IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA

NOT REPORTABLE

Case no: CC16/2022

In the matter between:

THE STATE

and

DONOVAN WOLF **Accused**

JUDGMENT

Govindjee J

Background

[1] The State alleges that the accused, Mr Donovan Wolf, unlawfully and intentionally killed Clyde Stuurman ('the deceased') by shooting him with a firearm on 10 February 2021 close to the R102 road between Jeffreys Bay and Humansdorp.

[2] Mr Wolf pleaded not guilty and made a statement in terms of s 115 of the Criminal Procedure Act, 1977.[1] He pleaded that he was acting in private defence when he shot the deceased. To summarise his plea explanation, his wife had seen an adult male wearing a hoodie crossing open veld. This aroused suspicion, given a break-in that had occurred in the area a few days previously and because it was approaching the curfew applicable at the time. His wife contacted Breytenbach, a member of the neighbourhood watch, for assistance. Having armed himself with a handgun, Mr Wolf, while driving his double cab vehicle, observed a person running across an open plot towards the R102. He observed the person taking cover on the corner of the plot, which was overgrown with shrubs and bushes, and then proceeded across the open plot before parking his vehicle on the R102. He then exited his vehicle and, still armed, approached the corner of the plot where he had last observed the person. Despite firing a warning shot, the person proceeded to approach him with a raised arm, holding a knife. Mr Wolf started walking backwards before firing what he recalled as being two shots towards the man, who tried to grab his firearm and struggled with him, causing him injuries to his left forearm and right lower leg. At some stage he hit the person against the head with the firearm before running towards his vehicle.

The evidence

[3] The deceased sustained a fatal gunshot wound that entered the left anterior chest and exited the right chest, the projectile traversing from left to right and lacerating the heart. Dr Mattheüs also recorded a V-shaped laceration, measuring approximately 15mm by 20mm, in the right occipital area of the scalp. This injury was not fatal and was consistent with blunt-force trauma. She also recorded various smaller or superficial injuries, including abrasions on the right lower leg, dorsum of the right foot, right medial heel and lateral ankles. Her evidence was that these injuries were consistent with a brief physical altercation and with movement through branches or shrubbery.

[4] It is accepted that the fatal injury was caused by Mr Wolf sometime between 22h26 and 22h35 on 10 February 2021. Breytenbach received two voice notes from

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[1] Act 51 of 1977.

Mrs Wolf at 22h26, at about the time Mr Wolf was leaving his home in pursuit of the person seen walking from the Kiaat veld towards Beefwood Street. By 22h35, Breytenbach had arrived at the scene, discovered the body of the deceased and reported the incident to the police. He photographed the body with his cell phone at 22h41.

[5] Breytenbach's photograph reflects the body of the deceased lying in a prone position, with the body angled slightly onto its right side, the left arm bent near the hip area and the right arm positioned underneath the body. When members of the police service arrived on the scene, the body appears to have been in the same or similar position. Rispel testified that, when she had observed the deceased's body after the paramedics had left, it was in materially the same position, and Mgciko photographed the body in that position at 00h25 on 11 February 2021. It may, as a result, be accepted that the body was not materially repositioned from the time that Breytenbach photographed it at 22h41 until Mgciko photographed it at 00h25.

[6] The significance of this conclusion is that when the body of the deceased was turned and photographed by the police at 00h27, the deceased's right hand was observed clasping a knife.

[7] I do not accept the paramedics' evidence that the deceased's right arm was extended above or near his head in a so-called 'superman' position when they examined him shortly after 23h00. That evidence was capable of supporting the suggestion that the knife later found in the deceased's hand had been planted. Their evidence is inconsistent with the objective chronology and with the contemporaneous photographs. Breytenbach's photograph, taken at 22h41 before the paramedics arrived, depicts the deceased lying face down with his right arm and hand positioned underneath his body. It is also significant that De Vos's own declaration of death recorded the body as 'found prone' and made no mention, when death was certified at 23h27, of the right arm being extended above the head or otherwise being in a 'superman' position. Rispel confirmed that, when she observed the body after the paramedics had left, it was still in materially the same position as Breytenbach's photograph depicted. Mgciko's photograph at 00h25 again depicts the body in materially the same position. For the paramedics' evidence to be accepted,

the right arm would have had to be moved from underneath the body into the position they described and later moved back underneath the body before the police photographs were taken. That is particularly improbable because the paramedics themselves said that they left the body as they had found it. There is no reliable evidence to support that sequence.

