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

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

DATE : 30 March 2026

SIGNATURE

CASE NO: CC79/2024

JUDGMENT: 30 March 2026

In the application of:

The State

Versus

Frederick Pieter Jacobus Botha

JUDGMENT

Strijdom, J

1. The accused, a 44 year old male, was arraigned in this Court on the following charges:

- (i) Murder (read with Section 51(1) Act 51 of 1977).
- (ii) Theft.
- (iii) Section 3 of Act 60 of 2000 (Possession of a firearm without a license.
- (iv) Section 90 of Act 60 of 2000.

2. On 22 July 2025 the accused pleaded not guilty on all the charges and denied that he committed any offence.
3. The relevant minimum sentences and competent verdicts were explained to the accused by the court at the outset of the case.
4. The state presented the evidence of 14 witnesses to testify *viva voce* and the defence tendered the evidence of the accused and 4 witnesses. Several exhibits were handed in during the trial.

FORMAL ADMISSIONS

5. The accused made formal admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977 ("the CPA:") which were read into the record. The formal admissions were:
 - 5.1 The identity of the deceased being FREDERICH CHRISTIAN COLYN VAN TONDER;
 - 5.2 That the deceased died on 29 November 2021 as a result of injuries which he sustained on 29 November 2021 at or near the Marlbank Plots in the district of Vanderbijlpark;
 - 5.3 That the deceased sustained no further injuries from the time he sustained the said injuries on 29 November 2021 until the conducting of the *post mortem* examination on the body of the deceased on 30 November 2021;
 - 5.4 That Dr M P Gobile conducted the *post mortem* examination on the body of the deceased on 30 November 2021 and recorded his findings on the form GW7/15, hereby handed in as Exhibit "B ";
 - 5.5 That the cause of death of the deceased is correctly recorded as: MULTIPLE NDS (UNNATURAL);

- 5.6 That a Toyota Hilux LDV with registration number H[...] was the motor vehicle of the deceased mentioned in par 4.1 *supra*;
- 5.7 That the aforesaid motor vehicle was moved from the crime scene at the Marlbank Plots area to the parking area at The Barrage South African Police Station for further investigation;
- 5.8 That on 30 November 2021, Lt Colonel S J Grundling photographed presumed gunshots at the rear window of the Toyota Hilux LDV with registration number H[...] and damages caused by the presumed gunshots. The photographs were taken with his private cellular telephone;
- 5.9 That on 30 November 2021, Lt Colonel S J Grundling attended the crime scene where the alleged murder took place in an open veld near Dinokeng Primary School and photographed a cellular telephone lying at the back of a tree. The photographs were taken with his private cellular telephone;
- 5.10 That on 21 April 2022 Lt Colonel S J Grundling compiled a photo-album of the photos (Photos 1 – 24) that he took on 30 November 2021 with his private cellular telephone;
- 5.11 That the content and correctness of the photo-album is not in dispute and may be handed in as Exhibit “C”;
- 5.12 That the Samsung cellular telephone that was found lying at the back of a tree close to the crime scene, was the property of the deceased;
- 5.13 That the cellular telephone number of the deceased was 0[...];
- 5.14 That on 30 November 2021 Cst L D Ndweni photographed the deceased as found, in an open veld at or near Marlbank Plots (the crime scene), with bullet wounds inside the motor vehicle with registration number H[...];
- 5.15 That Cst L D Ndweni compiled a photo-album consisting of 18 photos;
- 5.16 That the contents and the correctness of the photo-album is not in dispute and may be handed in as Exhibit “D”;
- 5.17 That on 30 November 2021, Cst L D Ndweni conducted one Primer Residue test on both hands of the deceased on the crime scene;
- 5.18 That one PR kit with serial number 12S1J035TF was used by Cst L D Ndweni;

- 5.19 That Cst L D Ndweni properly packed and sealed the exhibits separately to prevent contamination;
- 5.20 That Cst L D Ndweni sealed the PR kit 12S1J035TF in a forensic exhibit bag with unique seal number PAD001142361, after which the exhibits were booked at Vereeniging LCRC as per SAP 459 No. 796/2021;
- 5.21 That on 13 December 2021 the sealed forensic bag with unique seal number PAD001142361 containing a PR kit with serial number 12S1J035TF was hand delivered to the Forensic Science Laboratory, Pretoria;
- 5.22 That on 10 January 2022, W/O M C Mehlape received one sealed evidence bag with unique seal number PAD001142361 containing one sealed Primer Residue Collection Kit with a unique number 12S1J035XX;
- 5.23 That the afore mentioned sealed PR kit was opened by W/O M C Mehlape and contained two plastic containers marked 12S1J035RIGHT and 12S1J035LEFT respectively, each containing a test sample;
- 5.24 That as a result of his analysis W/O M C Mehlape determined that the test samples marked 12S1J035RIGHT and 12S1J035LEFT tested negative for character gunshot residue;
- 5.25 That the test samples were not tampered with or contaminated from the time when it was collected by Cst L D Ndweni and until it was analysed by W/O M C Mehlape;
- 5.26 That the motor vehicle, a silver coloured Mahindra with registration number H[...] belongs to the accused;
- 5.27 That on 30 November 2021 Serg W Van Rensburg attended a crime scene at Marlbank behind Dinokeng Primary School and photographed exhibits found amongst the trees near the crime scene;
- 5.28 That on 30 November 2021 Serg W Van Rensburg also photographed a motorvehicle, a Toyota Hilux LDV with registration number H[...], and exhibits at The Barrage police station;
- 5.29 That Serg W Van Rensburg compiled a photo-album of the photos (Photos 1 – 30) that he took on 30 November 2021;

5.30 That the content and correctness of the photo-album is not in dispute and may be handed in as Exhibit “E “.

6. Further section 220 admissions in terms of the CPA were made by the accused during the trial. These formal admissions were:

6.1 That Sgt Maphuting took over the crime scene from W/O Jack Mills on 29 November 2021;

6.2 That Sgt Maphuting did not find any firearms at the crime scene;

6.3 That Sgt Maphuting found one live rifle round and three empty rifle cartridges inside the Toyota Hilux bakkie on the crime scene;

6.4 That Sgt Maphuting contacted all the necessary role players to attend to the crime scene, such as LCRC and Forensic Pathology Services;

6.5 That Sgt Maphuting filled in the form to hand over the body of the deceased to Forensic Pathology Services but that the time of death was erroneously written at paragraph 16 as 00:49. That Exhibit “K”, the SAPS 180 form was handed in by agreement;

