



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

**CASE NO.: A17/2025
REPORTABLE**

In the matter between:

JONATHAN LOTTER

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Lotter v S* (case no A17/2025) [2025] ZAWCHC (August 2025)

Coram: **NZIWENI J et MOOSA AJ**

Heard: **1 August 2025**

Delivered: **21 August 2025** (delivered via email to the respective Counsel)

Summary: Criminal law – appeal on conviction – murder – identity of assailant – corroboration of evidence – witness with chequered history not to be ignored nor evidence discounted – evaluating evidence on identity.

ORDER

On appeal from Wynberg Regional Court, the following is ordered:

(a) The appeal is dismissed.

JUDGMENT

Moosa AJ (Nziweni J concurring)

Introduction

[1] The appellant, being dissatisfied with the guilty verdict of the magistrate brought this appeal for the setting aside of his conviction. Before the magistrate, the appellant together with two others, were charged with one count of murder. The charge sheet alleged that on or about 4 April 2017 and at or near Mannenberg, the appellant unlawfully and intentionally killed Marcelino Maart (the deceased) by shooting him in his pelvis.

[2] During the course of the trial, the appellant and his co-accused pleaded not guilty to the charge. Admissions were made in terms of s 220 of the Criminal Procedure Act, Act 51 of 1977 ("the CPA") concerning the fact (i) that the deceased was shot on the day alleged and at Mannenberg; (ii) that this occurred with a single gunshot to his pelvis; and (iii) that he died on 4 April 2017 from the wound sustained. Whereas the appellant's co-accused were acquitted, he was convicted for murder and sentenced to 12 years imprisonment. This appeal against his conviction is with leave of the court a quo.

[3] The nub of the argument advanced by the appellant's counsel, Ms S Kuun, is that the trial magistrate erred by finding that the State proved beyond a reasonable doubt that the appellant fired the fatal shot which killed the deceased, also known as Jimmy Jazz.

Issue(s) for adjudication

[4] The issue on appeal is whether the State proved beyond reasonable doubt that the appellant shot and killed the deceased. If not, then his conviction must be set aside.

[5] Answering the fundamental question forming the subject of this appeal necessitates that the salient facts first be narrated. I do so under the next heading. Thereafter, the key arguments advanced on appeal are discussed and assessed in the light of the relevant legal principles applicable to the evaluation thereof.

Relevant factual matrix

[6] At the trial, the primary evidence led by the State against the appellant was that of two eyewitnesses, namely, Marlin Frazenberg ("Frazenberg") and Sylvester Phillips ("Phillips"). In the ensuing paragraphs, I summarise their evidence, including their testimony pertaining to identification of the assailant who shot the deceased.

[7] Frazenberg testified that he is a member of the Hard Livings gang. He admitted that he was a member of that gang at the time of the fatal shooting. He testified that the appellant and his co-accused were members of a rival gang, namely, the Americans. Frazenberg further testified that on the morning of the shooting, which he said occurred sometime between 08h00 and 10h00, he saw the appellant and two friends close to where he [Frazenberg] was standing on a street in Mannenberg with Phillips and some others.

[8] Frazenberg recognised the appellant when he saw him. He testified that, while he did not know the appellant on a personal level, he knew the appellant by sight and name. Frazenberg testified that he knew the appellant by his nickname, namely, 'Kojack'. It is common cause in the record that this is the appellant's nickname. Frazenberg testified further that he had seen the appellant many times before the

shooting. This is because, firstly, they lived two streets away from each other in Mannenberg; and, secondly, he saw the appellant during times of gang rivalry. The appellant admitted that he lives close to Frazenberg.

[9] Frazenberg testified that when he saw the appellant on the morning of the shooting in April 2017. The latter was in a street within Mannenberg that forms part of the Hard Livings gangs' territory. Frazenberg said that because he knew the appellant was a member of a rival gang who was in the territory of the Hard Livings gang, Frazenberg suspected that the appellant was intent on shooting members of the Hard Livings gang, such as himself and Phillips. Frazenberg testified that it was for this reason that he and Phillips decided to walk towards Plate Street in the direction from where the appellant and his friends were coming. Frazenberg testified that when they started walking towards the appellant, the latter shot at them [Frazenberg and Phillips]. Nobody was hit by the bullets.

