



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CC 9/2020

In the matter between:

**THE STATE**

and

**ERNST JOSEF LICHTENSTRASSER**

**ACCUSED**

**Neutral citation:** *S v Lichtenstrasser* (CC 9/2020) [2023]

NAHCMD 696 (2 November 2023)

**Coram:** LIEBENBERG J

**Heard:** 15-18 Feb 2021; 6,8 April 2021; 5-6 May 2021; 27,28,29,30 Sep 2021; 1,4,5,6,7 Oct 2021; 14,15,17,29,31 March 2022;1,11,12 April 2022;18-22 July 2022;17,18,19,20,21 Oct 2022;5,6,7,8,12,13,14,15 Dec 2022;16,17,18,19,20 Jan 2023;24,25,27,28 April 2023;5,6 June 2023;11 July 2023;14 Sep 2023;16 Oct 2023

**Delivered:** 2 November 2023

**Flynote:** Criminal Procedure – Charges – Double Murder – Possession of a firearm without a licence – Possession of ammunition – Attempting to defeat

or obstruct the course of justice – Theft – Unauthorised supply of a firearm and ammunition.

Criminal Procedure – Circumstantial Evidence – Not to be assessed in isolation but holistically with all other facts and circumstances – Witness statements – Where witness deviates therefrom – Deviation must be material before negative inference can be drawn – Burden of proof – The evidence viewed as a whole, must establish the guilt of the accused beyond a reasonable doubt – Accused entitled to benefit of any reasonable doubt – Whether inference of guilt is the only reasonable inference to be drawn.

Criminal Procedure – Chain of custody – What constitutes a break in the chain – Where no evidence led proving tampering – Chain of custody remains intact.

Criminal Procedure – Confession – What constitutes – Admissibility thereof regulated by s 217 of the Criminal Procedure Act.

Criminal Procedure – Duplication of convictions – What constitutes – Authorities restated – First crime must be completed for the subsequent crimes to be considered separate.

**Summary:** The accused was indicted on the following charges: Count 1: Murder; Count 2: Murder; Count 3: Possession of a firearm without a licence (c/s 2 of the Arms and Ammunition Act 7 of 1996); Count 4: Possession of Ammunition (c/s 33 of the Arms and Ammunition Act 7 of 1996); Count 5: Defeating or obstructing or attempting to defeat or obstruct the course of justice; Count 6: Theft; Count 7: Possession of a firearm without a licence (c/s 2 of the Arms and Ammunition Act 7 of 1996); Count 8: Unauthorised supply of a firearm and ammunition (c/s 32(1)(a) and (b) of the Arms and Ammunition Act 7 of 1996. He pleaded not guilty on all counts set out in the indictment. Other than denying the allegations as per the charges, he elected to remain silent and offered no plea explanation. There were no eyewitnesses to the offences committed and all the evidence is circumstantial.

*Held:* That there is no material deviation from the witness statement and what has been omitted from the statement, was reasonably explained by the

witness. Further, the evidence of this witness stands unchallenged and he is accordingly found credible and reliable.

*Held that:* Failing to present photographic proof of the tyre and shoe tracks as well as the lack of plaster casts prepared for court purposes is evidence which, considered on its own, does not prove the identity of the accused. However, it is not to be assessed in isolation, but remains a circumstance which, in the end, must be considered together with all other facts and circumstances, holistically.

*Held further that:* When considering the evidence regarding the discovery, handling and recording of the exhibits, coupled with the corroborating evidence of several eyewitnesses, it seems inescapable to come to the conclusion that the omission of two firearm magazines on the application form was a mere oversight when booking in the exhibits at the Scene of Crime Sub-Division.

*Held that:* The proposition that the magazines were later added to the parts discovered in the desert, is not supported by the evidence before court, which proves that the numbers of the exhibit bags in which the parts were packed, corresponded when received by Namibian Police Forensic Science Institute, and that these bags were still sealed with no sign of tampering.

*Held further that:* The state has proved beyond reasonable doubt that the two magazines were indeed among the exhibits forwarded to the Namibian Police Forensic Science Institute for forensic examination and that the argument of tampering with the exhibits is without merit. Hence, the chain of custody remains intact as this is not an instance where forensic bags were opened after being sealed or re-sealed.

*Held:* That besides ballistics evidence, there is also evidence of swabs taken from the firearm parts and a holster found in the desert and the accused's clothes worn at the time of his arrest, yielding DNA profiles from which the accused cannot be excluded.

*Held further that:* The onus is on the state to prove beyond a reasonable doubt that the accused's version is not only improbable, but that it is false beyond all reasonable doubt. When the court follows a holistic approach in its assessment of the evidence before court, full regard being had to the merits and demerits of both state and defence witnesses, as well as the probabilities, then it is satisfied that the accused's version as regards events which led to the murder of the deceased persons, is not only improbable, but false beyond reasonable doubt.

*Held that:* The statement essentially describes the actions and mind-set of its maker, from which it can, with some certainty, be inferred that he appreciated the wrongfulness of the act but, notwithstanding, continued to commit the murders and therefore, the statement constitutes a confession.

*Held further that:* The requisites of s 217 of the CPA have been met as far as the confession is concerned. Furthermore, even if that were not to be the case, then the rest of the evidence proves the accused's involvement in the commission of the crimes set out in counts 1 – 5, beyond reasonable doubt.

*Held that:* In light of the same shotgun being the subject matter of count 6 (theft), count 7 (unlawful possession of a firearm), and count 8 (unauthorised supply of firearm and ammunition) respectively, the court is satisfied that it does not constitute a duplication of convictions for reason that, the first criminal act (theft) was completed and only thereafter did the accused form the intent to bring about changes to the shotgun and keep it (unlawful possession), before handing same over to his worker at a later stage. The three acts thus constitute separate criminal offences.

*Held further that:* The manner in which the deceased were shot in the head and upper body, is testament of acts committed with direct intent. Accused thus found guilty of murder with direct intent.

---

**ORDER**

---

- Count 1: Murder – Guilty (direct intent)
- Count 2: Murder – Guilty (direct intent)
- Count 3: Possession of a firearm without a licence (c/s 2 of Act 7 of 1996)  
– Guilty
- Count 4: Possession of ammunition (c/s 33 of Act 7 of 1996) – Guilty
- Count 5: Attempting to defeat or obstruct the course of justice – Guilty
- Count 6: Theft – Guilty
- Count 7: Possession of a firearm without a licence (c/s 2 of Act 7 of 1996)  
– Guilty
- Count 8: Unauthorised supply of a firearm and ammunition (c/s 32(1)(a)  
and (b)) – Guilty

With regards to the witness Immanuel Hangula the court is satisfied that during his testimony, he answered frankly and honestly all questions put to him and in terms of s 204(2) of the Criminal Procedure Act 51 of 1977, he is accordingly discharged from prosecution.

---

## JUDGMENT

---

LIEBENBERG J:

### Introduction

[1] On the morning of 15 April 2019, the lifeless bodies of Eckhart Diethelm Gunther Mueller (Mueller) and Heinz Heimo Hellwig (Hellwig) were found outside the main administration building of the Namibian Institute of Mining and Technology (NIMT), at Arandis, in the district of Swakopmund. Both had been shot multiple times in the head and body with a firearm, with

fatal consequences. There was no eyewitness to the incident and the first persons to arrive at the scene were a security officer and one staff member, alarmed by nearby shots that rang out. Upon closer inspection, the two bodies were discovered and they summoned the police to the scene. At the time of their demise, Mueller and Hellwig were the Director and Deputy-Director of NIMT, respectively, stationed at the Arandis campus.

[2] The accused, an adult male, was arrested the following day in connection with the murders and subsequently indicted on the following charges:

Count 1: Murder

Count 2: Murder

Count 3: Possession of a firearm without a licence (c/s 2 of the Arms and Ammunition Act 7 of 1996)

Count 4: Possession of Ammunition (c/s 33 of the Arms and Ammunition Act 7 of 1996)

Count 5: Defeating or obstructing or attempting to defeat or obstruct the course of justice

Count 6: Theft

Count 7: Possession of a firearm without a licence (c/s 2 of the Arms and Ammunition Act 7 of 1996)

Count 8: Unauthorised supply of a firearm and ammunition (c/s 32(1)(a) and (b) of the Arms and Ammunition Act 7 of 1996.

[3] The accused pleaded not guilty on all counts set out in the indictment. Other than denying the allegations as per the charges, he elected to remain silent and offered no plea explanation.

[4] Mr Titus represents the accused while Ms Verhoef appears for the state.

### The State's case

*The events of Monday 15 April 2019 at NIMT Arandis*

[5] According to Mrs Sabine Hellwig, the then spouse to Hellwig, her husband was picked up from home by Mueller at 06h00 from where they proceeded to the Arandis campus. When she later arrived on campus she learned about the shooting incident and that her husband and Mueller had died.

[6] In cross-examination, the witness elaborated on the daily functioning of the staff, the layout of the campus and security. The campus was not fenced in, though there was a night watchman doing patrol with patrol dogs during the night shift until early morning when the dogs were returned to the kennels.

[7] Regarding the accused, she knew that he was an instructor at the NIMT Northern Campus (NNC) workshop in Tsumeb, at the time. She was aware of the so-called 'concerned group' operating at the different campuses<sup>1</sup>, consisting of staff members who were disgruntled about envisaged retrenchments within the institution. As far as she knew, the accused was a member of this group. Regarding personnel management, she confirmed that decisions on retrenchment would be taken by the two deceased persons and that there was no retirement policy within the institution, neither a retirement age. This was one of the concerns of the discontented group.

[8] Ms Gertrud Naobes, the Matron Supervisor at the Arandis campus, arrived at work at around 06h05 and went about her usual work. It was still dark when she saw the lights of a moving vehicle on the campus. At about 06h30 she heard a 'loud noise', and assumed it to be related to blasting done by the mine. The security guard then arrived and enquired whether she also heard the sound. Upon confirming, he left but immediately came running back reporting about Mueller and Hellwig; she then contacted the police.

[9] At the scene she saw the bodies lying in blood and several spent cartridges. There was no one else in sight, neither did she hear any other (suspicious) sounds. She observed movement of the hand and lips of Hellwig which then stopped. According to the witness, Mueller, over the years, followed a set routine by coming to work at 06h30 before other staff members

---

<sup>1</sup> Arandis, Tsumeb and Keetmanshoop.

arrived. What is evident from this witness' testimony is that the only form of control over persons entering or leaving the campus after hours was by the security officer on duty. The campus was not fenced in, thus allowing uncontrolled access to the premises from virtually all directions to anyone travelling on foot. As regards roads giving access to the campus, there was the one leading up to the main entrance and a less travelled road behind the campus that branches off leading towards the dumpsite and the informal settlement of Arandis.

[10] Mr Festus Mwayambuatji, the security officer on duty that morning, confirmed the evidence of witness Naobes in material respects and nothing to add to her version of the events.

[11] Ms Karolina Tsuses, also employed at NIMT, was on foot on the back road going to work when an approaching vehicle sped past her at around 06h50. She had a brief side view of the driver, whom she described as a white man wearing sunglasses, but said she was unable to identify the person. The vehicle had roof rails on the cabin and was similar to the pickup owned by a certain Steve. She however did not check the registration number of the vehicle. Other than stating that the vehicle was leaving the campus, she was unable to tell the direction in which the vehicle travelled after passing her.

[12] In light of the connection made between this pickup and that of one Steve, the state led the evidence of Ms Jenny Howases, the daughter of Stephanus Goraseb,<sup>2</sup> the owner of a Nissan NP300 pickup registered in his name with registration number N3540S. The gist of this witness's testimony is that her father's vehicle, on that day, was in Windhoek for repairs and could therefore not have been the vehicle which Karolina Tsuses saw driving past her that morning. It therefore must have been a similar vehicle. It is not in dispute that the accused was found driving a Nissan NP300 pickup when arrested the next day (Tuesday, 16 April 2019).

[13] Warrant Officer Garoeb (Garoeb) from Nampol Arandis visited the crime scene but retreated after arranging that it be cordoned off. He was not

---

<sup>2</sup> Also known by the name, 'Ou Steve'.



involved in any investigations conducted at the scene, except for being seized with the handing in of exhibits at the Arandis police station later.

[14] Chief Inspector Skrywer (Skrywer), currently the Head of the Scene of Crime Sub-Division (SOCSD), Walvis Bay, photographed the crime scene and collected exhibits. These included eight spent cartridges<sup>3</sup> and four spent projectiles<sup>4</sup> which were individually sealed in small paper envelopes and marked. One of the projectiles was found lodged in a pouch in the shirt pocket of Hellwig. The exhibits were transferred to the SOCSD offices and booked into the forensic register where they remained in custody until transferred to the Namibian Police Forensic Science Institute (NPFISI) in Windhoek for forensic examination. He further compiled a photo plan of the crime scene and the exhibits.

[15] He extensively testified on the preparation and marking of exhibits submitted for forensic examination and the photographing thereof, as depicted in photos incorporated in the photo plan. This included the collection and preparation of exhibits handed in at Arandis police station during different stages of the investigation. After completion of the required application forms, he personally transported the exhibits to Windhoek, on diverse occasions, where it was handed in at the registry of the NPFISI for forensic examination.

[16] Sergeant Simon, attached to the Criminal Investigation Department at Arandis, testified about two sets of boot prints he observed in the sand, next to the main building and about five metres away from where the bodies lay. He drew Inspector Geiseb's (Geiseb) attention to these prints but these, in the end, turned out to be the shoe prints of students at NIMT. Nothing further turns on this evidence.

#### *Reports of threats made to Mueller*

[17] It is common cause that in 2019 a number of NIMT employees from all the campuses raised their concerns about retrenchments and the institution not following a retirement policy. Throughout the trial these persons were

---

<sup>3</sup> Exhibit 'U' points G –N and O.

<sup>4</sup> Exhibit 'U' points Q, T – V.

referred to as 'the concerned group'. It is not in dispute that the accused associated himself with the group and partook in raising the employees' concerns with higher authorities. The accused's personal involvement in trying to bring about change within the institution was primarily driven by his transfer from the NNC at Tsumeb to the Southern Campus at Keetmanshoop (NSC). Also evident from the evidence presented is that the accused resisted the transfer for personal reasons, considering it detrimental to his family and his accompanying health issues.