[8] There are further reasons to treat the paramedics' evidence on this aspect with caution. They had no particular reason to note the position of the deceased's right arm. Their purpose was to determine whether the deceased was alive, and their examination appears to have been limited given that they were told that the deceased had already passed away. Their evidence confirms that it was dark at the scene. There was some inconsistency as to how the area was illuminated for purposes of the examination, but it is unnecessary to resolve that detail. The point is that the conditions were not conducive to a reliable later recollection of the precise position of the deceased's right arm and hand, particularly where De Vos's contemporaneous declaration recorded only that the body was found prone and did not record the 'superman' position. De Vos checked for a pulse at the neck. That is consistent with a limited examination of the body as it lay face down. Had he performed a more intrusive examination beneath the body or clothing in the chest area, one would have expected him either to discover the chest wound or to encounter blood consistent with that wound. The two paramedics were also not consistent with each other: one described the arm as extended above the head in a 'superman' position, while the other placed the hand next to the head. Meyers's reliability was further undermined by his evidence that De Vos used his phone light to check for weapons on the deceased before proceeding. That evidence does not accord with De Vos's account, nor with the fact that the police had informed the paramedics that the scene had already been checked and was safe. I reject it. Their later recollection appears to have been prompted by being shown photographs of the body after it had been turned, and by their assertion that they had not seen the knife in the deceased's hand. In these circumstances, their evidence does not displace the photographic, police and bloodstain evidence. Nor does Ellis's evidence assist on this aspect given that she saw the body only briefly, by torchlight, from the fence. She did not record the position of the deceased's arms in any of her statements, and her account was not consistent with the photographic and other objective evidence.

[9] Bekker's bloodstain evidence also does not support the paramedics' account that the deceased's right arm was extended above or near the head. His reconstruction was based primarily on the clothing, not on an examination of the body at the scene. He expressly recognised that this limited the extent of his reconstruction, and that body-position changes could influence the bloodstain pattern. His evidence nevertheless suggested a sequence in which the deceased may initially have shed blood while upright, or on his knees, a conclusion based on staining in the waist area, before later shedding blood while lying down on his right side, with the right side of the body in contact with the ground, and with the torso at different stages in both prone and supine positions. The reference to a supine position must be understood in context, including that the body was later turned by the police when the knife in the deceased's hand was photographed, and to a more limited extent by the paramedics. Bekker described the deceased as stationary while flow and saturation occurred. I understand that evidence to relate to the phase during which the relevant saturation stains formed, and not to mean that the deceased could not have moved at all after being shot. That is also consistent with Dr Mattheüs's evidence that the deceased would not necessarily have been immediately incapacitated by the fatal wound and could have performed voluntary movement for a short period thereafter. Bekker explained that the large volume of blood would have saturated into the layers of clothing, as reflected in the relevant stains. In relation to certain stains his evidence was that the possibility could not be excluded that the right arm, at the bicep, was in contact with the torso while saturation occurred. That evidence accords with Breytenbach's photograph and Mgciko's photographs, which depict the body in materially the same position, with the right arm and hand underneath or close to the body. Rispel also confirmed that, when she observed the body after the paramedics had left, it remained in materially the same position. Her evidence therefore supports the conclusion that, during that phase of blood flow, the right arm was not extended away from the body in the manner described by the paramedics.

[10] The State's case, as presented in the summary of substantial facts, is that Mr Wolf placed the knife found in the deceased's hand there and that a further knife (the second knife) was planted near the body of the deceased to create the impression

that two suspects were being followed. On the evidence, I am satisfied that the second knife was introduced at the scene by Breytenbach, and not by Mr Wolf. I am mindful that Ellis's evidence did not fully accord with Breytenbach's account of what she conveyed to him before he entered the bush. It is unnecessary to resolve every detail of that discrepancy. The probabilities support Breytenbach's evidence that, before he found the body, he had already been told that Mr Wolf's account involved the deceased attacking him with a knife. He and Bredenkamp then proceeded into the bush to look for the suspect and found the deceased's body. The planting of the second knife is more readily explained on the basis that Breytenbach had already been told, whether by Ellis as he testified or otherwise through what had been conveyed at the scene, that Mr Wolf's version was that the deceased had attacked him with a knife. His explanation for planting the second knife was unsatisfactory, but it was not suggestive of a prior arrangement with Mr Wolf. He said, in substance, that after hearing that there had been a knife involved, and not seeing one near the deceased, he thought that a suspected housebreaker might escape responsibility because a knife had been lost in the bush. He denied acting with the intention of assisting Mr Wolf personally, emphasising that he barely knew Mr Wolf, that Mr Wolf was not a member of the neighbourhood watch, and that he would not risk his own future for a person he had just met. I accordingly find that the planting of the second knife was a spontaneous and misguided act by Breytenbach, done against the background of the version that the deceased had been armed with a knife, and not as part of any proven prior arrangement with Mr Wolf. I return below to the separate question whether the State has proved that the knife found in the deceased's hand was planted.