[10] Frazenberg testified that at the time of seeing the appellant, he [Frazenberg] was about 15 to 20 metres away from him (the appellant). Frazenberg testified that he had a good view of the appellant. He saw him clearly. Frazenberg's testimony is that his view was unobstructed. He also testified that the lighting and weather conditions were good.

[11] Frazenberg testified further that he saw the appellant open fire by shooting the gun which he [the appellant] had in his hand. Frazenberg testified that the appellant fired three gunshots at Frazenberg and Phillips (also known as 'Woekas'). Frazenberg testified that he went to take cover behind a bullet-proof fence of a school located on Plate Street in Mannenberg. The fence provided him with protection from the bullets. He testified that once he was behind the fence, his view of the appellant was obstructed. At that point, he could no longer see the appellant.

[12] Frazenberg testified that while he took cover behind the school fence, Phillips and the deceased, both of whom were members of the Hard Livings gang with Frazenberg, walked towards the corner of Plate Street. He [Frazenberg] had a clear

view of them both. They were standing about 10 steps from where Frazenberg was sheltered behind the school fence. This was about 4 to 5 metres away from Frazenberg's position at the fence.

[13] Frazenberg testified that he saw the deceased pull out his cellular phone and pointed it in the direction of where Frazenberg had seen the appellant firing his gun earlier. Frazenberg also testified that it was when the deceased pointed his cellular phone that he [Frazenberg] heard a second round of two gunshots being fired almost immediately. All this occurred within a short space of time after Frazenberg had seen appellant fire three shots at him and Phillips.

[14] Importantly, Frazenberg testified that he could not see the person who fired the second round of gunshots. He said that one of the bullets hit the deceased in his hip. The deceased fell to the ground in the street. Phillips then called Frazenberg for help.

[15] Frazenberg's testimony is that the second round of gunshots which included the bullet which wounded the deceased, appeared to come from the same direction from where the appellant had fired his volley of three gunshots shortly before.

[16] Frazenberg testified that after Phillips called Frazenberg to help him (Phillips) carry the deceased out of the street, Frazenberg came out from behind the fence and helped Phillips move the deceased's body off the street. The deceased was still alive at that time.

[17] Phillips is the second eyewitness. He testified that, at the critical time of the shooting, he was a member of the Hard Livings gang. It was Phillips' testimony that he was in Palm Walk, Mannenberg on the morning in question at about 07h30 to 08h00. He stood with friends at a street corner. They were talking to each other. While there, Phillips saw the appellant approaching with two other males, being his co-accused in the trial a quo. Phillips knew that they were members of the rival Americans gang and suspected that they were going to shoot at him and his friends who were in Palm Walk.

It was then that Phillips told his friends, including Frazenberg, that he believes the approaching men were going to shoot at them. At that point, Phillips and Frazenberg walked towards Plate Street. While en route there, Phillips saw the deceased coming out of a friend's house. At about this time, Phillips heard gunshots being fired. He testified that he could not identify the person(s) who fired the shots. He testified that he heard about six to eight shots.

[18] Phillips testified that, as a result of these gunshots being fired, he and the deceased decided to go to the corner of Plate Street which is in the direction from where the gunshots were being fired. He testified that, at the corner of Plate Street, the deceased took out his cellphone and pointed it in the direction of the appellant and his friends. The deceased pretended that he was pointing a gun. Phillips testified that it was cloudy on that morning but the sun was out and so he was able to identify the appellant and his friends. They [the appellant and his co-accused] ran away when they saw the deceased pointing at them what they perceived to be a gun, but was in actual fact the deceased's cellular phone.

[19] Phillips testified that as the appellant and his friends were running away, the appellant was at the back of the trio and closest to Phillips. The appellant was about 50 metres away from Phillips at that time. Phillips testified that it was at this point that he saw the appellant with a gun in his hand. Phillips described it as a .38 black revolver with a magazine (not a spin barrel). Phillips testified that as the appellant was running away, he fired one shot in the direction of Phillips and the deceased. Phillips testified that he felt the bullet pass him. The bullet then hit the deceased who was standing next to Phillips at that time. The deceased collapsed in the street after the bullet penetrated his stomach.

[20] Phillips testified that he called Frazenberg to help move the deceased's body. He said that Frazenberg was, at that time, about 30 steps away from Phillips and the deceased.