[18] As borne out by correspondence exchanged between the accused and Mueller regarding the transfer, it was agreed that the accused would assume duty at Keetmanshoop after submitting to a medical examination (ECG), scheduled for 15 April 2019, in Tsumeb. It is common cause that the accused did not turn up for the medical examination and was arrested one day later.

[19] Mr Ralph Bussel (Bussel), employed by NIMT as Principal of the Engineering Trade Campus, Arandis, was part of management and he testified that the closure of the fitter and turner workshop at Tsumeb arose in 2018 and the accompanying retrenchment of employees. Although the retrenchment process was retracted later that same year, the closing of the workshop proceeded, offering the affected training officers the opportunity of transfers to other campuses. The transfer of these officers was effected before the incident of 15 April 2019. The accused initially declined and, when given the option to either accept a transfer to NSC or resign, he intimated that he would accept the transfer, subject to further financial conditions. These conditions, however, fell outside the ambit of his employment contract.

[20] I pause to observe that it would appear from the accused's own evidence that his belated raising of expenses only after accepting the transfer, was done in an attempt to further delay his assumption of duty at NSC. Although the accused said he accepted the transfer, he considered it to be only of temporary nature because, in his view, the decision to close down the workshop at NNC would be set aside by higher authorities; this, however, never materialised.

[21] During cross-examination, Bussel was questioned about alleged threats made to Mueller during a campus visit at Tsumeb, to which he responded that Mueller personally mentioned to him afterwards that the accused threatened him saying that 'he had to sleep with one eye open'. During a subsequent meeting of the Board of Trustees, Mueller raised it again. Consequential thereto, Mueller decided to be less transparent about his travel arrangements in future. To Bussel it appeared that Mueller considered his life to be in danger, although the alleged threat was never reported to the police, except by Bussel after the shooting incident.

[22] Mr Hendrik Koekemoer is employed by NIMT Arandis and attached to head office. His evidence, in material respects, corroborates that of Bussel and need not be restated. He further confirmed Mueller's report made during a meeting about the accused's warning to Mueller, which he considered a threat.

[23] The accused's response to these allegations is a blunt denial and, according to him, the only knowledge he has about such threat was contained in an anonymous letter addressed to Mueller, circulated on the campuses. During the police investigation, the accused mentioned the name of the person (Imelda) who allegedly wrote the letter, but, when approached by the police in that regard, she disputed the allegation. The existence of such letter has thus not been established.

#### *The post-mortem examination findings*

[24] Dr Augustu Gawab is a medical practitioner based at Walvis Bay and on 17 April 2019, he conducted autopsies on the bodies of the deceased persons. He compiled medico-legal post-mortem reports<sup>5</sup> which were received into evidence during his testimony. I proceed to briefly state the gist of the respective reports.

[25] The chief post-mortem findings made on the body of Mueller, as noted in the report, are the following:-

---

<sup>5</sup>PM 56/2019 in respect of Eckhart Diethelm Gunther Mueller (Exhibit 'G') and PM 57/2019 in respect of Heinz Heimo Hellwig (Exhibit 'J').

- a) Massive subdural hematoma;
- b) Massive subarachnoid hematoma;
- c) Multiple skull fractures;
- d) Multiple rib fractures; and
- e) Multiple lung contusion.

Based on the aforementioned findings, the cause of death is noted as: head injury secondary to gun shot.

[26] Dr Gawab expounded on the head injuries and said there were two gunshot wounds to the head namely, one bullet entry point on the left frontal bone and exiting at the occipital area. The second being a laceration or piercing of flesh on the right cheek, fracturing the nasal bone base and the bullet exiting at the tip of the nose. On the body and limbs there were three bullet entry wounds in the chest, on the right upper- and forearm, and one to the left ring finger. In light of the nature of the gunshot wounds into the body, Dr Gawab opined that the chest wounds were inflicted first and thereafter the head wounds; the latter causing instant death. As for the chest wounds, there was massive blood loss with 1650ml of blood measured in the plural cavity. This was equally fatal in the circumstances.

[27] Based on the damage of tissue, it could be inferred that the shots were fired from a distance exceeding three metres. With regards to the body wounds, only shattered metal fragments were found as the projectiles shattered upon impact with the ribs. Whereas some of the injuries inflicted to the limbs could have been multiple injuries subsequent to a single gunshot, it is possible that either five or six shots were fired at or into the body. In addition, two shots were fired directly in the deceased's head.

[28] In respect of the chief post-mortem findings made on the body of Hellwig, the report reflects the following:

- a) Massive subdural hematoma;
- b) Massive subarachnoid hematoma;
- c) Multiple skull fracture;

- d) Multiple rib fracture on the left and right side; and
- e) Multiple lung contusion on both lungs.

The cause of death as indicated is noted as: head injury secondary to gunshot wound.

[29] With reference to the skull, multiple fractures were noted with one bullet entry point on the left temporal bone and an exit wound on the right temporal bone. On the chest, two bullet entry points were noted on the right side, exiting on the left side. The chest wounds suggest that the shots were fired from the right while that fired into the head was from the left side. The bullets penetrating the chest area resulted in multiple rib fractures on both sides and contusion of both lungs. Due to internal bleeding, 1350ml of blood was collected from the chest cavity. Similarly to that of Mueller, Dr Gawab deduced that the first shots were fired into Hellwig's body before he was shot in the head.

*Events leading up to the arrest of the accused on Tuesday 16 April 2019*

[30] Mr Gilliam Schoombee (Schoombee), formerly employed at NIMT Arandis, said that after his resignation in 2010, he relocated to a plot just outside of Tsumeb. He was subsequently appointed at NNC in January 2017 as electrical instructor, until he resigned in July of that year when he decided to pursue farming fulltime. It is not in dispute that during his six month stint at NNC he and the accused were colleagues.

[31] It is against this background that he again met with the accused at Agra in Tsumeb during March 2019 and, after exchanging greetings, he enquired how things were going at NIMT. The accused responded by saying that Mueller and Hellwig were responsible 'for all the shit going on at the moment' and, assuming that he was referring to Mueller, said 'that he should either retire or be taken out'. Accused added that it would be quick – once in the stomach and once in the head. The accused then broke eye contact and looked down at the floor, ending the conversation. Schoombee understood this to mean that Mueller should be shot. On the way home he considered what the accused had just said and, although their conversation left him

uncomfortable, he brushed it aside when recalling that the accused used to boast about his East-German military background and him being an 'unsung hero'.

[32] On the evening of 15 April 2019 (the day of the murders), Schoombee saw on Facebook that Mueller and Hellwig were shot and that the police were looking for a white Nissan pickup. He remembered the accused's earlier remarks and sent a text message to the number provided reading: 'This is your murderer'. Although, then, unable to recall the accused's surname being Lichtenstrasser, he mentioned the conversation he had with the accused at Agra and provided the accused's work address. Also that he was of East-German descent with Russian military background. Shortly thereafter he received a call from a police officer who asked him to make a statement. On 18 April 2019 he gave a statement to the police.

[33] In cross-examination, it was put to the witness that his statement makes no mention of gunshots or the accused's words of 'once in the stomach and once in the head'. This much he conceded, but explained that the officer who reduced his statement to writing condensed it by sticking to the words 'taken out' which could be seen as a mistake on his part for not correcting the statement when read back to him. He justified this by saying that he was told that the statement should be kept short as it was urgently required by the police of Swakopmund. According to Schoombee, he was unaware of any retrenchments at NIMT or tension between the accused and management at the time. The sole reason for contacting the police was because of what the accused had said during their meeting. Despite the accused's denial of such meeting or conversation, the witness remained unwavering.

[34] Acting on the information received from Schoombee, the police started searching for the accused and extended their search to the printed and social media. According to the evidence of the investigator, Inspector Geiseb, one of the newspapers on Tuesday 16 April 2019, published a report, stating that the accused was wanted in connection with the murders at Arandis.

[35] Still on 16 April 2019, Inspector Geiseb (Geiseb) from SOCSO Walvis Bay, accompanied by two colleagues, travelled to NNC to enquire about the 'concerned group' and threats allegedly made to management and Mueller in particular. The names of members of the group were made known to the police. They also learned that the accused was on sick leave and had missed a doctor's appointment on 15 April 2019. The accused was then regarded by the police as 'a person of interest'. They proceeded to his house situated at Otavi where they met with the accused's wife and interviewed her. She explained that she did not know the accused's present whereabouts, as he had left home two days before (14 April) and that she reported him missing on 15 April 2019. She said the accused was under stress because of his transfer to Keetmanshoop and that he had been writing to NIMT management in that regard; showing them a letter as proof which was copied and seized as evidence.<sup>6</sup>

[36] Mr Laurentius Katambo (Katambo), employed as a pump attendant at Engen service station Karibib was on duty on Tuesday 16 April 2019 at around 20h00, when a white Nissan pickup stopped at the service station. He recognised the driver (the accused) as a former neighbour of his in the North when he still lived in the village, years back. The accused asked to use his phone to make a call to his wife who had to send him money, as, according to him, he had lost his wallet and phone in Henties Bay. He handed his phone to the accused who made the call. The number of an unknown person by the name 'Jason' was also forwarded to Katambo's phone. Though the accused spoke to someone, the witness was unable to tell with whom.

[37] While the accused was still talking on the phone, Katambo's friend, Steven, arrived and showed him a photo on Whatsapp of a wanted person, whom he recognised as the accused. Katambo then alerted the police and Inspector Nghiteeka and other police officers arrived shortly thereafter. The accused was handcuffed and driven off to the police station. The testimony of this witness was not challenged during cross-examination. On the contrary, the false explanation the accused had given as to why he had no phone or money on him, was confirmed by the accused's counsel.

---

<sup>6</sup> Exhibit 'T'.

[38] Inspector Nghiteeka (Nghiteeka) testified that the accused was still speaking on the phone when they arrived and, after ending the call, the accused, of his own volition, said that he had been in the desert and that he heard on the radio that Deputy Commissioner Likuyu was looking for him. Nghiteeka told the accused that it was in connection with the Arandis murder case and informed him of his rights; accused confirming that he understood. Following his arrest, the accused was taken to the police station where permission was obtained from him to conduct a search of his vehicle. Leave was granted and, in the presence of the accused, Constable Muyenga conducted the search and found a .38 revolver and ammunition, the latter included two live rounds of a .22 calibre rifle. Though the revolver was licenced, there was no licence permitting the accused to have .22 ammunition in his possession.

[39] Constable Muyenga's testimony corroborates that of Nghiteeka as far as the arrest and the search of the accused's vehicle is concerned and need not be rehashed.

[40] From there on they proceeded to Nghiteeka's office where he interviewed the accused, describing his behaviour as co-operative. The accused explained that he was aware of the double murder and realised that he was considered a wanted person. However, according to him, this (the murders) was the work of 'high profile companies' and that he might know the person who did this. However, he would not mention the person before first meeting with his lawyer. He also asked to meet Likuyu but was told that he would only arrive the next day. The accused then remained in custody.

[41] Cross-examination of this witness primarily dwelled on the rights explained to the accused at different stages and that the accused on these occasions said that he wanted a lawyer. This was disputed, saying that the accused wanted his wife to come and, only thereafter, would he contact a lawyer.

[42] In light of the trial-within-a-trial conducted in which the court was presented with comprehensive evidence about the accused having been



informed of his rights at different stages of the investigation – from beginning to end – and the accused during these proceedings admitting that he was indeed familiar with his rights, there is no further need to discuss the question of rights in any particularity where it surfaced during the police investigation; unless where necessary and it being in the interest of justice to do so. The question as to whether or not the accused was denied his right to have a lawyer present when interviewed during the investigation, moreover when incriminating himself, was already decided and will be discussed later herein. For now it will suffice to say that the accused, at all relevant stages of the investigation, was familiar with his rights and therefore in a position to make informed decisions during interviews conducted by the police. It is against this backdrop that I proceed.

*Information proffered by the accused during police investigation*

[43] On Wednesday, 17 April 2019, Chief Inspector Litota (Litota), accompanied by Deputy Commissioner Iikuyu and Geiseb, arrived at Karibib police station where they interviewed the accused. Inspector Ashikoto was also present. After his rights were explained, the accused appeared to be eager to talk and said he had no problem to inform them about his earlier movements, as they were having the wrong guy. He started off by saying that he had a fight with his wife at home in Otavi; that he decided to drive off and took bottles of whiskey and wine along and drove with the B2 main road towards Swakopmund. Before reaching Arandis, he turned off into the desert where he spent two nights before deciding to return home. He said he was without food and water during this period and when asked whether he could take the police to the spot where he had been, he replied that he could not remember; neither the direction he drove in. At the end, the accused said 'If you want me to take you to where I was, I would be incriminating myself'. That brought the interview to a close and it was decided to transfer the accused to Arandis police station for further investigation. Before leaving, Litota inspected the soles of the Caterpillar boots the accused was wearing and also had a look at the tyres of his vehicle.

[44] Inspector Ashikoto (Ashikoto), in material respects, corroborates the explanation given by the accused during this interview, but added that the accused also said that his motive was accomplished and that there was no further need to transfer him to NSC.

[45] In cross-examination, Ashikoto was adamant that the accused spoke about his motive, despite Litota not making any mention thereof during his testimony. She (Ashikoto), in particular, relied on her witness statement to show consistency in her version.

[46] During the interview, Geiseb noticed that the accused was wearing black boots, the same ones he saw the accused wearing when captured on CCTV footage on Sunday, 14 April 2019, whilst visiting two service stations at Karibib and Usakos, respectively. After the interview, he called the accused outside. He then directly asked the accused what he knew about the shooting at Arandis, to which the accused replied that he knew something bad has happened, but could not recall what it was, as he was drunk. Geiseb thereafter arranged for the accused's transfer to Arandis police station. He also seized the accused's boots for the purpose of investigation.

