

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: SS69/2025

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

DATE 23 February 2026

SIGNATURE

In the matter between:

THE STATE

And

N[...] H[...] M[...]

Accused

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties / their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Caselines/CourtOnline by the Judge's secretary. The date of this order is deemed to be 23 February 2026.

J U D G M E N T

CORAM: Liebenberg AJ:

[1] The accused is charged with the murder of his partner on 14 February 2025 as well as defeating and/or obstructing the course of justice by placing the deceased's firearm on the floor next to her body. The accused pleaded not guilty to both charges. Although not giving any plea explanation, the accused made a number of formal admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977 (*the CPA*) including:

[1.1] That the deceased died on 15 February 2025 due to a perforating gunshot wound of the neck and chest as set out in the post-mortem report, the correctness of the facts and findings reflected therein which are admitted, which she sustained on 14 February 2025.

[1.2] At the time of her demise, the accused and the deceased live together in the house where the incident took place.

[1.3] The accused further admits the identity of the official draughtsman and photographer employed by the South African Police Services (*the SAPS*) as well as the entirety of the photo album and key handed into evidence, as correctly depicting the crime scene.

The State's case

Mr B[...] M[...]

- [2] The state's first witness was B[...] "B[...]" M[...], who described himself as a nephew of the accused, a young man of 27 years old. Mr M[...] lived with the accused and deceased in the home for a period of some two years immediately prior to the incident.
- [3] On the night of the incident, he came home from work at about 20:00 at a time when the deceased was taking a bath. After she bathed, she went into the main bedroom to sleep. Mr M[...] later also retired to bed, and at about 23:00 his cousin, a 9 year old boy, M[...], woke him to open the gate and door for the accused who had arrived at home. At the accused's request, Mr M[...] fetched keys from the accused's car and handed them to the accused whereafter both he and the accused retired to their respective rooms. Not long after, M[...] came running into Mr M[...]’s room to say that the accused and deceased were quarrelling. He heard the accused questioning the deceased about where she had been and her answering that she was in Spruitview. According to MrM[...] the disagreement had lasted about 10 minutes when he heard a single gunshot.
- [4] Some seconds later, the deceased open the door to Mr M[...]’s bedroom calling for him to call the police and ambulance services. She had her right hand clutching at her left collar bone. Moments later the accused also appeared at the bedroom door instructing Mr M[...] to call the police and ambulance.
- [5] According to Mr M[...], the deceased appeared to be in pain and when she

removed her hand from her collar bone there was blood. Moments after having called on Mr M[...], the deceased fell to the floor of the passage outside his bedroom. While she was lying on the floor, he tried to call for help but the calls would not connect.

[6] Mr M[...] described the accused as looking frightened and regretful of what had happened. The accused called a neighbour, and later a young man arrived and Mr M[...] opened the door for him.

[7] According to Mr M[...], while standing in the passage, the accused explained that the deceased had been trying to shoot him and he shot first. Both the accused and the deceased were police officers. During his examination in chief, Mr M[...] testified that the deceased's firearm was lying next to her on the floor in the passage which he only noted when it was pointed out to him by the accused.

[8] The accused then instructed Mr M[...] to pack clothes for him and young M[...], and repeated his instruction that Mr M[...] is to call the police and the ambulance and explain what happened. Having handed over the bag of clothing to the accused, the accused left the home with the boy.

[9] In a witness statement, Mr M[...] deposed to the accused having had his firearm in his hand as well as the deceased's firearm, stating that she had wanted to shoot him. When questioned about these facts in examination in chief, Mr M[...] explained that he was not sure how it came that the accused also had the deceased firearm in his possession, that is whether he had picked it up from the floor or entered the passage with it in his hand. Yet in the statement, Mr M[...] was clear that the accused came into the passage with both his and the

deceased's firearms in his possession. The statement continued that having shown the deceased's firearm to "them", the accused placed the deceased's firearm on the floor next to her where she was lying. In concluding his examination in chief, Mr M[...] explained that the accused had shown the deceased's firearm, which was in his hand, to him and thereafter placed it next to the deceased's body.

[10] During cross examination, it transpired that Mr M[...] deposed to two witness statements: the first, commissioned by sergeant Mudau, was deposed to on or about 15 February 2025 and the second, deposed to before investigator Dlamini of IPID on or about 20 February 2025. Both statements were read into the record and confirmed by Mr M[...].