[21] As for the basis of Phillips' identification of the appellant, Phillips testified that the appellant is well known to him. Apart from the fact that they lived close to each other in Mannenberg, Phillips said he knew the appellant because they were friends when the appellant was a member of the Hard Livings gang some years earlier. Phillips testified as follows about the closeness of his past relationship with the appellant:

'We would sleep next to each other, sir. We eat with each other, sir. We was accused also in one case, sir.'

[22] In the trial a quo, the appellant testified in his own defence. Importantly, the appellant confirmed Frazenberg and Phillips' prior knowledge of him. He offered a defence of an alibi. The appellant testified that he was not in the vicinity when the shooting occurred. He testified that he heard about the shooting from one of his co-accused.

Trial court's findings and submissions by counsel on appeal

[23] In his judgment, the trial magistrate correctly identified that the 'number one' question was 'who shot and killed Jimmy Jazz'. The magistrate said: 'it is so that the major point in dispute is identity'. Clearly, the trial magistrate was alive to the fact that the critical question was whether the appellant was present on the scene on the day in question and fired the fatal shot. The trial magistrate acquitted the appellant's co-accused.

[24] The trial magistrate was conscious that both Frazenberg and Phillips identified the appellant and both placed the appellant at the scene of the shooting which occurred on 4 April 2017. The trial magistrate was aware that Frazenberg identified the appellant as the shooter of the first round of gunshots, and that Phillips identified the appellant as the shooter who fired the second round within a minute or so after the first round and that Phillips testified that the appellant fire a shot in the second round which resulted in

a bullet hitting the deceased in his stomach and caused him to sustain a fatal wound to his pelvis. In this regard, the trial magistrate held:

‘The ... Court accept the evidence of those two witnesses where they corroborated each other. I the Court accept that they saw accused number one [the appellant Lotter] was the shooter and that they were able to make a positive identification.’

[25] In her heads of argument, the appellant’s counsel was constrained to concede the following incriminating fact emerging from the evidence which was before the trial magistrate:

‘Even though initially, during cross-examination, his legal representative hinted in the direction of the appellant being either in custody or at his girlfriend’s home in Atlantis when the shooting took place, *it became evident that he must have been in the area.*’

(my emphasis added)

[26] Accordingly, the appellant’s counsel, Ms Kuun, hinged success on appeal on the following twin arguments: first, she argued that the trial magistrate erred by failing to appreciate that the State relied on the evidence of a single witness, being Phillips, to identify the appellant as the shooter and the trial magistrate, therefore, failed to apply the cautionary rule for single witness testimony. Ms Kuun argued that the trial court erred in finding that Phillips’ evidence was satisfactory in every material respect (“the first argument”). Secondly, Ms Kuun argued that the trial magistrate should have rejected the identification of the appellant as the shooter because his identification was not based on any distinguishing features, identifying marks, facial characteristics, build, height, or dress, but rather exclusively on Phillips’ prior knowledge of, and experience with, the appellant (“the second argument”). The respondent’s counsel, Ms EM Van Wyk, argued that the appeal lacks merit and should be dismissed.

Evaluation of the first argument

[27] The submission that the State's case was based on the evidence of a single witness was pursued at the hearing, but not with any real vigour. This is understandable. This argument is unsustainable as a matter of fact for the reasons advanced here.

[28] I find that the trial magistrate cannot be faulted for finding that the State's case against the appellant was not based on the testimony of a single witness, but rather on the evidence of two eyewitnesses, namely, Frazenberg and Phillips. The magistrate also found that their testimony corroborated each other's evidence in material respects.

[29] When Frazenberg and Phillips' testimony is considered together, then the following crucial facts are corroborated: (i) first, the appellant was in Mannenberg in the immediate vicinity of the crime scene on the morning in question; (ii) secondly, he was armed with a gun; (iii) thirdly, there was an initial round of gunshots and a second round very shortly after the first round; (iv) none of the bullets fired in the first round hit anyone; and (v) the deceased was hit by a bullet fired in the second round of gunfire.

[30] Whereas Frazenberg identified the appellant as the shooter in the first round of gunshots, Phillips identified the appellant as the shooter in the second round which occurred within a minute or so after the first round. Based on this evidence, and the evidence of these eyewitnesses viewed as an integral whole, I find that the magistrate cannot be said to have misdirected himself when he held that Frazenberg and Phillips' evidence corroborate each other to a sufficient degree to justify a finding that the State proved beyond a reasonable doubt that the appellant fired the fatal gunshot.