[47] It is common cause that an investigation team was put together, consisting of Inspectors Maletzky, Kantema, lipumbu, Chief Inspector Nghinamundova, and Warrant Officer Van Graan.<sup>7</sup> Their first interview with the accused was conducted on 18 April 2019 at Arandis police station.

[48] During the interview the accused indicated that he was willing to cooperate and shared information regarding his background, his qualifications, military training and eventual immigration to Namibia during the 80's. Besides extensive military training in Austria and Zimbabwe whilst in exile, he was trained in the manufacturing of explosive devices and considered himself to be a weapon expert.

[49] He said he wanted to speak the truth and set off explaining the events of 14 April 2019 when he was enraged after a quarrel with his wife about a

---

<sup>7</sup> The investigation team was further made up by Chief Inspector Litota, Deputy Commissioners Iikuyu and Sibulile, W/O Geiseb, and Chief Inspector Kantema.

glass top table his son, from a previous marriage, had broken. After returning the boy to his biological mother in Tsumeb, he returned home where he smashed his cell phone against the wall, collected some alcohol and drove off. Before reaching Arandis he turned and drove into the desert where he stayed for two days, taking painkillers and alcohol – no food. When asked whether he would be able to direct the officers to the spot where he turned into the desert and where he had stayed for the two days, he replied in the negative. This was the same explanation he had earlier given during his questioning at Karibib police station.

[50] Regarding his relationship with NIMT, he said he was not pleased with the manner in which it was managed and that he belonged to the 'Concerned Group'. He singled out the deceased persons and Mr Bussel, being the ones forcing his transfer to Keetmanshoop, whilst his house and family were based at Otavi, with complete disregard of the financial burden it would bring upon him. He added that he was happy they were gunned down. The accused then admitted that he was the shooter and that he could not fool his interrogators. He explained that he was worried about his age if he goes to prison and expressed his concern for his wife.

[51] Van Graan confirmed the accused's narrative about his training and military background and his absolute disdain for the deceased which focused on the manner in which they managed the institution; the way they treated people and that they wanted to transfer him to Keetmanhoop. Van Graan, in material respects, corroborated Maletzky's version of the tumultuous events at home between the accused and his wife on Sunday before his departure and entering the desert where he stayed until Tuesday. He added that the accused was unable to direct them to the spot where he turned off into the desert, or where he had spent the two days. Also that the accused said he heard over the radio about the shooting as he exited the desert.

[52] When asked whether he had recently fired a firearm, he answered in the negative, stating that it was approximately two months ago. In view thereof, Van Graan remarked that there would thus be no explanation if gun residue deposit were to be found on his clothes, to which the accused

changed his version. He then said that it was the previous Saturday 13 April 2019, at farm Ubi-Bene situated between Otavi and Tsumeb, when he and his son did practice shooting on the shooting range. It was then decided to seize his clothes for possible testing.

[53] According to Van Graan, the accused also referred to the manner in which the victims were shot and, when questioned on that, he said that he knew he could not fool them and said that he was 'the shooter'. He said he wanted to tell them the full story but first wanted to discuss it with his lawyer. Upon reserving his rights, the interview ended and the accused contacted his wife, using Van Graan's phone. The accused's wife arrived first and brought along a fresh set of clothes into which the accused changed. The accused's worn clothes were then booked in as exhibits. His lawyer, the late Mr Mbaeva, arrived some time later and he and the accused moved to a private area where they were talking. When the accused returned, he informed the investigating team that, acting on the advice of his lawyer, he did not want to continue with the interview. The officers respected his decision, where after Van Graan withdrew from the investigation and returned to Windhoek.

[54] Van Graan disputed in cross-examination that the police already knew about the accused's military background and expertise on firearms. This was information tendered by him and which prompted further questions. Regarding the manner in which the deceased were killed, the accused said he knew how they were shot and made reference shots to the head. It was put to the witness as an instruction that the accused's exact words were: 'If I were the shooter I would not be able to fool you'. Both Van Graan and Maletzky disputed the assertion and confirmed that the admission was followed up by stating that he wanted to tell the truth, as he would not be able to fool them (the police) but, he first wanted to speak to his lawyer.

[55] Inspector lipumbu's testimony on the interview corroborates that of the two other officers in material respects, with the exception that he left the office to take a phone call as the accused was about to tell them 'the truth about the murder incident'. He only returned when the accused said he first wanted to speak to his lawyer where after the interview stopped.

[56] It is common cause that the accused on that day was released by Geiseb as a suspect on the murder charge, but formally arrested for the unlawful possession of the .22 ammunition found in his vehicle for which he later appeared in the Karibib Magistrate's Court. In the meantime, the murder investigation continued.

[57] The accused was then transferred in custody from Arandis to Walvis Bay police station.

*Spent cartridges found at the house of accused and at Farm Ubi-Bene*

[58] With regards to the accused's explanation about him having visited a shooting range the previous Saturday, the investigation team shifted their attention to Farm Ubi-Bene situated some 25km from Tsumeb where Mr Peter van Eeden (Van Eeden) resided. He testified that during April 2019 the police visited his farm on four occasions to obtain statements from him as regards his connections with the accused and to collect spent cartridges from the shooting range on his farm. He said he befriended the accused and knew that he was employed at NNC. Towards the end of 2018 the accused informed him that he was to be transferred to the NSC which seemed to have displeased him. During 2019 the accused visited the farm to practice target shooting and the last time was on Saturday, 13 April 2019 when he and his son arrived.

[59] When Litota and Geiseb arrived at the farm on Sunday, 21 April 2019, Van Eeden accompanied them to the shooting range where they collected 9mm spent cartridges. The next police visit to the farm involved three officers who again visited the shooting range where they collected spent 9mm Parabellum casings which were placed in plastic bags. It is common cause that on both occasions, these cartridges were collected from the same spot where a person would be standing when doing target shooting. During the last visit Chief Inspector Litota came to the farm and insisted on Van Eeden handing over his Heckler & Koch pistol, as well as his son's Glock pistol, for forensic examination. He reluctantly agreed and handed over the firearms.

[60] Litota confirmed their visit to the shooting range at Farm Ubi-Bene where Geiseb photographed the scene, before picking up seven spent cartridges which were wrapped in toilet paper and placed in a marked envelope. Acting on information pertaining to the accused's ex-wife, they proceeded to Tsumeb.

[61] During an interview conducted with the accused's former wife and their minor son, the boy confirmed that he and his father visited the shooting range at Farm Ubi-Bene on 13 April 2019. Also that they fired four firearms, including a pistol, where after his father told him to collect the spent cartridges – for reloading purposes – which he placed in a red plastic bag. I pause to observe that the boys report is hearsay and not representative of the truth.

[62] They then proceeded to the accused's home situated in Otavi where they met with his present wife, in order to verify the licences of firearms in their possession. There was no 9mm pistol licence among these. When asked about spent cartridges that were picked up at the shooting range, the wife fetched a red plastic bag from a drawer in the kitchen and handed it over. It contained 53 spent cartridges of 9mm calibre, duly photographed.<sup>8</sup> They obtained leave to seize these as exhibit. The bag with cartridges were then placed in an envelope and, upon their return, booked in at Arandis police station. Geiseb compiled a photo plan of the different scenes and exhibits seized during their visit.<sup>9</sup>

[63] The events of 20 April 2019, as testified on by Litota, were corroborated by Geiseb during his testimony. Geiseb explained that of the 53 spent cartridges found at the accused's house, he randomly chose six and of the seven picked up from the shooting range, he randomly chose five for forensic examination. These were placed in separate envelopes and transferred to SOCSA at Walvis Bay where the exhibits were marked, sealed into forensic bags and handed over to Skrywer. It was later decided to also forward the remaining 47 spent cartridges for examination. All the exhibits

---

<sup>8</sup> Exhibit 'ZZ'.

<sup>9</sup> Exhibit 'QQQ'.

were listed during April to June 2019 by Skrywer on the required application forms and dispatched to NPFSI in Windhoek for forensic examination.<sup>10</sup>

[64] Litota confirmed their return to Farm Ubi-Bene in May 2019 to collect 9mm pistols for purposes of elimination as testified by Van Eeden. It is common cause that these firearms could not be linked to the crime scene and the weapons were later returned to their rightful owners.

[65] On 24 April 2019 lipumbu and Sergeant Mbangu (Mbangu) visited the shooting range at Farm Ubi-Bene where Mbangu photographed the scene and collected a further 11 spent cartridges which were sealed in different forensic bags. These exhibits remained in the custody of lipumbu until he booked them in at Arandis police station on 30 April 2019. On the same day the exhibits were booked out and transferred to SOCSO Walvis Bay and handed over to Skrywer.

[66] The evidence of Mbangu in all respects corroborates that of lipumbu regarding the collection and handling of exhibits as testified.

#### *Development in the police investigation*

[67] From the ballistic report 1114/2019/R1<sup>11</sup> dated 29 April 2019, issued by Mr Kalipus Sem (Sem), a Forensic Scientist employed at the NPFSI, it emerged that, from the firing pin and chamber mark impressions on the spent cartridge cases, sufficient agreement of individual and class characteristics were found between two spent cartridges collected from the shooting range at farm Ubi-bene, five spent cartridges collected from the accused's home at Otavi (taken from the red plastic bag) and eight spent cartridges picked up at the Arandis crime scene. A similar match was found between three spent cartridges from the shooting range and one spent cartridge collected from the accused's home. It had further been established that the spent cartridges of all three locations were fired by the same firearm which, by then, had not been found.

---

<sup>10</sup> Exhibits 'CC-1' to 'CC -7' and 'TTT'.

<sup>11</sup> Exhibit 'UU'.

[68] Geiseb testified that on 6 May 2019 they were instructed by likuyu to search for the firearm at possible places in the desert where it could have been hidden, but to no avail.

[69] On 8 May 2019 Geiseb booked out the accused and took him to his office. After being informed of the content of the ballistic report, he was arrested and charged with murder. During the taking of his warning statement the accused informed Geiseb that he cancelled his instruction given to the late Mr Mbaeva and that his wife was busy making arrangements for another lawyer. This was also the time the accused mentioned that he was on a hunger strike for reason that he was refused bail. According to Geiseb the accused regularly used his phone to contact his wife and had free telephonic access to her.

[70] Further information obtained from MTC printouts of the phone of the accused's wife showed that she was in telephonic contact with a certain Mr Jason<sup>12</sup> at the time the shootings took place at Arandis. This, as testified to by state witnesses, made them 'persons of interest' for purposes of the murder investigation.

[71] On 13 May 2019, the investigating team was called in by likuyu and informed about the ballistic report. In view of the (new) information, the investigation team arranged a further interview with the accused. This was obviously done mindful of the accused having already informed them on 18 April 2019 at Arandis that he was advised by his lawyer not to continue with the interview on that day. When asked in cross-examination why a further interview was set up against this background, it was explained that, notwithstanding, it was for the accused to decide (at that stage) whether or not he would agree to such interview.

#### *The events of 15 May 2019*

[72] The events which took place on this day, primarily focus on two interviews held with the accused and what happened in-between. It is not

---

<sup>12</sup> By then it was known that Mr Jason was part of the 'concerned group' of employees at NIMT.



disputed that during the last interview, the accused made a confession, the admissibility of which was challenged and decided in a trial-within-a-trial. The court at that stage was presented with detailed evidence by witnesses from either side and there is no need to repeat that evidence, except for referring to the court's findings, considered relevant for purposes of this judgment. I will revert to these findings shortly.

[73] It is common cause that the accused was fetched by Sergeant Mulauli from the holding cells of the Walvis Bay police station and taken to the offices of the Serious Crime Unit where the accused, after being informed of new evidence which had been uncovered, agreed to an interview: Provided, he could end the interview whenever he felt like doing so. As stated by Van Graan, the objective was to discuss the development in the investigation with the accused.

[74] During the interview and after hearing about the phone call between his wife and Jason, he enquired from Van Graan whether they thought his wife and Jason were having an affair, which was denied. It was further disputed that the accused was either told or brought under the impression that his wife was considered as a suspect and about to be arrested; at no stage was she a suspect. The accused said he wanted to be taken back to his cell and he and Mulauli then left the office.

[75] On their way back and whilst crossing the courtyard, the accused asked Mulauli to shoot him, stating that he would become a hero in doing so; Mulauli however refused. There are conflicting versions as to what transpired thereafter. The version tendered by the accused during his testimony in the trial-within-a-trial was, in the end, found to be self-contradicting and not consistent with his version that he was unduly forced into making a confession. On this score the accused constantly stretched the basis of the original objection to the admissibility of the confession *viz.* that he insisted on the presence of his lawyer, to having acted under duress and not freely and voluntarily. Alternatively, that as a result of his hunger strike, he did not act within his sound and sober senses when making the confession.

[76] As earlier found, the court was satisfied that, in light of the evidence presented, the grounds of objection raised and relied upon by the accused were without merit. Moreover, that the accused's version of events leading up to the making of a confession was self-contradicting and improbable. Furthermore, on the accused's own evidence, it was his decision to return to the office to make a confession and not an instance where he was forced to do so. It had also been established that the accused, from the outset, understood his rights and at relevant stages of the investigation, took informed decisions when deciding to be interviewed by the investigation team; including when making a confession. The court accordingly found that the accused during these proceedings willingly waived his right to have a legal representative in attendance. When Sergeant Mulauli informed the investigation team that the accused wished to return in order to make a confession, this prompted the hurried setting up of audio and video recording devices by Van Graan.

[77] With regards to the second interview on 15 May 2019 when the alleged confession was obtained, not much is in dispute, except for the accused's assertion that, immediately before entering the office, Van Graan came out of the office into the corridor and coerced him to confess when threatening to arrest his wife. For reasons given in the earlier judgment, the court equally found this aspect of the accused's evidence without merit. The interview started off with the accused being informed of his rights where after he made a statement. Although the video recording – made available to the defence – was not challenged in any form or manner, it was argued on behalf of the accused that the transcript of the audio recording of the confession did not satisfy the requirements of s 217(1)(a) of the Criminal Procedure Act 51 of 1977 (the CPA) for not having been reduced to writing in the presence of any of the commissioned officers, as it was recorded and only afterwards sent to be transcribed. After due consideration of the provisions of s 217(1)(a) of the CPA, the court concluded that a confession made to a magistrate or commissioned officers (as in this instance) is admissible without it first being reduced to writing – the latter not being a requirement when made to a

magistrate or a commissioned officer. The confession was accordingly ruled admissible.

