



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

JUDGMENT

REPORTABLE

APPEAL CASE NO: 04/2022

CASE NO SSD240/2019

In the matter between:

SAKHIWO KOBE

APPELLANT

and

THE STATE

Neutral citation: *Kobe v The State* (Appeal Case no: 04/2022) [2025]

ZAWCHC (27 October 2025)

Coram: **SHER, J et MAYOSI, AJ**

Heard: 12 September 2025

Delivered: 27 October 2025

Summary: Appeal against conviction by Regional Court, Strand, of the competent verdict of assault to do grievous bodily harm – fair trial rights in the absence of forewarning regarding competent verdict – accused represented.

ORDER

- 1 **On appeal from:** The Regional Court, Strand, against conviction.
 - 2 The appeal is dismissed, and the judgment of the court *a quo* on conviction is confirmed.
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JUDGMENT

Mayosi AJ (SHER J concurring):

Introduction

- [1] This is an appeal against conviction only.
- [2] The appellant, a serving police officer in the South African Police Service (SAPS), was arraigned in the Regional Court, Strand, on a charge of attempted murder in that, on 28 October 2016 whilst he was on duty, he unlawfully and intentionally attempted to kill Mr Siphenathi Foto with a firearm.
- [3] He pleaded not guilty to the charge.

- [4] Five witnesses were called by the State in the trial, namely:
- [a] Mr Siphenathi Foto, the complainant in the case;
 - [b] His sisters, Ms Ncebakazi Foto (**Ncebakazi**) and Ms Akhona Foto (**Akhona**);
 - [c] Mr Richard Foto, the complainant's father (**Mr Foto**); and
 - [d] Mr Andile Tshongweni (**Andile**), a friend of the complainant who was present on the night on which the incident in question occurred.
- [5] On 30 September 2022 the appellant was found not guilty of attempted murder, but guilty of the competent verdict of assault with intent to do grievous bodily harm.
- [6] On 10 October 2022 the appellant was sentenced to a fine of R6000 or 6 months imprisonment, wholly suspended for a period of 3 years on condition that he is not convicted of assault committed during the period of suspension.
- [7] The appeal is with the leave of the court a *quo*.

Relevant background facts

- [8] The incident occurred at about 23h00 on the night of 28 October 2016 at Greenfields, Strand.
- [9] The complainant was walking with four friends down Ralarala Street returning from a tavern in the area, when a marked police vehicle came driving slowly down the road. Andile was one of the friends who were with the complainant.
- [10] After the complainant saw his cousin across the street, he crossed the road to go and talk to him whilst his friends remained on the other side of the street. The complainant's sister, Ncebakazi who was then at a nearby shop,

testified that she saw the group on Ralarala Street that night. She saw her brother cross the road, as well as the police van driving slowly down it.

[11] After the complainant crossed the road, the police van, which was positioned between him and his friends, continued to drive at a low speed such that it did not pass them as they walked in the same direction as the van was driving down Ralarala Street. The complainant was on the side of the road that was adjacent to the driver, whilst his friends, including Andile, remained on the side of the road that was adjacent to the passenger in the vehicle. After his brief conversation with his cousin, the complainant continued walking on Ralarala Street towards his home which was close by on the same street, where he lived with his father Mr Foto.

[12] The SAPS officers in the vehicle then called out to the complainant and told him that they wanted to search him. He told them that he was in a hurry and did not accede to their request. He testified that he was in any event close to his home already; and in this regard, he was heard by Ncebakazi telling the occupants of the police van: *"No bra, I'm at home"*. The complainant testified that as he understood his rights as a citizen, they included the right to refuse to submit to a police search. He testified that he was exercising his rights as a citizen on that evening when he refused to be searched by the police.

