

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case number: CC 154/19

THE STATE

VS

THOMO MICHAEL NGOATO Accused 1

PAULOS FOURIE Accused 2

THATO MARINGA Accused 3

---

JUDGMENT

---

BAM, J

Appearances: For the State: Adv. A Coetzee.

For accused 1 and 2: Mr Maluleka

For accused 3: Mr Kgagara

1. The accused are arraigned on a charge of murder committed on 10 January 2018 at Bronkhorstspuit. The victim was Victor Nkensani Mabunda (The main count.) The alternative charge is that the accused conspired with one another and other individuals to aid in murdering the deceased mentioned in the main count.

2. The Summary of Substantial Facts reflects the State's case as follows:

1. The first accused appeared in the Cullinan Magistrate's Court on a charge of dealing in dagga and the deceased was the presiding officer in the trial.
2. The first accused was employed as a prison warder at Baviaanspoort Correctional Services until his dismissal resulting from the charge mentioned above.
3. The second accused is a friend and former colleague of the first accused.
4. The third accused was detained at Baviaanspoort Correctional Centre whilst the first two accused were employed there.
5. Because the first accused came to expect that he would be convicted and sent to prison by the deceased, he and the second accused secured the services of the third accused to find someone who would be prepared to kill the deceased.

7. The accused all followed the deceased's vehicle when he left the magistrate's court in Cullinan on 10 January 2018 to his house in Bronkhorstspuit with the intention that he should be shot and killed at his house.
  8. When the deceased stopped in the driveway of his house, he was shot several times whilst still inside his vehicle.
  9. The deceased died at the scene and the cause of death was noted as "Gunshot chest".
  10. The first accused made several substantial payments to accused 2 and 3 and to the shooter after the deceased was killed.
  11. It is the State's case that the accused acted with a common purpose at all material times.
3. The accused pleaded not guilty and advanced no plea explanation.
  4. Formal admissions: Exhibits A, B and C:  
The identity of the deceased: V N MABUNDA, and the cause of death: "Gunshot chest."

## 5. State's evidence:

5.1 Mr D Jackson. He lives in Bronkhorstspuit across the street from the deceased's home and knew him well. On 10 January 2018, at about 15H40, he was inside his house, facing the street, when he heard a gunshot. When he got to investigate he heard several more shots from the direction of the deceased's home. A Toyota RAV 4, described as a green short wheel base SUV, then passed his house at speed from the direction of the home of the deceased's house. (Exhibit E is a photograph of a similar SUV. He knows the make and model. The vehicle came out in a green colour). He then noticed the deceased's car in the drive way. It was stationary, close to the wall of the house. The car was still idling. From the passenger side he noticed the deceased sitting in the driver's seat, slumping to his right. The driver's window was shattered. There was no reaction from the deceased.

5.2. Warrant Officer Mashisi is a technical expert of the Cyber Crime Unit - concerning CCTV cameras and cell phones. He downloaded the

footage of the CCTV cameras at the Cullinan Magistrates Office. It inter alia showed the silver Mercedes (belonging to the deceased) leaving the premises on 10 January 2018 at 15H07.

5.3 Mr T Boroka is a prosecutor at the Magistrate's Court Cullinan. He was the prosecutor in a case where accused 1 was tried before the deceased on a charge of dealing in dagga. The matter was enrolled on the 11<sup>th</sup> January for the defence case, and the purposes of a section 174 application. After accused 1's first appearance, whilst he was undefended, the deceased made a comment that in the event of accused 1 being convicted him will send him to prison for some time – and that he (the witness) should pass it on to the accused's legal advisor. The deceased owned a Land Rover and a silver Mercedes.

5.4 Warrant Officer SH du Pisani. After having received information about accused 3, the latter was arrested early morning of 1 February 2018 at a house in Soweto. Outside the house was a parked a green short wheel base Land Rover. Inside the house he found

accused 3 who gave him permission to search the house. On a fridge he found the Land Rover's keys. Accused 3 said it was his vehicle. The vehicle was resprayed. The original colour was blue. The vehicle was attached and removed to Lenasia Pound. A blue Nokia cell phone belonging to accused 3, found inside the house, was also seized. The Land Rover is in appearance similar to a Toyota RAV.

During cross examination it was put that accused 3 would deny that the vehicle belonged to him and that he was in possession of the keys. This version was denied and it was repeated that accused 3 told the police he was the owner. The accused would also deny that the cell phone belonged to him and would say that it belonged to his girlfriend. The response was that accused 3 said it was his.

## 6. TRIAL WITHIN A TRIAL RE ALL THREE ACCUSED

It was recorded that accused 1 and 2 would say they were assaulted and tortured by the police who arrested them, that they were forced to sign blank forms and that they were told what to say in the statements. The contents of the statements were contested.

Accused 3 would say that he was tortured by the police, that he was denied access to a legal representative, and that the contents of the statement are contested.

## 7. Evidence –Trial within a trial.

(Confession: Accused 1)

- 7.1 Lieutenant Colonel HS Mabaso. He is a member of the NB/ FCPVC Gauteng, stationed at Johannesburg. He knew nothing about the case. On 1 February 2018 he interviewed accused 1 at his office and completed a standard pro forma form, concerning the rights explained to the accused and he indicated that he wanted to make a statement (Exhibit H1). They conversed in English. Photographs of accused 1 were taken before and after the interview. (Exhibit H2) Accused 1 had no injuries save abrasions to his wrists caused by hand cuffs. Accused 1 was not under duress and was remorseful.

Cross examination. The accused version was recorded. He would say that the pro forma form was not completed in his presence that it was blank when he signed it, and that the statement was also not written down in his presence, that his rights were not explained and that he was denied access

to a legal representative. This was denied and it was also denied that accused 1 told him he was assaulted by the arresting officers, and that he was tortured. The Colonel denied that he threatened accused 1 that he would be taken back to Krugersdorp to be tortured. The photos (Exhibit H2) were taken before and after the accused had made the statement.