### *The Confession*

[78] A transcript of the second interview conducted with the accused on 15 May 2019 covers 15 pages. In order to contextualise the statement made by the accused, it would be necessary to quote parts thereof but as for the rest, it could be summarised as follows:

At the beginning of the interview, Van Graan explained to the accused his rights which he indicated he understood and that he just wanted to give a full confession; also that he wanted to inform his wife about what he was doing. It was agreed that he could speak to his wife afterwards. The accused then said they could go into the desert the next day where he will try to find the firearm. He was asked to start with what happened on the morning of the shooting.

The accused said he drove to Arandis and it felt like he was 'on a mission'. He realised that he was too early and drove back into the desert where he stayed for the night. He awoke between 03h00 and 04h00 and after taking some painkillers, he dosed off again. He explained that he suffered from a head injury and when he got stressed, the pain would get worse. He said that he hated 'the bastard' (referring to Mueller) and since the issue of his retrenchment came up, the headaches resurfaced. He continued that he saw the vehicle going over the bridge and then started doubting whether he was doing the right thing. It was like two people inside of him, the one saying that they must rather talk, opposed to the other one saying that he was on a mission and they were the enemies. The accused drove to a service road directly opposite Arandis where he waited. He described his mood as 'enraged' and had with him the 9mm (pistol) he had brought along from home. When asked of what make the firearm was, he replied that it was a Koevoet Baretta 92F.

When the Mercedes Benz approached after crossing the bridge, the accused was surprised how smooth everything went. He followed the vehicle and stopped behind it. They, referring to the deceased, by then had reached the

(main entrance) door and as the accused was approaching, Hellwig made the mistake by asking what the accused was doing there. According to the accused Mueller then made the biggest mistake by asking the same but added that he must get lost. When asked what his (accused's) actions were at that point, he described it as an automatic process of shooting that kicks in as he was trained. When Hellwig saw the accused pulling out the firearm, he bundled against Mueller and was shot first. He said he no longer saw faces as he, by then, 'was on an operation'. He recalls having fired more shots but has a blurred recollection of the sequence of shots fired at Hellwig. His focus shifted to Mueller who was coming towards him and he fired several shots at him. He explained that the shots to the head came automatic and were the last ones fired. This he described as the 'Mozambique drill' where the first shots are fired into the body and then to the head and again 'double tap' into the body. He then got into his vehicle and drove off into the desert.

Only after driving for some distance, he came to realise what he had done. He continued driving towards Usakos and crossed the railway line whereafter he drove on and stopped between two 'rotskoppies' where he could not be seen from the air. He started clearing his head and at some point considered committing suicide. He described his mental state at the time as being in two minds, the one being 'to do it' while the other that he did nothing wrong. He went on saying that he wanted to be honest and then admitted that it was a bad thing (what he did) and totally wrong, as the group (referring to the concerned group) was now under pressure because of his doing.

Towards the end of the interview, when asked whether the accused believed that he would be able to find the firearm, he answered in the affirmative. On a question whether he left it under a rock, he mentioned the figure 40 (indicating the distance) and added 'that thing is buried nicely you would never, you would not ..., forget it. You would not even find it with the metal detector and that is where training comes in.' When seeking confirmation that he would be able to find it, he said if he gets close to the 'rotskoppies' he would find it. Van Graan then suggested that they depart in search of the firearm. The accused was then asked to step outside which brought the interview to a close.

*Discovery of a firearm in the desert*

[79] On Saturday 27 April 2019 Litota, of his own accord, decided to look for the tracks of the vehicle that was seen speeding on a back road leaving the NIMT campus at Arandis. He started following tracks on a two-track dirt road behind Arandis up to a spot where he could see that the driver attempted to cross the railway line and reversed back into the road. He continued following the tracks up to where the vehicle stopped under a railway bridge and the driver disembarked. He examined the tyre tracks as well as the shoeprints and concluded that these were similar to the tracks of the accused's vehicle and the boots he wore at the time of his arrest. The vehicle tracks continued going underneath the bridge onto a two-track service road running parallel with the railway line in the direction of Usakos. Litota did not pursue the tracks any further but conveyed his suspicions about the firearm being left in that area to likuyu during a subsequent meeting.

[80] It was only on 17 May 2019 that Litota was asked to lead investigating officers to the different scenes he had earlier discovered and from where a search for the firearm was conducted. Vehicle tracks similar to the ones seen under the railway bridge were discovered at a rocky outcrop. Officers of SOCSA based at Walvis Bay were summoned. Litota's evidence corroborates that of Maletzky on the recovery and seizure of a dismantled firearm and a holster next to some rocks in that area, during which photos were taken by Sergeant Ganda.

[81] Deputy Commissioner Katopa (Katopa) was also present and next to the rocky outcrop, he observed a spot that was cleaned and a stone which had been moved. Warrant Officer Namwandi from the Explosives Division was summoned and with the use of a metal detector the presence of underground metal was signalled. When the sand was scooped away, firearm parts were discovered.

[82] Inspector Maletzky unearthed a dismantled Baretta pistol; 18 x 9mm live rounds as well as a brown holster, all of which were sealed in exhibit bags. A further search conducted of the area revealed a spent .22 cartridge.

Once done, he and Ganda proceeded to Arandis police station where the exhibits were booked into the POL 7 register.<sup>13</sup> It should be noted that the firearm parts listed in the register at p 43, include 'two empty magazines'.

[83] Sergeant Ganda photographed the scene and compiled a photo plan from which she testified in amplification of her testimony. After the exhibits were booked in at Arandis, she again booked them out that same day and took them to their offices at Walvis Bay where they were documented and handed over to Skrywer for safe keeping.

[84] During cross-examination of Ganda, she conceded that the two magazines discovered and seized together with firearm parts, were erroneously not entered into their POL 104 register at SOCSA. She explained that this came about when Skrywer assisted her by identifying the firearm parts (through the transparent exhibit bags), whilst she made entries in the register, leaving out the two magazines. Skrywer's assistance was prompted by the fact that Ganda was not familiar with firearms or the particular parts.

[85] The testimony of W/O Garoeb primarily turned on his handling of exhibits handed in at Arandis police station during the investigation, the recording thereof in the POL 7 register and safekeeping in the strong room under his control. During cross-examination the witness was taken to task to explain the lack of information and non-compliance with standard operating procedures regarding the keeping of registers at the station and the in/out checking of exhibits. He conceded that mistakes were made and procedures not strictly followed.

[86] It seems apposite at this stage of the judgment to say that the shortcomings pointed out concerning recordings made in registers kept at Arandis police station is worthy of criticism, as submitted by defence counsel. However, sight should not be lost of the fact that, in addition, corroborating evidence was led on the actual handling and processing of exhibits, despite the recordings registered. As will be discussed later herein, nothing significant turns on the alleged shortcomings in the registers as pointed out.

---

<sup>13</sup> Exhibit 'Y'.

[87] Dr Haulofu, a general practitioner based at Walvis Bay state hospital, testified on the collection of an oral DNA sample on 21 May 2019 from the accused who was brought in by Warrant Officer Geiseb. She was handed a DNA kit and requested to take a DNA sample, to which the accused agreed. Once done, the form and sample were placed in a clear plastic forensic bag (NFC-34169)<sup>14</sup> with the corresponding number and handed over to W/O Geiseb.

#### Examinations conducted at NPFSI

##### *NPFSI – DNA report*

[88] The undisputed evidence of the state is that, at different stages of the investigation, application was made to the NPFSI to have exhibits, duly numbered and listed in various application forms, examined for ballistic and genetic evidence. These exhibits were handed in at registry and would only be accepted if standard procedures applicable to the sealing of forensic evidence bags were met. The exhibits would then be collected by scientists from the different sections for examining purposes and, once done, would re-seal the exhibit bags and return same to registry for further testing, if required.

[89] On 27 June 2019 Mr S N Liswaniso, a Forensic Scientist attached to the Genetics Section of the NPFSI, prepared a report (Report No. 1114/2019/G-R1)<sup>15</sup> with regards to exhibits submitted by Skrywer to the NPFSI on 23 April 2019 and 22 May 2019, for genetic examination. These exhibits were sealed in tamper proof forensic evidence bags and contained clothing of the accused,<sup>16</sup> a .22 spent cartridge,<sup>17</sup> 18 x 9mm (live) rounds,<sup>18</sup> a brown holster and firearm parts,<sup>19</sup> and a DNA sample of the accused.<sup>20</sup> According to the witness he took swabs of the respective exhibits. Whereas the exhibits (A41) were packed in the same forensic bag, he divided the exhibits in two groups (holster/remaining parts) and took a swab of each

---

<sup>14</sup> Exhibit 'A42'.

<sup>15</sup> Exhibit 'PP'.

<sup>16</sup> Exhibits 'W', 'X' and 'Y'.

<sup>17</sup> Exhibit 'A39'.

<sup>18</sup> Exhibit 'A40'.

<sup>19</sup> Exhibit 'A41'.

<sup>20</sup> Exhibit 'A42'.

group. The swabs were sealed and marked as depicted in the additional photo plan (Exhibit 'RR'). The exhibits were thereafter resealed and returned to registry.

[90] Mr Liswaniso further testified that the DNA analysis was conducted by way of DNA extraction; DNA quantification; DNA amplification; and DNA capillary electrophoresis.<sup>21</sup> These individual processes were explained and documented by the witness. The data analysis generated was subsequently analysed and reported on by Ms Swart.

[91] Ms Marryn Swart was employed at NPFSI as a Chief Forensic Scientist and on 14 February 2020 issued Report No. 1114/2019/G-R2 pertaining to swabs taken by Liswaniso, as set out above. The autosomal DNA analysis presented the following findings as per the report: The reference sample 'Suspect' (A42) yielded a partial male profile suitable for comparison purposes and designated as 'Suspect'. The two swabs taken of the holster and firearm parts (A41) yielded (a) a mixed profile of at least two individuals and (b) a partial male profile which cannot exclude the 'Suspect' profile as a possible major or possible contributor, respectively. Similarly, the clothing (Exhibits W, X and Y) yielded profiles bearing the same result with regards to the 'Suspect' profile.

[92] From the aforesaid the evidence established that the accused is linked by DNA evidence to the holster and firearm parts discovered in the desert.

### *Ballistic reports*

[93] During 2019 Mr Abel Nyambe was employed at NPFSI as a Forensic Scientist and, having received training in ballistics, he was attached to the Ballistic Section. He was the first person to receive exhibits coming to the Ballistics Section and part of his duties was to open the sealed exhibit bags and photograph the contents. To this end he compiled a photo plan<sup>22</sup> which formed the basis of his comprehensive and elaborated testimony, backed by a series of photos depicting the different stages of standard procedures which

---

<sup>21</sup> See para 3 of NPFSI Report No. 1114/2019/G-R2 (Exhibit 'MM') compiled by M Swart.

<sup>22</sup> Photo plan 1114/2019/P2 dated 4 November 2019.



had to be followed.<sup>23</sup> With regards to exhibits received in connection with this case, he testified that there was no tampering with any of the forensic bags received by him. He further checked and compared the 'A-numbers' on the application forms against the individual forensic bags and found all to correspond and correct. In some instances there were smaller forensic bags packed in an overall forensic bag which were opened by him. In respect of the spent cartridges, he individually engraved on each the exhibit number and laboratory reference number with an electronic device. This, he said, is standard practice, where after each exhibit is placed back in its bag and closed/sealed by way of stapling.

[94] The next step was to take the exhibits to the Integrated Ballistic Identification System (IBIS) which is located in a separate room where the case is electronically registered on the system. He then personally cleaned the cartridge or projectile exhibits individually with a substance in order to remove all dirt from the object. Thereafter the individual objects are placed in a unit which then proceeds taking digital images of the object inside. Once done, the object is placed back in the forensic bag before moving to the next.

[95] Among the exhibits received was Exhibit A41 (firearm parts and holster) which were in a resealed bag. He photographed the parts and placed them back in the bag and handed it over to Sem. Among these parts were two magazines as depicted in photos taken at the time, but which are not included in the photo plan. When the bag was later returned to him, the firearm was assembled and he photographed and labelled it. The defence at this stage indicated that the contents of the photo plan is not disputed.

[96] During cross-examination it was conceded that on the application form relating to the exhibits listed for examination, it was not specifically requested that the firearm parts and holster (A41) be examined for genetics, as was ultimately done. The witness further disputed defence counsel's assertion that, by engraving the cartridges, this amounts to tampering with the evidence. He explained that the engraving marks are very distinct and clearly discernable from chamber marks which would be of a continuous nature, even

---

<sup>23</sup> Exhibit 'HH'.

where engraving crosses those marks. The next step was to hand over the exhibits prepared and marked by him, to Mr Sem.

[97] During his testimony Sem testified on four ballistic reports he compiled for court purposes. As already mentioned, the first Report No. 1114/2019/R1 dated 29 April 2019 (the R1 report),<sup>24</sup> established a link between the 9mm spent cartridges found at a shooting range frequented by the accused, his home at Otavi and the scene of crime at NIMT Arandis.

[98] On 10 June 2019 he compiled a second Report No.1114/2019/R2 (the R2 report)<sup>25</sup> on four pistols seized by the police being firearms used by the respective owners at the shooting range at Farm Ubi-Bene. Nothing in the report relevant to the accused turns on these firearms, besides linking them to spent cartridges collected from the shooting range by the police during the investigation.

[99] In addition, among the exhibits sent for forensic examination were the holster and firearm parts discovered in the desert (Exhibit A41). The dismantled components of the firearm were cleaned and re-assembled under Sem's watch by Insp. Vilonel, a gunsmith. Vilonel confirmed Sem's evidence and added that the firearm was a Baretta Model 92, 9mm Parabellum with unique features namely, the serial number was machined out and a new serial number punched over the original number, still partly visible. The new serial number was punched on the top side of the barrel, not where the manufacturer would have put it. There were also other unfamiliar changes made to the firearm.