[31] The corroborated testimony of Frazenberg and Phillips also cast serious doubt on the veracity of the appellant's alibi defence. When the appellant's evidence is then considered with the State witnesses' evidence, the magistrate's finding that the State

dispelled the alibi beyond a reasonable doubt is justified. To this end, the concession by the appellant's counsel on appeal speaks volumes (see paragraph 25 above).

[32] At the hearing, Ms Kuun argued that the trial magistrate misdirected himself by relying on the evidence of Frazenberg and Phillips. She argued that the magistrate erred in not finding that both of them lacked credibility and that their testimonies are tainted by bias against the appellant. She argued that Frazenberg and Phillips are members of a rival gang with an ulterior motive to mislead the trial court by implicating the appellant in the commission of the killing of Jimmy Jazz, a fellow member of the street gang to which they both belonged. For the ensuing reasons, I find this argument to be unsustainable.

[33] Firstly, the argument advanced is of a generalised nature, rather than factual. While a court ought to guard itself against any form of tainted evidence, it must be borne in mind that the effectiveness of our criminal justice system depends on the testimony of persons from all walks of life and social backgrounds, including persons with a chequered history, and persons who are (or were) engaged in anti-social behaviour, gangsterism, drugs, or other activity unpalatable to the majority in our community. The root causes of gangsterism on the Cape flats, their prevalence today, and dangers for affected residents has been the subject of judicial dicta. See, for e.g. *Abdullah v S* (134/2021) [2022] ZASCA 33 (31 March 2022) para 4. Frazenberg's and Phillips' evidence cannot be rejected based on perceived bias, nor approached with suspicion or more caution than would ordinarily be done with the evidence of any other witness merely because they are members of a gang to which the appellant was not a member of, or affiliated with, when the shooting occurred. The credibility and reliability of Frazenberg and Phillips must be tested with reference to the same trite criteria developed by our courts as enumerated in, for example, *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others* 2003 (1) SA 11 (SCA) para 5. A different standard cannot be used for them as gangsters.

[34] Secondly, on a factual level, Ms Kuun's argument loses sight of the fact that Frazenberg did not implicate the appellant directly in the commission of Jimmy Jazz's murder. If Frazenberg was intent on implicating the appellant in the killing of a fellow Hard Livings gang member, then it can reasonably be expected that he would have testified that he saw the appellant fire the second round of gunshots that included the fatal shot. But this was not his testimony. The highwater mark of Frazenberg's evidence is that he places the appellant in the immediate vicinity of the crime scene armed with a gun at or around the time when the shot was fired that fatally wounded Jimmy Jazz. The fact that Frazenberg did not directly implicate the appellant as the shooter who fired the fatal shot underscores Frazenberg's candour and trustworthiness as a witness. This seriously undermines, if not destroys, Ms Kuun's argument that Frazenberg lacks credibility and was bent on misleading the trial court with false testimony that implicates the appellant.

[35] The same reasoning applies equally to Phillips. While he implicated the appellant in the firing of the fatal shot, he did not implicate the appellant in the firing of the initial round of gunshots. Phillips testified that he did not know who fired the first round of what he described to be 6 to 8 gunshots. This is a key fact which bolsters Phillips' credibility.

[36] Frazenberg and Phillips' account of the events on 4 April 2017 have differences which are neither acknowledged in the magistrate's judgment, nor reconciled vis-à-vis his finding that they corroborated each other. For trial purposes, the key differences in their evidence are: (i) whereas Frazenberg testified that the appellant fired 3 shots in the first round, Phillips testified that there was about 6 to 8 shots fired; (ii) whereas Frazenberg testified that he was about 10 steps away from Phillips and the deceased when they were standing in Plate Street, Phillips testified that Frazenberg was about 30 steps away; (iii) whereas Frazenberg testified that the shootings occurred between 08h00 and 10h00 on 4 April 2017 at Plate Street in Mannenberg, Phillips testified that it occurred on that day and place between 07h30 and 08h00; (iv) whereas Frazenberg testified that the second round of gunshots consisted of two shots, Phillips testified that it comprised of a single shot; and (v) whereas Frazenberg testified that the deceased

was shot in his hip, Phillips testified that the bullet hit him in the stomach. What, if anything, is the effect that these differences have on the magistrate's finding that Frazenberg and Phillips' evidence corroborate each other? This requires an understanding of the nature of corroboration.