6.6 That the body of the deceased was handed over to K G Motaung at 01:05;

6.7 That the live rifle round and the three empty rifle cartridges were not sent to the ballistic unit for analysis.

FACTS NOT IN DISPUTE BETWEEN THE STATE AND DEFENSE

7. The following facts, inter alia were not in dispute between the state and the defense:

7.1 That the accused and the deceased were together on 29 November 2021;

7.2 That the accused allegedly purchased 31 cattle from the deceased at R50 per kilogram, with the final amount being R293 000;

- 7.3 That Daniel Marx transported the cattle from Lindley to FMC Auctioneers in Vanderbijlpark;
- 7.4 That the accused and the deceased travelled together in the Toyota Hilux bakkie of the deceased to FMC Auctioneers in Vanderbijlpark;
- 7.5 That the accused sold the cattle to Tripple J Farms (the evidence of JP Oosthuizen is relevant here). The accused incurred a loss of R33 000 on this transaction;
- 7.6 That the cattle were loaded by the driver of J P Oosthuizen at FMC Auctioneers while the accused and the deceased were still present there;
- 7.7 That the deceased had not been paid for the 31 cattle before the accused sold the cattle to J P Oosthuizen;
- 7.8 That the accused took the deceased to a locally known gravel road, referred to as “die skelm paddies” during the trial, that ran next to a row of trees and between two fields;
- 7.9 That the body of the deceased was discovered on that secret gravel road at around 22h30 that night with gunshot wounds. He was found dead;
- 7.10 That the cellular telephone of the deceased was discovered the following day amongst the trees about 5 meters from where the bakkie of the deceased was found – *vide*: record 17 September 2025, p 67 l 3 - 9;
- 7.11 That the keys to the bakkie have never been found to this day – *vide*: record 17 September 2025, p 67 l 10 - 13;
- 7.12 That the accused phoned Johan Hattingh (“Hattingh”) at 18h18 to fetch him as he was walking back to his plot, nr. 130, from the secret gravel road;
- 7.13 That the accused’s father, Riaan Botha Snr (“Botha Snr”) picked the accused up along a stretch of road where he was walking home;
- 7.14 That the accused went to see Bennie Grundling and Danie Janse van Rensburg at Grundling’s plot and arrived at 18h30;
- 7.15 That Sandra Botha had telephonic contact with the deceased during the day via WhatsApp messages and voice notes – Exhibit “G₁” and “G₂”. That the contents of these exhibits are not in dispute;

- 7.16 That Sandra Botha had telephonic contact with the accused during the evening of 29 November 2021 via telephonic conversations, WhatsApp messages and voice notes – Exhibit “G₃” and “G₄”. That the contents of these exhibits are not in dispute;
- 7.17 That the accused was the last person who saw the deceased alive.
- 7.18 That there were no other vehicles or persons on the secret gravel road at the time of the shooting of the deceased – *vide*: record 17 September 2025, p 39 I 14 – 18;
- 7.19 That neither Daniel Marx, Willem De Beer nor Hattingh shot and killed the deceased – *vide*: record 17 September 2025, p 58 I 19 – 25;
- 7.20 Nobody knew that the accused was taking the deceased to the secret gravel road because they were alone – *vide*: record 17 September 2025, p 59 I 2 – 5;
- 7.21 That according to the ballistic evidence, three bullets had been found. One bullet in the body of the deceased and two bullets in the cabin of the bakkie. That the Court can accept that at least three shots were fired – *vide*: record 17 September 2025. P 65 I 18 – 24;
- 7.22 That the shots were fired from the back to the front and/or from the left side of the back to the right side of the cabin of the bakkie. That the shots hit the deceased on the left side of his neck. The shots were fired through the back small windows of the bakkie’s cabin – *vide*: Lt Col Botha evidence, record 17 September 2025, p 65 I 25 – p 66 I 12;
- 7.23 That the deceased was shot and killed while he was still seated in the driver’s seat of the bakkie;
- 7.24 That the maps and measurements drawn up by the investigating officer were not in dispute – *vide*: record 17 September 2025, p 66 I 16 – 23, Exhibits “S, S₁ – S₃”;
- 7.25 That the ballistic reports and the contents thereof were not in dispute – *vide*: record 17 September 2025, p 66 I 24 – p 67 I 2, Exhibits “R₁ – R₄”;

7.26 That the accused did not have a firearm licence to possess a .38 or a .357 firearm or to possess ammunition of that calibre – *vide*: record 17 September 2025, p 93 I 19 – 25;

EVIDENCE PRESENTED BY THE STATE

8. Allistair Singo

He testified that he is a Live Case Supervisor at Netstar. In the records of Netstar he found that a Toyota Hilux single cab with registration number H[...] was fitted with a Netstar WIFI unit.

He extracted a movement report on 22 February 2023 of the said vehicle from 25 November 2021 at 18:12. The vehicle came to a standstill on the following place Latitude – 26,774 84 and Longitude of 27, 759331, Marlbank, Vanderbijlpark Vide (“exhibit “F2”).

Other applicable movements of the vehicle on 29 November 2021 are the following:

- (a) Starting 29 November 2021, 14:15 Ardington, odometer 136209 km. Switching off odometer 136381km. Total km 172, Time 2 hours 5 minutes.
- (b) Starting 29 November 2021, 16:14 Vanderbijlpark, lock Vaal odometer 136381km. Switching off 29 November 2021, 16:28. Emfuleni odometer 136391. Total km 10. Time 14:00.
- (c) Starting 29 November 2021, 17:48, Emfuleni. Odometer 136391. Switching off 29 November 2021, 18:12, Marlbank Severn Avenue. Odometer 136408. Total km 17. Time 24 minutes.

JACK MILLS

9. He testified that he is a police officer and on the night of 29 November 2021, he was at Ingwe Lodge when he received a message at 22:30 on a police community forum WhatsApp group. The message was posted by Willem de Beer, (exhibit "U"), asking for help at Oscars Café about a shooting incident in the area. He was not on duty but placed himself on duty and went to Oscars where he found Willem de Beer. De Beer told him that the incident was not at Oscars but at a hidden road. He followed De Beer to the scene. De Beer stopped in the hidden road and saw in the lights of his vehicle down the road a white bakkie. He then moved to the white bakkie a small distance away. He testified that it was raining softly and it was pitch dark. He used his vehicle's headlights as well as his cell phone light to see properly. He was asked to look at the photos in exhibit "D" and he confirmed that photo 1 depicts the body inside the bakkie as found; photo 3 the back window possible broken by bullets fired through it; photo 14 the right back side in cab. He also testified that that road is known as a "skelm paadjie" and is used by the people staying around there. He stated that he found the Toyota bakkie was stationed to the left side of the "skelm paadjie" as shown on photo 1. He phoned the police immediately and waited until they arrived and handed the scene to sergeant Mphuting.