[13] The police van then accelerated at speed towards the complainant and believing that the police wanted to hit him with the vehicle, he ran around it and crossed the road again (back to the side that he had crossed over from, which was adjacent to the passenger in the police van), and ran away. The complainant testified that an additional reason for him running away after the van accelerated towards him was fear of being assaulted by the police, whom

he said were known to do this sometimes to people that they found in the streets at night.

[14] In his evidence, Andile confirmed that after a short while of them walking in this formation, he heard and saw the police van drive faster towards the complainant as if they wanted to bump him, and the complainant then ran away across the street.

[15] After he had crossed the road, as he was running away from the police van, the complainant fell. He stood up and continued running; and as he was doing so, he heard a gunshot coming from the direction of the police van. He looked back and saw the appellant alighting out of the police van and he continued to run away. The gunshot was also heard by Ncebakazi, although she did not witness the incident unfolding.

[16] Andile testified that after the police van had come to a stop, the appellant had alighted from the passenger seat and fired a shot at the complainant whilst he was running away. The shot hit the complainant in the back, and when he was shot, the complainant was facing forwards with his back towards the police van, as he was running away. Andile's evidence was that the complainant, whom he spent some time with that night, did not have a weapon on him.

[17] After he heard the gunshot and continued running, the complainant started to feel unwell – a sensation from the back to the front of his chest, as though something had struck him. He showed the court a *quo* where a bullet had struck him – on the right-hand side of his back below the shoulder blade. He ran until he reached his sister, Akhona's house. When he arrived there, he felt he had no strength. He told his sister that he had been shot by the police.

[18] In her evidence Akhona confirmed that this is what occurred after the complainant arrived at her house, running, at about 23h00 that night. She saw that he had been shot in the back 'on' his shoulder.

[19] Akhona and her friend helped the complainant to their father's home, which was not far from her house. On the way, they were seen by Ncebakazi who joined them as they proceeded to their father's house, after Akhona told Ncebakazi that the complainant had been shot.

[20] *En route* to their father's house, they met up with the same police van. Akhona said that the complainant told them that those were the police who had shot him. According to the complainant, and as corroborated by Akhona, the occupants of the police van called him over to them, to talk they said. The complainant refused, for the reason that they had already shot him.

[21] After they arrived at Mr Foto's home, Akhona and Ncebakazi told their father what had happened and Mr Foto took the complainant to the police station. Mr Foto confirmed that when he was brought to his house, the complainant had been shot in the back, on his shoulder. Akhona testified that her brother was crying at this point, saying that the bullet was burning him. An ambulance took the complainant from the police station to Helderberg Hospital where he was examined, x-rayed, treated and kept overnight for observation.

[22] Mr Foto testified that later that night when he returned to his home from the hospital, members of the community were gathered there and there were many policemen as well, some of whom were policemen that he had met earlier at the police station. One of these members called him and pointed out to him two of his colleagues, who he said were the ones who had shot his son. Mr Foto asked one of the two why they had shot his son. The SAPS member

he spoke to replied that it was not him who had shot the complainant; but rather his colleague - the appellant.

[23] Mr Foto's evidence was that when he asked the appellant why he had shot his son, he said that he suspected him of being in possession of something, which he did not specify. In cross-examination, this conversation was denied in the version that was put to Mr Foto, but it was alleged that the appellant did suspect the complainant of carrying an object that looked like a gun. Akhona confirmed that she observed the interaction between her father and the two policemen. She overheard the first policeman telling her father that it was not him who had shot his son, but the appellant.

[24] The complainant testified that he took a long time to heal from his gunshot injury. The bullet remains inside him. He still feels the pain, especially on days with inclement weather. He tires easily and is unable to work for long periods.

[25] The appellant's version was put to the complainant and other State witnesses during their cross-examination, and it was said that the appellant and his colleague, Sergeant Mawela would testify as follows for the defence:

[a] They accelerated the police van to give chase to the complainant.

[b] They wanted to search the complainant because he had acted in a peculiar way by crossing the road; and they had noticed that he might be carrying a firearm. When he ran away, they suspected that the firearm was unlicensed, and therefore they wanted to arrest him.

