

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH-AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: A76/24

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
29.07.2025	
DATE:	SIGNATURE

Heard on: 8 May 2025

Judgment: 29 July 2025

In the matter between:

JACQUES JACOBUS ALBERTUS COETZEE

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

STRIJDOM, J

1. The appellant was charged and convicted in the Regional Court, Benoni, with premeditated murder read with section 51 of the Criminal Law Amendment Act 105 of 1977. The Regional Court Magistrate, after finding no compelling and

substantial circumstances meriting a deviation from the prescribed minimum sentence, imposed a sentence of life imprisonment.

2. The appellant has an automatic right to appeal under the provisions of section 309(1)(a) of the Criminal Procedure Act 51 of 1977 ("the CPA"). The appellant now appeals against the conviction as well as the sentence.
3. It is trite law that the State must prove its case beyond reasonable doubt and if the appellant's version is reasonably possibly true, he is entitled to his acquittal even though his explanation is improbable.¹ It must be borne in mind that it is not necessary for the State to prove its case beyond all doubt.²
4. In evaluating the evidence presented, the court must not decide the matter in a piecemeal fashion, but all the evidence presented must be taken into account.³
5. The court must also apply its mind not only to the merits or demerits of the State and the defence witnesses but also to the probabilities of the case.⁴ The probabilities in this particular matter must also be tested against the proven facts that are common cause.⁵
6. It is common cause that, on the evening of 3 December 2020 and at or near Crystal Park Benoni, the appellant shot the deceased four (4) times. It is further common cause that the deceased died as a result of the wounds he sustained.
7. The State presented the evidence of:
 - 7.1 Mr Babalola Lahleka;
 - 7.2 Mr Mbongi Archie Lamfiti;
 - 7.3 Sergeant Moitshepe Elvis Sape;
 - 7.4 Mr Avinash Rupchand; and

¹ See *S v Selebi* 2012 (1) SA 487 (SCA); *S v Schackell* 2001 (4) SACR 279 (SCA)

² See *S v Van As* 1991 (2) SACR 74 (W)

³ See *S v Radebe* 1991 (2) SACR 166 (T) at 174 G and *S v Mbuli* 2003 (1) SACR 97 (SCA)

⁴ See *S v Guess* 1976 (4) SA 715 (A) and *S v Mhlongo* 1991 (4) SACR 207 (A)

⁵ See *S v Abrahams* 1979 (1) SA 203 (A)

7.5 Dr Fortunato Bishya

8. The appellant was the only witness who testified in his defence.
9. The evidence of the only State witness that witnessed the shooting incident, Babalola Lahleka ("Lahleka") can be summarised as follows:
 - 9.1 Mr Lahleka testified that he was employed by Archie Lamfiti and stayed in a room on the smallholding where he was employed;
 - 9.2 at about 19:00 on the evening of 3 December 2020 he was inside his room. He went outside after he heard someone speaking. He noticed a white man, whom he identified as the appellant, speaking Afrikaans. The appellant demanded Lahleka to show his identity document;
 - 9.3 thereafter the appellant called the deceased who was busy attending to his dogs in their kennel. When the deceased arrived at the scene, the appellant required him to remove his balaclava, but the deceased refused;
 - 9.4 after the appellant reached for his waist, the deceased also moved his hand to his waist, but Lahleka did not see him take anything off. The appellant then took out a firearm and fired four shots;
 - 9.5 Lahleka testified after the appellant shot the deceased, the deceased fell down, and was struggling to breath. The appellant was on his cellphone during this time. Lahleka heard the appellant saying that he required an ambulance. The appellant thereafter approached Archie, his employer, after he called the ambulance;
 - 9.6 during cross-examination Lahleka was confronted with photographs taken by members of the SAPS and those taken by the appellant. He also admitted that he made a statement to the SAPS and confirmed the correctness thereof. The photographs as well as the statement were handed in as exhibits;