[100] The pistol was found to be in working condition and four live rounds were test-fired from the pistol. The spent projectiles were run against Exhibit T, a projectile found at the crime scene, while the spent cartridge casings were run against spent cartridges found at the crime scene, the shooting range, the accused's home and those fired from the other four pistols.

---

<sup>24</sup> Exhibit 'UU'.

<sup>25</sup> Exhibit 'VV'.

[101] From the Land Engraved Areas (LEA's) and Groove Engraved Areas (GEA's) on the spent projectiles, sufficient agreement of individual and class characteristics were found between the recovered pistol (Exhibit A41) and the spent projectile (Exhibit T). On the spent cartridges, sufficient agreement of individual and class characteristics were found between the said pistol and all eight spent cartridges found at the crime scene and at the shooting range. It was accordingly found that the pistol could not be excluded as having discharged the spent projectile and cartridges found at the crime scene.

[102] The third report dated 8 July 2019, Report No. 1114/2019/R3 (the third report),<sup>26</sup> concerned the examination of one .22 spent cartridge (Exhibit A39)<sup>27</sup> and a .22 pistol (Exhibit A48). It was found that Exhibit A39 was in fact a live cartridge case which had not been fired and could therefore not be linked to the pistol (A48). Nothing of interest turns on these findings.

[103] The fourth report dated 8 October 2019, Report No. 1114/2019/R4 (the fourth report), deals with 47 of the spent cartridges found at the accused's home at Otavi, initially not sent for examination. Similar to the findings reached in the second report (R2), corresponding features were found between the pistol (Exhibit 41) and spent cartridges from the crime scene and the shooting range. It could therefore not be excluded that the pistol discharged the spent cartridges under examination.

[104] Corresponding features were found between some of the 47 cartridges and the four pistols collected from the owners Exhibits A32 – A35. However, none of which could be linked to the crime scene.

### *Shotgun*

[105] Immanuel Hangula's (Hangula) testimony was led subsequent to the provisions of s 204 of the Criminal Procedure Act 51 of 1977 (CPA) and concerns his unlawful possession of a shotgun. It is not in dispute that W/O Ruben approached the witness on 24 May 2019 at Farm Okahaluni in the

---

<sup>26</sup> Exhibit 'WW'.

<sup>27</sup> Collected at the rocky outcrop in the desert.

Ohangwena Region, in connection with a shotgun he had in his possession. He said he came to live and work on the farm at the request of the accused's wife, Fereciana, and that the relationship between him and the accused was that of employer/employee since 2014 until 2019. His explanation as to how he got possession of the firearm is that it was given to him together with a few rounds of ammunition by the accused in 2016, for purposes of protecting the accused's livestock. He was not provided with any letter of authorisation by the accused for having the firearm in his possession.

[106] During that period he examined the shotgun and familiarised himself with the two different serial numbers punched out on the firearm. On the day it was seized by the police he gave a statement in which these numbers are reflected. Before giving his testimony, he identified in court Exhibit 1 on the serial numbers, as the same weapon given to him by the accused in 2016. Despite defence counsel's imputation that the accused denies having handed the shotgun to the witness as testified, Hangula was adamant that it indeed happened. He is related to the accused's wife and still resides on the same farm, but no longer as an employee.

[107] The evidence of W/O Ruben concerning the seizure of a shotgun from Hangula on 24 May 2019 corroborates the latter's evidence in all respects. According to him he was accompanied by W/O Uushona who had informed him about a murder case against the accused under investigation, and that the police needed to know whether he owned other firearms. He equally identified Exhibit 1 before court as the firearm that was seized by them.

[108] Mr Hendrik de Villiers (De Villiers) is a registered gunsmith and licenced dealer in firearms and ammunition and owns a gun shop situated in Grootfontein. During May 2019 Deputy Commissioner Nangombe arrived at his workplace with a 'letter of destroying' (destruction letter) issued by De Villiers on 21 June 2016 and addressed to the Namibian Police concerning the destruction of a Baikal 12 gauge shotgun. Upon inspection of Exhibit 1, he confirmed that this firearm had been sent to him during May 2019 for destruction as it was found to have excessive play between the barrel and the receiver and considered to be dangerous, as it could still fire. He explained

that he dismantled the shotgun in three parts which were kept in his strong room for destruction at a later stage. He only discovered that the parts were no longer on the premises when Nangombe turned up in May 2019.

[109] From documentation in his possession, he could determine that the shotgun was licenced in the name of M S Shipandeni. The shotgun was accompanied with a request to destroy the arm and the cancellation of the licence.

[110] De Villiers testified that the serial number is factory punched at three different places on this type of firearm and the only number which corresponded with the licence issued to the holder (Shipandeni) was on the handgrip (No. A32990). On the barrel and receiver, the remaining two numbers were tampered with and illegible. When he physically checked the functioning of Exhibit 1 at court, he found the same play on the shotgun as before.

[111] According to De Villiers he met the accused who regularly frequented his shop during work hours and twice after hours, between 2016 and 2019. In his view the accused has a good general knowledge of firearms and, at the time, had a particular interest in collector's arms kept in the strong room. Because they had a good relationship and he trusted the accused, he was allowed to enter the strong room on his own. When put to the witness that the accused disputes having stolen a shotgun from the strong room, the witness countered by questioning as to how the accused then came in possession of the said shotgun. In response to how it would have been possible for the accused to take the firearm from the strong room unnoticed, the witness explained that access to the strong room was electronically regulated and that there were times when the witness would leave the shop, leaving the accused inside. He said he never became suspicious of the accused and did not expect this to happen.

[112] On 28 May 2019 Geiseb, accompanied by Litota and Commissioner Nangombe of the Firearms Department, visited the accused's home at Otavi to do an inspection of firearms. With the permission of the accused's wife they

took firearms from the safe for inspection. A shotgun with serial no. 285381 was registered in the name of F N Lichtenstrasser (the wife) and, when compared with Exhibit 1, it was found that the serial numbers on both firearms were identical. When asked for an explanation, she explained that the accused applied for a licence on her behalf and that she merely signed the application form. The shotgun was then seized. A .22 pistol was also seized as an exhibit for purposes of determining whether the spent cartridge found in the desert was fired from the said pistol. These exhibits were booked in at Arandis and thereafter handed over to Skrywer at SOCSO Walvis Bay. Geiseb also prepared a photo plan regarding the firearms seized.<sup>28</sup>

*Documentary evidence received by agreement*

[113] By agreement the following documents were received into evidence:

- (a) Annexure 1 – Confession by E Lichtenstrasser before magistrate Brown (Exhibit 'R').
- (b) Copies of five firearm licences registered in the name of F Lichtenstrasser, the accused's wife (Exhibit 'S').
- (c) A typed letter dated 15 April 2019 (Exhibit 'T').

[114] With regards to (a) above, the document merely reflects the interaction between the magistrate and the accused when brought before her in chambers. He mainly raised his concerns over the way he has been treated by the police after his arrest; that he was threatened and under duress; and that he feared the imminent arrest of his wife as an accessory. Notwithstanding, he said he was 'not forced; it's from my own free will'. He was in dire need of making contact with his lawyer and claimed to have been obstructed by the police to do so. Despite the magistrate affording him the opportunity to call his lawyer from the general office, he was unable to reach him. He was unwilling to give a statement without having consulted his lawyer. The statement further lacks the requisites applicable to a confession made in terms of s 217, or admissions made under section 219A of the CPA. In essence, its content implies that the accused was brought before the

---

<sup>28</sup> Exhibit 'SSS'.

magistrate whilst under duress and for purposes of making a confession involuntarily. It amounts to a mere statement containing information obtained from another person (likely his wife) and inferences drawn therefrom with no probative value.

[115] As for the firearm licenses, nothing of significance turns on these as the licenced firearms, namely, four rifles/shotguns and one pistol are of different calibre and none being of 9mm calibre.

[116] With regards to the letter, this came into possession of the police during a visit to the accused's wife who handed them the letter. As regards the contents of the letter, it was addressed to Mueller in reply to his earlier letter in April and addresses his dissatisfaction with the proposed transfer to Keetmanshoop, without any financial support from the institution. It further criticises management and restructuring of NIMT and suggests that there are sinister reasons behind his forced relocation to Keetmanshoop. It is common cause that the letter was still in draft form and had not been sent at the time the accused left home on Sunday 14 April 2019.

#### Evidence presented by the defence

##### *The accused's testimony*

[117] The accused testified in his defence and described his background as follows: He was born in Austria in 1961 where he lived until mid-1980. Whilst there, he qualified as a fitter and turner and completed his military service in the Special Forces during 1979 – 1980. He has vast experience in side arms, standard small rifles and assault rifles.

[118] In 1982 he came to Namibia and started working as a fitter and turner in Windhoek. During this period he joined the liberation struggle where he *inter alia* received training in small arms. After independence he re-joined the private industry and in October 2009 took up employment with NIMT at their Northern Campus, Tsumeb, as a training officer. He continued working there until the date of his arrest. He described his relationship with Mueller as one

of mutual respect and disputes having harboured ill feelings towards Mueller or Hellwig.

[119] The accused gave an elaborated explanation of the formation of the so-called 'concerned group' within NIMT of which he was the group co-ordinator at the Northern Campus. There is no need to repeat what was said in this regard, suffice it to say that retrenchment of staff members was considered, allegedly due to financial constraints. The group found this unconvincing and raised their concerns with the Ministry of Higher Education (the Ministry) which led to the revoking of the retrenchments. The management of NIMT however pursued the closure of certain workshops and had started the process of relocating staff members to other campuses.

[120] During a visit to NNC by Mueller and senior management in January 2019, Mueller presented the accused with transfer options to Keetmanshoop or Arandis, as the closure of certain workshops would continue. The accused point-blank refused, pending a clear answer from the Ministry, which visibly agitated Mueller. One week later he received a letter from Mueller stating that all positions at Arandis had been filled and he either has to accept the transfer to Keetmanshoop or else his employment at NIMT would be terminated. In his testimony the accused said that, initially, he was not opposed to the transfer to Keetmanshoop but just felt that it would have been a waste of money. He had financial concerns about him paying the transfer costs upfront and did not expect to be refunded. Notwithstanding, he wrote back saying that he accepted the transfer but considered it only as a temporary arrangement. This was to avoid constructive dismissal.

[121] By 15 April 2019 the accused had not assumed duty at Keetmanshoop as he fell sick in early March and was booked off until end March of that year. The accused informed the NNC that he had a further doctor's appointment on 15 April 2019 and would therefore remain in Tsumeb.

[122] Regarding threats made to Mueller during their visit to the Northern Campus in January 2019, the accused disputes this. All he was aware of is an anonymous letter which was circulated among the concerned group in which



a warning was made about Mueller having to 'sleep with one eye open'. This was aimed at warning him against his 'own group' viz. those siding with Mueller on the retrenchment issue and who employed (what the accused described as) 'Mafia tactics'.

[123] With regards to Schoombee's testimony about him meeting the accused during March 2019 at Agra Tsumeb, the accused cannot recall such a meeting. He however denies having had a conversation with Schoombee as testified and said that on no occasion did he utter the impugned words. Although admitting having briefly worked with Schoombee at NNC, he said they did not have a very friendly relationship at the time as the accused tried to keep it professional.

[124] On Saturday 13 April 2019 he and his son went to Farm Ubi-bene where they practised target shooting on the shooting range with archery equipment and firearms. The latter included the accused's shotgun, his revolver and his wife's Baretta .22 rifle. Because the shotgun cartridges are made of plastic, he instructed the boy to pick up the spent ones and discard them at home. He did not check whether he did so. The accused said he did not own a 9mm Parabellum (pistol) at the time and neither did he take one along on the day. He therefore disputes the content of his son's report that he fired a 9mm pistol and instructed the son to collect the spent cartridges of such arm. They returned home after having a braai with Van Eeden and received a chilly reception from his wife.

[125] Only the following day (Sunday) did he learn about his son having damaged a glass table top which culminated in an altercation with his wife and ultimately led to the accused damaging the bedroom door and smashing his phone. He decided to return the boy to his biological mother who resides in Tsumeb. After dropping off the boy and whilst on his way home, he decided to go and see Jason in Swakopmund, on matters concerning the group. At the same time he decided to do a trip into the desert to calm down after the fight with his wife. Before leaving the house he collected his travel bag and some painkillers and told his wife that he was going to see Jason. He said the only weapon he had on him was the .38 special revolver and ammunition.

[126] Between 21h00 and 22h00 that night he was still on the road and had crossed the bridge at Farm Vergenoeg between Usakos and Arandis when he became tired and decided to pull off and sleep in the car. It was only in the morning (Monday 15 April) that he abandoned his plan to meet up with Jason in Swakopmund, stating that he forgot to bring his bag with documents along. He then decided to drive into the desert and crossed the railway line, going in the direction of Spitzkoppe. After driving over a dilapidated fence, he proceeded to two rocky outcrops where he decided to spend time meditating and sleep over.

[127] The next morning (Tuesday 16 April), he felt rejuvenated and when switching on the car radio at around 13h00, he heard about the shooting incident at Arandis but not who the victims were. In the afternoon he decided to return home and, as he was short on cash, he tried to find someone looking for transport who could assist with buying fuel. This took him to a service station at Karibib where he entered the kiosk and read a newspaper report about Mueller and Hellwig having been killed on the Monday; he was shocked. With the assistance of the pump attendant, he called his wife asking her to send him money. After enquiring about his whereabouts, she told him that the police were with her, looking for him. He did not ask as to the reason the police were looking for him and assumed it was because they wanted to interview members of the 'concerned group'. He thereafter called Jason who had no specific information about the murders and then asked him to arrange a lawyer for him; deeming it necessary as he expected the police to question him and to explain the complicated situation surrounding NIMT.