[37] Relevant and material corroborating evidence includes, but is not limited to, independent testimony by one witness which supports the existence of a fact(s) also testified to by another witness which, when the two witness' accounts are viewed together, would substantiate a finding that the fact (or version) in question has been credibly and reliably validated (that is, verified) so that the fact (or version) concerned may be taken as proved and can be used as part of the mosaic of evidence implicating the accused in the commission of an offence. See *Cele v S* [2016] 2 All SA 75 (KZP) para 1. Information in a tangible exhibit (such as, a J-88 form) may also provide objective corroboration of a fact (or version) as testified. See *Abdullah v S* supra para 21.

[38] Evidence by one State witness of the kind and quality envisaged in the preceding paragraph which tends to make similar evidence tendered by another State witness more probable in the context of a particular case would qualify as corroborating evidence for purpose of the State discharging its onus of establishing an accused's guilt.

[39] The mere existence of differences between the evidence of State witnesses (such as, those identified in paragraph [36] above) is in and of itself no justifiable basis to conclude that the evidence of State witnesses (such as, Frazenberg and Phillips in casu) lack credibility and/or reliability so that their evidence cannot be used to sustain a conviction. A deeper analysis is required to establish whether, despite the differences, their evidence credibly and reliably corroborate each other in material factual respects.

[40] In this regard, when evaluating a witness's evidence, ordinary human experience is that memories fade. Therefore, a witness's recollection of events will likely be

adversely affected through the passage of time. See *Van Veen v Director of Public Prosecutions, Western Cape and Others* 2023 (2) SACR 370 (WCC) para 19. Ordinary human experience is also such that persons observing the same event do not necessarily perceive the event, nor recollect the minutia thereof, in perfect harmony or alignment with each other. Therefore, differences may well manifest in the accounts of persons who observed the same event. Differences may arise for a variety of reasons. However, the mere existence of differences between the account of witnesses would not necessarily be tantamount to contradictions which undermine a witness's credibility. Indeed, the existence of understandable differences (or variances) may well be an indicator of independent observation and recollection which serves to bolster a witness's credibility, rather than undermine it.

[41] The reasons for separate accounts of the same event (or incident) being at variance with each other is a factual issue. Possible reasons for differences may include, inter alia, differences owing to age and/or maturity of the persons concerned; differences in position and/or vantage point of the event at the time of its observation; differences in length of opportunity for observation; differences in focus and/or attention to detail; and differences in the effect which the event itself may have had on a witness and/or his/her ability to observe with precision. This is not an exhaustive list of explicable reasons.

[42] Reverting to the differences between the accounts of Frazenberg and Phillips (see paragraph [36] above), Frazenberg testified in June 2023 and in September 2023 about events that occurred on 4 April 2017 in Mannenberg. Phillips, on the other hand, testified in December 2023 and in January 2024 about the same event. Both testified more than 6 years after the fact. This is a considerable delay. It would be unreasonable to expect that they would each have perfect memories about the events for which they were called to testify. Also, during both rounds of shootings, Frazenberg and Phillips had different focus which would well account for the differences in observation. For example, whereas Frazenberg was running for cover during the hail of bullets in the first round of shooting by the appellant, Phillips was focussed on Jimmy Jazz with whom he

decided to go to the corner of Plate Street to be in the face of the appellant and his two friends.

[43] The differences in the evidence of Frazenberg and Phillips bears testament to their independent recollection and testimony. In my view, this destroys any suggestion that they conspired to implicate the appellant in Jimmy Jazz's murder. Importantly, I find that the differences between their evidence is not of a material nature. They corroborate each other's evidence in material respects. As a result, I find that the magistrate did not misdirect himself when he held that Frazenberg's evidence corroborates that of Phillips in material respects pertaining to the killing of Jimmy Jazz on 4 April 2017 at Mannenberg.

Evaluation of the second argument

[44] To recapitulate: the second argument advanced by Ms Kuun is her hypothesis that the trial magistrate misdirected himself when he concluded that the State proved the identity of the shooter beyond a reasonable doubt based on the eyewitnesses' prior knowledge of the appellant, without linking the appellant and the shooter with reference also to any distinguishing features, identifying marks, facial characteristics, build, height, or dress of the shooter. This ground for challenging the trial magistrate's finding on identity requires consideration with reference to the applicable principles emerging from case law.