7.2 The court enquired whether accused 1 would disclose where, when and by whom he was assaulted. Mr Maluleka recorded the following: Accused 1 was assaulted and tortured by the investigating officer, Constable Mashigo, at Krugersdorp. He was “tubed” (suffocated). A police woman named Jane was one of the torturers. Accused 1 has medical records.

7.3. Constable M Mashigo. He is stationed at the Provincial Organised Crime Investigation Unit, Johannesburg, and is the investigating officer. On 28 January 2018 information in respect of the murder of the deceased was received. He arrested accused 1 during the early hours of the 31<sup>st</sup>, at an informal settlement at Hammanskraal. Accused 1’s rights were explained. They conversed in Northern Sotho. Accused 1 was detained at Silverton Police Station and interviewed by him and Captain



Ndzinisa. After the interview he phoned his commander, Colonel Modise, and told him accused 1 wanted to confess. At 7h00 he took accused 1 to Bronkhorstspuit. He was told that the only person available to take down the confession was at Krugersdorp. Female Sergeant Seaga transported accused 1. Constable Jane Mohale is Sergeant Seaga's colleague. He saw accused 1 again after he had made a confession and transported him from Krugersdorp to Bronkhorstspuit where accused 1's legal representative was waiting for him. Accused 1 told his lawyer that he was tied up. Later he took accused 1 to a doctor. A J88 form was completed – Exhibit J. The only injuries accused 1 had was on his wrists caused by handcuffs. He saw accused 1 again after the pointing out. Sergeant Seaga and Constable Tladi arrested accused 2, who wanted to make a confession. He then Phoned Colonel Modise to make the necessary arrangements. Captain Salemane was appointed to take down the statement. Accused 2 also wanted to do a pointing out. Accused 2 was taken to Krugersdorp but he did not see him there.

When accused 1 and 2 appeared before the Magistrate's Court they did not tell the magistrate that they were assaulted. He took accused 2's

warning statement. There was no complaint of assault.

Accused 3 was arrested by WO Booyens and WO du Pisani, members of a team led by Colonel Kgapane, and taken to Kameeldrift. This team only assisted the investigation team and did not investigate the case. They first looked for accused 3 at Soweto but could not find him. Subsequently he interviewed accused 3 at the cells. Accused 3 wanted to make a confession and a pointing out. Colonel Modise was informed. The officer who was tasked to take down the confession was at Randburg. He denied any allegation of assault on accused 3.

Cross examination by Mr Maluleka.

He took accused 1 to Silverton as being the safest place, because accused 1 was too well known in the area. Captain Ndizima was present during the accused 1's interview. The reason why Captain Ndizima did not take the confession was because he had intimate knowledge of the case. Colonel Modise made arrangements for the confession to be taken. Confessions can be taken at any time of the day, and accused 1, that early morning said he wanted to make a confession. He could not comment on the version that accused 1 was assaulted in his absence. It was recorded that

accused 1 did mention to the magistrate that he was assaulted. He replied that he did not remember that. Accused 1 did not tell him he suffered from asthma.

Cross examination by Mr Kgagara.

He took accused 3's warning statement at Muldersdrift. Accused 3 was detained at Kameeldrift. Accused 3 said he wanted to make a statement. It was put to him that it was strange that all three accused wanted to make confessions and that not one of them was taken to a magistrate. He replied that Colonel Modise made the arrangements. Accused 3's version was put that he did not meet him at Kameeldrift, but he insisted it happened. He denied that accused 3 said he wanted to make a statement to a magistrate. It was shown to him that is what was noted in the warning statement. He then pointed out that the warning statement reflects that accused 3 added to that part: *"or a peace officer"*. (Exhibit J.). (The relevant paragraph indeed reads as follows: *"I will make a statement in front of a magistrate or peace officer."*)

He denied accused 3's version that he was one of the people who assaulted him as well as the version that he was present when accused 3 was suffocated.

It was recorded that accused 3 refused to sign the confession and that his fingerprint was forced onto the document.

- 7.4 Captain J H Ndizimba. He is a member of the Provincial Crime Investigation Unit. He was in charge of the team who arrested accused 1. Sergeant Mashigo was the investigating officer. Accused 1 was taken to Silverton. He was present when accused 1 was interviewed by Mashigo. There was no assault. Accused 1 handed over his belt and watch for safekeeping. Accused 1 said he wanted to mention something about the killing of the magistrate. He then stopped accused 1 and arranged that somebody else should take his statement. He used English as language medium. Mashigo was used as an interpreter because he knew Northern Sotho. Accused 1's rights were explained and he signed the SAP 14(a) form. After that was done he did not see accused 1 again. He is aware that accused 1 was taken to Krugersdorp for the confession.

He denied that during the interview accused 1 asked for a legal representative and that he did not signed the document (SAP 14(a)) voluntarily. His rights were explained before the interview. Constable Mashigo conducted the interview and he himself did not speak to accused 1.

He explained that the Occurrence Book will show that accused 1 was taken for a confession.

- 7.5 Dr LP Chumba. She has 17 years' experience as a doctor. On 1 February 2018, at Brits Hospital, she examined accused 2 during a routine examination and she completed the standard J88. Accused 1 only had bruises to his wrists caused by handcuffs. She concluded that accused 1 was a healthy young man with light abrasions to his wrists. The policemen who brought accused 1 to her were not within hearing distance during the examination. Accused 1 said he was not assaulted and it did not seem that he was hiding anything from the doctor, and there were no signs of any assault.

Cross examination by Mr Maluleka.

The doctor denied the version that the policemen were surrounding the bed where she examined accused 1 and added that she told the police that the examination of accused 1 was confidential, and that she closed the curtain screening any observation by anybody else. This was a normal routine check-up required by the police. The accused's feet were cuffed but not his hands. The abrasions to his wrists were recent. She conceded that suffocation with a car tube would not necessarily leave any injuries, depending on the force applied.

Re-examination. The accused did not tell her he had asthma.