- 9.7 Lahleka testified that he had not seen the “knife” (as depicted in the photos), in possession of the deceased before he returned from his employer. Lahleka only noticed the knife in possession of the deceased after he returned from his employer;
- 9.8 In his statement (“Exhibit “A”) Lahleka described the events on the 3rd December 2020 as follows:
- (a) the appellant “noticed the security guard, Kaledi Kajane who was coming towards me” and not whilst standing at the kennel for the dogs as Lahleka testified;
 - (b) when the deceased approached the appellant, he ordered the deceased “to take off his balaclava”;
 - (c) the deceased refused to remove the balaclava whereupon the appellant “took out the firearm and pointed it at him. At that time, he was also speaking to someone on his cellphone”;
 - (d) the appellant continued talking on the cellphone but threatened to shoot;
 - (e) whilst the appellant pointed the firearm at the deceased, and threatened to shoot him, the deceased took out a knife;
 - (f) to Lahleka’s shock, the appellant started shooting at the deceased;
 - (g) the appellant shot twice, missed the deceased whereafter “he shot another two and that is when he hit him with, in front of my room and he fell on the ground.”
- 9.9 Lahleka further testified that the deceased did not wear a blanket because it was not cold. According to Lahleka the appellant requested the deceased three times to remove the balaclava. The deceased refused to do so.
10. Mr Mbongi Archie Lamfiti, (“Lamfiti”) testified that the deceased was employed to enhance the security on the premises. On 3 December 2020, the deceased locked the gate and proceeded to feed his dogs. Lamfiti received a call from

Terence Mapanga, who informed him that there was a white guy outside carrying a gun and a beer. Lamfiti immediately called the police. As he terminated the call, he heard two gunshots being fired. Later he heard another two shots. Lamfiti, accompanied by CMS, [Private Security] went to the back rooms where they found the deceased lying on the ground. Lamfiti noticed that the appellant was at the back of the premises at the rooms. The appellant was standing approximately 10 meters from him, facing the gate carrying a gun and a beer.

11. Lamfiti stated that the "sword" depicted in the photographs belonged to the deceased. He also conceded during cross examination that the sword was capable of causing serious harm if used against an individual.
12. Sergeant Moitshepe Elvis Sape and Constable Tethe attended the scene of the shooting where they found the deceased. They thereafter proceeded to the smallholding next door. They found the appellant and they further identified themselves as police officers. The appellant was arrested and his firearm was seized. Sergeant Sape testified that the appellant smelled of alcohol and he was unsteady on his feet.
13. During cross-examination Sergeant Sape conceded that he had seen the sword beneath the deceased. He testified that according to his recollection, the sword was approximately 1 metre long. He could not say whether the appellant's eyes were dilated, bloodshot or enlarged but could confirm his speech was not affected. He therefore did not dispute the statement of his colleague, namely they could smell the alcohol on the breath of the appellant, but did not find the appellant to be drunk.
14. Avinash Rupchand is a member of the Emergency Medical Services stationed at the Glenwood Hospital at Benoni. On the said evening the body of the deceased was pointed out to him. He confirmed the death of the deceased.
15. Dr Fortunato Bishya is a qualified medical practitioner who has been practicing as a general practitioner and district surgeon of the Springs area since 1990. He has extensive experience in that he conducts around 30 forensic post-mortems per month. On 7 December 2020 he performed a post-mortem on the body of the deceased. He found gunshot wounds on the body of the deceased which he

depicted on the post-mortem form. He used circles to indicate the entrance wounds and square blocks to indicate the exit wounds. He explained that:

- 15.1 wound 1 was located on the face next to the mouth of the deceased. This wound went under the skin and exited at the point reflected as wound no 2 on the diagram, just beneath the entrance wound;
 - 15.2 wound number 3 was also an entrance wound at the back of the right upper leg as indicated on the diagram with exit wound number 4 on the front part of the right leg;
 - 15.3 wound number 5 was an entrance wound at the back of the left upper arm, and it exited the body through wound number 6 which is the front part of the left upper arm. The shot entered at the back of the left upper arm and exited at the front of the left upper arm;
 - 15.4 wound number 7 was an entrance wound on the right border of the chest and abdomen at the lower border of the ribs. This wound continued from the entrance to the left front part of the body, through the bowel, through the stomach, through the spleen and it exited the body through wound no 8. Hence Dr Bishya concluded that the cause of death was the multiple bullet wounds.
16. During cross examination Bishya conceded that it was possible that the wounds to the left arm and face was caused when the appellant fired at the left arm of the deceased in an attempt to disarm him from the sword that was held above his head. He agreed that those shots would not have stopped the deceased whilst he ran towards the appellant.
 17. Dr Bishya admitted that it is possible that the shots to the left of the body might have caused the deceased's body to swivel to the left. He conceded that when the appellant decided to shoot at the right leg of the deceased in an attempt to render the deceased immobile, it was "definitely possible" that the shots entered and exited the body of the deceased as indicated in the diagram on his post mortem report.

18. Dr Bishya testified that the appellant's version of the shooting is aligned to where the wounds on the body of the deceased were located.
19. The appellant's testimony was as follows:
 - 19.1 he testified that on the evening in question, he returned from work to the place where he resided. Around 18:00 he was enjoying a beer when he noticed his dog playing with strange dogs. He then proceeded to investigate where the dogs had come from as his property was fenced. He testified that since the area was prone to burglaries and house robberies, he carried his pistol at all relevant times for self-protection;
 - 19.2 the appellant found that the wall between his property and the adjacent property was damaged. He looked through the hole in the wall and noticed an unknown male stripping metal. He took a photograph because he did not know whether the individual was busy with unlawful activities. He further took photographs of another individual sitting at the door of a room. He approached this individual who informed him that he lives on the property. The appellant requested the individual to contact the owner of the property as he wanted to discuss the issue of the broken wall with the owner and how it could be repaired;
 - 19.3 whilst in discussion with the said person, he noticed the deceased approaching him. The deceased was clothed in an overall, gumboots and wore a balaclava over his face. The deceased also had a homemade sword on his person;
 - 19.4 the appellant had requested the deceased to stop and remove his balaclava more than once. The deceased refused and proceeded towards the appellant. The appellant again requested the deceased to stop and remove the balaclava;
 - 19.5 when the deceased refused to stop, the appellant removed his pistol from the holster, fired two warning shots towards the ground next to the deceased. The deceased did not heed to the warning shots. Instead he charged at the appellant with the sword above his head, with the point

of the sword directed downward. In an effort to disarm him the appellant fired two shots in quick succession to the left arm of the deceased that was close to the face of the deceased. The deceased's body swivelled to the left but he did not stop and neither did he not drop his sword;

- 19.6 this is when the appellant fired a further two shots in quick succession towards the right leg of the deceased which caused the deceased to fall on his face with the sword beneath his body.
20. The appellant testified that he did not intend to kill the deceased. He tried to disarm him by shooting at his left arm in which the sword was held, and when this failed, he shot at his right leg to stop the deceased from stabbing him with the sword. The appellant believed that his life was in danger when he shot at the deceased.

EVALUATION OF THE EVIDENCE

21. The correct approach to evaluating evidence is to weigh up all elements which point towards the guilt of accused against all those which are indicative of innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of State as to exclude any reasonable doubt about accused's guilt.⁶
22. Firstly I find that the court *a quo* erred by accepting untested hearsay evidence that was presented in the bail application in the District Court⁷. In his judgment the Magistrate remarked as follows: "The other employee returned his ID to the room as he was supposed to throw it on the ground. According to bail application records he did not want to touch anything from the blacks."
23. It was decided in *Director of Public Prosecutions, Transvaal v Viljoen*⁸ "that it did not follow from the fact that the record of the bail proceedings formed part

⁶ S v Chabalala 2003 (1) SACR 134 (SCA)

⁷ Record: page 301 line 15-17

⁸ 2005 (1) SACR 505

*of the record of the trial that evidence adduced during the bail proceedings must be treated as if that evidence had been adduced and received at the trial. Consequently, statements which were handed up during the bail application but not admitted at the trial could not be relied upon as these constituted hearsay evidence.*⁹