[11] I accept, consistently with the plea explanation and the objective evidence, that Mr Wolf drove across the open plot where the deceased was later found and reached the R102. The vehicle tracks or impressions observed in the open plot by Opperman and Mgciko, and the disturbances and faint tyre marks later photographed by Henning, were consistent with his vehicle having driven through that area to the R102. Opperman and Mgciko associated the position of the shoe and beanie with the point at which they considered the tracks or impressions to have stopped. Opperman also expressed the view, based on his experience of accident scenes, that the deceased had been bumped by a motor vehicle. Bekker's evidence

was more cautious. When the shoe, the tyre-track evidence and the mark on the ground were put to him, he accepted that a hit-and-run might be a first investigative assumption, but not a fact that could be concluded from those features. The significance of that evidence is considered further in the analysis.

[12] Opperman's opinion was also not supported by medical or accident-reconstruction evidence. In cross-examination, Dr Mattheüs accepted that the injuries on the deceased's body were not typical of those seen in a person hit by a motor vehicle. That is significant because, if the deceased had been struck by a vehicle with sufficient force to dislodge his shoe and beanie, one would have expected clearer bodily injury consistent with such contact. Dr Mattheüs's evidence did not provide that support. As to the right foot specifically, she recorded only relatively limited injuries. When asked what she would have expected if a wheel had passed over the foot, she mentioned injuries such as bruising, lacerations, abrasions, a tyre imprint or a fracture. While not excluding the possibility completely, she could not say that the injuries she observed were caused by a wheel passing over the foot.

[13] Bekker's evidence about the sock added to the suspicion but was ultimately qualified. He considered the right sock to be part of a pair and observed damage to its upper part which, by comparison with the other sock, he regarded as inconsistent with ordinary wear and tear. Based on his experience, he considered the damage to be consistent with high-friction mechanical damage, most likely caused by a tyre passing over the sock while it was being worn and considered it to correspond with the right-foot injury described. But he accepted that he was not a materials analyst, could not identify the object, shape, size or amount of force involved, and could not say what the event was. He also accepted that he could not say that the sock damage was caused by a vehicle tyre passing over the deceased's foot. The State's heads record the further concession that it was unlikely that the shoe was on the foot when the damage to the sock was caused.

[14] Symmington's evidence, which supports the conclusion that the vehicle had crossed the open plot completely and reached the R102, assists with the probable movement of the vehicle after it had reached the R102 area. She lived in the home

adjacent to the scene and initially observed an unidentified vehicle parked near the R102, facing in the direction of Humansdorp, or towards Fountains Mall. Because it was dark, she could not then identify the vehicle properly. She subsequently observed that the vehicle had been turned around and was facing in the opposite direction, towards Gqeberha. It was at that stage that she noted that it was a bakkie, although she could not make out its colour. Ellis's evidence also placed Mr Wolf's bakkie on the R102 facing the Gqeberha direction when she and Coetzee arrived. The evidence is consistent with Mr Wolf having driven through the open plot towards the R102, stopped there initially on the side of the road closest to the open plot, and later returned to his vehicle and turned it around into the position in which it was later found.

[15] The ballistic evidence is consistent with the firearm having been cocked, ejecting an unspent round, and with at least two shots having been fired. Rululu's evidence explained that, if the firearm was carried one-up, with a round already in the chamber, cocking it again would eject an unfired round. Bekker found the projectile later marked A5 and the spent cartridge case later marked A6 when he returned to the scene with a metal detector on 1 March 2021, more than two weeks after the incident. The fact that those exhibits were recovered only on this date reduces the weight that can safely be attached to their precise positions. For present purposes, I approach the evidence on the assumption most favourable to the State: that the ballistic exhibits were found where they originally came to rest, and that the absence of visible gunshot residue is consistent with a distance of at least approximately 2 to 2,5 metres, as referred to in Schoeman's evidence. The positions of the ballistic exhibits indicate that the relevant events occurred within a relatively confined area of the bush where the deceased was found. They do not, however, permit a precise reconstruction of the position of the shooter, the position or movement of the deceased, or the sequence of each discharge.

The law

[16] Murder consists in the unlawful and intentional killing of another person. An intentional killing of a human being is not unlawful if done in circumstances where the perpetrator has a defence excluding unlawfulness. For criminal liability to result, the State must prove, beyond reasonable doubt, that the accused engaged in

voluntary conduct, that the conduct was unlawful, and that it was accompanied by criminal capacity and fault.