[11] The first statement is somewhat terse, containing no reference to the firearms of either the accused or deceased, the accused's explanation of what happened or the latter having placed the deceased's firearm on the floor next to her body. The second statement, which incorporates the first statement, is more detailed. Mr M[...] explained that investigator Dlamini asked him various questions when compiling the statement in an attempt to understand what happened because the first statement "did not make sense".

[12] Mr M[...] testified that investigator Dlamini reminded him of the firearms, and asked how the firearm got to the floor. This gave rise to his relaying that he saw the accused in possession of two firearms, the accused showed them the deceased's firearm in his hand and stated that the firearm belonged to the deceased, after that the accused placed the deceased's firearm next to her body on the floor.

[13] Mr M[...], although somewhat nervous at times, impressed as a forthright and honest witness throughout.

Ms N[...] T[...] M[...]

[14] Ms M[...] testified that she is the deceased's aunt, and knows the accused because he was married to the deceased.

[15] On 13 February 2025, the deceased arrived at Ms M[...]’s home in Protea Glen early evening, and she was in possession of her bag with the police emblem. Ms M[...] immediately knew that the deceased and accused must have had another fight. It was usual behaviour by the deceased that most of the times when she and the accused were fighting, the deceased would take refuge at Ms M[...]’s home.

[16] The deceased confirmed to Ms M[...] that she has been in constant fights with the accused, that the accused is having financial problems, he is drinking every day since he is on leave and when he is drunk, they fight all the time, and she is tired of their fights. The deceased slept over.

[17] The following day on 14 February 2025 around 10:00 am the deceased received a call from the accused and the deceased put the cell phone on loudspeaker. Ms M[...] overheard the entire telephone conversation and stated that the accused sounded drunk. The accused warned the deceased that if she is not home by 15:00, “I will show you”. The same threat was conveyed by the accused in a voice note sent to the deceased at about 11:00, which voice note the deceased played to Ms M[...] to listen to.

[18] Ms M[...] mentioned that there were previous fights between the accused and

the deceased and during one such argument the accused had bitten the index finger of the deceased. Despite Ms M[...] and other family members' entreaties, the deceased never laid any criminal charges and never sought a protection order against the accused. After every fight, the couple would merely reconcile.

[19] During cross examination, Ms M[...] relayed that the deceased could overpower the accused with her fists which is why the accused used an iron rod to hit her. She also stated that it was the accused who started the fights because he was always drunk, and the deceased did not consume liquor.

[20] Ms M[...] denied that the version put to her that it was the deceased who had called the accused to inform him that she would be going back home on 14 February 2025. She also denied that accused had told the deceased that when she gets home, he would not be home because he was about to go to look for a plumber.

[21] Although emotional at times, Ms M[...] impressed as an honest witness, forthright in her manner and steadfast in her version placed before court.

Sgt Mohale

[22] Sgt Mohale attended the scene and photographed the scene as it was found. He compiled a photo album which was formally admitted by the accused. The album contained photographs of the firearm found next to the deceased's body, and the fired bullet which had been found on top of the bed. The cartridge case which should have ejected on the right side when the shot was fired was not found at the scene after a thorough search was conducted.

[23] Having photographed the firearm on the floor, Sgt Mohale moved it away and

ensured it was safe. He found the firearm on safe mode with one bullet in the chamber and an empty magazine. He took touch DNA samples hoping to establish who handled the firearm last.

[24] From his own observations, Sgt Mohale formed the opinion that the firearm found next to the deceased was placed after the deceased had collapsed on the floor inter alia because of the lack of a void on the floor around the firearm, the lack of blood on the grip and slide of the firearm despite both the deceased's hands being very bloody, the lack of any significant blood spatter on the right hand side of the firearm, and the presence of blood droplets on the left hand side of the firearm.

[25] He stated further that he could not locate the safe in the main room and conceded that the place marked where the safe is situated, there were items on top of the safe and those items were not removed and that contributed to the failure to locate the firearm safe.

[26] Cross examination commenced with a focus on the failure to take fingerprints on the firearm found at the scene. Sgt Mohale also explained that just because the firearm had a round in the chamber did not render it ready for use because the safety pin was on and the hammer was not cocked. In this state, the firearm could not be triggered.

[27] The defence sought to undermine the correctness of two s 212 statements, by captain Janse van Rensburg and lieutenant colonel Moodley, two witnesses neither of whom were called.

