IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPETOWN

CASE NO: A186/2026

In the matter between

R GALLANT Appellant

And

THE STATE Respondent

Coram: CLOETE J; PETERS AJ
Heard: 30 October 2026
Delivered ex tempore: 30 October 2026

Summary: Criminal Appeal – Single Witness – evidence found not credible to sustain conviction – conviction set aside – Appeal Succeeds.

JUDGMENT

Peters AJ (Cloete J concurring):

[1] The appellant, Randall Gallant, was convicted in the Wynberg Regional Court on 1 (one) count of Murder and thereafter sentenced to 15 (fifteen) years imprisonment. He now appeals against both the conviction and the sentence.

[2] In convicting the appellant, the learned Regional Magistrate only had the evidence of Eileen Jacobs, mother of the deceased, to rely on. She testified that she knows the appellant for about 30 years. She knows him by the nickname "Robot". He stays around the corner from her. On Sunday afternoon, 6/8/2023, she and her boyfriend, Peter, were planning to go to a confirmation party. She went to her neighbour (Miriam), opposite the road, to get a pedicure. She saw the appellant, with his friends, standing on the corner. Mariam was just about to finish her toenails, when Peter shouted, informing her that their transport was on the way. As she was walking across the road to her house, she looked down the street and again saw the appellant standing on the corner, with his friends, about 30 (thirty) metres away from her. His arms were stretched out in front of him and he was holding a "black thing", resembling a firearm, in his hands. Several gunshots (3 to 4) went off and she was pulled into the house by Peter. After the gunshots had subsided, she heard people shouting her son's name. When she went out she saw her son laying in the street with a gunshot to his head.

[3] The appellant was the only witness who testified in his defence. He confirmed that he goes by the nickname of Robot. He testified that in the afternoon in question, he was standing on the corner, as testified to by Ms Jacobs. He was in the presence of two other gentlemen. They however left and he remained standing on the corner alone. He then saw two male persons, a tall one (with a firearm in hand) and a short

one, walking in the road close to Ms Jacobs' house. The taller of the two walked towards the opposite corner, where another male person was standing. The two of them then got into a gunfire exchange, shooting at each other. The tall and the short persons ran away. The one with whom the tall person had the gunfire exchange, came towards him and fired a shot at him. He ran away.

[4] In convicting the appellant, the learned Regional Magistrate correctly made mention of the fact that Ms Jacobs was a single witness and that her evidence had to be approached with caution. In his assessment of the evidence, the Regional Magistrate found that although there were certain contradictions between her evidence in court and her sworn statement, her evidence could not be rejected, because the contradictions were not material. He further endeavoured to explain away the contradictions with reference to the decision of S v Mafaladiso en Andere[1]. He also found that, although Ms Jacobs was subjected to extensive cross-examination, she was able to answer all questions without hesitation and was able to explain herself. He found that "She explained that she saw that it was the appellant with a firearm and he was shooting." I cannot agree with that assessment.

[5] Regarding the evidence of the appellant, the learned Regional Magistrate makes mention of the fact his version needs only to be reasonably possibly true. He then states that it amounted to a bare denial of the allegations and that the appellant did not deny that he was at the scene of the shooting. Based on that, he then finds that notwithstanding the fact that Ms Jacobs did not specifically say that the appellant fired shots at her son, she did see him with a firearm, leading to the only inference that the appellant was the one who fired the shots that killed the deceased.

[6] As indicated already, Ms Jacobs was a single witness in respect of the killing of her son. In terms of the provisions of section 208 of a Criminal Procedure Act, 51 of 1997, an appellant person can be convicted of any offence on the single evidence of a competent witness. Such evidence should however be approached with caution.

[1] 2003(1) SACR 583 (SCA).

The application of the cautionary rule was set out in S v Sauls and Others 1981(3) SA 172 (A) at 180E-G[2] as follows:

"There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of a single witness (see the remarks of Rumpff JA in S v Webber...). The trial judge will weigh the evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told. The cautionary rule referred to by De Villiers JP in 1932 [in R v Mokoena 1932 OPD 79 at 80] may be a guide to a right decision but it does not mean 'that an appeal must succeed if any criticism, however slender, of the witnesses' evidence were well founded' (per Schreiner JA in R v Nhlapo (AD 10 November 1952) quoted in R v Bellingham 1955 (2) SA566 (A) at 569.) It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense."

[7] As will be indicated below, the judgment of the Regional Magistrate did not take into account all the evidence led during the trial. Factual findings were made in favour of the credibility of the state witness, without them being fully motivated. On the other hand factual findings were made against the credibility of the appellant without reasons being advanced. Regrettably the Regional Magistrate paid lip service to the cautionary rule pertaining to the evidence of a single witness and the onus of rebuttal.