[c] As the complainant was running away with the firearm that they would say was on the complainant's waist, they observed that he was about to fire towards them. The complainant's failure to heed their instruction, coupled with his fleeing from them led them to feel that the complainant posed a threat to them.

[d] As the complainant appeared to be turning to fire a shot at the police, the appellant fired a shot in his direction.

[e] The appellant fired the shot in order to stop the complainant from fleeing, and in order to minimise the threat that he posed to the police.

[26] The complainant denied that he was carrying a firearm. This was corroborated by Andile, who testified that at no stage during the time that he was with the complainant that night did he have a gun on him.

[27] Neither the appellant nor Sergeant Mawela testified, for after the appellant's application in terms of section 174 of the Criminal Procedure Act 51 of 1977 (**the Act**) was dismissed, the appellant elected not to testify and closed his case without calling any witnesses in his defence. The appellant was represented at all times during the trial.

[28] The appellant was entitled to elect not to testify, as part of his fair trial rights entrenched in section 35(h) of the Constitution. The fact that an accused is under no obligation to give evidence, however, does not mean that there are no consequences attaching to their decision to remain silent when on trial. If there is evidence calling for an answer and an accused person chooses to remain silent, a court may well be entitled to conclude that the evidence is sufficient, in the absence of an explanation, to prove their guilt.

[29] In **Tshakwata & another v S**,¹ the Supreme Court of Appeal held that “[w]hilst the failure of the accused to testify may in appropriate circumstances be a factor in deciding whether their guilt has been proved beyond a reasonable doubt by the State, this is permissible only when the State has at least established a *prima facie* case.” The issue therefore, remains whether or not the State has proved its case beyond a reasonable doubt.

¹ [2014] ZASCA 45; () also reported sub nom ? S v Gerson 2014 JDR 0061 (SCA) at [10]).

[30] In deciding whether or not a *prima facie* case which has been made out by the State has been converted into a case proved beyond reasonable doubt, an accused's silence may weigh against him, because they could easily have refuted the *prima facie* case by their evidence, if it was not correct.²

[31] Where, as in the present case, the State's case is based on direct evidence, an accused's failure to answer credible evidence would lead to the State's case being proved beyond reasonable doubt.

[32] In this case, the direct evidence presented by the State implicating the appellant in the commission of the crime was as follows:

[a] The complainant was close to his home when the SAPS vehicle accelerated towards him, which caused him to run away. This is corroborated by Andile.

[b] The complainant was shot whilst he was running away, at a time when his back was turned to the police and he was facing forwards. When, after hearing the gunshot, he looked back, he observed the appellant getting out of the passenger side of the police van. This is corroborated by Andile, who testified that he saw the appellant shoot the complainant whilst he was running away.

[c] The fact that the complainant was shot by a member of SAPS at or near Ralarala Street on 28 October 2016 is not disputed. The appellant and the driver of the police van were, at the relevant time, the only SAPS members present, conducting patrols.

[d] Andile's evidence was that it was the passenger in the police van, namely, the appellant, who shot the complainant. This corroborates the

² See *R v Ismail* 1952 (1) SA 204 (A); *S v Nkombani & another* 1963 (4) SA 877 (A); *S v Mthethwa* 1972 (3) SA 766 (A).

complainant's evidence that after he heard the gun shot, he looked back and saw the appellant coming out of the van.

[33] It was never disputed by the appellant that the complainant was shot that evening; or that the injury he sustained was a gunshot; or that the reason that he was admitted to Helderberg Hospital that night was due to a gunshot. It was never put to the complainant, or Andile, that the appellant did not fire a shot at the complainant; or that the shot that was fired did not strike the complainant.