7.6 Sergeant M Mabasa. He is stationed at the Tshwane District Services Unit. He has 11 years' experience. On 1 February 2018 he and Constable Masoma were instructed to transport accused 1 from Krugersdorp to Colonel Mabaso at Muldersdrift. Sergeant Seaga booked accused 1 out. He (Sergeant Mabasa) handed accused 1 over to Colonel Mabaso. Photographs were taken of accused 1. When accused 1 had objections to their presence, the Colonel excused them and they waited at their vehicle. After the interview the colonel called him on his cell phone to fetch the accused. He had been briefed about the case.

Cross examination by Mr Maluleka. He denied that he interviewed accused 1. He disagreed with accused 1's version that he did not transport him to Colonel Mabaso.

Cross examination by Mr Kgagara. He conceded that he knew accused 3. He denied that he transported accused 3 to Krugersdorp. He denied that accused 3's girlfriend gave him R1300 to keep for accused 3. He visited accused 3 at Kgosi Mampuru prison to enquire about other suspects. He conceded that he transported accused 3 from Muldersdrift to Cullinan.

7.7 Sergeant Fait Seaga. She has 15 year experience and is a member of the Provincial Organised Crime Investigation

Unit. On 1 February 2018 she was in charge of the team tasked with the arrest of accused 2. They were working hand in hand with the tracing team. Accused 2 was not at home. Two policemen were to remain at the shack in order to arrest accused 2 when he arrived, and the rest retired to a nearby main road. She was later phoned by Constable Tladi that accused 2 had been arrested. After having picked up accused 2, whilst driving she conducted an interview with him. Accused 2 said he wanted to speak the truth. She then arranged with Constable Mashigo, the Investigating Officer that a statement should be taken from accused 2. Mashigo called later and instructed her to take accused 2 to Krugersdorp. Constable Tladi transported accused 2. Later, after Mashigo had made arrangements, she booked accused 1 and 2 out at Krugersdorp. Two policemen, Constable Mabuse and Constable Phala, respectively picked up accused 1 and 2. The two accused were not interviewed at Krugersdorp. She was not aware of any assault. Upon their return the two accused were again booked into the cells at Krugersdorp but she did not know exactly where they were detained. Later the two accused were again booked out, the one to Silverton and the other to Bronkhorstspuit. She knew that accused 1 was taken to the Bronkhorstspuit hospital for examination. She then knocked off. Constable Mohale, who worked with her, and others,

transported accused 1 and she and the other group took accused 2 to Silverton. She did not see Constable Mohale interacting with accused 1 and 2. Accused 3 was arrested the following day, Friday. In respect of accused 3 she only transported him to the Magistrate's Court in Orlando. She was accompanied by Constable Mohale.

Cross examination by Mr Maluleka. She was not the investigating officer, but an assistant of Constable Mashigo. She was the leader of the team who arrested accused 1. She denied that they entered and ransacked the shack of accused 2 in his absence. She denied that a cell phone, his ID document, drivers licence and belt, were taken from the shack. She said Tladi and another member she could not remember were left at the shack to await accused 2. She denied that accused 2 was taken to Watloo for interrogation. She told accused 2 inside the vehicle what the charge was. Tladi had already explained his rights when he was arrested. She denied that it was improper to interview an accused in a vehicle. She was entitled to interview accused 2 as part of the investigating team. Constable Mashigo had been informed of accused 2's arrest. The arrest of accused 2 and his transport to Krugersdorp happened early morning of 1 February. She did not know a place close to the police station at Krugersdorp called *White House* that was used by the police. She denied the version of assault and torturing of accused two. It was put that a



were bleeding. He was referred to the J88 completed by Dr Chuma stating that he only had bruises on his wrists. He then said the blood was inside and not outside. He responded that it did not happen but was asked why he did not correct Mr Maluleka as he did on numerous other instances. He said that he told his lawyer, Mr Magara on 1 February 2018, when he visited him in the cells that night at 9pm, that he was tortured, and that the same lawyer represented him the next morning at the Bronkhorstspuit Magistrate's court. He did not know why the lawyer did not tell the magistrate that he was assaulted. Ms Coetzee pointed out to him that he did not raise the assault allegation even when accused 2 did when they appeared after accused 2's arrest. There was no coherent explanation. It appeared that the first allegation of assault was only raised 3 months later in the Pretoria Magistrate's court.

Concerning the contents of the statement to Captain Salemane he said he was told by the police what to say, and that maybe accused 2 gave certain information to the police when he was tortured. He did not know why the statement contained a version that he was not at the scene where the murder was committed. He denied that his rights had been explained to him but admitted that he

was a Correctional Officer for 17 years. He did not know all the Constitutional Rights of a person suspected of having committed a crime, but said he could not remember which he knew of. In respect of the formal Rights Document SAP(14)(a) he said he only put the document in his pocket because he was tired and wanted to sleep. He consulted with his attorney, Mr Magara, after his return from the doctor. He told the attorney that he was tortured but did not know why the attorney did not tell the magistrate about it the next morning when they came before the court at Bronkhorstspuit. He did not ask his lawyer why he did not tell the magistrate. When he was tortured he lost consciousness and when he regained it, Seaga and Jane entered and they then took over and tortured him in the same manner. He was asked that if he suffered from pains after the torturing why he did not ask Doctor Chuma for medication. He said he did not report to the doctor she gave him pain medication without having asked her. He was reminded that the doctor testified that he only had bruises to his wrists.

During re-examination he said he memorised what the police told him to say, and that they had re-played the recorded version to him. He was asked about his conflicting versions whether he told

Colonel Mabaso that he was assaulted. He answered that when he tried to tell Colonel Mabaso that he was assaulted, the colonel said he would not entertain that complaint because he was only tasked to take down the confession. The statement was read back to him and it contained everything he told the Colonel. Whist he was tortured accused 2 was in the same building. The police said he was making a confession.

8.2 M J Malefetse (Former state witness not called by the State.) He was called on behalf of accused 1. He testified about a meeting where a Mr Pienaar wanted him to *frame* the accused. His evidence was incoherent and seemed to be irrelevant, and was abandoned by Mr Maluleka.