10. **SANDRA BOTHA**

She confirmed the WhatsApp messages between herself and the deceased (exhibit "G1"), the WhatsApp messages between herself and the accused (exhibit "G3") on the day of the incident as well as the WhatsApp voice notes, (which she retrieved and typed), between herself and the deceased (exhibit "G2") and the WhatsApp voice notes between herself and accused (exhibit "G4").

She testified that the deceased was on WhatsApp the last time at 18:04. In the WhatsApp messages, the deceased told the witness that he cannot come to visit her after the cattle was sold and he received his money, because the agent, (the accused), is driving with him to Vereeniging, (Vanderbijlpark), and then the agent must drive

back to Lindley and he (the deceased), must drive to Betlehem to bank the money. Vide (exhibit "G2") entry 29/11/2021 13:33.

11. **JUAN PIERRE OOSTHUIZEN**

He testified that he received a phone call from the accused on 29/11/2021 at 12:48, advising him that he had calves to sell. The accused sent him a video of the calves. He made a market related price offer for the calves, which was accepted by the accused for 31 calves. They agreed that his driver will pick up the calves at FMC Auctioneers in Vanderbijlpark, and that he will also pay when the calves are at his place. He paid the money with an EFT payment the next morning at 6:47 into the accused's account, in the amount of R259 609,87.

On the same day, (30/11/2021), someone from the stock theft unit phoned him and said they want to come and fetch the calves because Vleissentraal had not been paid for them. He told them he had already paid the accused for the calves. He spoke to the accused later, who told him: 'ok (nee dis reg) let's see what the procedure will be further.'

12. **JAN DANIEL JOHANNES VAN WYK**

He testified that on 29/11/2021 he did security work for Gerrie Coetzee. Vide (exhibit "V1" and exhibit "V2". He was posted that night at plot 104 Marlbank. Vide (exhibit "F5"). Gerrie Coetzee dropped him off at 17:30 and left to go back to Ingive Lodge. He testified that he and Gerrie Coetzee sent each other WhatsApp messages. At 18:15 he heard four (4) gunshots in the direction of the trees. Theoville direction. Vide (exhibit "F5"). He then sent a voice WhatsApp message to Gerrie Coetzee at 18:16. Vide (exhibit "J"). The rest of that day he did not hear anything from Gerrie again. He stayed at his post. He further testified that Willem, vide (exhibit "U"), drove around in a bakkie from Oscars. At one stage he came out of the "skelm" road and drove past him in the direction of the hanger. This person took the two-way radio of Florence and said over the radio that he just drove past a bakkie where someone shot himself.

Mr Van Wyk never went to the scene of the shooting. He also testified that the four shots were fired in quick succession.

13. **JACQUES DE KOCK**

He testified that he ate dinner at his grandparents' house at Theovill on 29/11/2021. He left the house to go home between 18:10 and 18:20. On the way to his vehicle, he heard a shot being fired. He looked in the direction where the shot was fired and he saw a white bakkie plus minus 500 meters away, across open veld, standing in the road. He could not see properly but went inside the house to fetch binoculars. He observed a person stepping around the white bakkie. He stood there checking for ten (10) minutes and then went home. At this stage the person was still there at the bakkie. He only heard one shot being fired.

14. **DANIEL MARX**

He testified that he is a farmer and doing transport of livestock. The deceased was well known to him. On 29/11/2021 the deceased asked him at plus minus 12:30 to transport cattle from Lindley to Vanderbijlpark. He did so and the next morning at plus minus 6:45, he heard from Carel Olckers from Vleissentraal that the deceased had been shot and killed.

15. **DR MP GOBILE**

Dr Gobile is the medical doctor who compiled the post-mortem report, (exhibit "B"). He examined the body of the deceased on 30/11/2021. The chief post-mortem findings made by him were "The body is of an adult white male with the history of the deceased allegedly was found with gunshot wounds to the head (SAP 180 statement). He testified that the cause of death was "multiple Gunshot wounds (Unnatural).

The external appearance of body and limbs are as follows:

1. "Entrance gunshot wound on the left sub-mandibular with collar of abrasions measuring (1,5 cm x 1,5cm).
2. Exit gunshot wound on the right side of the neck measuring (1cm x 1cm).

3. Entrance gunshot wound on the left posterior aspect of the left ear with collar of abrasions measuring (0,5cm x 0,5cm).
4. Tangential gunshot wound on the left superior shoulder with collar of abrasions.”

16. **COLONEL ANDRE BOTHA**

He is a Lieutenant Colonel in the South African Police Service at the Forensic Science Laboratory in pretoria. He has been attached to the Ballistic Section since 1999 as an examiner of Forensic Ballistics. His expertise is not in dispute.

His affidavit and photos 1-9 was submitted in terms of section 212 of the Criminal Procedure Act 51 of 1977 as (exhibit “O”).

He testified that on 4 May 2022 during the performance of his official duties he attached a crime scene at SMD vehicle yard Hercules Sgt Fouche pointed out a white Toyota bakkie with registration number H[...].

During the execution of his official duties at the crime scene, he found the following:

- “5.1 Note that some interior parts of the vehicle were removed
- 5.2 A bullet defect was visible on the glass to the back of the driver’s seat (A1). The glass fell out but the origin of the impact can be seen. The bullet was fired from the back of the vehicle to the front and from left to right. The bullet (A) stuck the door frame pillar (A2) and lodged inside a plastic cover. See photos 2-6 photo 7 indicate a bullet defect on the glass at the back of the passenger’s seat (B1). The shot was fired from the back to the front of the vehicle. The bullet stuck the back of a metal bar inside the head rest.”

17. **BENJAMIN GRUNDLING**

He testified that the accused is known to him and there is no bad blood between them. On 29/11/2021, he was cutting grass between 17:00 and 18:00 on his stand with a tractor. He saw a Mahindra bakkie passing his stand and did not take cognizance of the driver. Between 18:15 and 18:20, uncle Daan, who is working with him, came to him to change a battery of a lawnmower. Mr Grundling saw the Mahindra again at

plus-minus 18:30, it turned into his yard and stopped. The accused got out of the vehicle and said it was a hot day, and that he had loaded cattle. The accused was wet and out of breath as if he had worked hard. He was also looking nervous. Uncle Daan asked the accused why he was wet and the accused said he had to wash himself after he worked with the cattle. The accused then said that he was looking for uncle Daan to discuss the patrols of the neighborhood watch that they both belong to.