[28] Cross examination ended with Sgt Mohale explaining that from his

observations, the deceased was shot in the bedroom as it evident from the damage to the wall where the bullet ricocheted and the spent bullet found on the bed.

Dr Carson

[29] The evidence of Dr Carson, the pathologist who performed the medico-legal postmortem examination of the deceased was uncontroversial. She confirmed the contents of the report which had been formally admitted by the accused and accepted into evidence as exhibit "B".

[30] The cause of death was a perforating gunshot wound to the neck, which perforated both major blood vessels in the neck, the carotid artery and the jugular vein as well as the upper lobe of the left lung causing it to collapse. The bullet entered the anterior aspect of the neck on the left, some 42 mm to the left and 40 mm above the suprasternal notch, and exited at the back 38 mm to the left of the midline at a height of 1420 mm from the left heel.

[31] According to Dr Carson, the absence of burning, soot or tattooing around the entrance wound indicates that the shooter was at least a meter away from the deceased and the wound is consistent with the deceased facing the shooter but Dr Carson was unable to determine the exact position of the deceased when the shot was fired.

Captain Nkosi

[32] Captain Nkosi, a senior forensic analyst, qualified himself as an expert in the field of scene reconstruction, bullet trajectory and terminal ballistics as well as wound reconstruction. He attended not only the scene but also the post-

mortem examination by Dr Carson. He confirmed the findings reflected in and the contents of of his s 212 statement marked exhibit "L".

[33] Based on his expertise, Cpt Nkosi opined that the deceased's firearm, depicted in photo 18 of his report, landed on the floor after there was already blood on the floor. His opinion is based on the law of superposition which posits that had the firearm been on the floor previously, blood spatter would be on top of the firearm.

[34] Because the deceased had free flowing arterial bleeding from the neck and both hands had blood, it is significant that the firearm did not have any blood on its grip or on the righthand side thereof.

[35] From his analysis of the findings at the scene and the postmortem examination results, Cpt Nkosi deduced that when the deceased was shot at, her head was facing to the right thereby exposing the neck and that she was slightly bending forward. He further stated that it is human nature to take this stance to shy away from danger.

[36] During cross-examination, Cpt Nkosi stated that if the deceased had been shot when she stood up straight, facing the shooter, he would expect the bullet to go straight and come out at the same direction as it entered because the bullet does not change direction when in motion. The bullet should have exited from the back side of the neck if she was shot whilst she stood up in a straight upward position. He stated that for the type of trajectory found, had the deceased not been slightly bended, the shooter must have been on the position of the ceiling.

Sgt Chauke

[37] Sgt Chauke's evidence was uncontroversial and related to him having been called to the scene by the accused. At the time, Sgt Chauke was not on duty but attended in his capacity as neighbour and friend of the accused and deceased. But for his observations of the presence of the body of the deceased, the blood, and the state-issued firearm lying on the floor, Sgt Chauke did not interfere in the scene and ensured that no-one else entered the home until his colleagues arrived.

Sgt Madlati

[38] Sgt Madlati was the arresting officer, who was called to Moroka police station when the accused handed himself over. According to her evidence, which was uncontroversial, on 18 February 2025 and at the Moroka station the accused announced that he was handing himself over for the murder of his wife where he was detained whilst she booked his firearm into evidence.

[39] The accused's firearm had an empty magazine and upon enquiry from Sgt Madlati, the accused explained that the deceased must have taken the other bullets from the magazine.

Sgt Mudau

[40] Sgt Mudau's evidence was uncontentious. At the scene, he observed the deceased lying in the passage in front of the main and second bedrooms and a 9 mm firearm lying next to her. He took a statement from a family member whose name he could not recall, and tried to contact the accused telephonically, whose telephone was switched off. He could not retrieve the

deceased's telephone at the scene.

[41] During cross examination much was made of the fact that Mr B[...] M[...]’s first statement was commissioned in his absence days, after it had been taken.

Investigator Dlamini

[42] Mr Dlamini, the investigating officer in the matter, is attached to IPID. He attended the scene where he cordoned off the area, took exhibits, ensured the safety of the victim and interviewed potential witnesses and all the role players at the scene.

[43] He testified that he had to re-take the witness statement from B[...] M[...] because of his discussion of the first statement with his commander when it was concluded that the first statement is not clear. He stated that when he was at the scene, he also interviewed Mr M[...] and that the first statement did not have all the information that was given to him whilst at the scene.