[8] The finding by the Regional Magistrate that contradictions in the evidence of the state witness were not material, cannot be agreed with. The contradictions were between her evidence during the trial and her sworn statement. It further related to the contradictions between her evidence in chief and during cross-examination. These contradictions related to the circumstances under which the events unfolded, that led to the killing of the deceased.

[9] As indicated above, the Regional Magistrate tried to explain away the contradictions between the state witness' evidence during the trial and her sworn

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[2] 1981(3) SA 172 (A) at 180E-G.

statement, with reference to the decision of S v Mafaladiso (supra). He did not explain why and how that decision finds application to the contradictions at hand. (As a reminder, it was stated in S v Mafaladiso that the mere fact that there were self-contradictions, must be approached with caution. It must, firstly, be ascertained what the witness actually intended to say in order to determine whether there was a contradiction and what the extent of it was. It must, secondly, be remembered that not every contradiction by the witness affects his/her credibility. Thirdly, that the contradictions must still be considered and evaluated on a holistic basis.)

[10] It should be remembered that the state witness never, in any way, disavowed the content of her sworn statement. She furthermore offered no credible explanation for the contradictions. For these reasons the contradictions could not simply be ignored.

[11] The contradictions are as follows:
(i) In her sworn statement she indicated that when she saw the appellant just before gunshots went off, he was with only one other person. In court she testified that he was with a few other males. When confronted with this, during cross-examination, the witness changed her version, indicating that when she walked over to Miriam she saw the appellant with a group of his friends and when she later returned she saw him with only one other person.

(ii) In her sworn statement she indicated that she was crossing the road and she heard gunshots going off. She looked and saw the appellant with a firearm, shooting. In her testimony in court, however, she testified that she first saw the appellant before hearing gunshots going off and she cannot say if the appellant was the shooter.

(iii) She testified in chief that the black thing that the appellant had in his hands resembled a gun. On page 23 of the transcribed record the following exchange between the prosecutor and the witness is found:
"Prosecutor: A black thing?
Ms Jacobs: Ja. 'n Gun."

By contrast, during cross-examination, being confronted with the appellant's version that he was not in possession of a firearm, she testified that she did not see a firearm, she only saw the appellant with outstretched arms, holding a black item in his hands. No mention then about the black item resembling a firearm.

(iv) On page 83 of the transcribed record the following exchange is found between the learned Regional Magistrate and the witness:
"Questions by Court: Were there other people shooting there?
Ms Jacobs: Not that I know of, Your Worship."
By total contrast the following exchange happens on page 78 of the transcript between the appellant's legal representative and the witness:
"Ms May: He says (the appellant) the two guys, the tall and the short one that went down the road they were shooting on or towards other guys that was standing on the other side.
Ms Jacobs: That is what is happening, it was an exchange of shots, Your Worship. Robot them are firing to the other group and the other group is retaliating and my child was caught in the middle of that."

(v) As indicated above, the witness intimated in her evidence in chief that the appellant must have been in possession of a firearm and must have shot and killed her son. This is however in contrast to her evidence in cross-examination, where she unequivocally testifies that she never saw the appellant in possession of a firearm and never saw him shooting.

[12] The Regional Magistrate also did not take into account the fact that the state witness, by her own admission was in a hurry, when she crossed the road and that the incident unfolded rapidly. She testified that she was preoccupied by the fact that the transport had arrived and everything happened fast.

[13] The Regional Magistrate appeared to have not taken into consideration, in his judgment, the full extent of the appellant's version and the probabilities contained in it. The appellant testified that when the exchange of gunshots happened, he was alone. He denied being in possession of a firearm and firing shots. On a conspectus of all the evidence, it is reasonably possible that the state witness, being in a hurry

crossing the street, saw the appellant standing on the corner. She, associating the appellant with gang involvement, and gunshots going off, came to the wrong conclusion that he must have been the shooter. This will explain the material contradictions in her evidence, as pointed out above.

[14] The Regional Magistrate failed to give sufficient weight to the contradictions in the State's case and failed to properly weigh the state witness' evidence against that of the appellant and against the probabilities.

[15] It follows that the appeal must succeed and the conviction and sentence set aside.

[16] I thus propose the following order :

1. The appeal is upheld.
2. The appellant’s conviction and sentence are set aside.
3. Provided that the appellant is not in custody for any other criminal charge or conviction or sentence, he is to be released immediately.

[1] 2003(1) SACR 583 (SCA).
[2] 1981(3) SA 172 (A) at 180E-G.

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K PETERS

ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered

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J CLOETE

JUDGE OF THE HIGH COURT

APPEARANCES:

For the appellant : Ms P Andrews, Legal Aid South Africa

For the respondent: Mr T Ntela, Office of the Director Public Prosecutions