He further testified that the accused then said he cannot understand why a person can be so afraid to drive with cash, and he showed the person the safer road through the agricultural lands, (he referred to Christiaan, the deceased). The accused explained that the deceased sold cattle to him.

Mr Grundling further testified that they discussed the pros and cons of different firearms. (9mm pistol and 38 revolver). He saw a 9 mm pistol in the possession of accused. The next day, in the morning (6:00-7:00), the accused phoned him and said that the guy he bought the cattle from, had been shot.

18. **DANIEL JACOBUS J VAN RENSBURG**

He testified that the accused is known to him. On 29/11/2021 he took a battery to his neighbour to charge. The accused then arrived with his father's Mahindra bakkie and wanted to discuss the patrols of the neighborhood watch. He asked the accused why he is so wet and the accused explained that he had loaded cattle and had to wash the mud off him. The accused was nervous which he found strange. They spoke about firearms and the accused asked if he heard shots and he said no, he was in the store. The accused did have a 9mm pistol.

19. **CAREL PETRUS FRANCOIS OLCKERS**

He testified that he knew the accused and the deceased. During the time of the incident, he was working at Vleissentraal Livestock Company. They had a project where they helped people by selling stock to them on auction, the person must add value, (feed), to the stock and then the stock was sold again at the auction. The client's debt was then deducted from the selling price and the profit paid to him. The

deceased bought 44 calves from Vleissentraal on 22 and 23/11/2021, and owed them R362 027,46. This money was paid out of the estate of the deceased.

He saw the transporter of the cattle and the deceased at Arlington SAPS, moving livestock on 29/11/2021 and on 30/11/2021. After he had gone to the mortuary to identify the body of the deceased, he tried to phone the accused, but he did not get an answer. He testified that if a client got a better price selling the stock to someone else, they would not stand in his way to sell.

20. **JOHAN DEWALD HATTINGH**

He was a general worker, previously in the service of the accused. He did make a statement on 1/12/2021, corroborating the version of the accused. (Exhibit "P1"). On 1/8/2023, he made a new statement, (exhibit "P2"), wherein he changed his version about what happened on 29/11/2021 at the residence of the accused when he was still employed by the accused. He stated that he was coerced by the accused and threatened to make the first false statement. He also made a statement on 6 September 2023, (exhibit "P4"), about a telephone conversation he heard the accused had.

He lastly made a statement on 28/9/2023 (exhibit "P3"), denying that he went to the cold room, that he took out a cooler bag from the cold room and handed it to the accused at the gate of the accused's residence.

21. **HENK HUMAN**

He testified that he knew the deceased very well. He was a neighbour of the deceased's father. Before the funeral of the deceased, he phoned the accused and told him not to attend the funeral of the deceased. He took the mother of the deceased to Barrage police station as she wanted to talk to the investigating officer, (Fouche). Fouche, later on came to Lindley to take a further statement. Fouche later contacted him and asked if he knew where Hattingh was working, as he wanted to talk to him.

The witness contacted Francois Beckett and asked if he knew where he could find Hattingh. He then traced Hattingh. Hattingh then said he wanted to make a statement. Mr Human took Hattingh to Barrage SAP to make a statement. He did not know what the statement was about.

22. **GEORGE CHRISTIAAN FOUCHE**

He is the investigating officer and testified about the investigation of the case.

23. **ERNEST TEBOGO MPHELA**

He testified that he is not in the police service anymore. During 2021, he was working at the Cybercrime division of the police. He is the author of (exhibit "W"). He downloaded the contents of the cellphone of the accused on a CD disk. He further testified that only the Audio WhatsApp audio messages are available. At the time of his downloading the files, no WhatsApp messages could be downloaded. No time can be found for the WhatsApp messages on the download.

24. **PM DE BEER**

This witness is missing and his statement was handed in under an exception under the hearsay rule (exhibit "U").

He stated that he was a security officer at Oscars shop on 20/11/2021. He came on duty at 18:00 that day. He patrolled every hour, to his employer and the employer's father's house and then back to Oscar's shop. At 22:30 he drove to Gerrie Coetzee's security offices on the Marlbank road, using the "skelm road".

There he found the vehicle with the deceased on the inside. He drove to the security offices and asked them to phone the police. He saw that the back window of the Toyota Hilux was broken and the left window had a bullet hole in it. He met warrant officer Jack Mills at Oscars shop and took him to the scene.

25.

GERRIE COETSEE

This witness passed away and his two (2) statements were handed in under an exception under the Hearsay rule. In his first statement, (A37, exhibit "V1"), he mentioned that he has security personnel working for him. On 29/11/2021 at 17:50, he dropped his personnel on the Marlbank road, and he then used the secret road to go to Theoville Plots. He usually used this road to patrol and check crime in that area. On this night he did not see any signs of crime or persons or vehicles on the road. He arrived at his place at about 18:00 and at 19:16 he received a voice note from Van Wyk, his employee, that he had heard gunshots at the trees. He asked Van Wyk about the number of shots and on which side of the trees because on the far side of the trees, is where Grundlingh lives. Van Wyk replied that it was four (4) shots and it was in that direction. Van Wyk phoned him and said that Willem had informed him that he saw a bakkie with a person on the inside full of blood. He then got into his vehicle and drove in the direction of Theoville. On his way, at about 22:30, he passed the accused in his Mahindra Scorpion on the tar road to Ardenworld.

At 23:47 the witness phoned the accused and asked him what is going on, because he knew that accused was driving patrol. The accused answered that he does not know. He then said to the accused that according to his information, it was a male. The accused replied, "oh, okay".

At 01:00 on 30/11/2021, he received a message from the accused saying "oom ek gaan nou slaap, praat more". He made a screen shot which he provided to Fouche, the investigating officer. At 04:12, he received another message from the accused, requesting news, "Enige nuus, oom".

He sent a voice note to the accused at 04:25, advising that it was a white male had been shot inside his bakkie. The accused phoned him at 05:17 and said that the person who was shot was a friend of his. He also said that they had been together the previous day and had sold calves at Hersa, (FMC Auctioneers).

He spoke to the accused again on the phone at 05:18, about the payment and the route that the deceased took and that the accused accompanied the deceased and walked

home after he alighted from the deceased's vehicle. In his second statement (A102 exhibit "V2") he only mentioned that he had met with Fouche and went to show him where he passed the accused in the Mahindra on 29/11/2021 at about 22:20. He also stated that he saw a dark-haired woman in the Mahindra, but he did not know her.

EVIDENCE PRESENTED BY THE DEFENCE

26. The accused testified that the deceased was known to him prior to the incident. On 29/09/2021 he bought 31 calves from the deceased. They agreed on a price of R50-00 per kg and that he would pay cash for the calves. The final amount payable to the deceased would be R293 000.

