



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

JUDGMENT

Case No: A199/2025

In the matter between:

LUVUYO PATRICK NDEVU

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation:

Coram: Fortuin J, Sher J et O'Brien, AJ

Heard: 27 February 2026

Delivery: 16 March 2026

Summary: Evidence-evaluation thereof-court of appeal will not interfere with factual findings – unless trial court committed a misdirection.

Alibi-no onus on accused to prove alibi-if evidence shows alibi is false-court entitled to reject it.

ORDER

The appeal against the convictions and sentences is dismissed.

JUDGMENT

O'Brien, AJ (Fortuin, J et Sher, J concurring):

1. The appellant as accused no1 was one of five accused who appeared in the High Court on charges of robbery with aggravating circumstances, murder, the unlawful possession of firearms and ammunition. He was convicted of robbery with aggravating circumstances and murder on 5 March 2016. On 28 April 2016, the trial court imposed a sentence of 15 years' imprisonment for the robbery charge and a life sentence for murder in terms of section 51(1) of Act 105 of 1997. Accused no 4 was convicted on the same offences and was sentenced to 11 years on the robbery count and 2 years imprisonment on the murder count. The trial court ordered the sentences to be served concurrently. Strangely, the court a quo did not convict the appellant and accused no 4 on any of the firearm charges. Accused 2, 3 and 5 were acquitted of all the charges.
2. The appellant sought leave to appeal both his convictions and sentences; however, the trial court refused the application. On 20 February 2024, the

Supreme Court of Appeal granted the appellant leave to appeal to the Full Court of this division against both the convictions and sentences.

3. The facts underpinning the appellant's conviction and sentence can be briefly summarized as follows. On 16 April 2014, the deceased, a police officer W/O Britz, together with constable Cupido and constable Tyantsi, were on duty at the Klapmuts police station, Western Cape. Before Cupido and Tyantsi went out on patrol they had some Coke from a cup which Tyantsi cleaned by washing it with warm water before use. During the course of the evening, Cupido and Tyantsi responded to calls while on patrol, leaving the deceased alone in the police station.
4. A group of men entered the police station, shot the deceased and removed several firearms and ammunition from a safe located in the charge office. When Cupido and Tyantsi returned to the charge office sometime later they found the deceased lying in a pool of blood with a gunshot wound to the back of his head. The post-mortem report indicated he sustained two gunshot wounds to the occipital region of the skull and an entry and exit wound on the left hand. A footprint on the back of the deceased's shirt suggested that he was executed while lying on the ground.
5. Subsequent police investigation of the scene revealed a fresh fingerprint on a cup, which was found on a counter next to a half-empty bottle of Coke. It was the same cup Tyantsi used earlier. A swab was taken from the cup to collect potential DNA evidence. The fingerprint was identified as

belonging to the appellant. Analysis of the swab revealed DNA material that was also attributed to the appellant. Although alternative explanations, such as accidental transfer or contamination, could be raised, these possibilities were considered and mitigated. The crime scene was secured promptly by first responders, limiting access to the area, and only forensic personnel were permitted to collect evidence. According to the evidence presented, standard protocols for the collection and preservation of forensic evidence were followed. While the defense contended that the fingerprint was left before the incident and that the cup was handled by others, the print's freshness and the timing of its identification in a secure environment strongly support its connection to the offence in question.

6. It is not in dispute that the appellant was a detective at the same police station. At the time of the incident, the appellant was on sick leave, having last reported for duty on 28 February 2016. The appellant's sick-leave certificate indicated he was officially booked off duty from 29 February 2016 until 16 April 2016, covering the entire period in question. Accordingly, he had not been present at the police station for approximately six weeks.
7. During the trial, the appellant asserted that he was at home with his brother at the time of the incident. He did not call his brother as a witness, as his brother had passed away. The appellant further contended that his fingerprint on the cup resulted from his use of the cup at the station on 28 February 2016 and offered the same explanation for the presence of his DNA in or on the cup.

8. The court a quo rejected the appellant's version and found that the evidence against him proved his guilt beyond a reasonable doubt.
9. Before this court, the appellant argued that the state failed to prove its case beyond a reasonable doubt, particularly with respect to the fingerprint and DNA evidence. The appellant contends that the court a quo failed to properly evaluate the state's evidence, particularly in light of alleged contradictions and improbabilities.
10. It is well-established that the state bears the burden of proving the appellant's guilt beyond a reasonable doubt. There is no onus on the appellant to prove his alibi. In this regard, *R v Hlongwane* 1959 (3) SA 337 (A) at 340 H-341A:

‘The legal position with regard to an alibi is that there is no onus on an accused to establish it, and if it might reasonably be true, he must be acquitted. *R v Biya* 1952 (4)514 (AD). But it is important to point out that in applying this test, the alibi does not have to be considered in isolation. I do not consider that in *R v Masemang*,1950 (2) SA 488 (AD), Van Den Heever, JA had this in mind when he said at pp 494 and 495 that the trial Court had not rejected the accused’s alibi evidence “independently”. In my view he merely intended to point out that it is wrong for a trial Court to reason thus: “I believe the Crown witnesses. Ergo, the alibi must be rejected. See also *R v Tusini and Another*, 1950 (4) SA 406 (AD) at p 414. The correct approach is to consider the alibi in the light of the totality of the evidence in the case, and Greenberg JA said at p.521 “ ... If on all the evidence there is a reasonable possibility that this alibi evidence is true it

means that there is the same possibility that he has not committed the crime
'.