8.3 Paulos Fourie. (Accused 2).

He knows all three accused. He testified extensively what he did on 31 January 2018 and how it came about that he was apprehended. He had left his shack to go to the neighbours and. When he returned the door to his shack was locked. He heard the police were looking for him, and that the police had already been inside his home. He was apprehended in the street and was

handcuffed. One policeman was named Tladi. They told him they were looking for a firearm. He denied that he had a firearm. They never explained his rights or told him why he was apprehended. A female officer said they had taken his ID, drivers licence, belt and cell phone. He was detained at Silverton Police Station and later taken to Krugersdorp Police Station by Constable Tladi and another policeman. His rights were explained. He was never interviewed and did not say he wanted to make a confession. From there he was taken to a place used by the police, called the *White House*. It is about 10 to 15 minutes' drive from the police station. He only saw Jane Mohale again at that place. There he was assaulted and tortured by the police. There were four policemen present. Tladi was one of them. He was told to confess that he killed Mabunda. When he denied that, he was pushed to the floor. His hands were still cuffed behind his back. He was made to lie down on his stomach and he fell to the floor face first. One man sat on his back and suffocated him with a car tube whilst another one sprayed pepper spray into his face underneath the tube. His eyes, nose and mouth were covered. The man on his back held his head between his legs. Another man bound his feet with a seatbelt and tied the belt to the handcuffs. His feet were pulled up behind his back. This process was repeated until he lost consciousness. All the time Tladi just sat on a chair. Whilst he was tortured the

policemen told him to confess that he killed Mabunda. Everything was recorded. He asked for water but was not given any.

The torturing affected his health in that even now he cannot breathe properly. During the torturing he soiled himself. His balance was upset. He was taken to a toilet to clean himself and to wash his clothes. He was told to urinate in a container and to drink it. He complied. From the toilet he was returned to the room and his hands were cuffed to the table. Tladi was instructed to leave the room and the torturing was repeated. This time another man got onto his back. The recording was played back twice after the second session. He was not assaulted in any other way. He suffered physical injuries -- pains to his back. The injuries are visible on photos.

He was taken to Kgosi Mampuru prison where he was treated by a psychiatrist for trauma. He was taken to Captain Salemane whom he told that he had a lawyer. He gave the lawyer's cell phone number to the captain in order to call he lawyer. He denied the captain's version that he said he did not want the lawyer present. The captain said he was not there for a lawyer. When he refused to say anything the captain called the two policemen who escorted him and who were waiting outside. One of them was Phala. The captain told the policemen "*this man has changed*". Phala and the other

man addressed him and reminded him what he had been told, and ordered him to do what he was told. The captain had a blank pro forma form in front of him. Whilst Phala was still there the captain instructed him to put his initials on the form. He did not read anything to him or write anything down. In respect of the confession he also signed and attached his thumb print to a blank document. Nothing was read back to him. Phala and the other man who escorted him to the captain had been told by the torturers that he would make a confession.

During the torturing he was informed that he was under arrest for murder. This also appeared on the Rights Explanation form (SAP 14(a).)

He became aware that accused 1 had been arrested the same night he was arrested. He knew that accused 1 was in the same area when he was tortured.

In respect of the R50 000 accused 1 drew from his bank account on 11 January 2018, he said he only saw accused 1 entering the bank area.

When Mr Maluleka moved on to the issue of the pointing out he stated that he wanted to refer to the photos taken at the time of the confession. He continued as follows: The photographer came late. Phala and the other escort stood at the door of the office. Captain Salemane told Phala and the other man to leave. The photographer introduced himself and took

photographs of him whilst half naked. The photographer, a white man, noticed marks on him and asked what caused it. He told the photographer that the marks were caused by torturing. His left eye was red and there were marks on his back. The photos were taken before the pointing out.

Accused 2 referred to certain photos, they were not the photos taken during the pointing out. The matter stood down for the photos to be found. It was eventually located by Ms Coetzee. The album containing photos taken during the confession was handed up. The photographer was WO Booysens. Accused 2, after perusing the album, stated that it was also not the photos he was referring to.

The issue of the photos taken at the confession stage was stood down and held in abeyance in order to have the photographer called by the court to clear up the situation. Prosecution and defence agreed.

Examination in chief re the pointing out proceeded.

The pointing out was not done voluntarily. The paper used was blank when he signed it. He never knew what the contents of the pointing out document were. He did not see the colonel completing the document. It was not read out to him. Photos were taken of his body before the pointing out. He told the photographer that he was tortured. The 14 photos were identified by accused 2

and handed in as exhibit N2. Photos 13 and 14 depict what he said is "*a bloodshot spot*" on his right hip (It can be described as a bruise.). Photo 1 depicts his face. When he was asked what was wrong, he said his face was swollen. Photos 11 and 12 depict injuries to his wrist and thumb, caused by the seat belt and hand cuffs.

Witness called by the court in respect of the photographs taken during the interview with Captain Salemane. This was regarded to be in the interests of justice.

Warrant Officer Booysen. He took the photos at the time of the confession to Captain Salemane, Exhibit N1. He used a photo lens. He did not converse with accused 2. Accused 2 did not tell him that he was tortured and assaulted. Photos 1 to 8 were taken before the confession and 9 to 16 afterwards. He did not remember any injury to accused 2's left eye, but in looking at the photographs, photo 1 depicting a close up full frontal face photo, he said there was no injury. It was put that the photo depicts an injury to accused 2's left eye. That he denied. He has 30 years' experience. The photos in album, Exhibit H2, taken during the pointing out are of bad quality.

Mr Maluleka was allowed to consult with accused 2 concerning the evidence of the photographer.



Cross examination by Mr Maluleka.

He conceded that photo 6 depicts a bruise to accused 2's right hip area.

Upon a question by the court he said he did not take any photograph but those in the office of Captain Salemane.

The photographer of the photos taken during the pointing out was also available and Mr Maluleka requested the court that he should be called as well. I regarded it in the interests of the accused and justice that he should be called.