Daniel Marx transported the cattle from Lindley where the deceased were staying to FMC Auctioneers in Vanderbijlpark.

He testified that he travelled together with deceased in the deceased's Toyota Hilux to FM Auctioneers in Vanderbijlpark. He sold the cattle to JP Oosthuizen (Tripple J Farms).__The cattle were loaded by the driver of JP Oosthuizen at FMC Auctioneers while the accused and the deceased were still present there.

He further testified that he accompanied the deceased to his house in the deceased's bakkie to collect a cooler bag with the money he had to pay the deceased. Before they went to his house, he phoned Mr Hattingh to collect the cooler bag with the money in his cold room and to wait for him at the gate. He fetched the cooler bag from Mr Hattingh, and he then directed the deceased to drive to a locally known gravel road, referred to as "die skelm paadjie" during the trial. He explained to the deceased that it is safer to take "die skelm paadtjie" and it is a short route to take on his way back to Lindly.

On their way to "die skelm paadjie" he opened the cooler bag and took out R7000-00 and put it in his pocket. He left the balance of the money in the cooler bag for the deceased as payment for the cattle.

He directed the deceased to turn into "the skelm paadjie". Shortly after the deceased turned into "die skelm paadjie", he instructed the deceased to stop, and he then

alighted from the vehicle and proceeded to walk back to his residence. On his way he was picked up by his father, and they drove back to his residence.

He testified that after he arrived at his residence, he took his bakkie and went to Daan van Rensburg. The next morning, he was informed that the deceased was shot and passed away. He denied that he shot the deceased and that he influenced Mr Hattingh to make a false statement concerning the black cooler box and the money.

27. **HESTER SUSANNA BOTHA**

She testified that she is the wife of the accused. On 29/11/2021 approximately 18:00 she went outside their house and saw Johan Hattingh sitting near the main entrance gate. She asked him what he was doing there and he answered that he was waiting for the accused to fetch a black cooler bag.

She further testified that the accused's father, Johan Botha, arrived there and informed her he is going to pick up the accused. He then left and came back with the accused between 18:20 and 18:25. The accused later left and came back at 19:05. The next morning, she heard that the deceased was shot.

28. **SHOUKAT HUSSAIN KOLIA**

Mr Kolia testified that he knew the accused for many years. During 2021 there was a transaction between him and the accused in terms of which the accused would sell his cattle and sheep for R300-000.00. The accused then sold the cattle and sheep and wanted to send the money to him. He informed the accused that he must invest the money and when he needs the money, he will request the money. There was a R200-000.00 profit on the selling price. The accused later paid him R495-000.00. The witness submitted two screenshots of the payments. On 25/01/2024 R400-000.00 was paid (exhibit "Z1") and on 3/2/2024, an amount of R99 950-000 (exhibit "Z2")

29. **MAPHATSWA EMANUEL LIBIYA**

The witness testified that he is an employee of the accused. He has been working for the accused for eleven years. He remembers a specific day when he was busy

cleaning the swimming pool on the premises of the accused. He can't remember the date and month. He saw Johan Hattingh came out of the garage with a cooler bag which the accused used to put money in. He saw Johan Hattingh proceeding in the direction of the gate and sat on a cement ball at the gate. According to him there was money in that bag. After few minutes he heard the gate opening. He saw Johan Hatting exiting the gate and handed the cooler bag to the occupant of a white van. He testified that on the specific day the bag contained money. The bag never left the yard without money. He later saw the father of the accused driving out of the yard. He knocked off duty and do not know what later transpired.

30. **CHRISTIAAN RUDOLPH BOTHA**

He testified that he is the father of the accused. On 29 November 2021 at 18:10 he was at the Supermarket to get airtime on his cellphone. He drove to the premises of the accused and found Johan Hatingh sitting under a tree. It was approximately between 18:15 and 18:20. Johan Hattingh informed him that he handed over the cooler bag with the money to the accused and the accused left in a white vehicle. He also informed Mr Botha that he must pick up the accused on a corner. Mr Botha then decided that he would go and pick up the accused. When he arrived at the corner of Roodeweg the accused wasn't there. He drove in a northern direction and found the accused. He asked the accused what he was doing there. The accused explained that the deceased asked him if there wasn't a shorter route back home. He asked the accused how much money was paid to the deceased. The accused said that he paid the deceased R293.000.00. The accused explained to him that where they stopped with the deceased's bakkie, in "the skelm paadjie", he opened the cooler bag and asked the deceased to count the money with him. When the deceased agreed there was R300 000-00, he, the accused, took out R7 000-00 and put it in his pocket.

He testified that they drove back to accused's house. Later the accused took his father's bakkie and went to uncle Daan. The next morning the accused phoned him and informed him that the deceased was shot a distance from where he dropped off

the accused. The witness also testified about photos that were taken from the premises of the accused. The photos were handed in as (exhibit “DD1”).

EVALUATION OF THE EVIDENCE

31. In *S v Shackell 2001(2)* SACR 185 SCA it was held that “it is a trite principle that in criminal proceedings the prosecution must prove its case beyond reasonable doubt and that a mere preponderance of probabilities is not enough. Equally enough is the observance that in view of this standard of proof in a criminal case, a court does not have to be convinced that every detail of the accused’s version is true. If the accused’s version is reasonably possibly true in substance the court must decide the matter on the acceptance of that version. It is indeed permissible to test the accused’s version against the inherent probabilities. It cannot be rejected merely because it is improbable. It can only be rejected on the basis of inherent probabilities if it can be said to be so improbable that it cannot reasonably possibly true.”
32. In assessing the evidence, a court must in the ultimate analysis look at the evidence holistically in order to determine whether the guilt of the accused is proved beyond reasonable doubt. This does not mean that the breaking down of the evidence in its component parts is not a useful aid to a proper evaluation and understanding thereof.
33. In *S v Chabalala 2003 (1)* SACR 134 SCA it was decided that:

“The correct approach to evaluating evidence is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper count 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 the State as to exclude any reasonable doubt about the accused’s guilt. The result may prove that one scrap of evidence or one defect in the case for either party (such as the failure to call a material witness concerning an

identity parade) was decisive but that can only be an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch on to one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence.