[44] He stated that when obtaining the second statement from Mr M[...], he asked questions and this was in the normal course of obtaining a detailed statement of how the incident happened. He did not by any way or means coax and/or force Mr M[...] to get the information as contained in the second statement.

[45] He intended to also obtain a further statement from the Tsepo Masilela who was in the house, however Mr Masilela indicated that he was satisfied with the statement already made and did not co-operate with him hence no further statement was taken. He stated that if Mr M[...] had stated to him that he did not want to make a second statement, he would have not proceeded to obtain the said second statement.

[46] According to Mr Dlamini he never received the results of the DNA swabs because they did not have an acknowledgement of receipt at the laboratory. He further stated that there is a high probability that the DNA of the accused would be present on the deceased's firearm because the accused and deceased were residing in the same room. The DNA would have been of assistance in a case where there was an intruder. The presence of DNA cannot prove that the accused is the last person to handle the firearm. For that purpose there must be evidence to indicate who was the last person to handle the firearm.

[47] He stated that the information in his sworn statement to apply for the J50 warrant was based on his interviews with the witnesses at the scene. He had no personal knowledge of how the deceased's firearm ended next to the deceased.

[48] He stated that the deceased's cell phone was not found at the scene and that the fired cartridge was also not found. The conclusion he reached was that the accused must have taken the deceased's cell phone with him when he fled the scene.

[49] During cross examination, attempts were made to discredit Mr Dlamini's statement in support of his application for a warrant of the accused's arrest. Nothing turns on this in so far as the accused handed himself over on the very day the warrant had been authorised.

Record of bail proceedings

[50] Prior to closing the State's case, the court received the transcript of the bail proceedings without objection from the defence.

Application for discharge in terms of section 174

[51] Having considered the written submissions filed and having heard argument, the defence's application for a discharge was dismissed. These are the reasons.

[52] If at the close of the State's case, the court is of the opinion that there is no evidence that an accused committed an offence he was charged with, it may at that stage acquit the accused. This means that a conviction must not be possible on the evidence tendered before the court. The court thus have the discretion to decide not to put an accused on the defence if there is no case for him to answer to.

[53] It has been held that "no evidence" means that there must be no evidence on which a reasonable man, acting carefully, may convict. The mere presence of contradictions in the State's case does not mean that there is not a *prima facie* case against an accused.¹

[54] In *S v Manona*² the Court dealt with an application for the discharge of the accused in terms of s 174 of the CPA in the context of a defence of private defence and held that:³

"An assault and the killing of a human being is an action which is *prima facie* unlawful. Once it becomes common cause that the accused has assaulted or killed the deceased or the victim in self-defence, an evidential burden is place on the accused to rebut the *prima facie* presumption of unlawfulness. In such cases a discharge under s 174 cannot be granted".

¹ *S v Langa* (unreported, SCA case nr 640/2016 decided on 23 February 2017).

² 2001(1) SACR 426 (TK). Also see *Director Of Public Prosecutions, Gauteng Local Division, Johannesburg v The Regional Magistrate, Krugersdorp and Another* 2018 (1) SACR 93 (GJ) at paras 6 and 7.

³ At 427f.

[55] I am satisfied that given the accused's version that he killed the deceased in self-defence, there is indeed evidence upon which a reasonable court may convict, rendering a discharge in respect of count 1 inapposite. In respect of count 2, sufficient evidence, in the form of eye witness testimony of Mr B[...] M[...] as well as the evidence of Sgt Mohale, Cpt Nkosi as well as Investigator Dlamini together with the forensic findings sufficient to sustain a conviction on the count.

[56] In the result, the application for a s 174 discharge was dismissed.

The accused's case

[57] Only the accused himself testified in his case.

[58] According to the accused, during the afternoon of 13 February 2025 at about 16:00 and whilst he was sitting in the lounge with Tshepo Masilela, the deceased exited the house without a word, carrying a bag. She left the home and did not return that night.

[59] On the morning of 14 February 2025, at about 10:00 he received a call from the deceased to say that she was returning home whereafter she terminated the call. He telephoned her back to say that she would not find him home on her return as he would be looking for a plumber.

[60] He only returned home "after 20:00" to find the deceased lying on their bed. During the ensuing conversation, the deceased said that she was stressed out by the pregnancy of her daughter and the fact that the boyfriend's family wishes to pay damages for the unborn child. The accused expressed his belief that the deceased was lying and that is why he wished that they would just part ways.