[34] What was put to the complainant during cross-examination was that the appellant would testify that he did not know whether or not the shot he fired in the direction of the complainant had in fact struck him. If, going into the trial the appellant did not know that the shot he had fired in the direction of the complainant had in fact struck him, then it ought to have been clear to him after the evidence of the complainant and Andile, as well as the remaining witnesses, that there was now *prima facie* evidence that it did.

[35] The version that it was said would be testified to by the appellant was one which placed him at the scene at the relevant time; and included the prospect of the appellant testifying that he did, in fact, fire a shot in the direction of the complainant in order to: (1) stop him and arrest him; and (2) prevent him from posing a threat to the SAPS members. In other words, there was *prima facie* evidence before the court *a quo* that the appellant intended the shot that he fired to strike the complainant, in order to defuse or subdue him.

[36] The magistrate found that the appellant had a case to answer, given that the State witnesses placed him at the scene of the crime, and that, with reference to his version as put to the State witnesses during cross examination, the appellant had sought to explain the complainant's conduct that led to him

being shot, which on its own demonstrated that he did not dispute that he was one of the two officers at the scene and that he knew what had transpired that night, culminating in the complainant being shot. Furthermore, the magistrate concluded that it was clear on the evidence before her that the bullet that struck the complainant was fired from the firearm allocated to the appellant who, according to his line of cross-examination, had an encounter with the complainant.

[37] The magistrate, who saw and heard the witnesses and was steeped in the atmosphere of the trial, made no adverse credibility findings against any of the State witnesses, nor did she impugn the reliability of their evidence. In the circumstances, I find no reason to reject or interfere with her factual findings .

[38] The appellant's election not to place his version in the form of evidence before the trial court had the effect that there was no evidence to gainsay the *prima facie* evidence presented by the State implicating him in the commission of the offence, which included the direct evidence of Andile that he saw the appellant shoot the complainant as he was running away.

[39] There is another aspect in relation to which the appellant's failure to testify did not assist his defence, namely, his purported reliance on section 49(2) of the Act for his actions on the night in question, which he suggested he would testify about but elected not to. Section 49(2) permits the use of force in effecting an arrest.

[40] In this regard, it was not put to the complainant that the appellant was attempting to effect an arrest of him that night; or, crucially, that it was clear to the complainant that an attempt to arrest him was being made.

[41] Section 49(2) sets out a number of requirements for the successful invocation of its provisions, which include that the person against whom the

force is used must be a 'suspect' as defined in sub-section (1) .i.e. '*any person in respect of whom an arrestor has a reasonable suspicion that such person is committing or has committed an offence.*'

[42] The entertaining of a reasonable suspicion embraces two distinct requirements: that the arrestor subjectively entertains the relevant suspicion (in *casu* the appellant's suspicion that the complainant was committing or had committed an offence); and that there were reasonable grounds for entertaining this suspicion. The appellant's subjective state of mind was therefore a vital piece of evidence for his successful invocation of a defence under this section. However, no evidence as to his state of mind was put before the trial court, and it has been held that where an accused's state of mind is involved the court may find difficulty in finding in his favour where he has not given evidence about it.³

[43] The following contention is made in the appellant's heads of argument in support of his purported section 49(2) defence: "*The incontrovertible version here is that the police had observed a shiny object on the person of the complainant, who was then believed to be unlawfully carrying a firearm.*"

[44] There are a number of difficulties with this contention.

[a] First, the appellant's version was nothing more than that – a version. He gave no evidence to support it, as a consequence of which it could not be tested.

[b] Second, the appellant's version that the complainant was carrying a firearm was denied by him, and this was corroborated by Andile. This evidence was not gainsaid.

[c] Third, carrying a firearm is not, without more, unlawful.

³ Union Government (Minister of Railways) v Sykes 1913 AD 156 at 173-4; S v Kola 1966 (4) SA 322 (A); R v Deetlefs 1953 (1) SA 418 (A).

[d] Fourth, the appellant placed no evidence before the trial court to demonstrate that his suspicion that the alleged firearm was ‘unlawful’ was based on reasonable grounds.