[128] Whilst making a second call to his wife the police arrived and after being wrestled to the ground, he was placed in handcuffs and taken to Karibib police station. The accused confirmed having been interviewed on 17 April 2019 by Ashikoto, likuyu and Litota, at which stage he agreed to talk to the police, provided he be allowed to see his lawyer. The accused contradicted himself as to whether or not, during the interview, he told the police that he drove into the desert but could not show them where he was, as he would be incriminating himself. He explained his response by saying that he meant that

he had driven over a dilapidated fence and did not want to open himself up for charges of trespassing, thus admitting only to driving into the desert. However, he disputes Ashikoto's evidence that he uttered words to the effect that his mission was accomplished and that there would be no transfer.

[129] On 18 April 2019 at Arandis during the interview with the investigating team, the accused disclosed his personal and military background. He referred to the last time he used a firearm and spoke about the shooting range at Farm Ubi-Bene, prompting seizure of his clothes. He further repeated that he had a fight with his wife and had driven into the desert. He made no mention about his intention of meeting up with Jason. The accused denies having admitted that he was the shooter as proposed to him and considered making a confession to that effect, as ridiculous. He, however, concedes having said that if he were the shooter, he knew he would not be able to fool the police but, that they had the wrong person. The interview stopped when his wife and the late Mr Mbaeva arrived. On the following day he was interviewed by Maletzky and Mulauli who encouraged him to say where he had turned off into the desert, but refused, due to the aggressive behaviour of Mulauli.

[130] The accused testified about subsequent interviews during his detention at Walvis Bay police station. On 24 April 2019 he was taken to Namport police station by Maletzky and Litota where he was confronted with having employed the Mozambique drill when killing the deceased. As he had no knowledge thereof, it was explained to him by Maletzky. This was also the time he was told about the 9mm Parabellum cartridges found at his house and his son's report in that regard. He said, on that day, he started going on a hunger strike but without informing the police.

[131] During an interview on 29 April 2019, photos of the crime scene were shown to him and it was suggested how he committed the murders which he denied.

[132] He was formally charged on 8 May 2019 and again interviewed and encouraged to confess. On this occasion his wife was mentioned as a

possible link to the spent cartridges found at their home. He again denied having any knowledge of the weapon which fired the spent cartridges. With regards to a further interview on 13 May 2019, he initially said that he did not say anything but then changed course to say that, when threats were made about having his wife arrested, he pleaded with the officers and told them to leave her out of the investigation. This repeated itself during a follow-up interview the next day.

[133] It is common cause that two interviews were conducted with the accused on 15 May 2019 which were extensively summarised and discussed in the court's earlier ruling in the trial-within-a-trial. The accused's testimony in the main trial is essentially a repetition of his earlier narrative, but with the difference that he emphasised his concern for his wife and him being under pressure when told that his wife and Jason were to be arrested, unless he confesses. Also common cause is that the accused, during the first interview, gave no statement and that his request to return to his cell was respected. On the way Mulauli received a call and said that they must go back, the accused not knowing what for. He confirms having entered the office of the late Anna Kapena where they sat down and talked. He however disputes that he then uttered words to the effect that he questioned his earlier actions by asking 'What have I done?.'

[134] The accused corroborates Mulauli's evidence that he was taken back to make a confession at his (the accused's) request, but says this was to avoid his wife being arrested and, according to him, he was not thinking clearly at the time. He said he decided to confess to the two murders by repeating what he had been told during all the earlier interviews and additionally, would make up smaller fictions. Although it is not disputed that he, on their way back told Mulauli to shoot him, he added to the first version that he suggested to Mulauli that he could say the accused attacked him or tried to run away. The accused maintained his position that he was unduly influenced by Van Graan, prior to making a confession, by threatening to arrest his wife.

[135] With regards to the confession itself, the accused claims that although he did not express himself on that during the recording, he was still desirous of having his lawyer present. He said it was difficult to explain his actions in that he was not himself and not thinking straight. The accused during his latter testimony, tried to explain and give context to what is recorded in the confession. According to him, Mulauli was standing behind him and remained an intimidating influence throughout the interview. He however agreed that there appears to be a lot of consistencies between the evidence of state witnesses and what is reflected in the confession. He however maintains his denial of having committed the murders and that he buried a firearm in the desert.

[136] Regarding the shotgun, he denies having seen it before going on trial. He admits that in 2016 Immanuel Hangula borrowed the shotgun of his wife to shoot a mamba but that the accused took the firearm away from him after only two days. He said he could only speculate as to how the serial number of the wife's shotgun was similar to that on the shotgun (Exhibit 1) found in possession of Hangula. He disputes having removed a firearm from De Villiers' shop without his knowledge.

[137] During cross-examination it was put to the accused that his intended visit to Jason arose for the first time during his own testimony and never featured during any of the interviews with the police. This much he conceded. During the state's case it was put to Geiseb that the accused refuelled at Usakos and bought cooldrink as he intended driving into the desert to meditate. Noteworthy of the instruction is that, at that stage, the accused was still en route to Jason and only changed his mind the next morning when realising that he forgot to bring his documents along. He explained the discrepancy by saying that he thought he had earlier mentioned it in court, but must be mistaken.

[138] The second defence witness is Mr Onno Nghidileko who was employed at NSC during 2019 and a former colleague of the accused. His evidence mainly turns on his assistance to the accused in finding accommodation at Keetmanshoop by putting up a note on a notice board in town at the

beginning of 2019. He was also part of the concerned group of NIMT employees and assisted another colleague, Imelda Handunge, by providing her with the email address of someone working at The Namibian newspaper, to whom a letter would be sent for publication. In this letter, he read the words that Mueller must sleep with his one eye open which, by implication, must have come from Imelda. He was however unable to comment on why Imelda disputed having written the letter when questioned by the police.

[139] The third defence witness is a psychologist by profession and supplemented her testimony with a report she prepared and handed into evidence.

#### *Psycho-legal evaluation report*

[140] Ms Ute Sinkala, an admitted clinical psychologist, testified on the psycho-legal evaluation report she compiled on the accused Ernst Lichtenstrasser.<sup>29</sup> The evaluation commenced on 21 September 2022 and the purpose thereof was 'to look at the circumstances under which his alleged confession was obtained and determine the most likely affect the circumstances may have had on Mr Lichtenstrasser, and how this may impact the statements made in the confession.' The request to have the accused assessed, was made by his sister, Ms Gabriele Lichtenstrasser, following the accused's assertion that the confession was obtained under dubious circumstances and that he confessed whilst being under pressure.

[141] In the introductory section of the report the author states that the report was prepared in her capacity as clinical psychologist, conducting a psycho-legal evaluation during which she remained objective and impartial throughout. It is further stated that the report is not for retrospective diagnostic purposes. According to information provided by the accused, he has never been treated by a psychologist or diagnosed with any mental disorder prior to his incarceration. During 2012 the accused started seeing Dr Mudzanapabwe, a clinical psychologist, who, according to the accused, diagnosed him with

---

<sup>29</sup> Exhibit 'YYY'.

Major Depressive Disorder (MDD) with anxiety symptoms for which the accused received treatment.

[142] The sources of information consulted and relied upon for purposes of the evaluation are listed in the report and, *inter alia*, include witness statements disclosed by the state to the accused, medical reports and interviews conducted with the accused, his wife (Fresiana Lichtenstrasser) and ex-wife (Florence Kambanula), his sister (Gabriele) and an ex-colleague of the accused (Jason Elago). Except for the accused, who testified before the report was introduced into evidence, none of the persons mentioned in the report were called by the defence to verify the information contained in the report. Thus, to this end, the information tendered by these (other) persons and relied upon for purposes of the evaluation, is unsubstantiated hearsay evidence which was not tested during cross-examination. Neither could the accused be confronted and tested on assertions made by him to Ms Sinkala who only testified *after* the accused gave evidence.

[143] Given the sheer volume of the report (39 pages), I do not intend summarising the information contained therein in any particularity. Neither do I consider it necessary for purposes of this judgment. Suffice it to say that it includes broad expositions of the family history since the accused's childhood; his training and qualification as an artisan and subsequent employment up to his arrest; his military training and involvement in the liberation struggle before the independence of Namibia; traumatic encounters he had during this period and *his* perception of the psychological impact these incidents had on him.

[144] Under the heading styled: *The interrogation according to Ernst* is set out in the interviews conducted with the accused since his arrest on 16 April 2019 up to the recording of the alleged confession on 15 May 2019. The accused's narrative of his arrest and degrading treatment handed out by the police during this period is noted in some detail; accompanied by the accused's reaction and perceptions thereto. He described the arrest as physically painful when wrestled to the ground and handcuffed at the back, whilst suffering from a rotary cuff injury.

[145] With regards to interrogations regularly conducted after his transfer to Arandis and Walvis Bay, the report covers in detail how he was treated and which brought up memories of former SA interrogation methods which triggered passive resistance from him. It further extensively reported on the medical ailments he suffered from at the time. The report further reads that during subsequent interrogations the accused was extremely weakened and in a compromised state. On 8 May 2019 his physical condition is described as very weak, in extreme pain due to the prostate problem and dizzy. The continued intimidation and threats inspired the accused not to give in. Although taken to a clinic where he received medication, it did not bring any relief. His request to call his doctor was refused.

[146] Further sessions followed for the next three days during which the accused's medical condition remained unchanged. He was extremely worried about his family and pleaded with his interrogators to save his wife. His physical condition by then is described in the report as: 'pain fatigue, fog in the brain, unable to concentrate, weak, pleading'. During the session of 15 May 2019 Van Graan confronts the accused with cell phone records that proves his wife is an accomplice and that she was having an affair with Jason and, if he does not confess, she will also be arrested. Van Graan causes the accused to feel like he is back in the struggle which confuses him. Although Anna Kapena hugged and comforted him, he became more confused as she tried to convince him to confess to protect his wife. He wanted to die and begged Mulauli to shoot him.

[147] Assessment procedures adopted and the results obtained are discussed at length in the report followed by the conclusion and recommendation. There appears to be a fair degree of speculation in the conclusion reached where stated: 'Suffering from sleep deprivation, chronic pain increased to excruciating levels as a result of being denied medical intervention, hunger, fatigue, and not being able to discern what he is asked because of his hearing problems may have made Ernst more disorientated and desperate. In the end, it is most likely, based on his history, physical limitation and chronic pain, clinical diagnosis, fatigue, nutritional deficiency,



and sleep deprivation that Ernst was in a state of being completely impressionable and willing to do what it takes to end the torture.' It is further stated that the accused was placed under enormous duress which negatively impacted on his mental state when making the confession, to the extent that he was not in a psychological state to give a reliable confession. Hence, the confession obtained should be deemed inadmissible.

[148] Though Ms Sinkala, subsequent to preparing her report, confirmed having viewed the video recording and transcript of the audio recording of the confession, she admitted that she did not evaluate it; neither did she reach any conclusions in that regard. When asked whether her opinions as per the report were confirmed in what she had seen and read subsequent thereto, she claimed that it was neither confirmed nor disputed, simply because she did not *view it with an assessment in mind*. As to whether the accused at the time was mentally fit, she said the accused's state of mind was not at best to give a completely reliable statement, as the prevailing circumstances were not ideal.

[149] What became evident from Ms Sinkala's report is that her conclusions and finding pertaining to the admissibility of the confession were, in the end, solely based on events (some which happened decades ago) preceding the actual making of the statement, and *not how it played out during the making of the statement*. Neither did she seem to show any interest in familiarising herself with the actual evidence presented during the trial-within-a-trial, including that of the accused, or the ruling by the court, as no mention was made thereof in the report. The reason for this omission is obviously to be found in the fact that, already at the time of preparing the report, she concluded that the accused's mental state was compromised, irrespective of what came out during the inquiry and trial. This stance seems anomalous in light of the purpose of the report being specifically to inquire into the accused's state of mind when making the statement.

[150] This conclusion is fortified by the fact that Ms Sinkala was never called as a witness during the trial-within-a-trial in support of the accused's evidence, despite the report having been prepared and ready at the time. Though

counsel then considered calling her, this option was not pursued. When asked during oral argument why evidence concerning the accused's state of mind had not been presented at the relevant stage, counsel's response was that the defence decided not to do so. The decision to deal with the psychologist report only after the accused testified in his defence, is not without consequences. This is evident from the obvious change in the angle of attack on the admissibility of the confession with a significant shift away from the accused's state of mind *on the day* it was made, to his *general* state of mind whilst in police custody, based on past events which psychologically impacted on him.

[151] Where the purported confession has already been ruled admissible, the question that must be answered at this stage, is whether sufficient doubt was cast during the defence case for the court to now find otherwise. I will revert to this issue later.

#### Evaluation of evidence

[152] The state case, as argued by defence counsel, is based on (a) circumstantial evidence pertaining to the accused's grievances with NIMT management and accompanying threats made towards Mueller, and the accused's coincidental presence in the Erongo Region at the time of the murders; (b) forensic evidence in the form of DNA and ballistics evidence implicating the accused; and (c) the alleged confession made by the accused to a team of investigators.

#### *Circumstantial evidence: Counts 1 - 5*

[153] It is not in dispute that the accused, in order to keep his employment with NIMT, had to accept his transfer to NSC in Keetmanshoop. Besides being displeased with the turn of events, the evidence undoubtedly proves that the accused put up resistance to be transferred by not only openly expressing his opposing views in letters addressed to management and approaching higher authorities to prevent his transfer, but when all these failed, by employing other means like his health condition and financial constraints to procrastinate the transfer. This was still his train of thought as

per his draft letter addressed to Mueller on 12 April 2019. At that stage the accused was well aware that if he refused the transfer, his employment with NIMT would be terminated.

[154] It is against this background that the accused's evidence must be considered that he reluctantly accepted his transfer to NSC. Though corroboration for the accused's version is found in the testimony of defence witness Nghidileko, the evidence of this witness goes no further than him putting up a notice on a public notice board on behalf of the accused, looking for accommodation. It further stands in sharp contrast with the stance taken by the accused in correspondence between him and Mueller regarding his transfer. Thus, although the accused reluctantly accepted his transfer in correspondence to management, he made no meaningful attempt to give effect thereto. On the contrary, he abandoned his initial excuse (his doctor's appointment on 15 April 2019) and resorted to his financial constraints as an excuse to further delay the transfer. As borne out by the evidence, on the day the accused was supposed to assume duty at NSC, he was, on his own account, alone in the desert between Arandis and Usakos.