[17] The State is required to disprove beyond reasonable doubt the existence of any defence properly raised on the evidence. Mr Wolf did not testify, and his plea explanation is not evidence. It nevertheless identifies private defence, which excludes the unlawfulness of his conduct, as the basis on which the charge is disputed. Proof that Mr Wolf caused the death of the deceased does not, once private defence is properly raised, relieve the State of proving that the killing was unlawful.[2] There is no burden of proof on the accused to establish a defence excluding unlawfulness. The prosecution bears the overall onus of proving the unlawfulness of the conduct beyond reasonable doubt. Where private defence is properly raised, that requires the State to exclude the reasonable possibility that the accused acted in private defence.[3] The plea explanation does not, on its own, displace the State's evidence. Its significance is that it identifies the basis upon which unlawfulness is placed in issue, and therefore the issue which the State must prove in order to secure a conviction.[4]

[18] In determining whether the State has discharged that burden, the evidence must be considered as a whole. The court must weigh those features of the evidence which point towards guilt against those which are indicative of innocence, taking proper account of the strengths and weaknesses, probabilities and improbabilities on both sides. A conviction may follow only if, on that assessment, the evidence establishes guilt beyond reasonable doubt. If there remains a reasonable possibility that the accused's explanation may be true, he is entitled to an acquittal.[5]

[19] Private defence excludes unlawfulness where a person faced with an actual or imminent unlawful attack on a legally protected interest uses force reasonably necessary to repel that attack. An attack is imminent where the threatened harm is immediately impending, or where the circumstances are such that defensive action is

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[2] Cf *S v Manona* 2001 (1) SACR 426 (Tk).
[3] *R v Patel* 1959 (3) SA 121 (A) at 124, citing *R v Moleko* 1955 (2) SA 401 (A).
[4] *S v Eke* 2016 (1) SACR 135 (ECG) paras 31–32.
[5] *S v Chabalala* 2003 (1) SACR 134 (SCA); *S v Van Aswegen* 2001 (2) SACR 97 (SCA), with reference to *S v Van der Meyden* 1999 (2) SA 79 (W).

immediately required to avoid it. Harm inflicted on the aggressor in such circumstances is not unlawful. As the SCA explained in *S v Steyn*, private defence recognises that a person may lawfully use such force as may be necessary to repel an unlawful attack which has commenced or is imminent and which threatens life or bodily integrity.[6] The initial enquiry is into the lawfulness of the accused's conduct and if the conduct is lawful, an acquittal follows.[7]

[20] There is no precise test for determining whether defensive conduct was lawful. The question is whether, taking all relevant factors into account, there was a reasonable balance between the attack and the defensive act. The relevant factors include the relationship between the parties, their respective ages 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 means used in defence, and the harm likely to be caused by the defence.[8] The position has been described as follows:[9]

'The question whether an actor can successfully claim the defence of private defence is determined by examining objectively the nature of the attack and of the defence to determine whether they conform to the principles of law … This means that each requirement of the attack and of the defence must be judged from an external perspective rather than in terms of the accused's perceptions and assessment of the position at the time of resorting to private defence. For example, the question of whether the attack was imminent is decided by the court's assessment of the evidence of the circumstances of the attack and not according to the defender's belief in the imminence of the danger of being attacked. Nevertheless, in applying this test, our courts have always insisted that they must be careful to avoid the role of armchair critics, wise after the event, weighing the matter in the secluded security of the courtroom … Thus the test must be applied by the court putting itself in the position of the accused at the time of the attack. This does not make the test subjective – it simply means that the matter is considered objectively in the particular circumstances of the case'.

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[6] *S v Steyn* 2010 (1) SACR 411 (SCA) para 16.
[7] Ibid para 18.
[8] *S v Trainor* 2003 (1) SACR 35 (SCA); [2003] 1 All SA 435 (SCA) para 13.
[9] J Burchell, PJ Schwikkard and TB Mosaka *Burchell's Principles of Criminal Law* (6th Ed) (2025) at 122.

[21] A person who initiates an unlawful attack cannot ordinarily rely on private defence against the defensive response of the person attacked. That rule does not mean that imprudent conduct, or conduct that contributes to a confrontation, necessarily excludes private defence. The question remains whether the accused was, at the critical moment, repelling an actual or imminent unlawful attack. Where the other person's response exceeds what the law permits, the right of private defence, which was unavailable because of the original unlawful attack, may be restored by the original victim's excessive response.

[22] The State's case depends materially on circumstantial evidence. In *R v Blom*,[10] the Appellate Division stated the two cardinal rules of logic in reasoning by inference. First, the inference sought to be drawn must be consistent with all the proved facts; if it is not, the inference cannot be drawn. Secondly, the proved facts must exclude every reasonable inference save the inference sought to be drawn; if they do not exclude other reasonable inferences consistent with innocence, there must be a doubt whether the inference sought to be drawn is correct. Suspicion, even strong suspicion, is not sufficient.

