 is a machine rifle was not disputed. The State has discharged its **onus** and the accused is **consequently convicted on both counts**.

Counts 5 & 6: of Section 2 read with sections 1.39(1)(h) and 39(2)(a)(i) of Act 75 of 1969.

The evidence reveals that the accused was in possession of a 9 mm Parabellum caliber Walther Model P38 pistol and a 9 mm Parabellum Vektor model Z88 with the necessary licences. There is no doubt that he possessed the ammunition without having the licence for the firearms out of which the ammunition could be fired. The accused is consequently **convicted of counts 5 and 6 as charged.**

Count 7: Murder

I am satisfied that the accused fired shots at the motor vehicles in which Rosina de Wee was seated and reasonable foresaw that the bullet might kill her. **He is consequently convicted as charged.**

Count 8: Murder

By firing shots at the passing Reinecke family he satisfied the requirements of **dolus eventualis** **consequently convicted as charged.**

Count 9 and 10: Murder

These counts relate to the attempted murder of Johannes Botha and Tofarides at Score Supermarket. Mr Botha in his evidence states that he was at the fruit and vegetables shelves and a shot was fired

*in that direction. It struck the refrigerator. I am not satisfied that count 9 has been proved beyond a reasonable doubt. The evidence of Mr Tofarides, the complainant in count 10 is that he spoke to the accused in an attempt to calm him down and he pointed a firearm at him and fired a shot. This is the bullet that struck the refrigerator. I am satisfied that count 10 has been proved beyond a reasonable doubt. The accused is **found not guilty of count 9** and is **found guilty of count 10**.*

Counts 11, 12, 13, 14: Murder and Murder

*The attempted murder on Mr Abednigo Bear, Catharina Dauth and the Murder of Mr Francois Arnols Dauth have been proved beyond a reasonable doubt and the accused is **found guilty of counts 11, 12 and 14**.*

*The attempted murder of Shirley Vorster and Betta Barends have not been proved beyond reasonable doubt, and the accused is consequently **found not guilty and discharged of count 13**. In count 14 I make a finding that the accused had direct intent to kill Mr F A Dauth in count 14.*

Count 15: Murder

*With regard to the attempted murder of Ruben Sebako doubt exist in my mind as to whether the accused attempted to kill him. There is insufficient evidence relating to the manner in which he sustained the injuries. The accused is entitled to the benefit of the doubt and is found **not guilty and discharged**.*

Counts 16, 17, 18, 19, 20, 21, 22: Murder and Murder

*As outlined before in relation to the events at the Tavern I am satisfied that the State has proved **dolus eventualis** on the part of the accused.*

*All the witnesses corroborated each other about the events inside the Tavern. They were satisfactory witnesses and were corroborated by the findings of Inspector Fortein. The accused is consequently found **guilty on all these counts.***

Counts 23 & 24: Murder and Robbery with Aggravating Circumstances

*In these counts the accused fired shots at a motor vehicle in which Sabel Esau, Haratio Bessies and Khudugo Mocwane were the occupants. He had **dolus eventualis**, and as a result of the use of the firearm he manage to dispossess them of their red Golf motor vehicle. I am satisfied that the State has succeeded to proof the guilt of the accused beyond reasonable doubt and he is **found guilty on both counts.***

Count 25: Murder

These counts relate to the Petrol attendants at Schoeman Motors. Mr Anthony van Zyl's evidence clearly indicated that having heard shots being fired he ran for his life. He says in his running he heard something moving past his head at high speed. I do not have satisfactory evidence that a firearm was pointed at him and fired. It should be remembered that as he was frightened he could have genuinely believed that a bullet went past him. This is not the only

*inference that can be drawn under the circumstances. The accused is entitled to the doubt that exist and he is consequently **found not guilty and discharged of Attempted Murder.***

Count 26: Murder

*This count relate to Mr Gerhardus Witbooi who is a petrol attendant at Schoeman Motors. His evidence revealed that the accused pointed him with a firearm against his head and instructed him to fill up the car with petrol. He offered the money bag which the accused did not accept. As pointed out earlier he managed to escape and as he turned at the corner of the Motel a fire went past him and he believed that it was a bullet. On the same reasons I am not satisfied that a charge of Attempted Murder has been proved beyond a reasonable doubt. The evidence proves the charge of pointing of a firearm. The accused is therefore not found guilty of Attempted Murder. In terms of Section 258 of Act 51 of 1977 the accused is **found guilty of Contravention of Section 39(1)(i) read with Sections 1 and 39(2)(d) of Act 75 of 1969 i.e. Pointing of firearm.***

Count 27 & 28: Murder and Robbery with Aggravating Circumstances

This count relate to Mr Jacob Visser about the incident at Schoeman Motors. The complainant's evidence indicate that the accused was close to him and he pointed a firearm at his leg and shot him on the thigh. I am not convinced that with this evidence that, the accused made an attempt to kill Mr Visser. The evidence proves that by shooting him directly on the thigh he intended to injure him and render him immobile. This was done immediately after one of the

*petrol attendants fled. The accused is **found not guilty of Attempted Murder**. In terms of Section 258 of Act 51 of 1977 he is **found guilty of Assault with intent to cause grievous bodily harm**. Regarding **count 28 he is found guilty as charged**.*

Count 29: of a Firearm

As pointed above the accused pointed Mr Andries Jacobus Burger with a firearm and held his shoulder with the other hand and directed him to a motor vehicle. He is found guilty as charged.

Count 30 & 31: and Robbery with Aggravating Circumstances

These charges relate to Mr Donovan Patrick Olyn. The accused shot at him at close range and killed him. He shot him on the chest. The post-mortem examiner observed that:-

“The bullet entered the right anterior chest above the clavicle and passed through the upper lobe of the right lung, the medial end of the clavicle, transected the right common carotid artery and the trachea, fractured the 2nd thoracic vertebra, passed through the upper lobe of the left, deflected off the 2nd rib and passed through the 3rd and 4th ribs posteriorly on the left to exit through the left scapula posteriorly.”

*This is in my view clear instance of **dolus directus**. One should bear*

*in mind that the accused as a policeman underwent training in specialized weapons in Oudtshoorn in 1995. **The accused is convicted of counts 30 and 31 as charged.***