The deceased, while getting up from the bed, said no, only death would part them, and moved to the wardrobe to retrieve her firearm from a drawer in the wardrobe when she pointed the firearm at him. He fired a shot in the direction of the place she was standing defending himself. He then ran to the kitchen where he heard the deceased saying that an ambulance must be called. When the accused went back to the passage he noticed the deceased lying on the floor. The accused said to B[...] M[...] that the deceased wanted to shoot him and pointed to the firearm on the floor to the right of the deceased, whereafter he holstered his own firearm. He denied having touched the deceased's firearm.

[61] The accused then entered B[...]’s room to retrieve his son, M[...]’s clothing bag, and asked B[...] to pack some other clothes for him. Thereafter M[...] and the accused got into his vehicle to depart for Mpumalanga. *Enroute*, the accused called Sgt Chauke asking him to go to the house. It was only whilst travelling to Mpumalanga, when M[...] asked for a charger, that the accused realised that the child had the deceased’s telephone in his possession. The boy explained that he had been playing games on his mother’s telephone and that is why he still had the phone with him.

[62] By all accounts, the vehicle broke down *enroute* and was left at the side of the road, with the deceased’s phone inside. Later, when the accused arrived at the place with a vehicle mechanic, he learnt the car had been impounded. He never retrieved the vehicle.

[63] During cross examination, the state pointed out various inconsistencies and contradictions between the accused’s version in the trial and the affidavit he

deposed to in support of his bail application. These inconsistencies included:

[63.1] The accused stated in his bail affidavit that he got home on the 14 February 2024 at 17:00, this is in a direct contrast with his evidence in this court, that he got home after 20:00.

[63.2] The accused stated in his bail affidavit that he was from running errands, which contradicts his evidence in this court, which is that he was from a home cell in Roodepoort, where he went to pray.

[63.3] The accused stated in his bail affidavit that he was taken aback to see the deceased on their bed, this is in direct contrast with his evidence in this court that the deceased who left without informing him where she was going, who slept out and then contacted him to say she was going to return home. It is highly improbable that the accused would have been surprised by the deceased's presence in the house if the deceased had informed him that she would return home.

[63.4] The accused stated in his bail affidavit that the deceased reached for her firearm from the bed side drawer, this is in direct contrast to his evidence that the deceased pulled out the firearm from the top wardrobe drawer.

[63.5] The accused stated in his bail affidavit that after the deceased reached for the firearm, she pointed it at him and she uttered the words that they will only be separated by death, this too is in direct contrast of his evidence before this court where the accused stated that the words "we will be separated only by death" were uttered before the deceased

reached for the firearm.

[63.6] The accused further stated in his bail affidavit that he verbally expressed his surprise at her presence to which she gave an explanation that he found unconvincing, whereas in this court he testified that the argument was caused by deceased's explanation that she was stressed about her daughter's pregnancy and that the family of her daughter's boyfriend wanted to come pay for damages. The accused's version is contradicted by Mr M[...]’s testimony that he heard when the accused asked the deceased where she had been, and that from thereafter there was an argument that lasted for about 10 minutes. The evidence of Mr M[...] must be taken with the fact that the deceased did not sleep at home and that according to Ms M[...] the accused contacted the deceased and told her that if she does not return before 15:00 he would show her.

[64] The accused stated that after he had fired a shot at the direction of the deceased, he was not aware if the bullet had struck the deceased, at the same time he noticed that he did not have more bullets in his firearm, however he turned and ran to the kitchen exposing the back part of his body to the deceased who was still in possession of a firearm.

[65] Much was made of the improbability that, considering that the accused said that this happened very quickly, the deceased is the one who took out the firearm first, the accused to be able to pull out his firearm, cock it and even fire a shot.

Evaluation

[66] In respect of count 1, the State did not present any direct evidence of events immediately prior to the fatal shot being fired, unsurprisingly so given that only the deceased and the accused were present in those moments. The State relies on circumstantial evidence to prove its case.

[67] But a Court is required to have regard to the full conspectus of evidence to determine an accused's guilt or innocence. In *S v Hadebe*⁴ Marais J, referring to the dictum in *Moshephi and others v R* (1980-1984) LAC 57 at 59 F-H stated as follows:

"the question for determination is whether in the light of all the evidence adduced at the trial, the guilt of the Appellants was established beyond reasonable doubt. The breaking down of the body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it, but in doing so, one must guard against a tendency to focus too intently on upon the separate and individual parts of what is after all a mosaic of proof. Doubts about one aspect of the evidence led in a trail may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence, far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence, but once that has been done, it is necessary to step back a pace and consider the mosaic as whole. If that is not done one may fail to see the wood of trees."⁵

[68] In the case of the *S v Trainer* 2003 (1) SACR 35 (SCA), Navsa JA remarked as follows:

"A conspectus of all the evidence is required. Evidence that is reliable should be

⁴ 1997(2) SACR 641(SCA).