34. I am mindful of the basic principles to be applied when evaluating evidence. It is trite that evidence must be weighed in its totality and that probabilities and inferences must be distinguished from speculation and conjecture.
35. It was submitted by counsel for the accused in his heads of argument that “Regarding the allegations by the State from the onset it can be seen that there were not much aspects placed in dispute by the defence as can be see in the extensive admissions being made in terms of section 220 Act 51 of 1977, no extensive cross-examination done on the State witnesses and even no objection made to the handing in of statements made by witnesses under the exception under the provisions of the Hearsay Act (Law of Evidence Amendment Act 45 of 1988.”
36. The evidence of the State witnesses with the exception of Mr Hattingh was not seriously consistent by counsel for the accused.
37. The state witnesses were truthful and credible. They did not elaborate their evidence in any way to implicate the accused. None of them had any reason to falsely implicate the accused as the perpetrator. The version of the state witnesses contained no inherent improbabilities or material contradictions.
38. I have carefully listened to the evidence of the state witnesses, and taken cognizance of their conduct and behavior when they testified and it is clear in my mind that their evidence clearly has a ring of truth, I did not gain the impression that the witnesses had come to falsely implicate the accused in the commission of the crimes. All the State witnesses gave their evidence in a clear, concise and uncontradicted manner, and in mu view were impressive witnesses.

39. It was argued by the defence that the court should not give any credence to the evidence of Hattingh who made his initial truthful statement to the police, and which was corroborated by the evidence on behalf of the defence. In the new statements he attempted to incriminate the accused as having influenced him to lie and also having intimidated him. It was argued that it appears as if Hattingh was traced and pursued, through a witness from Lindsay, and pursued to change his statement to incriminate the accused.
40. Mr Hattingh testified that the version he gave to the police in his affidavit was not true – vide (exhibit “P1”) par 4 and 5. His explanation was that he was threatened by the accused and told what to say to the police. He further testified that the accused told him that he must remember who support him and provides for him.
41. Hattingh testified that he corrected the lies in his first statement (exhibit “P1”) of his own accord because he could not live with the lies any longer. He made a second statement to the investigating officer in which he have the version that was consistent with his evidence in court – exhibit “P2”. The evidence of Hattingh is relevant to the question whether there was a black cooler bag fetched or not.
42. It was argued by the State that Hattingh’s fear of the accused was understandable and reasonable given that after he stopped working for the accused, he was still telephoned almost weekly by the accused and reminded to stick to the version the accused told him to give to the police. While Hattingh worked in Lindley, the accused sent one of his employees to him in Lindley so that the accused could speak to Hattingh telephonically. This was done under the guise that the accused had work on a truck or some other vehicle that he wanted Hattingh to do. Hattingh agreed to go and do the work but he never went through with it.
43. Hattingh had only finished standard 5 in school and did not progress further with any education.

44. He gave a detailed and thorough account of the incident in a straight-forward manner. Under cross-examination he was able to logically substantiate his evidence thereby reinforcing it. He made a favourable impression on the court whose account was truthful and reliable. He impressed the court as a good witness and there is nothing to cast doubt on his veracity concerning the actual incident and subsequent events. His evidence is also in conformity with the objective and common cause facts in this matter.

45. The accused on the other hand did not impress me as a reliable witness. He contradicted himself and his witnesses on material aspects. His version is also not in conformity with the objective and common cause facts in this matter.

46. The timeline according to the evidence of the accused and the defence witnesses, differs from the fixed timeline presented by the state. The timeline of the accused and his witnesses are riddled with material contradictions and improbabilities as set out below-

46.1 During his evidence in chief the accused testified and estimated that he and the deceased stopped at his plot at about 18:05 to pick up the black cooler bag;

46.2 During cross-examination by the state the accused testified more than once when asked about specific times that he was not sure or he was estimating the time but he knew it was after 18:00.

46.3 The accused testified that he was back at his home at 18:20. He knew this for a fact.

46.4 He testified that he phoned Hattingh when he walked into the secret gravel road. He then contradicted himself and testified that he had phoned Hattingh at 18:18 but by that time he had walked quite a distance. He further testified that from where he got out of the deceased's bakkie, he had walked 400 meters when he phoned Hattingh.

46.5 He testified that the deceased left him between 18:10 and 18:15.

- 46.6 He testified that Sandra Botha phoned him and asked him what time the deceased had left him. He could not remember times but told her the deceased had left a long time ago.
- 46.7 During cross-examination, the accused testified that he had told Sandra Botha that the deceased had left him about 18:30.
- 46.8 According to exhibit "G4" in the voice note of 21:41 the accused had told Sandra Botha that the deceased had left between 18:20 and 18:30. The accused then in a voice note to Sandra Botha at 22:49, said that he had checked his call list to see what time he had called Hattingh and that the deceased had left him precisely at 18:16. On a question by the court, the accused confirmed that the deceased had left him at 18:16 and that it was the precise time.
- 46.9 The accused's version is that he received the money from Mr Kolia as a loan to run his farming business. He and Mr Kolia would share any profits made. Money was paid to Mr Kolia by FMC Auctioneers. Mr Kolia confirmed the receipt of that money and produced two proof of payments documents – (exhibit "Z1 AND Z2"). Mr Kolia did not receive any other money from the accused before the aforementioned two transactions. He was not aware of all the transactions that the accused performed with the R300 000-00.
- 46.10 The accused testified that he and the deceased had fetched the black cooler bag from the accused's plot and on the way to the secret gravel road, he had put the cooler bag with the money in it between him and the deceased and showed the deceased the plastic packets filled with the money. He testified that the money was never counted because it was not necessary. The deceased trusted him and they had done cash transactions before. During cross-examination, it was put to the accused that Fouche testified that the accused had told him that he and the deceased drove about 100 meters into the secret gravel road and there the money was counted and the deceased left. This was denied by the accused.
- 46.11 In a voice note to Sandra Botha at 21:23 (exhibit "G4"), the accused also told her that "... ons het die goed gecek, als was reg .. en toe het hy gewaai.."

46.12 During cross-examination of the accused, the court heard for the first time that the accused and the deceased had done many cash transactions before.

46.13 Botha snr, father of the accused, testified that the accused told him that there was R300 000-00 in the bag and when they stopped on the secret gravel road, the accused opened the cooler bag and they went through the packets of money and counted it together.

46.14 Sandra Botha testified that during a conversation with the accused, he informed her that she must not worry about the safety of the deceased because he gave the deceased one of his firearms and she must not tell anyone about it. This evidence was not disputed in cross-examination.

46.15 The accused testified that the deceased told him that a friend of his borrowed his firearm to the deceased. The accused conceded that what he told Sandra Botha about the firearm was not the truth.

46.16 The evidence of the defence witnesses does not corroborate the accused's version.

46.17 Mapatsive Emmanuel Lebea in my view was not a honest and reliable witness. He contradicted himself on material aspects and adjusted his evidence, especially under cross-examination. His evidence does not corroborate the accused's version.