[45] Whilst the appellant under this ground of appeal complains that his version cannot be rejected on the grounds that it appears improbable, it bears remembering that the appellant placed no evidence before the trial court in support of his version. In truth, there was no section 49(2) defence that was properly mounted by the appellant and supported by the necessary evidence before the court *a quo*. In the circumstances, this issue does not arise for consideration in this appeal.

[46] I turn now to consider the appellant’s main grounds of appeal.

There was no evidence supporting the competent verdict

[47] The appellant contends that the court *a quo* misdirected itself in finding him guilty of assault with intent to do grievous bodily harm.

[48] In support of this ground of appeal the appellant contends, in the main, that there is a material incongruence in the court *quo*’s reasoning in finding him guilty on the competent verdict, having acquitted him of attempted murder in the circumstances of this matter.

[49] This contention cannot be sustained when regard is had to the magistrate’s reasoning in the court *a quo*, as well as the provisions of section 258(2) of the Act.

[50] The magistrate acquitted the appellant on the more serious charge of attempted murder primarily because of the State’s failure to lead the evidence of either the doctor who examined the complainant, or the doctor who completed the J88 medical report in the absence of the doctor who examined

him. The magistrate reasoned that attempted murder is a serious offence and it was therefore necessary for the doctor to explain not only the nature of the injuries sustained by the complainant, but also how such injuries might or could have led to his death; and in the absence of such valuable evidence, the court *a quo* had no basis upon which to conclude that the appellant had attempted to kill the complainant.

[51] The magistrate thereafter found, rightfully in my view, that the matter did not end there.

[52] Section 258(b) of the Act stipulates that if the evidence on a charge of murder or attempted murder does not prove either of these offences as the case may be, but the offence of assault with intent to do grievous bodily harm, the accused may be found guilty of such offence.

[53] In further support of this ground of appeal, the appellant contends that once the court *a quo* had accepted that the essential element of unlawful conduct was absent in that it could not be proved that the bullet which struck the complainant came from the complainant's firearm, the issue of a competent verdict did not even arise.

[54] This contention is unfounded, for nowhere in its judgement did the court *a quo* accept: (1) that the element of unlawful conduct was absent; or (2) that it could not be proved that the bullet which struck the complainant came from the appellant's firearm. On the contrary, as I have referred to above, the magistrate found, in terms, that it was clear that the bullet that struck the complainant was fired from the firearm allocated to the appellant. According to his own version which was put to the State's witnesses during cross-examination, he confirmed that he had an encounter with the complainant on the night in question; essentially placing himself at the scene of the crime that the State's witnesses had testified about.

[55] Furthermore, the magistrate found that by means of this very same line of cross-examination, the appellant had set out what he said would be his evidence of the circumstances that led to him shooting in the direction of the complainant, which demonstrated that the appellant admitted that he was one of the two officers involved, otherwise he would not have known what transpired.

[56] There is no incongruence in the magistrate's reasoning, given the court *a quo*'s powers in section 258(b) of the Act and her factual findings in this case. I find no reason to interfere with the magistrate's factual findings and reasoning on this score. The magistrate was also correct in finding that the nature of the assault which the appellant perpetrated constituted more than an ordinary assault, and was one committed with intent to at least cause serious bodily harm, a consequence which any reasonable person firing a gun at another would foresee.

Absence of forewarning regarding the competent verdict

[57] The chargesheet did not state that the State intended to pursue a competent verdict in terms of section 258(b) in the event that the crime that was specifically charged was not proved. The magistrate raised the issue of competent verdicts for the first time in the course of the trial, during the prosecutor's address opposing the appellant's application for a discharge in terms of section 174 of the Act, after which the appellant's counsel had the opportunity to respond and address the issue as raised. The State accepted that assault with intent to do grievous bodily harm was indeed a competent verdict in this case, but nevertheless contended, incorrectly in my view, that it was not relevant in this particular instance.