Warrant Officer G Jansen van Rensburg. He took photos of accused 2 upon request by Colonel Sithole.

He conceded that the quality of the photographs in the copy of the album before the Court, Exhibit O1, was not good. He then produced from his file the original close up photo depicting accused 2's face. This photo was handed in as Exhibit O2 and was of good quality. It showed no injury to accused 2's face and no indication that his face was swollen.

During cross examination by Mr Maluleka he denied that he had asked accused 2 what caused the mark on

his hip. He could not say whether it was and old or new bruise. He denied that there was any mark depicted at the inside of accused 2's left eye or that it was bloodshot.

He denied that accused 2 was terrified and said he co-operated.

No further evidence was adduced by accused 2.

Cross examination of accused 2 by Adv Coetzee.

He and accused 1 were colleagues in the Department of Correctional Services. Accused 3 was a former inmate. He knew the deceased by sight and was present when accused 1's case was postponed on 10 January. He would have been a defence witness. On 11the January at court he heard that deceased had been killed. After his arrest he was not taken to Watloo as his legal representative had put during cross examination. He said his lawyer misunderstood his instructions. It was put to him that on numerous occasions during cross examination he had corrected his lawyer.

At the time of his arrest on 28 January he heard that accused 1 had also been arrested.

He denied that what he told Colonel Sithole could not have come from the police. This he denied and said everything he told the colonel was told to him by the police. At the time of his torturing Tladi was present. It was pointed out to him that it was never put to Tladi. He said he did tell his lawyer Tladi was present but could not advance any reason why he had not corrected his lawyer when this was not put to Tladi. In respect of his evidence that his underpants and pants were allegedly washed, shortly before the confession, after it was soiled, it was pointed out that there was no indication on the photographs that those garments were wet. He said he squeezed it dry.

It was put to him that none of the photos depicted any mark on his face. He then said at Kgosi Mampuru (the prison) there was a J88 showing such injuries. He conceded that he was in Kgosi Mampuru more than 2 weeks after his arrest.

On exhibit O2 he marked a spot on the inside of his left eye where he said the mark was.

The court adjourned and upon resuming accused 2 said he wanted to correct something. He had made a mistake – it was not his left eye that was injured but the right eye. He indicated on Exhibit O2 where the injury was on the inside of his right eye. He explained that he made the mistake when he looked at the photo by accepting

that the right side of the photo was actually his left. It was then pointed out to him that there was no indication of any visible injury on either side.

He conceded that he did not tell either Captain Salemane or Colonel Sithole that he was assaulted. He said the policemen who tortured him told him not to mention any assault. It was further put that Constable Phal was not confronted with his version that Captain Salemane called him into his office when he refused to co-operate. He responded that the police would deny everything.

The recorded version he had to tell the officers was played back twice which he had to commit to memory. It was pointed out him that his statement consisted of 7 pages. He could not remember what he said in the statement because it happened about two years ago. He was repeatedly asked whether he was told by his torturers to make a pointing out. He then said he did not make any pointing out and that Colonel Sithole took him to certain places he did not know. The torturers, including Tladi, followed in their own vehicle. He did not know who told Colonel Sithole where to stop. The Colonel made notes where they stopped. The photographer told him where to stand and then took photos.

Upon questions by the Court he said the injury to his eye was inflammation caused by the pepper spray, but only to his right eye.

- 8.4 Thato Maringa. (Accused 3.) He testified how it came about that he was arrested on 3 February 2018 at his home at Soweto. He was handcuffed and told to lie on the floor. His wife was told to wait outside. The police told him that they were looking for a firearm and searched his house. He was naked and his wife dressed him. There were two cars parked there but he did not know to whom it belonged. He did not know about the Land Rover key WO du Pisani said he found in his house. The police took him to Lens Police Station. His rights were not explained. At his home he was addressed in English which he did not fully understand. At the police station his bag was searched and the police found a cell phone. It was early morning and getting light outside. He was then taken to Kameeldrift where he was given a document listing his rights. He was locked up in the cells and he slept. At about 9h00 his name was called and he was told that he was charged and his fingerprints were taken. They said he was arrested for murder. The police were still looking for the firearm that killed Mabunda. He was returned to the cell and after a further 2 hours he was again fetched by other policemen. When he asked where he was taken to, they told him not to ask questions. One of the policemen then conversed with

Mashigo on his cell phone and asked for directions and they drove Muldersdrift. It was about 4 to 5 pm. Mashigo greeted him by his name. He denied Mashigo's evidence that he was interviewed at Kameeldrift. At Muldersdrift he fell asleep in the cell because he had not slept for days. He was awakened and taken to the *White House*. They took him to an office where he was interviewed by a big man and Mashigo. The two female police officers who had testified (Seaga and Mohale) were also present. He was told that the police could not travel from Pretoria to Johannesburg to arrest him for nothing. They asked him whether he knew accused 1 and 2, mentioning their names. He told them he knew them from Baviaanspoort. Both were correctional officers and he was an inmate. He also said he knew a man called Pienaar who had laid a charge against him. He told the police that he knew nothing about the killing of Mabunda. He was told to lie down his hands were cuffed behind his back and it was painful. The big man had a bag which he unzipped. They told him if he was not going to talk about Mabunda they will tell him what to say. He complained about his injured hand but they tied his legs with a seat belt and suffocated him with a car tube. They told him to tell the truth. They also said that he was young and that Fourie had soiled himself and that he would do the same. When he complained about his asthma they said he killed people and should