46.18 Lebea was unable to recall the date of the incident but was apparently able to clearly recall what happened on that day.

46.19 He testified that he was cleaning the swimming pool, and he saw Hattingh came out of the garage with a cooler bag. He saw Hattingh proceeding to the gate with the cooler bag and the bag had money in it. He later saw Hatting proceeding to a white van outside the gate and Hattingh handed the cooler bag over to the occupants. He did not see the occupant of the van.

46.20 Lebea conceded during cross-examination that the gate is completely obscure by the structure between the pool and the gate. He later changed his version and testified that he was able to see the gate because there was a glass passage that he

looked through to see the gate. He had to go through a gate at the swimming pool to see through the glass passage.

46.21 Lebea denied that he told the police that he mentioned in his statement that Hattingh handed the cooler bag over to the occupant in the van. When he was confronted with par 2 of his statement (exhibit "BB") wherein he stated that Hatting handed the cooler bag to the accused who was inside a white bakkie that was parked at the gate, he gave another version.

46.22 Hester Botha, the wife of the accused, testified about the times that Hatting had given the black cooler bag to the accused.

46.23 She testified that she was outside with Hattingh at the gate at 18:10. She conceded that at 18:15 Hatting was in the kitchen with her. She testified that the accused and his father returned at about 18:20 to 18:25. She conceded that she did not know if the kitchen clock was set to the correct time.

46.24 According to this witness when the accused returned to his house he was normal. She cannot remember that he had mud on his clothes, arms or legs. Her evidence that the accused did not have to wash himself, was contradicted by the evidence of Botha Snr who testified that the accused had cattle dung on his arms and legs, that he washed off. The times that she gave were contradictory to the fixed times established by the State.

46.25 In respect of the timeline testified to by Botha snr, it contradicts the fixed times established by the State.

46.26 The only fixed time that he can state is that he loaded airtime on his cellular phone at 18:10 at the supermarket and from the supermarket it is 5-8 minutes to the accused's plot. He estimates that he arrived at the plot between 18:15 and 18:20.

46.27 He testified that when he picked up the accused, the accused was 400 meters away from where he and the deceased had allegedly stopped. He further testified that the accused's hands and arms were full of cattle dung.

46.28 During cross-examination he conceded that (exhibits "CC1" and "CC2") were not the tax invoices of FMC Auctioneers that related to the payment of the money to Mr Kolia.

46.29 During cross-examination he was asked, whether a person could see the front gate from the swimming pool through the glass doors and passage. He answered that one would have to first move out of the gate at the swimming pool area and then to the glass doors to see the front gate.

45.30 Botha snr testified that he stopped at the secret gravel road where the deceased's bakkie was at 18:30, then he changed his evidence to 18:25-18:30.

46.31 He was asked during cross-examination what the accused had told him about the money that he had given to the deceased. He testified that the accused told him that there was R300 000-00 in the bag and when they stopped on the secret gravel road, the accused opened the bag and they went through the packets of money and counted it together.

46.32 He further testified that when a client is paid cash for a transaction, the client has to sign for receipt of the cash.

46.33 Botha snr conceded that according to the evidence the accused was the last person who saw the deceased alive.

46.34 It was put to the witness that he testified in answer to a question by the court that a person cannot see the front gate through the glass doors from the pool and that he was now changing his version to say that a person could see the front gate through the glass door.

46.35 He testified that the deceased had not signed for the cash and that the accused did not tell him anything about the deceased being in possession of a firearm.

46.36 Botha snr during cross-examination conceded that he and Lebea spoke about Lebea's evidence that he gave in court and how the translation of his evidence was incorrect.

46.36 The court subsequently, made an order that the evidence be transcribed and sent to the chief interpreter together with a CD of the evidence. Counsel for accused later placed on record that they were satisfied that there were no interpretation errors found by the chief interpreter.

46.38 I reject the evidence of the accused and his witnesses in so far as their evidence were not in accordance with the evidence presented by the State and the common cause facts.

CIRCUMSTANTIAL EVIDENCE

47. It is trite that once a court is faced with circumstantial evidence it naturally flows that it is duly called upon to draw inferences from the evidence thus presented.

48. The benchmark decision on how to deal with inferences, relating to circumstantial evidence, is the case of **R v Blom** 1939 AD 188, where reference is made to two (2) cardinal rules of logic which cannot be ignored. These are, firstly, that the inference sought to be drawn must be consistent with all the proved facts and secondly, the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn.

49. In **R v De Villiers** 1944 AD at 508-9 remarked as follows:

"The court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together and it is only after it has done so, that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way, the Crown must satisfy the Court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence."

50. In *De Villiers supra* at 508 it is said: "... even two particles of circumstantial evidence though taken by itself weigh but as a feather - join them together, you will find them pressing on the delinquent with the weight of a millstone."
51. Circumstantial evidence has on occasion been described as a chain, the links of which consist of pieces of evidence. This is not correct as it implies that the chain will be broken once one piece of evidence is rejected. It is better to compare it with a braided rope as the strands break, the rope weakens and conversely, as strands are added, the stronger it gets. The gist of the matter is that one piece of circumstantial evidence may be inconclusive, but once other evidence is added, it gains probative force.
52. It was submitted by counsel for the accused that the inference that Daniel Marx Willem Pieter de Beer and Gert Abraham Coetzee could have killed the deceased, is consistent with the proved facts. It was further argued that the inference that one of them killed the deceased does not exclude the inference that any one of them or the accused killed the deceased.
53. The accused during cross-examination conceded that neither Daniel Marx, Willem de Beer nor Hatting shot and killed the deceased.
54. I am of the view that, after careful analysis of all the viva voce and objective documentary evidence, that the only reasonable and inescapable conclusion is that the accused is the person who shot and killed the deceased. This inference is consistent with all the proved facts. The evidence as a whole is beyond reasonable doubt inconsistent with the innocence of the accused. The proved facts are such that they exclude any other reasonable inference.
55. The inference that the accused shot and killed the deceased is based on the following circumstantial evidence and common cause facts.

55.1 The accused purchased 31 cattle from the deceased on 29 November 2021 for the amount of R293 000,00;

55.2 Before the accused was paid for the cattle, the accused sold the cattle to Tripple J Farms (the evidence of JP Oosthuizen).

55.3 The deceased was never paid for the cattle. If the deceased was paid there was no reason for accused to kill the deceased. The deceased was killed to disguise the fact that he was not paid for the cattle.

55.4 On 29 November 2021 the accused accompanied the deceased in the deceased's Toyota bakkie and lured the deceased to a locally known gravel road known as "die skelm paadjie".