[45] In casu, there is no dispute that Frazenberg and Phillips knew the appellant before 4 April 2017; nor is it disputed that they were each acquainted with appellant sufficiently well to be able to identify him; nor is it suggested that this is a case of mistaken identity; nor is it argued that Frazenberg and/or Phillips could not have made a proper identification due to proximity, length of time, lack of opportunity, and/or poor lighting or visibility. See *Moodley and Another v S* (475/2023) [2024] ZASCA 102 (20 June 2024) para 15.

[46] Shorn of all its frills, the argument advanced by the appellant's counsel on this aspect essentially boils down to this: as a matter of law, a trial court may not determine the identity of a perpetrator based solely on a witness's prior knowledge of the person concerned. Identification must in addition, so the argument hypothesises, be based on other evidence by the eyewitness which tends to establish and prove identity (such as, any distinguishing features, identifying marks, facial characteristics, build, height, or dress of the perpetrator). For the reasons that follow in the ensuing paragraphs, this argument lacks merit and falls to be rejected.

[47] Our courts have recognised 'the fallibility of human observation' (*S v Mthetwa* 1972 (3) SA 766 (A) at 768A). Therefore, it is trite law that, owing to the dangers of incorrect identification, evidence of identification is approached with some caution, although this 'must not be allowed to displace the exercise of common sense' (*R v Bellingham* 1955 (2) SA 566 (A) at 569). It is not enough for an identifying witness to be honest. The reliability of an identification must be tested against other relevant factors too (such as, lighting, visibility, proximity of the witness, and opportunity for observation). See *S v Mthetwa* supra at 768A – C. On the law relevant to identification, the following dictum was endorsed in *Arendse v S* (089/2015) [2015] ZASCA 131 (28 September 2015) para 10:

'one of the factors which in our view is of greatest importance in a case of identification, is the witness' previous knowledge of the person sought to be identified. If the witness knows the person well or has seen him frequently before, the probability that his identification will be accurate is substantially increased ... *In a case where the witness has known the person previously, questions of identification ..., of facial characteristics, and of clothing are in our view of much less importance than in cases where there was no previous acquaintance with the person sought to be identified.* What is important is to test the degree of previous knowledge and the opportunity for a correct identification, having regard to the circumstances in which it was made".' (footnotes omitted) (my emphasis)

[48] More recently, in *Abdullah v S* supra para 13, the SCA pointed out that when an eyewitness identifies a person known to him, then 'it is not a process of observation that takes place but rather one of recognition. This is a different cognitive process which plays a vital role in our everyday social interaction.' The SCA went further and held 'that where a witness knows the person sought to be identified, or has seen him frequently, the identification is likely to be accurate'.

[49] Consequently, in view of the fact that the evidence that Frazenberg and Phillips were well acquainted with the appellant before the shooting was admitted and not challenged or controverted, their identification of the appellant cannot be faulted. They recognised him on the scene as having a gun in his possession.

[50] Concerning Ms Kuun's submission that the identification of the appellant cannot be accepted in the absence of Frazenberg or Phillips testifying as to distinguishing features, identifying marks, facial characteristics, build, height, or dress of the perpetrator at the scene of the crime which compares with that of the appellant at the relevant time, this argument has been rejected by the SCA in *Abdullah v S* supra para 20 as follows:

'The absence of a description of the clothing that the appellant was wearing is hardly a reason to question the veracity of Mr Carelse's identification of the appellant. Moreover, this type of detail takes on far less significance once the appellant was a person well known to Mr Carelse.'

[51] For all these reasons, I find that the trial magistrate cannot be faulted for accepting as credible and reliable the identification evidence of Frazenberg and Phillips that the appellant was, beyond a reasonable doubt,¹ the person who shot the deceased on 4 April 2017 at Mannenberg.

¹ The notion of 'reasonable doubt' in a criminal trial was usefully explained as follows in *Nkomo and Others v S* (130/2022) [2024] ZASCA 61 (26 April 2024) para 15:

Order

[52] In the result, I would make the following order:

The appeal is dismissed.

F. MOOSA
ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

C.N. NZIWENI
JUDGE OF THE HIGH COURT

Appearances:

For appellant: S Kuun
Instructed by: Legal Aid South Africa, Cape Town Justice Centre

For respondent: EM van Wyk
Instructed by: Office of the Director of Public Prosecutions, Cape Town.

‘Reasonable doubt is based on reason, logic, and a common sense evaluation of the evidence presented, not on prejudices or emotions. In my view, what is needed is a degree of certainty that falls between absolute certainty and probable guilt.’