Analysis

[23] I accept that Mr Wolf pursued the deceased, whose identity was then unknown to him, through the open plot and drove through that area to the R102. The State relies on the position of the shoe and beanie, the right-foot injuries, the track evidence and the damage to the sock to submit that Mr Wolf struck, bumped or drove over the deceased with his vehicle. The location of the shoe and beanie must be distinguished from the area in which the body and the ballistic exhibits were found. Bekker measured the distance between the shoe and the body as approximately 28 metres as the crow flies. The shoe and beanie support suspicion about what occurred during the vehicle pursuit through the open plot. The body and ballistic exhibits, by contrast, support the conclusion that the shooting occurred in the thicker bush where the deceased was found.

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[10] *R v Blom* 1939 AD 188.

[24] I accept that Opperman's evidence goes further than merely identifying tracks. He testified that, in his opinion, the mark or disturbance showed that a person had been bumped by the vehicle. He based that opinion on the laced takkie, the mark or disturbance of approximately 10–15 cm by 1 cm that he observed in that area, and his experience of many accident scenes. He nevertheless accepted that his opinion that the deceased had been bumped by a vehicle and that the bump caused the shoe to come off was speculation. Mgciko's evidence supports the State's suspicion to the extent that he also observed and sketched what he regarded as vehicle impressions or tracks stopping near the shoe and beanie. Neither Opperman nor Mgciko could reliably account for the vehicle's movement after the point at which the tracks were said to stop. That difficulty also bears on the reliability of the asserted stopping point itself. Against the factual finding that Mr Wolf proceeded through the open plot and reached the R102, the difficulty is not the location of the shoe and beanie, but the reliability of the reconstruction sought to be drawn from the asserted stopping point of the tracks. The uncertainty about the vehicle's movement after that alleged stopping point weakens the conclusion that the marks identified the point at which the vehicle stopped because it struck the deceased.

[25] The evidence of Opperman and Mgciko provides a reasonable basis for the State's investigation of vehicle contact. But the inference remains dependent on a slight ground disturbance observed with the naked eye that could not be reliably documented, measured, photographed or preserved, and is not supported by medical evidence sufficient to prove a vehicle impact. The position of the tracks, the shoe and beanie, and the damage to the sock were all matters that properly required investigation. Bekker's evidence concerning the sock is the strongest feature of this aspect of the State's case. The damage to the sock was not readily explicable as ordinary wear and tear, and it raised a real concern about what happened to the deceased's right foot during the movement through the plot. But, for the reasons already summarised, the evidence did not establish the object, force or event that caused the damage, and did not prove that a vehicle tyre passed over the deceased's foot. The qualification that it was unlikely that the shoe was still on the foot when the damage to the sock was caused weakens any simple link between the sock damage, the loss of the shoe and vehicle impact. Considered cumulatively, the shoe, sock damage and foot injury deepen the concern as to what occurred during

the movement through the plot. They do not, however, establish what occurred or identify the mechanism by which the shoe came off, the sock was damaged or the foot was injured.

[26] The State's vehicle-impact theory is based on circumstantial evidence. The question is not whether the tracks, shoe, beanie, sock damage and right-foot injuries are suspicious when viewed together. They plainly are. Nor is it necessary to find that the right-foot injuries could not have been caused by a wheel passing over the foot, bearing in mind that Dr Mattheüs did not exclude that possibility. The question, applying *Blom*, is whether the proved facts exclude every reasonable inference other than that Mr Wolf's vehicle struck, bumped or drove over the deceased. In my view, they do not. The evidence may support the conclusion that the shoe came off, that the sock was damaged while on the deceased's foot, and that the right foot was injured during the incident. But the precise mechanism by which those things occurred remains uncertain. That uncertainty does not assist the State. It is precisely because the mechanism cannot be reliably reconstructed, and because the medical evidence does not provide sufficient support for vehicle impact, that the vehicle-impact inference cannot be drawn as the only reasonable inference. Dr Mattheüs accepted that the injuries were not typical of those seen in a person hit by a motor vehicle and could not say that the right-foot injuries were caused by a wheel passing over the foot. She also accepted that the superficial foot and lower-leg injuries were more consistent with scratches caused by branches or rough vegetation than with the type of injuries ordinarily expected from a motor-vehicle impact. The connection between the loss of the shoe, the right-foot injuries and the damage to the sock remains unexplained. While suspicious, those features do not permit the inference sought by the State in this regard to be drawn as the only reasonable inference from the proved facts.