not complain about asthma. Then the female officers took their turn. A female officer sat on his shoulders and suffocated him. They told him what to say. One officer took a video with his cell phone and said they would show him how he was screaming. He struggled to breathe. He was told to comply with their instructions, and that is what he did. The torturing stopped and the police said they did not search his house properly. They then went to his house. The door was broken and the furniture was gone. They asked him where his wife was but he did not know. They then went to his wife's home. There the police jumped across the wall and returned with his wife. The police then searched her home. The police then came with Botsotso, (his brother in law) who screamed. The police then went to his mother's place. They slapped his girlfriend and searched the house. They called him inside the house where Botsotso was tortured with a tube. The police then had a firearm in a plastic bag, hit him with a fist and said that that it was the firearm that killed Mabunda. He was then taken back to Muldersdrift by WO du Pisani. He was then taken for the confession. He was told that should he not co-operate he will be shown the video taken when he was tortured. He was then taken to an office where he found an officer who greeted him in isiZulu. The officer struggled with Tswana. In the officer's possession was a document from Correctional Services. The officer wrote

on a form but said what he was writing had nothing to do with him. The officer then wanted him to tell how Mabunda was killed. He told the officer that he was assaulted by the police. At that stage, through the office window, he saw some of the police who had assaulted him. The officer said he was not there for an assault case. The officer did not explain his rights and did not ask him about a lawyer. He denied that made the statement freely and voluntarily and denied that the statement was read back to him. He refused to sign the statement and denied that he voluntarily affixed his thumb print to the document. When he was taken for the pointing out he found the police who had tortured him there. They forced him to affix his thumb print to that document. He added that his hands were un-cuffed there. At the time of the pointing out the officer was talking that fast that he did not understand whether his rights were explained. He did not tell Colonel Visagie that he had a lawyer. When he tried to tell the interpreter he was told to show where Mabunda was killed. After the pointing out he signed the pro forma document and the officer's notes. The officer had taken him to a place he did not know. He showed the officer where he saw accused 1 the last time. He told the officer he did not know Bronkhorstspuit. Upon their return a police officer said they will use the police's pointing out. When he appeared before the magistrate



at Bronkhorstspuit the first time, when accused 1 and 2 were not present, he told him he was assaulted. The magistrate told him he had the right to lay a charge. He then laid a charge at Kgosi Mampuru where he was told to make a statement. At Kgosi Mampuru he was treated for his asthma. He did not suffer any injuries when he was tortured because a tube was used. The injury to his finger was sustained at his home and infection caused an amputation. The finger was painful at the time of his arrest. A lawyer consulted him at Kgosi Mampuru. He stated that he told Colonel Mbotho that he was assaulted. When it was pointed out to him it was never put to the Colonel he said he decided to mention it in his evidence. The Colonel did not ask him any questions from the pro forma document and said it had nothing to do with him. The Colonel had other documents from which he completed the pro forma. The Colonel asked about his address but some things he just wrote of his own. He denied that he said he did not need his lawyer. His rights were not explained. He repeated that what he told the Colonel was told to him by the police. He was asked several times what he told the Colonel but was unable to recall anything

Cross examination by Adv Coetzee. He was arrested in the early hours 3 February. He conceded that he slept in the cells at Muldersdrift. He arrived at the office of the officer who took his statement at 20h40. He did not

want to admit that, on his own version, what he told Colonel Mboto, that he did not eat or sleep for days was a. He said he told Colonel Mboto he was assaulted. He was then asked why it was not put to Colonel Mboto during cross examination. His answer was that he wanted to mention it in his evidence.

- 8.5 Ms D Mashego. Accused 3 is her husband. Accused 3 was arrested the night of 2 February 2018. She and accused 3 were in bed. The door to their home was kicked open by the police. Accused 3 was handcuffed and she was told to go outside. The police then searched the place. There were two cars belonging to tenants in the yard. She was called back into the room and she helped to dress accused 3. The police then left with accused 3. There was a green Land Rover parked outside the yard. Because the door of the home was broken she moved to her own house. The police returned at 11pm. Two female officers accompanied her and her home was searched. They did not say what they were looking for. Her brother Eugene Botsotso was also with her. She was asked about where her furniture was and she told them it was at her mother's home and that her brother assisted her to move it. The police then took her and her brother to her mother's home. There the police asked her about a gun and where it was. She denied any knowledge of a gun. The police insulted her. One of the male officers then covered her face with a plastic bag.

Accused 3 was with the police. He told her that the police were hurting him. The police kicked her brother and asked him about the gun. He denied any knowledge. The police then took them back to her home. Her brother was taken into the house and she was told to remain outside. The police had a black bag with them, in size about 25 cm. A tyre tube was removed from the bag by a policeman who entered the home. She then heard her brother screaming. A policeman then came out of the house with a gun in a plastic bag. Accused 3, who was in the police vehicle, was asked in Afrikaans whether that was the gun. The policeman slapped accused 3 on the chest with the gun. Her brother was arrested for possession of the firearm. He was later charged but the case was struck from the role.

Cross examination by Ms Coetzee.

When she noticed the green Land Rover two police officers stood in front of it and the bonnet was open. The Land Rover was taken by the police but she did not know where they got the key from. She was suffocated with the plastic bag when the police asked her about the firearm. A female officer slapped her. A black male officer took the black bag from a car. The tube was inside the bag. The policeman took it out when he approached the door. She was at the door but could not see inside. She only heard her brother screaming. The

rubber tube was a round and hard and in size about 15cm. When she said it was rolled up she could not explain why she initially said it was round. She said police just tried to scare her with the grocery bag.

Ms Coetzee confronted her with the accusation that she falsely attempted to support accused 3.

9. After the trial within a trial the evidence of the confessions made by all three accused and he pointing outs by accused 2 and 3 were admitted. It was an interlocutory finding which may be revisited at the end of the trial.

10. Accused 1 made a statement consisting of five pages to Lieutenant Colonel Mabasa. (Exhibit H) It reads as follows:

Par 11.1 of the pro forma: As you are still prepared to make a statement, I would like to know your source of information regarding the proposed statement you wish to make. *"I am the one who planned and paid the killer of Mr Mabunda."*

Confession.