24. In **S v Sibeko**¹⁰ the Regional Court Magistrate also referred, for the first time, in her judgment, to the content of the formal bail application conducted in the District Court that had not been proven in the Regional Court. It was decided that the *“unilateral practice of the Regional Magistrate of introducing the record of the bail proceedings in the judgment on conviction for the first time, constitutes not only a gross irregularity in the proceedings but a material misdirection”*.
25. Mr Lahleka was the only witness called by the State regarding the events on the day in question. Hence the cautionary rule relating to the evidence of single witnesses had to be considered. The trial court found Lahleka to have been a credible and truthful witness. However, it was evident that there were various discrepancies in Lahleka's evidence. Furthermore it was not readily apparent from the record why the appellant's evidence had been rejected.
26. In my view, the appellant did not appear to be a poor witness. He had neither contradicted himself and nor had the trial court referred to any material contradictions or inconsistencies in his evidence. The appellant correctly contended that the Magistrate erred in not considering the evidence of Lahleka with the required caution and in particular take note of the various contradictions in Lahleka's evidence. It was also argued that Lahleka's evidence is contradicted by Lamfiti and is incompatible with the objective medical evidence of Dr Bishya.
27. Furthermore Lahleka's evidence differed from his statement to the police. Under cross examination he further conceded that the deceased was in fact in possession of a knife before he was shot by the appellant.”¹¹ The Magistrate further erred in failing to take into account that Lahleka confirmed that the

⁹ See also **S v Miya** 2017 (2) SACR 461 (GJ) and **S v Sejaphale** 2000 (1) SACR 603 (TPA)

¹⁰ 2024 (2) SACR 25 (NWM)

¹¹ Record: page 46 line 10-13

contents of his police statement was correct whilst the evidence in court that he did not see the deceased take out a knife was "the mistake".¹²

28. Lahleka tried to distance himself from the description of the homemade item as a sword, by claiming that the "knife" was approximately 30cm long.¹³ However Sergeant Sape referred to it as a "sword" and testified that the sword was approximately one metre long and capable of seriously injuring a person.¹⁴
29. The Magistrate further erred when he stated that Lahleka testified that he does not know whether the appellant fired any warning shots.¹⁵ Lahleka conceded in cross-examination, that the appellant fired two shots that missed the deceased and that these served as warning shots.¹⁶
30. The Magistrate also erred in finding that the medical evidence supported the testimony of Lahleka because the post-mortem revealed four wounds and Lahleka testified that the appellant fired four shots.¹⁷ According to Lahleka the appellant fired four shots of which two shots missed the deceased.¹⁸ If the version of Lahleka was correct, Dr Bishiya would have found only two wounds on the deceased's body and not four.
31. According to Lahleka, the deceased would only have sustained two wounds to the front of his body as he was shot by the appellant who stood in front of him.¹⁹ The deceased, on the version of Lahleka, never turned his back on the appellant. The wounds at the back of the deceased's left arm and the two wounds to the right rear of the deceased's body is incompatible with Lahleka's testimony in this regard.
32. The finding by the Magistrate that the appellant tampered with the scene contradicts the testimony of Lahleka. During evidence in chief, Lahleka explained that, after shooting the deceased, the appellant continued with his

¹² Record: page 48 line 15-18

¹³ Record: p33 line 18 – p35 line 10

¹⁴ Record: p123 line 7-15

¹⁵ Record: p289 line 20-21

¹⁶ Record p303 line 13-16

¹⁷ Record: p45 line 20-25

¹⁸ Record: p44 line 8-12, p44 line 19-21, p45 line 16-19

¹⁹ Record: p11 line 1-3; line 9-11; p12 line 24 page 13 line 1; p13 line 21

phone conversation saying there is an ambulance required. He further stated that the appellant left after he concluded the conversation.²⁰ During cross examination Lahleka confirmed that after appellant shot the deceased, the appellant "did not draw closer to the deceased" but called an ambulance "and then he left".²¹

33. On a conspectus of all the evidence, I am of the view that the Magistrate erred in accepting the evidence of Lahleka, a single witness whose testimony was riddled with contradictions, improbabilities and was not corroborated by the medical evidence. On the totality of the evidence, it cannot be said that the appellant's version was not reasonably possibly true. His version is corroborated by the medical evidence and opinion of Dr Bishya and the objective evidence.