[27] That conclusion does not mean that Mr Wolf's prior conduct was justified. It forms part of the broader picture in which he chose to continue the pursuit while armed and ready for a possible confrontation. The route he chose also supports the inference that he intended to intercept or confront the person he was pursuing. This was not an ordinary road or recognised thoroughfare and required driving a large bakkie through dense and uneven terrain. On his own account, he had seen where

the deceased had taken cover. That description, and the fact that the deceased moved into the dense vegetation rather than continuing openly to the R102, is consistent with retreat or an attempt to avoid detection or confrontation. Instead of awaiting assistance from the neighbourhood watch, on his own version, having reached the R102, he alighted and continued on foot through the dense and uneven terrain in the direction of the area where he had last seen the deceased. That reinforces the conclusion that Mr Wolf was not merely observing events but was actively pursuing and seeking to intercept or confront the deceased.

[28] This was imprudent conduct and must be criticised. I accept that it contributed materially to the confrontation that followed. Considered in context, Mr Wolf's conduct followed what he believed to be a recent break-in, and occurred after he had called for assistance from the neighbourhood watch. This reduces the likelihood that he was pursuing a concealed purpose to attack the deceased in the bush, knowing that assistance had been called and that others were expected to arrive. The fact that Mr Wolf created the circumstances in which the confrontation occurred does not, without more, determine the lawfulness of the fatal shot. It is not equivalent to proof that he initiated an unlawful attack on the deceased. The State has not proved what unlawful attack Mr Wolf is said to have initiated, or at what point his serious and unjustified pursuit had crossed into an actual or imminent unlawful attack before any knife threat arose. It follows that the State has not proved that any knife threat by the deceased was a lawful defensive response to an unlawful attack initiated by Mr Wolf. It remained for the State to exclude the reasonable possibility that, at the critical moment, Mr Wolf was repelling an imminent unlawful knife attack.

[29] The State's case, as foreshadowed in the summary of substantial facts and advanced through much of the evidence, included the inference that the knife found in the deceased's hand was planted to support a false account of private defence. In argument, however, the State accepted that the matter could be adjudicated on the premise that the deceased had a knife in his hand, while maintaining that the Court need not make a final finding whether the okapi knife had been planted. The planting inference must in any event be assessed together with the evidence that Breytenbach planted the second knife near the body. The latter fact is serious and contaminates the scene. It also explains why the possible planting of the knife found

in the deceased's hand requires careful scrutiny. But it does not, without more, establish that the knife found in the deceased's hand was also planted.

[30] I cannot find, as the only reasonable inference from the proved facts, that the knife found in the deceased's hand was planted. There is no direct evidence that Mr Wolf placed that knife there. Nor is there direct evidence that Breytenbach did so. Breytenbach was with Bredenkamp when the body was found, and there is no evidence implicating Bredenkamp in any such act. Ellis's evidence also supports the conclusion that, once she arrived, Mr Wolf remained near the R102 and had no opportunity thereafter to interfere with the deceased's body. While that does not exclude the possibility of interference before Ellis arrived, there is no direct evidence that Mr Wolf placed the knife in the deceased's hand during that earlier period, and any such inference must be assessed against the body-position and bloodstain evidence already discussed. The existence of a possible opportunity does not, without more, establish that the knife was planted. The items found on the deceased, including a small blade and rope, and the fact that he was wearing several layers of clothing, form part of the factual matrix. While I draw no character inference from those facts, they do not support a conclusion that possession of a knife was inherently improbable. The evidence of the Stuurman siblings that the deceased was not known to carry a knife does not alter that conclusion. This was necessarily evidence of general knowledge or habit, and Ms Stuurman accepted that she could not say whether he had a knife on him that night. Applying *Blom*, the inference that the knife found in the deceased's hand was planted cannot be drawn. I accept, on the evidence as a whole, that the deceased had the knife in his hand during the encounter. That finding does not, by itself, prove private defence. The questions that remain are whether the State has excluded the reasonable possibility that, when Mr Wolf fired, he was faced with an imminent unlawful knife attack, whether his own prior conduct deprived him of private defence and whether the force used exceeded what was permissible.

[31] The finding that the deceased had the knife in his hand during the encounter must be considered together with other objective features bearing on whether there was a physical encounter before the fatal shot was fired. The fatal wound was an anterior entry wound, which accords with the deceased facing Mr Wolf when the shot

was fired, rather than being shot from behind while fleeing. The non-fatal V-shaped laceration to the right occipital area of the scalp was consistent with blunt-force trauma. The smaller and superficial injuries recorded by Dr Mattheüs were compatible with a brief physical altercation, as well as with movement through branches or shrubbery. I have considered the State's closing submission that the superficial injuries on both Mr Wolf and the deceased may be explained by their movement through the dense vegetation rather than by a physical altercation. That possibility cannot be excluded. The photographs of Mr Wolf's superficial injuries must therefore be approached with the same caution. They may be explained, at least in part, by his movement on foot through dense vegetation. But Ellis's evidence that his clothing was dirty with soil, and that he had a scratch on his calf, is also consistent with some ground contact during the incident. That evidence does not prove the precise mechanics of the encounter, but it forms part of the broader objective matrix.