[58] According to the appellant, these circumstances raise the following issues in this appeal.

[a] First, whether an accused who has not been forewarned by either the State or a court of the possibility of a conviction on a competent verdict, even where such accused is legally represented, may be so convicted.

[b] Second, whether it is open to the court to convict an accused on a competent verdict, even where the State categorically rejects a conviction on the basis thereof, as is said to have happened in this matter.

[59] The first question is not novel, and the facts of this case raise no new legal issues in that regard. The legal prescripts that answer this question have been crystallised by the courts into the following principles.

[60] An accused has a right to know the case he has to meet, which finds expression in section 35(3)(a) of the Constitution. It is, however, not necessary that competent, alternative verdicts should formally be mentioned in the chargesheet.⁴

[61] The legality of competent verdicts is subject to the principle that the accused should not be prejudiced in the presentation of their case. In *S v Mwali*,⁵ the Appellate Division (as it then was) held as follows:

‘That would be a competent verdict in terms of section 264(1)(b) of the Criminal Procedure Act 51 of 1977. The possibility of such a conviction was not brought to Mwali’s attention at any stage, but the decided cases show that that is not

⁴ *S v Velela* 1979 (4) SA 581 (C).

⁵ 1992 (2) SACR 281 (A). The accused had been charged with theft which could not be proved on the facts. The State then pursued conviction for a competent verdict under section 36 of the General Law Amendment Act 62 of 1955.

necessarily a bar to such a course. It is well established that it is desirable that, if the State contemplates asking for an alternative verdict in terms of s 264(1), the offence concerned should be formally charged as an alternative, or it should be brought to the notice of an accused during the course of the trial that he can be convicted of one of the offences mentioned in section 264(1). Even though neither course be followed, however, the accused would not be entitled to succeed in an appeal against or review of the conviction unless it appeared that he was prejudiced by the failure.⁶

[62] Prejudice is a question of fact,⁷ and there can in principle be no prejudice if the accused, as in the present case, had legal representation. See in this regard, the decision of the Supreme Court of Appeal in **S v Jasat**.⁸ The accused was aware, before he elected not to give evidence and thereafter closed his case, that the court *a quo* was considering a competent verdict in terms of section 258 of the Act. His counsel had the opportunity to address the court *a quo* in this regard when he applied for the appellant's discharge at the end of the State's case, and the record shows that he did in fact do so. It must therefore have been clear to the appellant and his counsel that, on the basis of the evidence which had been tendered by the State he was potentially at risk of being convicted on the alternative, competent verdict of assault with intent to commit grievous bodily harm, if he did not put up any evidence to countervail it. Despite knowing this the appellant chose not to put up any evidence. No issue of prejudice was asserted by the appellant, before the court *a quo* and in this appeal; nor, given the circumstances, could he.

[63] As to the second question posed by the appellant, the State's view in the court *a quo* that a competent verdict was not relevant in this particular case

⁶ At 284B – D.

⁷ See generally *R v Dayi & others* 1961 (3) SA 8 (N), at 9D – G; and *S v Velela*, *supra* at 586G.

⁸ 1997 (1) SACR 489 (SCA) 493H – 494A.

patently did not accord with the applicable statutory provisions. It did not in any event preclude the court *a quo* from itself considering the applicable competent verdicts, a position which was confirmed in **S v Marothi**,⁹ where it was held that presiding officers have a responsibility to consider competent verdicts on a specific charge and should not leave it to prosecutors to alert them thereto .

[64] In the circumstances of this case, the court *a quo* applied the correct legal principles in its consideration of the accused's fair trial rights in the context of how the issue of the competent verdict was raised during the course of the trial. The trial court's conclusion that there was no prejudice to the accused cannot be faulted by this Court, and accordingly, there can be no vitiation of the trial for this reason.