⁵ At 645I – 646B.

weighed alongside such evidence as must be found to be false. Independently verifiable evidence, if any should be weighed to see if it supports any of the evidence tendered in considering whether evidence is reliable, the quality of that evidence must be of necessity be evaluated as must corroborative evidence if any evidence of course must be evaluated against the ones on any particular issue or in respect of the case in its entirety. The compartment and fragment approach of the magistrate is illogical and wrong."⁶

[69] The State is not required to close every possible loophole for escape and is not obliged to call every available witness.⁷ The State's evidence must be weighed against the improbabilities and contradictions in the versions of the accused in order to determine whether it is compelling.⁸

[70] When relying on circumstantial evidence, such evidence must be consistent with the guilt of the accused and exclude every reasonable inference consistent with innocence.⁹

[71] Mr B[...] M[...] was the only State witness who was able to given direct evidence of events leading up to him hearing the gun shot and the aftermath thereof. As a single witness, his evidence must be found to be credible and "must be clear and satisfactory in every material respect."¹⁰ There is no magic formula which determines when a conviction is warranted upon the testimony of a single witness. Such evidence must be approached with caution and the merits thereof weighed against any factors which militate against its credibility. In essence a common sense approach must be applied. If the court is convinced beyond a reasonable doubt that the sole witness has spoken the truth, it must

⁶ At 40 F-41C.

⁷ S v Ndlovu 1987 (1) PH H37 (A) at 69; Michaels v S 2003 (1) All SA 312 (E) at 317a-f.

⁸ S v Lachman 2010 (2) SACR 52 (SCA) at para 43.

⁹ S v Shackell 2001 (2) SACR 185 (SCA).

¹⁰ S v Sauls and Others 1981 (3) SCR 172 (A) at 173.

convict, notwithstanding that the witness was in some respects unsatisfactory.¹¹

[72] This Court is satisfied that Mr M[...]’s evidence was corroborated in large parts by the evidence of Ms M[...] (regarding the existence of an argument between the accused and the deceased) with the inherent probabilities that the couple had in fact had an argument which led to the deceased sleeping elsewhere on the night of 13 February 2025. Upon her return home on 14 February 2025 that argument continued. The physical and forensic evidence of Cpt Nkosi and Sgt Mohale in relation to the blood spatter or lack thereof on the firearm found at the scene coupled with the nature of the wound the deceased had sustained corroborate Mr M[...]’s evidence on the firearm and its placement at the scene.

[73] The accused raises private defence (self-defence) as exculpation for his actions. A person acts in private defence, and the act is therefore lawful, “if he or she uses force to repel an unlawful attack which has commenced, or is imminent threatening, upon her or somebody else’s life, bodily integrity, property or other interest which deserve to be protected, provided the defensive act is necessary to protect the interest threatened, is directed against the attacker, and is reasonably proportionate to the attack.”¹² To qualify as private defence, the attack must be unlawful, it must be directed at an interest which legally deserves to be protected, and the attack must be imminent but not yet completed.

[74] In *S v Strydom*¹³ the court held:

“Every case must be determined in the light of its own particular circumstances and it is impossible to devise a precise test to determine the legality or otherwise of the actions of a person who relies upon private defence. However, there should be a

¹¹ *S v Banana* 2000(2) SACR 1 (ZSC) at 8A-B.

¹² CR Snyman *Criminal Law* 6 ed (2014) at 102.

¹³ (1) SACR 411(SCA) at para 9

reasonable balance between the attack and the defensive act as 'one may not shoot to kill another who attacks you with a flyswatter'. As Prof J Burchell has correctly explained '... modern legal systems do not insist upon strict proportionality between the attack and defence, believing rather that the proper consideration is whether, taking all the factors into account, the defender acted *reasonably* in the manner in which he defended himself or his property'. Factors relevant to the decision in this regard include the following (the list is by no means exhaustive):

- the relationship between the parties;
- their respective ages, genders and physical strengths;
- the location of the incident;
- the nature, severity and persistence of the attack;
- the nature of any weapon used in the attack;
- the nature and severity of any injury or harm likely to be sustained in the attack;
- the means available to avert the attack;
- the nature of the means used to offer defence;
- the nature and extent of the harm likely to be caused by the defence."