[32] Ellis's evidence and statement, despite the difficulties already mentioned, support the general proposition that Mr Wolf gave an early account, before the police turned the deceased's body and discovered the knife in his hand, that involved a knife and a physical encounter. I accept her evidence in that respect, and her evidence that the account given to her created the impression that the deceased was not alone. A related suggestion appears in the later accounts given by Mr Wolf in his bail affidavit and plea explanation, which describe something in the bushes to the right, a person approaching from the left and a loud noise from the right, without repeating the two-person account in the direct terms attributed to Mr Wolf by Ellis. There is accordingly force in the State's submission that this aspect of Mr Wolf's account shifted over time. That weakens the reliability of the account in that respect. It does not, however, prove that the central feature of the account, namely a knife confrontation with the deceased, was false. Breytenbach's evidence provides further support for the limited proposition that the account associated with Mr Wolf from an early stage involved a physical encounter with the deceased and a knife, although it does not amount to independent proof that the account was true. Considering that evidence together with the objective features already mentioned, I accept that there was a physical encounter between Mr Wolf and the deceased, who had a knife in his hand.

[33] The ballistic evidence, including the unspent round and the evidence that at least two shots were fired, supports the conclusion that the firearm was cocked and that more than one shot was fired in the thicker bush where the deceased was found. I bear in mind, however, that the later position of the projectile and cartridge case found by Bekker on 1 March 2021 must be treated with caution, given the lapse of time before those items were recovered. While these features do not prove Mr Wolf's pleaded version, they are consistent with the broader finding that the fatal shot was fired during an encounter in the thicker bush.

[34] The question remains whether Mr Wolf's own conduct deprived him of private defence. His decision to arm himself and pursue the deceased into the open plot was not justified by any general power to investigate, confront or apprehend a person he considered to be suspicious. The fact that he armed himself before doing so supports the inference that he pursued the deceased while prepared for the possibility of a confrontation in which the firearm might be used. That inference is strengthened by Rululu's evidence that the firearm was carried one-up, with a round already in the chamber. But the ballistics place that fact in a wider context. The unspent round was found close to the area where the deceased was found. Bekker's evidence was that an unfired round cocked out of a firearm would not travel far, particularly if the firearm was pointed downwards and given the soft surface present there. That evidence is consistent with the firearm having been cocked in that area, and is capable of fitting with the account of a warning shot before the fatal shot, although it does not prove that such a warning shot was fired. I therefore do not treat the one-up condition as unlawful in itself, or as proof that Mr Wolf intended to use the firearm unlawfully. For the reasons already given, the State has not proved that, before any knife threat arose, Mr Wolf initiated an unlawful attack on the deceased, so that any knife threat by the deceased was a lawful defensive response. In all the circumstances, the State has not proved that, by his prior conduct alone, Mr Wolf lost the protection of private defence.

[35] It remains necessary to consider whether the force used exceeded what private defence permits. The authorities confirm that the use of a firearm against a knife attack is not automatically justified. The full court decision in *Dougherty* is a

useful reminder that fear alone does not justify lethal force. But the present case differs materially in that, in *Dougherty*,[11] the deceased was unarmed, whereas here the State has not excluded the reasonable possibility of an imminent unlawful knife attack at relatively close quarters. I accept, in the State's favour, that Schoeman's evidence supports the conclusion that the fatal shot was not fired at contact or very close range. Her testing showed that, under controlled laboratory conditions, the maximum propellant-residue distance for the firearm and ammunition tested was between 2 and 2,5 metres. But she did not make a finding about the actual distance from which the fatal shot was fired, and her testing did not account for the actual shooting conditions. Still, her evidence is important and means that the fatal shot cannot safely be treated as having been fired during a grappling contact moment. The non-fatal occipital laceration, while consistent with blunt-force trauma and with a physical encounter, also cannot be used to conclude that the fatal shot was fired during such a moment. But Schoeman's evidence does not permit a precise reconstruction of the position or movement of either man at the moment of the fatal shot. Nor does the ballistic evidence prove the precise sequence in which the discharges occurred. The assessment of proportionality remains objective, although it must be made in the circumstances that prevailed: it was night, the encounter occurred in dense and uneven vegetation, Mr Wolf was alone, the deceased had a knife, the threatened harm was potentially serious, and the shooting was not shown to have occurred at contact or very close range. Those circumstances raise squarely the question whether any unlawful knife threat remained imminent and whether lethal force was reasonably necessary. But the residue evidence is not, in itself, inconsistent with an imminent unlawful knife attack, particularly where the evidence has not excluded that the threat was continuing when the fatal shot was fired. Nor does the evidence establish that Mr Wolf had a safe and reasonable means of retreat or that he could reasonably have resorted to a lesser form of force in the circumstances.[12] The State has accordingly not proved beyond reasonable doubt that the firing of the fatal shot exceeded what was reasonably necessary to repel the attack.