The J88 and the ballistic report

[65] The appellant sought to make much of the fact that the evidence of the doctor who completed the J88 was not led at the trial; and the contents of the J88 itself were not proven in evidence by the State. These contentions were rather cynical, considering that the J88 was introduced into the proceedings by the appellant's counsel, who sought to refer to its contents in advancing the appellant's defence. The submission that was made was that the angle at which the bullet struck the complainant was critical in deciding the matter, as it would explain whether it was a direct hit or perhaps ricocheted off another surface before it hit him. It was also pointed out that, according to the findings of the doctor who examined the appellant there was uncertainty as to whether

⁹ Referred to by Du Toit *et al* in Commentary on the Criminal Procedure Act, [Service 68, 2022], at 26 4.

the bullet which struck him entered his body, as it could not be found on examination. Notwithstanding this, however, the examining doctor concluded that the appellant had sustained a gunshot injury.

[66] As for the ballistics report, the submission was that it had not been proven that the complainant was struck by a bullet emanating from the appellant's service pistol and, on the evidence, it could not be said for certain that the complainant was indeed struck directly by a shot fired by the appellant.

[67] I fail to see the relevance of these submissions, when regard is had to the totality of the factual evidence that was before the trial court. As I have stated earlier in this judgment, the appellant never disputed that the complainant was shot that evening; or that the injury that he sustained was a gunshot; or that the reason that he was admitted to Helderberg Hospital that night was due to a gunshot. It was never put to the complainant, or Andile, that the appellant did not fire a shot at the complainant; or that the shot that was fired did not strike the complainant. In fact, as was previously pointed out it was pertinently put to the complainant during cross-examination that the appellant had fired a shot 'in his direction'.

[68] The overwhelming direct evidence that was before the trial court, which the appellant failed to contradict, was that he shot the complainant with his service pistol whilst he was running away, and the bullet hit the complainant in his back, just below his right shoulder blade. It is not apparent from the appellant's submissions why, in the light of this evidence, facts relating to the path of travel of the bullet that struck the complainant were critical to assist the trial court in determining the matter. In my view, once again, when regard is had to the totality of the evidence of the State witnesses, these submissions were of no consequence to the determination of the case. In light of the

appellant's concession during the cross-examination of the complainant that he had fired a shot 'in his direction' it was surely immaterial whether it struck the complainant directly, or only after it had ricocheted off something else. This may have been a material consideration if the appellant's case was that he had not fired a shot directly at the complainant, but rather as a warning shot aimed somewhere else, and the complainant was inadvertently and unintentionally injured in the process. But this was not the version which was put to the complainant or any of the other State witnesses.

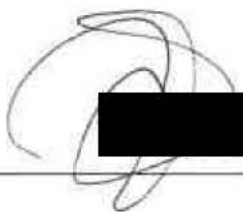
[69] Moreover, it is apparent from the court a *quo*'s judgment that its decision on conviction was based on the factual evidence before it, which proved beyond reasonable doubt the guilt of the appellant on the competent verdict of which he was convicted. The contents of the J88, which was introduced as an exhibit by the appellant during the trial, had no bearing on the decision other than that it confirmed facts that were in any event common cause, i.e., that the complainant was treated at Helderberg Hospital on 28 October 2016 for a gunshot wound.

[70] The appellant's submissions relating to the J88 and the ballistics report consequently have no merit, and do not take the issues raised in the appeal any further.

Conclusion

[71] For all the reasons set out in this judgment, the appeal must fail and, in the circumstances, the following order is proposed:

a) The appeal is dismissed, and the judgment of the court *a quo* on conviction is confirmed.


[REDACTED]

N MAYOSI

ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered.


[REDACTED]

M SHER

JUDGE OF THE HIGH COURT

APPEARANCES

For appellant: Advocate Thembalihle S. Sidaki, Cape Bar of Advocates

For the State: Advocate S M Galloway, National Prosecuting Authority