[155] When considering the accused's persistence that he, on the day of the murders, still intended relocating to Keetmanshoop against the testimonies of state witnesses and documentary evidence showing otherwise, I find the accused's evidence on this point unconvincing. What the evidence established beyond reasonable doubt is, that the accused on 15 April 2019 had no intention to relocate as directed by his employer, despite his earlier undertaking to do so. The relevance and significance of this part of the evidence is that it gives some insight of, and reflects on, the accused's state of mind shortly before the deceased persons were murdered.

[156] With regards to alleged threats made by the accused towards the deceased, these were testified to by state witnesses who narrated what they heard from Mueller. Due to the passing of Mueller, the truth of these reports could obviously not be proved. In circumstances where such evidence is lacking, the alleged threats remain hearsay and inadmissible evidence where intended to incriminate the accused. On this score, the accused's version is

corroborated by defence witness Nghideleko that the accused was not the source of a statement perceived as a threat towards Mueller. In my view, nothing further turns on this point.

[157] I now turn to decide the reliability and import of the testimony of Schoombee regarding his meeting and conversation with the deceased at Agra Tsumeb, during March 2019. Although the accused disputes such conversation between him and Schoombee taking place, he could not deny them having met, as he cannot recall it. Schoombee's evidence was shrugged off as 'nothing other than pure fabrication' and an afterthought *after learning of the manner in which the deceased were shot*. Counsel reasoned that if the accused had the intent to kill the deceased, then it baffles the mind why he would disclose such a detailed and incriminating statement to a person with whom he did not have a close relationship. Further, the impugned utterances were not incorporated in the witness's statement made to the police on 18 April 2019. Essentially, the accused's version on this aspect of the evidence amounts to a bare denial.

[158] The argument advanced by the defence, respectfully, is flawed in more than one way. The undisputed evidence is that Schoombee, of his own accord, contacted the police and implicated the accused as the murderer, that very same day of the murders. He based his assumption on the earlier conversation with the accused and specifically pertaining to the awkward remarks made by the accused when hinting that the deceased must either retire or be taken out, while signifying the method to be used ie shots in the stomach and head. If Schoombee's report was prompted by the manner in which the deceased were shot (as reasoned by defence counsel), then the argument *per se* acknowledges that something was said or happened in the past to which the witness latched on 'as an afterthought'. Furthermore, when they met at Agra, Schoombee was unaware of what the situation at NIMT was and specifically enquired from the accused how things were going; this prompted the accused's unexpected response. It is common cause that there were no ill feelings between the two and there would have been no reason to implicate the accused as a suspect, other than for the accused's remarks.

[159] In order to discredit Schoombee, counsel for the defence relied on the witness statement which does not contain the utterances alleged to have been made by the accused. It was submitted that there was 'little explanation' by the witness for the omission. The fact remains that an explanation was given as set out above, explaining the omission. The question is whether the deviation is such that it is material to the outcome of the proceedings; only then would it cast doubt in the court's mind as to the credibility of the witness.

[160] The court in *R v Steyn*<sup>30</sup> had the following to say on witness statements:

'[T]here is a serious possibility that statements made to the police, which are made in entirely different circumstances, may be far from constituting this accurate representation and through inaccuracies may be a target for cross-examination which, instead of revealing the truth, may obscure it.'

[161] In the same vein, in the headnote of *S v Bruiners en 'n Ander*<sup>31</sup> the following was said where witnesses in certain respects deviated from their witness statements:

'In order to discredit a State witness on the basis of his affidavit, it was still necessary that there had to be a material deviation by the witness from his affidavit, before any negative inference could be drawn. The purpose of an affidavit was to obtain the details of an offence, so that it could be decided whether a prosecution should be instituted against the accused. It was not the purpose of such an affidavit to anticipate the witness's evidence in court, and it was absurd to expect of a witness to furnish precisely the same account in his statement as he would in his evidence in open court.' (Emphasis mine)

[162] When applying the principles stated above to the testimony of Schoombee as opposed to his statement made to the police, I am of the view that there is no material deviation and that what has been omitted from the statement, was reasonably explained by the witness. The evidence of this witness otherwise stands unchallenged and he is accordingly found credible and reliable.<sup>32</sup>

<sup>30</sup> *R v Steyn* 1954 (1) SA 324 (A) at 335G-H.

<sup>31</sup> *S v Bruiners en 'n Ander* 1998 (2) SACR 432 (SEC).

<sup>32</sup> *Mafaladiso v S* 2003 (1) SACR 583 (SCA) at 593j-594g.

[163] Turning to the events at NIMT after the shooting incident, the relevance of the evidence of Karolina Tsuses, to this case, is threefold: (a) her identification of the pickup she saw speeding past her on a back road leaving campus; (b) driven by a white male; and (c) the direction in which the vehicle moved. Evidence presented by the state established that the make of the pickup was similar to that of the accused ie a Nissan NP300 white in colour and which he used whilst being in the Erongo Region. It is common cause that Tsuses was unable to identify the driver of the pickup, though the general description fits the accused. As for the direction in which the vehicle moved, Litota followed the tyre tracks which took him to a spot under the railway bridge, some distance outside of Arandis, where it stopped. At this spot he observed shoe prints and tyre tracks which, to him, appeared similar to that of the accused's vehicle and the Caterpillar boots he was wearing at the time of his arrest.

[164] The defence attacked the evidence of Litota and essentially the state's case, for failing to present photographic proof of the tyre and shoe tracks where observed, and the lack of plaster casts prepared for court purposes. Counsel submitted that the conclusion reached that these imprints were merely similar, is relative and merely the subjective impression of Litota.

[165] Though counsel's argument is not without merit, this evidence, standing alone, obviously does not prove the identity of the accused. However, it is not to be assessed in isolation, but remains a circumstance which, in the end, must be considered together with all the other facts and circumstances, holistically. It is significant to note that when the police followed these tyre tracks from the bridge leading into the desert, it in the end took them to a rocky outcrop where the same/similar prints and tracks were observed. This is the same place where the firearm parts were discovered.

[166] The accused's coincidental presence in the Erongo Region will be discussed below under the accused's version.

[167] Evidence regarding the finding of firearm parts, a holster and live 9mm rounds at a rocky outcrop in the desert is not disputed. The attack on the

reliability of evidence related thereto primarily focuses on (a) whether two magazines were among the parts so found and forwarded to the NPFSI for examination; and (b) the handling of spent cartridges recovered from the shooting range at Farm Ubi-Bene and the accused's house at Otavi.

[168] The gist of the complaint is that, when Skrywer completed the NPFSI application form, no mention was made of magazines. Though all other parts recovered are listed, the magazines were left out. Based on this shortcoming in the state's case, it was argued on behalf of the accused that it may reasonably be inferred that the magazines were later added to the other firearm parts (police exhibits), rendering the entire examination of the exhibits listed in the application form<sup>33</sup> questionable. The exhibits listed are: 1 x .22 spent cartridge (A39); 18 x 9mm rounds (A40); 1 x brown holster; 1 x barrel; 1 x chamber; 1 x recoil spring; 1 x slide; 1x frame grip; 2 x springs of magazines (A41); and 1 x DNA sample of suspect (A42).

[169] The defence considered it inconceivable that a seasoned police officer like Skrywer would not have been able to identify the two magazines among the parts when preparing the application form.

[170] Besides the corroborating evidence of witnesses Maletzky, Litota and Ganda on the finding of the firearm parts, Ganda photographed the scene and compiled a photo plan (Exh 'EE'). Although there is no photo on which magazines could be seen, photos 12 and 13 however depict two springs and one baseplate of a magazine. These firearm parts were transported from the scene to Arandis police station by Maletzky and Ganda, and, were booked into the POL 7 register. At p 43, next to the serial no 17, appears a detailed description of the exhibits booked in. Of particular interest regarding the exhibits listed, is the second entry which reads 'two x empty magazines' which confirms that, among the discovered items, were also two magazines. It is common cause that Ganda checked out the same exhibits and proceeded to their offices at Walvis Bay where she booked in the exhibits in the POL 104 register. By then the exhibits were already sealed in forensic evidence bags and, as explained by Ganda during her testimony, she had difficulties in

---

<sup>33</sup> Exhibit 'CC-5'.

identifying the individual parts and called on the assistance of Skrywer to identify each through the plastic bag and list them in the register. These bags remained sealed throughout until handed in at NPFSI in Windhoek. As borne out by the register under serial number 35, the two magazines were not listed. This omission was simply transferred when copied over to the application form completed by Skrywer.

[171] When considering the evidence regarding the discovery, handling and recording of the exhibits, coupled with the corroborating evidence of several eyewitnesses, it seems inescapable to come to the conclusion that the omission of two magazines on the application form was a mere oversight when booking in the exhibits at SOCSO by Ganda and Skrywer. This was human and nothing sinister can be inferred therefrom as proposed by the defence. The magazines were seen at the discovery scene, booked in at Arandis and later that same day transferred to SOCSO where the entry of the magazines was omitted.

[172] The proposition that the magazines were later added to the parts discovered in the desert, is not supported by the evidence before court, which proves that the numbers of the exhibit bags in which the parts were packed, corresponded when received by NPFSI, and that these bags were still sealed with no sign of tampering. The court accordingly finds that the state has proved beyond reasonable doubt that two magazines were indeed among the exhibits (A41) forwarded to NPFSI for forensic examination and that the argument of tampering with the exhibits is without merit.

[173] A further shortcoming in the state's case, it was said, relates to the 53 spent cartridges in a red plastic bag, recovered from the accused's home at Otavi by Geiseb and Litota. The bag and its contents were placed into an envelope and sealed. It is common cause that, back in Arandis, Geiseb opened the envelope and removed six cartridges in order to subject them to forensic/ballistic examination where after he closed/sealed the envelope by stapling it. At a later stage the remaining 47 cartridges were collected and sent for forensic examination.



[174] It was argued that, based on the evidence of Geiseb pertaining to his opening and sealing/closing of the envelope after removing exhibits on two occasions, this demonstrates the capability and willingness of the police to 're-open sealed forensic bags and add to, remove or alter the contents contained therein'. Hence, this gives substance to the inference that magazines and other firearm parts were added at a later stage. Issue was also taken with the fact that the red plastic bag and envelope were not exhibits before court. Argument was advanced in which the question was raised whether, in light of the many obvious breaks in the state's chain of custody, it had been proved that the firearm (Exhibit 5) is indeed the murder weapon?

[175] Looking at the actions of Geiseb when he opened the envelope in order to remove some spent cartridges at first, and later the rest, this must be seen in context with all the evidence related thereto and not in piecemeal. Firstly, this is not an instance, as argued by the defence, where sealed forensic bags were opened after being sealed or re-sealed; it was a paper envelope which was closed by means of stapling and which, at the time, served no other purpose but holding the bag with the cartridges. There is no evidence that something was added to the content thereof or altering of the content. The testimony of Geiseb is clear that, initially the sole purpose was to randomly select six (A5 – A10) from the bag with 53 cartridges for ballistic examination and it was only later decided to also send the remaining 47. Skrywer handed these exhibits in with NPFSI which were received by Nyambe still sealed. He opened the exhibit bags, photographed, engraved and cleaned the exhibits, preparing them for ballistic examination and after re-sealing the bags, handed same to Sem for testing. As regards the six spent cartridges, the sealed forensic bag is depicted in photo 103 of the photo plan compiled by Nyambe (Exhibit 'HH') whilst the envelope in which the red plastic bag was placed (referred to earlier), is depicted in photo 104.

[176] The testimonies of witnesses Nyambe, Liswaniso and Sem from the NPFSI, corroborate each another regarding the handling and sealing of exhibits in all respects; each giving a detailed account of his function during the examination and the chain of custody. From the testimonies of these

witnesses, as summarised above, the court, in the absence of evidence to the contrary, is bound to accept the evidence where showing that all standard operational procedures were followed at the different stages of examination of exhibits submitted for testing; that there is no room for any suggestion of possible tampering; and lastly, that the witnesses in all respects were credible and reliable.

[177] Consequential to this conclusion, the evidence adduced by the state establish the following facts beyond reasonable doubt: Despite the accused's protestations regarding the 9mm spent cartridges found at his home in Otavi and he distancing himself from evidence how it ended up there, the only person in that family who would reasonably have had an interest in the spent cartridges, is the accused – likely for reloading which the accused was equipped to do. These cartridges were handed over to the police by the accused's wife when asked about the red plastic bag containing spent cartridges collected from the shooting range of farm Ubi-Bene, the previous Saturday; an established fact and consistent with the accused's own evidence that he instructed his son to collect spent cartridges, albeit shotgun casings. The evidence further proves that these cartridges were fired from the 9mm pistol discovered in the desert. In turn, the same pistol is linked to spent cartridges and one spent projectile found on the murder scene.

[178] Besides ballistics evidence, there is also evidence of swabs taken from the firearms parts and a holster found in the desert and the accused's clothes worn at the time of his arrest, yielding DNA profiles from which the accused cannot be excluded. The estimated probability of selecting an unrelated individual at random from the Caucasian and African American population, respectively, is virtually impossible. I pause to observe that the criticism levelled against the use of populations outside Namibia is unsubstantiated and baseless.

[179] The defence raised by the accused on each of the charges preferred against him is a blunt denial and, although conceded that the accused was in the region at the time of the murders, it was submitted that this was sheer

coincidence. It should be noted that the defence do not rely on an alibi defence, hence, not considered by the court as a possibility.

[180] It is common cause that on Sunday 14 April 2019, the accused returned home after dropping off his son. His testimony in chief is that he took his gym bag, his .38 revolver with ammunition and painkillers before leaving home, as he then decided to drive to the coast where he planned on meeting with Jason and a certain Wimmert (members of the concerned group), and informed his wife accordingly. He decided to combine the trip to the coast with a trip into the desert. The planned visit to Jason and Wimmert never materialised as the accused, according to him, spent the night sleeping in his vehicle at the roadside between Usakos and Arandis. In the morning he abandoned his trip to Jason and drove directly into the desert where he stayed until Tuesday, when he decided to return home.