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[11] *S v Dougherty* 2003 (2) SACR 36 (W).
[12] *Steyn* above n 6 para 21.

[36] I have also considered whether, even if murder is not proved, the evidence establishes culpable homicide on the basis that Mr Wolf acted negligently in creating the danger or in using excessive force. That enquiry cannot be approached by treating his pursuit, with hindsight, as determinative.[13] Negligence in creating the conditions for a confrontation does not, without more, establish culpable homicide where the operative act causing death was the fatal shot. The relevant question is whether, on the evidence as a whole, the State has proved that a reasonable person in Mr Wolf's position, confronted with the circumstances that have not been excluded as reasonably possible, would have avoided the fatal shot. Given the unresolved reasonable possibility of an imminent unlawful knife attack at relatively close quarters, at night, in dense vegetation, after a physical encounter, I am not satisfied that negligence has been proved beyond reasonable doubt. I bear in mind, as *Dougherty* illustrates, that the availability of a less harmful alternative may be relevant to negligence. But on the present evidence the State has not proved that, in the circumstances that have not been excluded as reasonably possible, Mr Wolf had a safe and clear non-lethal alternative, whether by retreating, firing elsewhere, or otherwise avoiding the fatal shot.

[37] In arriving at this conclusion, I have given serious consideration to the matters relied upon by the State. I have approached the evidence holistically, including the probabilities and improbabilities relied upon by the State.[14] Mr Wolf's conduct in arming himself, carrying the firearm one-up, pursuing the deceased through the open plot and continuing the pursuit on foot was unjustified and imprudent. Breytenbach's planting of the second knife contaminated the scene. The track evidence, the shoe and beanie, the damaged sock, the right-foot injuries, the ballistics evidence and the absence of visible gunshot residue all raised real suspicion and required careful consideration. Mr Wolf's failure to testify is also relevant. His plea explanation is not evidence, and his silence leaves the court without evidence from him about the precise dynamics of the encounter. I accept that an accused who elects not to testify may run the risk that the State's evidence will be accepted, where that evidence establishes a case calling for an answer.[15] That principle does not relieve the State

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[13] *R v Patel* 1959 (3) SA 121 (A) at 123D–E.
[14] See *S v Hadebe and Others* 1998 (1) SACR 422 (SCA) at 426f–h.
[15] *S v Boesak* 2001 (1) SA 912 (CC) para 24.

of its burden to prove guilt beyond reasonable doubt, or permit the court to fill gaps in the State's case by speculation. The question is not whether Mr Wolf proved private defence, but whether, on the evidence as a whole, properly weighed, the State excluded the reasonable possibility that he acted in private defence.[16] The various pieces of evidence relied upon by the State, considered individually and cumulatively, do not fill the evidential gaps I have identified. They do not establish beyond reasonable doubt that, when Mr Wolf fired the fatal shot, he was not facing an imminent unlawful knife attack.

[38] It follows that the State has not proved beyond reasonable doubt that Mr Wolf's conduct was unlawful. The reasonable possibility that he acted in private defence has not been excluded. The State has therefore not proved the charge of murder. Nor, for the reasons already given, has culpable homicide been proved. Mr Wolf must accordingly be acquitted.

[39] As for Breytenbach, although his conduct in planting the second knife was reprehensible, I am satisfied that he answered frankly and honestly all questions put to him in these proceedings. He accordingly qualifies for a discharge in terms of s 204(2) of the Act. The appropriate order will follow.

Order

[40] The following order is issued:

1. Mr Donovan Wolf is found not guilty of the charge of murder and is discharged.
2. Mr Sarel Breytenbach is, in terms of s 204(2) of the Criminal Procedure Act, 1977, discharged from prosecution in respect of the offence specified by the prosecutor and any offence in respect of which a verdict of guilty would be competent on that charge. The discharge is to be entered on the record.

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[16] *S v Ntuli* 1975 (1) SA 429 (A) at 437F–G.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 3–5 October 2023; 9–11 October 2023; 13 October 2023; 17–18 October 2023; 3, 7 and 19 June 2024; 25–27 November 2024; 4–5 December 2024; 4–22 August 2025; 4–15 May 2026; 12 June 2026

Delivered: 12 June 2026

Appearances:

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Instructed by:	Director of Public Prosecutions Gqeberha
Counsel for the Accused:	Mr P Dauberman
Instructed by:	Mr A Griebenow Griebenow Attorneys Gqeberha