(footnote omitted)

[75] The Court does not have to be convinced that every detail of the accused's version is true but if the accused's version is possibly true in substance, the court must decide the matter on the acceptance of that version. The accused's version can only be rejected on the basis of inherent probabilities if that version is so improbable that it cannot reasonably possibly be true.¹⁴ It follows that, accepting the accused's version of events, the State must disprove the accused acted in self-defence.¹⁵ When, as in this matter, the State's case is mainly

¹⁴ S v Shackell 2001 (4) SA 1 (SCA) at para 30.

¹⁵ S v Ramavhale 1996 (1) SACR 639 (A) at 654B.

squared on circumstantial evidence, the State's case must be consistent with the guilt of the accused on every reasonable inference, failing which the private defence must succeed.

[76] All the available evidence, taken holistically, points to an argument that raged between the accused and the deceased, not about her alleged stress in relation to her daughter's pregnancy, but rather about the deceased having spent the night elsewhere. The argument took place in the main bedroom, at the time when the deceased had already retired to bed.

[77] Given the various contradictions and inconsistencies in the accused's version, this Court accepts the evidence of Mr M[...] that the accused arrived home closer to 23:00 than 20:00 as the accused alleged, and that an argument ensued, not about the deceased's daughter and her situation, but about the deceased's whereabouts the previous night.

[78] The deceased did not reach for her firearm in a bedside drawer, but got up out of bed during the course of the argument. With a gun safe installed in the bedroom, there is no reasonable explanation why the deceased would hide her firearm in the wardrobe but no evidence was presented to counter the accused's version on this score.

[79] Whilst it seems improbable that the accused could have reacted so swiftly as he would have it, that is even before the deceased could properly aim her firearm at him, he was able to unholster, unpin, cock and fire his firearm, when measured against the deceased's utterance that only death would part them, whether said before or after she took possession of her own firearm, it is reasonably possibly true and probable that the accused formed a genuine fear

for his life.

[80] It seems peculiar that having fired a shot and without knowing whether he hit his mark, the accused would then run to the kitchen exposing his back to a possible retaliatory attack from the deceased. In sum, the accused's version of events certainly have the hallmarks of an improbable chain of events, yet, absent any evidence to disprove the accused's version, this court cannot reject outright as being not reasonably possibly true the accused's version that the deceased was in fact the aggressor that she pointed her firearm to the accused. A version he stated to Mr M[...] immediately after the shooting, and which he repeated consistently thereafter.

[81] It follows that the state has failed to disprove the defence of private defence.

[82] Whilst Mr M[...] was unable to state when and how the deceased's firearm came into the accused's possession, this Court accepts that Mr M[...] noticed that firearm when it was in the accused's hands, when the latter remonstrated to Mr M[...] that the deceased had aimed the firearm at him. The absence of blood on the grip and slide of the firearm militates against a finding that the deceased had the firearm in her hands after she had been shot. With a catastrophic arterial wound to the neck, it is improbable that the firearm would not have been soiled with blood whilst in the deceased's hands. This Court accepts the evidence of Sgt Mohale that the absence of a void around the firearm points to the firearm having been placed on the floor after blood had already fallen on the floor.

[83] In sum, on a conspectus of the evidence, the State has proven that the firearm was placed, by the accused, next to the deceased's body rather than the

firearm having fallen from her grip after she suffered the gunshot wound to the neck.

[84] In the final analysis, having weighed up the full mosaic of evidence, having considered the circumstantial evidence together with the direct evidence of Mr M[...], the forensic and physical evidence of Sgt Mohale and Investigator Dlamini as well as Cpt Nkosi, this Court is satisfied that the State has acquit the onus resting on it to prove beyond reasonable doubt the accused's guilt of defeating or obstructing the course of justice.

[85] Accordingly:

[85.1] The accused is acquitted on count 1, the charge of murder;

[85.2] The accused is convicted of count 2, defeating and/or obstructing the course of justice.

SARITA LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

For the state: Adv Phungo

For the defence: Adv Mapholisa

Heard on 20, 21, 22, 23, 26, 27, 29 and 30 January 2026.

Judgment on 23 February 2026