11. In *S v Ngcina* 2007 (1) SACR 19 (SCA) at para. 18, Navsa JA said:
'In Hoffman and Zeffert, the South African Law of Evidence (2003), p151, the learned authors correctly point out that courts occasionally fall into the error of treating an alibi defense as a separate issue to the issue of identification. An alibi defense is essentially a denial of the prosecution's case on the issue of identification.'
12. A Court of Appeal will only interfere with the trial court's factual findings where there has been a material misdirection by the trial judge or where the court is convinced that the trial court was clearly wrong. The proper approach to the evaluation of evidence on appeal was set out in the well-known case of *R v Dhlumayo and Another* 1948 (2) SA 677 (A).
13. An alibi defense is essentially a denial of the prosecution's identification claim. In this case, the issue is not merely the identification of the appellant, but whether he was among those who participated in the murder of the deceased. The appellant contends that he could not have been present, as he had last been at the station six weeks prior to the incident. The cup in question is a communal item used by several police officials. Acceptance of the appellant's version would require the improbable conclusion that the cup remained untouched and unwashed by any police officer for six weeks, a proposition that should be rejected.

14. There is evidence that Constable Tyantsi used the cup that evening and washed it with warm water. By doing so, she likely removed any other fingerprints previously present on the cup. Following the incident, the cup was collected by forensic personnel who were the only individuals granted access to the scene after it was secured. The cup was then sealed in an evidence bag, labelled, and stored in accordance with chain-of-custody procedures, ensuring that any risk of contamination or tampering was minimized. Records documenting each transfer and handling of the cup were maintained and presented in court, pre-empting challenges regarding potential contamination. This careful process supports the conclusion, as per the evidence of the fingerprint expert who testified, that the fingerprint found was fresh and properly identified as belonging to the appellant. Approximately two hours elapsed between the constables' departure from and return to the police station. During this period, only the appellant could have touched the cup. Furthermore, there is no evidence that any other police officers were present at the station immediately before the deceased's death.
15. Furthermore, the DNA evidence also demonstrates that the appellant was present at the police station when the offences were committed. It is highly improbable that the appellant's DNA would have remained in or on the cup from 28 February 2016 until 16 April 2016. Logical reasoning suggests that other police officers would have used the cup during the appellant's absence. Any contrary argument renders the appellant's version not only improbable, but so improbable that it is false beyond a reasonable doubt. See: *S v Shackell* [2001] 4 ALL SA 279 (SCA).

16. Earlier that evening, the appellant contacted the police station telephonically to enquire about the whereabouts of one W/O April. Notably, on the same evening following this call, both the appellant's fingerprint and DNA were discovered at the scene. The appellant's explanation for enquiring about April is unconvincing. On another score the appellant only raised his alibi in his evidence in chief. It was not mentioned in his bail affidavit nor was it put to the state witnesses. If the appellant's alibi was true, one would have expected of him as a detective to raise this defense at the first opportunity, to show his innocence. The coincidence of the phone call, combined with the fresh forensic evidence, supports the compelling and only reasonable inference that the court *a quo* correctly found the appellant to be one of the perpetrators of these offences.
17. With respect to sentencing, as the trial court was of the view that there were no substantial and compelling circumstances present, it imposed the prescribed minimum sentence of 15 years' imprisonment for the robbery and life imprisonment for the murder. In accordance with the law, the 15-year sentence for robbery will run concurrently with the life sentence. The appellant bears the burden of demonstrating that the sentence that was imposed is vitiated by some material misdirection by the trial court, such as to warrant interference by an appellate court. In my view, the appellant failed to show that there was any misdirection by the trial court, let alone a material one. The appellant has not advanced any proper, let alone compelling, reason why the court *a quo* was entitled to depart from the prescribed minimum sentences. There are no substantial and compelling

circumstances present which would justify deviating from the prescribed minimum sentences in this matter. The deceased was a long-serving police officer who was executed in a brazen and heinous attack on the State, motivated by the acquisition of firearms. The offences were clearly planned and executed in a vicious manner. There are no mitigating factors that outweigh the aggravating circumstances.

In the circumstances, I propose that the appeal against both the convictions and sentences be dismissed.

O' BRIEN, AJ
Acting Judge of the High Court of South Africa
Western Cape Division, Cape Town

I agree, and it is so ordered.

FORTUIN, J
Judge of the High Court of South Africa
Western Cape Division, Cape Town

I agree.

SHER, J
Judge of the High Court of South Africa
Western Cape Division, Cape Town

Appearances

For appellant: Adv Paries

Instructed by: R Davies and Associates

For respondent: Adv Swart

Instructed by: National Prosecuting Authority