SELF DEFENCE

34. The appellant relied on self-defence. In order to successfully raise self-defence, an accused must show the following: (a) that it was necessary to avert the attack; (b) that the means used were a reasonable response to the attack and (c) that they were directed at the attacker. (See ***Jonathan Burchell Principles of Criminal Law 5 ed (2016) at 125***). The third enquiry is not contentious in this matter.
35. The State argued that the appellant could not have claimed to have acted in self-defence. More particularly because he is the one who instigated the individuals next door whilst they were minding their own business. It was argued that there was no reasonable relationship between the attack and defensive act because the appellant is the one who called the deceased and when the deceased came, he demanded the deceased to remove his balaclava and when he refused to do so, the appellant threatened to shoot him and eventually shot him.
36. The appellant testified that the deceased approached him holding a sword above his head. He requested the deceased to stop. When the deceased refused to

²⁰ Record: p14 line 4-21

²¹ Record: p35 line 21 – p36 line 3

stop the appellant fired two warning shots to the ground. The deceased did not heed the warning and charged the appellant with his sword. In an effort to disarm the deceased the appellant fired a further two shots in quick succession at the deceased. It must follow therefore that the appellant managed to show that it was necessary for him to avert the attack under the circumstances.

Was the use of a firearm in averting the attack reasonable in the circumstances?

37. This enquiry is in practice more a question of fact than of law. (See ***S v Trainor 2003 (1) SACR 35 (SCA)***).
38. It is beyond question that the deceased launched an attack on the appellant; that the attack was directed at the appellant's right to bodily integrity which is constitutionally protected; and that the attack was not yet completed when the appellant resorted to the defensive act, which was aimed at the deceased.
39. In order to decide whether there was such a reasonable relationship between attack and defence, the relative strength of the parties, their sex and age, the means they have at their disposal, the nature of the threat, the value of the interest threatened and the persistence of the attack are all factors which must be taken into consideration.²²
40. I find that under the circumstances there were no alternatives the appellant could have explored. The appellant could not have averted the attack by resorting to conduct which was less harmful to the deceased and which was necessary to overcome the threat. The appellant fired two warning shots to avert the attack. However, the deceased did not heed the warning and continued towards the appellant with a sword which was approximately one metre long.
41. Section 12(2) of the Constitution provides that everyone has the right to bodily and psychological integrity, which includes the right to security in and control over their body.
42. ***In Cele v R 1945 NPD 173*** at 176 it was stated that:

²² See CR Snyman Criminal Law 6 ed (2014) at 110-11

"In all these cases one has to bear in mind the human aspect of the attack. It is all very well for the person who sits in an easy chair and tries to analyse the various incidents that took place in order to produce a picture of what actually happened, and then, ex post facto, to say he ought to have done this and he ought to have done that as a reasonable man."

43. In my view the appellant's conduct was reasonable in the circumstances. It follows that the State failed to prove unlawfulness. The appellant's conduct in defending himself against the deceased's unlawful attack constituted a ground of justification. On this basis alone, in my view, the appeal should succeed.

ORDER:

1. The appeal against the conviction is upheld.
2. The conviction of murder and the sentence of life imprisonment are set aside.



 JJ STRIJDOM
 JUDGE OF THE HIGH COURT
 GAUTENG DIVISION, PRETORIA

I agree and it is so ordered.



 H KOOVERJIE J
 JUDGE OF THE HIGH COURT
 GAUTENG DIVISION, PRETORIA

Appearances:

For the Appellant: Adv. PA Wilkins

Instructed by: Strydom Attorneys, Boksburg

For the Respondent: Adv. S Lalane

Instructed by: National Director of Public Prosecutions Pretoria