1

*On or around 30 or 31 January 2017 I was arrested for dealing in dagga outside Baviaanspoort main gate or access control gate.*

*I was sent to court and paid bail of R4000. The presiding magistrate was Mr Mabunda who is now the deceased. I was released on 1 February 2017.*

*An internal hearing started and I was dismissed on August 2017. The criminal case continued. Around January 2018 I was phoned by Thato Maringa, the ex-prisoner, whom I met in Baviaanspoort where he was serving his sentence. He told me that my case was so serious, my family will suffer because magistrate (Mr Mabunda) wanted to send me to jail. He told me to make a plan to kill him.*

*I explained to Fourie, my ex colleague in prison, the plan which Thato explained to me.*

*Fourie told me it has been some time he trying to explain to me the same plan to kill the magistrate.*

*On 10 January 2018, I explained to him that Thato Maringa and other guys were on the way to me.*

2

*They wanted us to go and kill the magistrate.*

*I and Fourie went to the main road to wait for them.*

*We waited 10 or fewer minutes, they came by a Land Rover green in colour and were driven by Thato, and all in all they were three people inside it.*

*Thato alighted, came to us and greeted us.*

*He told us to drive to Cullinan to start doing the planned job of killing Mr Mabunda.*

*I and Fourie parked my car at SPAR. Thato and the other guys (one coloured and one black guy) unknown to me went to court to check him in court as e was the only magistrate working there. Around 15 00, Thato phoned me and told me that the magistrate is driving out of court, and they were following him. Then we also followed them, driving a little bit distance from them.*

*We could see Thato's Land Rover and Mr Mabunda's silver Mercedes Benz.*

*At the cross road in Cullinan, they proceeded to Bronkhorstspuit, we remained at the Engen garage.*

### 3

*After 30 to 40 minutes they came back and drove past the garage straight to Mamelodi East at Fourie's place.*

*That was a meeting place for us. We arrived and met them. The unknown black male to me told me that the R50 000 00 I agreed with Thato Maringa and the coloured guy was too little.*

*They want R90 000 00 for killing the magistrate Mr Mabunda. So they have done the job as agreed or*

*planned with them. I told them I had R25 000 00 in my pocket, they accepted it.*

*I told them the total amount which I can pay them was R70 000 00, as I have already paid R25 000 00, the balance is R45 000 00.*

*On 11 January 2018, I went to Standard Bank at Sunny Park, Pretoria, withdrew R50 000 00 from my account.*

*I phoned Thato Maringa informed him that I was ready to drive to them in order to pay balance R45 000 00. He gave me the direction in Soweto where to meet them.*

*I and Fourie drove to Soweto, and found him with the same black guy with them during the killing of the magistrate. I gave to Maringa the R45 000 00 in cash for the job which I required them to do it for me.*

*Thato told me they were going to share the money amongst the three involved in the killing.*

*After 4 to 5 days, Fourie demanded his share.*

*I told him he was not actively involved in the shooting and I ended up offering him R10 000 00 for his part he played. I withdrew R10 000 00 from the bank and paid him.*

#### *4*

*After paying Fourie, everything was done,*

*I regret of what had happened and meeting wrong people at the wrong time.*

*I regret to allow Fourie to influence me to plan the killing of the magistrate.*

*He told me it was the only way to survive, and nothing else.*

*That is all I want to say to the peace officer."*

11. Accused 2 made a statement to Captain Salemane, consisting of 28 paragraphs, and a pointing out to Lieutenant Colonel Sithole.

- 11.1 The relevant paragraphs of the statement made by accused 2, Exhibit O, read as follows:

*1*

*"I am an adult male, ID No 7411116257082, presently residing at No 940 Phase Two, New Town, Mamelodi East, and Cell 0796159919. I am presently unemployed.*

*2*

*I am a friend of Michael Thomo Ngoato who resides at Married Quarters, Baviaanspoort Prison, and resides t Phase 2 in Mamelodi East. He was Prison Warder until dismissed in 2017 after been arrested for possession of dagga. His possession of dagga case was on court roll at Cullinan Magistrate Court before Magistrate Mr Mabunda.*

*3*

*After having been granted R4000 00 bail and when he appeared in court, Magistrate Mr Mabunda said 'Pray that I do not find you guilty, if I find you guilty, don't expect less than six years, go and tell your lawyer that.'*



*Ngoato then appointed an attorney known as Nduna to ask Magistrate Mabunda to excuse himself from the case as it appeared he has already made a judgment.*

## 4

*Nduna made application to senior magistrate Conradie to have Mr Mabunda excused, and Nduna got reply from senior magistrate Conradie that Mr Mabunda refused to excuse himself from the case. During some appearances, a senior officer from Baviaanspoort Prison, Ms Mochesane, used to come to court and sat in front and took notes. Ngoato complained to his lawyer Nduna, but Mr Mabunda stated that he has no problem with that.*

## 5

*Nduna failed to have Mr Mabunda excused and Ms Mochesane removed and Ngoato changed lawyers and appointed Tuelo Nkhara. Officer Mochesane was removed and the other officer Vister was sent but he did not sit where Ms Mochesane sat. The forensic results of the dagga came back and the trial started and police officers testified. The argument between Mr Mkhara and the magistrate started about fore report the chain evidence of the Police when handling the dagga was not according to the right procedure, and Mr Mkhara pointed all these to the Magistrate Mr Mabunda but Mr Mabunda ruled that he accepts the evidence by the police and forensic report which were not properly done and handled.*

## 6

*After court on that day, Mkhara and the stenographer that was in that court got the lift with me, Mkhara and Ngoato. Ngoato was driving his back Mercedes Benz, no, it was a Carola, in the m/vehicle the discussion started about Mr Mabunda's decision to proceed with dagga even if he realizes that the Police have made mistakes in handling this exhibit. The conclusion was that Mr Mabunda is personally attacking Ngoato.*

## 7

*Ngoato started contacting "Marcavelly" whose full names Surname and addresses are unknown to me. I was reminded by Ngoato that "Marcavelly" is the ex-prisoner who once mixed porridge and faeces at the prison in Baviaanspoort. That is when I remembered and also recalled that I once attended "Marcavelli" gangsterism complaints as I was employed as dog handler at Baviaanspoort Prison. At one stage I met "Marcavelli" with two others travelling in a Toyota Taz and then is when he came to the vehicle where I was sitted with Ngoalo. "Marcavelli" asked R500 00 for petrol but Ngoato gave him about R200 00. "Marcavelli" then said to Ngoato that he must not worry as they ("Marcavelli" and others) will "saad" (kill) that man. He did not mention a name at that time.*