[181] The explanation of the accused in his evidence in chief differs from previous statements he had made to the police after his arrest when he said that the fight with his wife was the reason why he drove directly to the desert to cool off; no mention made of the actual reason for driving in that direction ie to meet with Jason and Wimmert. Despite claiming to have told his wife before he left home that he was going to see Jason, there is evidence to the effect that she did not know where he had gone and the next day (Monday) made a missing person's report to the police. On this score, the accused clearly gave divergent explanations as to where he intended travelling.

[182] This is also borne out by the fact that there is no indication that the accused prepared himself to meet with Jason and Wimmert, or that he stocked up with food and water to stay over in the desert on his own, for three days. If he had done this in the past to meditate (as he claims), then one would have expected of him to come prepared on the latter occasion. On the accused's version there are gaps and unexplained contradictions regarding why the accused had travelled in the first place and turned off into the desert just before reaching Arandis. The purpose for his travelling to the coast to meet up with Jason, against this backdrop, has all the makings of an

afterthought in an attempt to explain why he was in the desert in the first place.

[183] When asking the pump attendant, witness Katambo, whether the accused could use his phone to make a call, he deliberately lied when saying that he had lost his phone and wallet in Henties Bay. Besides admitting this as an instruction in open court, no explanation was proffered by the accused why it was at all necessary to lie about it, especially in circumstances where it may be inferred that he was covering his tracks.

[184] Turning to defence counsel's reasoning that it was sheer coincidence that the accused was in the area at the time of the murders, one has to have a closer look at all the facts in order to determine whether it was indeed a mere coincidence. The following evidence would be similar to the circumstances the accused was in at the time he was in that area: a white man was seen speeding on a back road leaving NIMT campus, driving a similar pickup as the accused. The tyre tracks of this vehicle and shoe prints observed under a railway bridge outside of Arandis where the driver parked the vehicle and disembarked were described as similar to the accused's pickup and boots he wore when arrested. These vehicle tracks led the police to a rocky outcrop in the same area where firearms parts were found hidden under the ground next to it. Also at this spot, an unfired .22 round/cartridge was picked up. Though disputing that he was at this same rocky outcrop, the accused admits having spent his time in the desert at a rocky outcrop. During a search of his vehicle after his arrest a .22 round was found in the vehicle.

[185] When putting all these similarities together, it would appear that the probabilities do not favour any assertion regarding the accused's presence in that area, to have been a mere coincidence; there is more to it. These similarities, even when considered in isolation, are pieces of the puzzle which, in the end, will assist the court in seeing the full picture when holistically viewed.

[186] What needs to be determined is whether, in light of the evidence as a whole adduced during the trial, the guilt of the accused was established

beyond reasonable doubt. Although the breaking down of a body of evidence into different components is quite useful, one must guard against a tendency to focus too intently on the separate and individual parts thereof; instead of evaluating it together with the rest of the evidence. When dealing with circumstantial evidence the court should not approach such evidence on a piecemeal basis and to subject each individual piece of evidence to a consideration of, whether it excludes the possibility that the explanation given by an accused, is reasonably true<sup>34</sup>. The cumulative effect of all the circumstances must be weighed together and, only after this has been done, the accused is entitled to the benefit of any reasonable doubt which the court may have as to whether the inference of guilt is the only inference which reasonably can be drawn. It is settled law that the accused does not have the onus to prove his innocence; the onus is on the state to prove beyond a reasonable doubt that the accused's version is not only improbable, but that it is false beyond all reasonable doubt.

[187] I now return to the evidence regarding the confession made by the accused to the investigating team on 15 May 2019. During oral argument I raised the question with counsel whether the document, throughout the trial referred to as 'a confession', meets the requirements of s 217 of the CPA and whether, in particular, it satisfies the requisite of being an unequivocal plea of guilty, opposed to a statement made in terms of s 219A of the CPA. Counsel had divergent views. The court only got sight of the content of the document *after* it was ruled admissible and handed in, hence questioning the status of the document which was throughout referred to as 'a confession'. While defence counsel reasoned that the statement lacked the element of *mens rea* (and therefore considered a statement), state counsel referred to parts of the statement from which it is clear that the accused acknowledges the wrongfulness of his actions when shooting the deceased persons.

[188] From a reading of the statement, it is my considered view that the statement essentially describes the actions and mind-set of its maker, from which it can, with some certainty, be inferred that he appreciated the wrongfulness of the act but, notwithstanding, continued to commit the

<sup>34</sup> *Reddy and Others* 1996 (2) SACR 1 (A) at 8c.

murders. I am accordingly satisfied that we are dealing with a confession, its admissibility regulated by s 217 of the CPA. This court already during the trial-within-a-trial decided on the admissibility of the confession and concluded, for the stated reasons, that it was admissible evidence. In light of the evidence of the accused in the main trial and that of Ms Sinkala, the court must re-evaluate the evidence on this point and decide whether or not the totality of evidence adduced is capable of disturbing the court's earlier finding.

[189] I already alluded to some of the shortcomings in the psychologist report compiled by Ms Sinkala, especially the general assumptions made and biasedness which becomes evident from a reading of the report. The approach followed to accept the accused's version unreservedly and with virtually no effort made to verify that version from the established evidence presented to court, in my view, is sufficient to consider the conclusions reached, with a high degree of caution. This is fortified by the fact that Ms Sinkala clearly had no interest to examine the accused's state of mind on the day of making a confession; she simply shut herself off from those proceedings. Alternatively, she brushed it aside as having no impact on her earlier findings and conclusion that the accused was not able to discern what he was asked because of his hearing problems and which might have made him more disorientated and desperate. As stated, there was some degree of speculation as to whether the situation the accused was in at the time rendered him 'completely impressionable and willing to do what it takes to end the torture'. This, considered together with the accused being placed under enormous duress, culminated in the accused not being in a psychological state to give a reliable confession.

[190] In this court's earlier ruling, it found at paras 56-57 that:

'Based solely on the accused's own evidence, there is simply no evidence on record from which the court, when objectively viewed, would be able to infer that external influences were such that it adversely impacted on the accused's state of mind.

[57] The accused's evidence about certain incidents being 'hazy' as a result of his hunger strike, largely manifested during cross-examination when he was required

to explain inconsistencies in his version. The accused's explanation in this regard is undoubtedly inconsistent with his earlier testimony and the trier of fact would be forgiven for thinking that it was done with an ulterior motive. Moreover, when this decisive possibility was never considered when raising the objection at the beginning of the inquiry.'

[191] After hearing evidence presented by both sides, the court provided reasons for coming to the conclusion that the accused was of sound and sober mind and that the accused was not acting under duress when making the confession. Not surprisingly, the accused in his testimony in the main trial shifted his evidence away from his earlier version and focused more on his mental state, now claiming not to be thinking clearly at the time. He also changed course when saying that he decided to confess to the two murders by repeating what he had been told during all the earlier interviews and additionally would make up smaller fictions. This is new and, undoubtedly, an attempt to nullify facts stated in the confession which suggests that it could only have been mentioned by someone who had first-hand knowledge of what happened ie the manner or pattern in which shots were fired into the bodies. As regards other details contained in the confession, the accused explained that he made these up from what he picked up during the interviews. The accused however maintains the position that he was unduly influenced prior to making a confession.

[192] Contrary to Ms Sinkala's finding that the accused was 'completely impressionable' and emotionally not fit to make a confession, the accused's testimony was that he merely regurgitated what he heard from the investigators and otherwise fabricated a story to fill the gaps. It seems to me that this would have required some clarity of mind.

[193] For the already stated reasons, it is evident that the accused materially changed his evidence, particularly when challenging the admissibility of the confession. The reason for this may be found in the psychologist report which probably resulted in changing the angle of attack. This court had the opportunity to consider all the evidence presented in the trial-within-a-trial, inclusive of the merits and demerits on both sides, and gave its ruling on the

proven facts. With regards to evidence led by the defence subsequently, I am not convinced that the court is compelled to come to a different conclusion on the admissibility of the confession and, accordingly, decline to do so.

[194] When the court follows a holistic approach in its assessment of the evidence before court, full regard being had to the merits and demerits of both state and defence witnesses, as well as the probabilities, then it is satisfied that the accused's version as regards events which led to the murder of the deceased persons, is not only improbable, but false beyond reasonable doubt.

[195] As for the confession, the court is further satisfied that the requisites as per s 217 of the CPA have been met. Furthermore, even if that were not to be the case – which is not conceded – then the rest of the evidence proves the accused's involvement in the commission of the crimes set out in counts 1 – 5, beyond reasonable doubt.

[196] Concerning the charge of defeating or obstructing or attempting to defeat or obstruct the course of justice as set out in count 5, I consider the accused's actions of hiding the 9mm pistol and ammunition as a mere attempt, for reason that the course of justice was not obstructed as the pistol and ammunition were recovered by the police and subjected to forensic examination.

#### *Evaluation of evidence re Counts 6 - 8*

[197] Counts 6 – 8 are intertwined and relate to a shotgun (Exhibit 1) found in possession of state witness Hangula who resides on a farm in the Ohangwena Region where he took care of the accused's livestock. As mentioned, the accused denies any involvement in these offenses and particularly disputes having stolen the arm from the gun shop of De Villiers in Grootfontein. Though admitting that he once handed a shotgun registered in the name of his wife, to Hangula, the accused denies that it was the arm in question. He was unable to possibly explain how the serial number of the wife's shotgun was punched onto the barrel of the said arm. That this number was affixed at a later stage, is borne out by the fact that the original serial



number is still visible on the arm, but on a different part and not tampered with as the one on the barrel. The undisputed evidence of De Villiers is that this shotgun was unlawfully removed from his custody and that Exhibit 1 is that particular arm, still bearing the same defect.

[198] Despite the accused's assertion that he did not take the shotgun from the gun shop, the probabilities do not support his proclaimed innocence. Firstly, the accused was a trusted friend or acquaintance of De Villiers and allowed unaccompanied access to the safe where the shotgun was kept. Secondly, although there is no evidence as to how and when exactly the shotgun was taken, the one found with Hangula is the same arm formerly in De Villiers's possession. Thirdly, when so found, the original serial number on the barrel had been machined out, with a new number punched out in its stead. Fourthly, the new number is identical to that of the shotgun registered in the name of the accused's wife. Lastly, the accused is the only link between witnesses De Villiers and Hangula, who had no contact with one another in the past. Add thereto, the direct evidence of Hangula that he received the shotgun and some ammunition directly from the accused.

[199] It is my considered view that, when applying the established principles set out in the leading case of *R v Blom*<sup>35</sup> and what was said in *S v HN*,<sup>36</sup> the only reasonable inference to draw from the proved facts is that the accused stole the shotgun from De Villiers's gun shop, erased the original serial number and substituted it with that of his wife's shotgun, where after he handed it to Hangula to protect his property. Bearing in mind that the accused was skilled in milling, he would thus have been able to change the serial number of the shotgun. When joining the dots, it leads to only one person and that is the accused.

[200] Contrary thereto stands the evidence of the accused who, except for attacking the credibility of the witness Hangula, was unable to proffer any explanation that could possibly explain how the serial number of the wife's shotgun ended up on the one found with Hangula. Neither was the defence

---

<sup>35</sup> *R v Blom* 1939 AD 188.

<sup>36</sup> *S v HN* 2010 (2) NR 429 (HC).

able to cast doubt on the credibility of witness De Villiers who was adamant that Exhibit 1 was the same arm stolen from his gun shop.

[201] Based on the foregoing, I am convinced beyond reasonable doubt that the accused stole the shotgun, changed its serial number and handed same, together with some rounds of ammunition, to Hangula who had worked for him on the farm. The accused was clearly unauthorised to supply Hangula with an arm and ammunition.

[202] In light of the same shotgun being the subject matter of count 6 (theft), count 7 (unlawful possession of a firearm), and count 8 (unauthorised supply of firearm and ammunition) respectively, I am satisfied that it does not constitute a duplication of convictions for reason that, the first criminal act (theft) was completed and only thereafter did the accused form the intent to bring about changes to the shotgun and keep it (unlawful possession) before handing same over to his worker (Hangula) at a later stage. The three acts are thus separate criminal offences.<sup>37</sup>

### Conclusion

[203] From the evidence presented in respect of counts 1 – 5 it is possible to infer that the accused's actions were pre-planned and appear to have taken form after the argument with his wife. He had reached the end of the road in resisting his transfer while circumstances surrounding his son seemed to have exacerbated the insurmountable situation he found himself in at the time. When leaving home, he not only had with him his licensed .38 revolver, but also an unregistered 9mm pistol, ultimately used in the killing of the deceased persons. This unlicensed weapon would therefore not be linked to the accused and was abandoned when buried in the desert. The manner in which the deceased were shot in the head and upper body, is testament of acts committed with direct intent.

[204] In the result, it is ordered:

Count 1: Murder – Guilty (direct intent)

---

<sup>37</sup> See *S v Gaseb* 2000 NR 139 (SC).

- Count 2: Murder – Guilty (direct intent)
- Count 3: Possession of a firearm without a licence (c/s 2 of Act 7 of 1996)  
– Guilty
- Count 4: Possession of ammunition (c/s 33 of Act 7 of 1996) – Guilty
- Count 5: Attempting to defeat or obstruct the course of justice – Guilty
- Count 6: Theft – Guilty
- Count 7: Possession of a firearm without a licence (c/s 2 of Act 7 of 1996)  
– Guilty
- Count 8: Unauthorised supply of a firearm and ammunition (c/s 32(1)(a)  
and (b)) – Guilty

With regards to the witness Immanuel Hangula the court is satisfied that during his testimony, he answered frankly and honestly all questions put to him and in terms of s 204(2) of the Criminal Procedure Act 51 of 1977, he is accordingly discharged from prosecution.

---

JC LIEBENBERG  
JUDGE

#### APPEARANCES

STATE: A Verhoef  
Of the Office of the Prosecutor-General,  
Windhoek.

ACCUSED:

A Titus  
Of the Directorate Legal Aid,  
Windhoek.