55.5 The accused conceded, during cross-examination, that the deceased was shot dead at 18:16 on 29 November 2021.

55.6 Given the fixed times presented by the evidence of the State, the inference is inescapable that the deceased was shot between 18:12 and 18:16.

55.7 The accused testified during cross-examination that on 29 November 2021 the deceased left him between 18:10 and 18:15 in the "skelm paadjie".

55.8 The accused conceded that after he climbed out of the bakkie of the deceased at the secret gravel road he saw the deceased drive further on the secret road. He conceded that there were no other people or vehicles in the secret road at that stage. He further conceded that he had a clear line of vision on the bakkie as it drove away.

55.9 The body of the deceased was discovered in his bakkie on the secret road at around 22:30 with gunshot wounds.

55.10 The cellular telephone of the deceased was discovered the following day amongst the trees about 5 meters from where the bakkie of the deceased was found. The keys of the bakkie have never been found.

55.11 Accused was the last person who saw the deceased alive.

55.12 The accused denied that he was the person that shot the deceased and that he was close to the area where the deceased was shot.

55.13 Hatting was coerced by the accused to make a false statement concerning the cooler bag with the money.

55.14 The accused lied to Sandra Botha that he gave the deceased a firearm to protect himself.

55.15 The accused lured the deceased to the secret gravel road to make sure that nobody saw him when he execute his plan.

55.16 The accused shot the deceased with a unlicensed firearm to make sure he cannot be linked with the firearm.

55.17 The accused had a motive to kill the deceased as it was never his intention to pay the deceased for the cattle.

55.18 The state witnesses had no motive and/or opportunity to kill the deceased.

55.19 Nobody knew that the accused was taking the deceased to the secret gravel road because they were alone.

55.20 The accused wants the court to believe that the deceased drove away with a cooler bag containing R293 000-00 and that the deceased just happened to be attacked and robbed a short distance into the secret gravel road and within a minute or two after the accused left him. This version of the accused is so improbable that it is not reasonably, possibly true.

56. In conclusion, I find that on a consideration of the totality of the evidence that the prosecution has discharged the onus to prove beyond reasonable doubt that the accused did wrongly, unlawfully and intentionally killed the deceased.

PLANNING OR PREMEDITATION

57. The distinction between 'planning and premeditation' has been examined in some detail in **S v PM** 2014 (2) SACR 481 (GP) para 36 where it was found that the concepts were distinct from each other - premeditation referring "to something done deliberately after rationally considering the timing or method of so doing, calculated to increase the likelihood of success, or to evade detection or apprehension, while planning refers to a

scheme, design or method of acting, doing, proceeding or making which is developed in advance as a process calculated to optimally achieve a goal."

58. In *S v Taunyane* 2018 (1) SACR 163 GT at par 30 it was decided that:

"The question now is whether or not appellant 'weighed-up' his proposed conduct either on a thought -out basis or an arranged - in - advance basis, or whether or not appellant rationally consider[ed] the timing or method of the killing, or prepared a 'scheme or design in advance' for achieving his goal of killing the deceased."

59. The following facts must to my mind, be taken into account:

- (a) The accused bought cattle from the deceased but never paid for the cattle.
 - (b) The accused lured the deceased under false pretenses that he is going to pay the deceased in cash, to a secret road where the deceased was shot and killed.
 - (c) The deceased was taken to the secret road by the accused to make sure that nobody could see when he executes his plan.
 - (d) The accused used a unlicensed firearm to kill the deceased in order to make sure that he cannot be linked to the firearm and or murder.
 - (e) It was never the intention of the accused to pay the deceased for the cattle.
- The accused had a motive to kill the deceased.

60. I am satisfied that the state has proved beyond reasonable doubt that the accused is guilty of murder committed in circumstances of planning.

THEFT OF CATTLE

61. It was submitted by counsel for the accused that the accused did not steal the cattle but that the case became a civil matter, where the money must be claimed from the accused.

62. I rejected the accused's version that he had paid the deceased in cash for the cattle. No cooler bag filled with money was found in the vehicle of the deceased when it was discovered at 22:30 on 29 November 2021.
63. It was conceded by the accused that the cattle was in the lawful possession of the deceased and if someone took the cattle away from the deceased and sold the cattle to another buyer then that person had the intent to permanently deprive the deceased of the cattle.
64. I am of the view that the state proved beyond reasonable doubt that the accused under false pretenses obtained the cattle from the deceased with no intention to pay for the cattle and that he formed the intention to permanently deprive the deceased of the cattle. I find the accused guilty of theft of 31 cattle.

POSSESSION OF A FIREARM WITHOUT A LICENCE (Section 3 of Act 60 of 2000)

65. According to the ballistic evidence, three bullets had been found. One bullet in the body of the deceased and two bullets in the cabin of the bakkie of the deceased.
66. The state handed in two ballistic reports, referring to ammunition that was forensically examined. Vide (exhibit "R3" and exhibit "O"). In (exhibit "R3") the finding in paragraph 5 is that the bullet is of 38/357 calibre.
- In (exhibit "O") para 6 the finding of Lieutenant Colonel Botha was the bullet that he investigated is 9mm/38/357 calibre.
67. The 9mm firearm of the accused was not linked to the shots fired. The accused is licensed to possess his 9mm firearm. However, I found that the accused must have used a .38 or a .357 calibre firearm of which he is not in possession of a valid license

to kill the deceased. It is common cause that the accused did not have a firearm license to possess a .38 or a .357 calibre firearm.

68. I conclude that the state proved beyond reasonable doubt that the accused was in possession of a .38 or a .357 calibre firearm on 29 November 2021 without a valid firearm license to possess such a firearm.

UNLAWFUL POSSESSION OF AMMUNITION (SECTION 90 OF THE FIREARMS CONTROL ACT NO 60 OF 2000)

69. I found that the accused was in unlawful possession of either a .38 or a .357 calibre firearm without a valid license and in possession of ammunition of that calibre without a license.

70. In the result the accused is found guilty as follows:

- (a) Count 1:
Murder read with the provisions of section 51(1)(a) Act 51 of 1977;
- (b) Count 2: Theft
- (c) Count 3:
Possession of a firearm without a license (section 3 of Act 60 of 2000).
- (d) Count 4
Unlawful possession of ammunition (section 90 of Act 60 of 2000).

Strijdom JJ

Judge of the High Court, South Africa

Gauteng Division, Pretoria

Appearances:

For the applicant: Adv J Cronje

Instructed by: DPP PRETORIA

For the first respondent: Adv R van Wyk

Instructed by: H Badenhorst Attorney