## 8

*After about 4 days "Marcavelli" came back and that is when he reported to Ngoato that he has done the job of killing Mr Mabunda. Ngoato left with him and came back and told me "Macavelli" has tricked him and told lies. Ngoato then found another person called Thato, commonly known as "T-man. Ngoato came to me with Thato with another coloured male. This was on the 7<sup>th</sup> January 2018 and Thato stated that he and this coloured male will go to Cullinan Court to see the person that Ngoato has told them about. Ngoato directed them to the District Court which Mr Mabunda always presides over. Thato left and only came back on 2018/01/10.*

## 9

*On this day Ngoato came to pick me up with his black Mercedes Benz and told me I must accompany him to Court as his need to spray some "muthi" as he is appearing on 2018/01/10. I went with him but did not enter the court but stopped and parked on the railway line not far from the court. On this position we were able to see the two court gates. After about 15;00 Mr Mabunda got into his silver Mercedes Benz and as he drove out, Ngoato started the vehicle and stated that we are following that car. I also seen that it was Mr Mabunda.*

## 10

*We followed Mr Mabunda from Cullinan to Bronkhorstspuit and Ngoato called Thato to inform him that Mr Mabunda is on his way and we were still behind his m/vehicle. That*

*responded that he sees the vehicle (Mr Mabunda). After that was confirmed, we drove a little bit and turned right. After few minutes, Thato called Ngoato that the job of killing Mr Mabunda has been done. Thato also asked Ngoato to buy 5 litre petrol. I bought petrol and on the way Ngoato withdrew cash from ATM in Mamelodi, and he withdrew R5000 00.*

## 11

*We drove to Phase Two where I saw Thato and the coloured male I saw with Thato before and one male who Thato called him Sfiso, in the green Land Rover. Ngoato gave them the 5 litre petrol and they left. Ngoato dropped me at my place and he also left. On 2018/01/10 I was picked up by Ngoato who was with his lawyer, Mr Mkhara to court. On arrival, there was a white female magistrate who was postponing cases and also telling lawyer and those in attendance that the magistrate for this court Mr Mabunda is deceased.*

## 12

*After court we dropped Mr Mkhara at Hatfield and proceeded to Sunny Hill Mall in Sunny Side and Ngoato withdrew large amount of cash. And in the bank,( Standard Bank) he gave me one bundle of R200 notes and he kept two bundles. We went to Markhams and where I bought two T-shirts, and after that we went to the car. He gave me R3500 00. We then went to KFC. After that we went to Johannesburg using N1. We met Thato, the coloured male and Sifiso in a garage. Thato was still with the green Land Rover. Ngoato gave Thato two*

*bundles of cash, and after I finished to fix Ngoato's tyre we left.*

*13*

*At this stage Ngoato has given me R5000 00. He dropped me at my place and came as I continued to supervise his rooms that were been built. After two days he gave me another R5000 and that is when he stated that this is payment to keep quiet and not say anything about the killing of Mr Mabunda.*

*14*

*On 2018/01/31 about 21:00 the police detective arrived at my place and arrested me. Ngoato was also arrested at Phase Two. That is all.*

11.2 The pointing out notes (Exhibit N) covered the route indicated by accused 2 and the relevant comments. I refer to only certain specific comments made by accused 2 at pointed out places, in the Cullinan area, at the noted time.

*16:57 I came here with Mr Ngoato in a black Mercedes Benz; We parked near the Court so that we have a clear view of r Mabunda when leaving the court. Mr Ngoato went to the Cullinan Kwamhlanga board and came back. We waited in the car. A grey Mercedes Benz drove out of the*

*court. We started the car, following him. At the time calling T-Man he is coming.*

*17:00 Pointer pointed where the black Mercedes Benz was parked.*

*17:12 Turn right into R515 and drive straight to the garage where we bought R79 00 fuel for the hit men.*

*17:20 All along in this road we were following Mr Mabunda behind far away but we could see him.*

*17:25 This is where Mr Ngoato parked the Mercedes Benz while I went to the shop to buy empty container then petrol for the Land Rover driven by Thato - T-Man.(Jan Ahlers Motors.)*

*17:28 He points where the Mercedes was parked.*

*17:31 From here we went back to Mamelodi where Ngoato withdrew R5000 00 . ABSA ATM.*

*17:38 Before buying petrol we waited next to the bridge. Then Ngoato received a call from T-Man that they are done, but they need petrol.*

*18:07 From here we must drive to Phase Two where Ngoato gave petrol to T-Man."*

12. Accused 3 made a statement to Colonel Mbotho (Exhibit P) consisting of 28 paragraphs, and a pointing out to Lieutenant Colonel Visagie (Exhibit Q).

12.1 In the statement reference is made to totally irrelevant issues and occurrences. The relevant paragraphs read as follows:

1

*In 2010 I was in prison serving the sentence of 12 years imprisonment at Baviaanspoort Correctional Services in Mamelodi. That is how I know the prison warder Mike Ngoato and prison warder Mr Fourie.*

10

*One day I was at a shopping complex at Mamelodi and I met Mike driving his Toyota Carola, white in colour. We greeted each other and we exchanged the numbers. He asked me when did I get out from prison and I told him. We parted way. It was December.*

11

*Before we parted ways I asked the place to stay and he told me that he is busy building rooms and he wanted to rent them. I went to my sisters place in Soweto, Ghost Town Zones, Diepkloof and stay with my sister. She called me and said he wanted to see me and I told him that I am at Diepkloof. Before he was call me he came to visit me at hospital for the first time as I was injured at my finger due to the bricks that fell on top of me. He (Mike) came to visit me twice in hospital. First he came to visit me alone*

*and the second visit came with another prison warden Fourie.*

*12*

*He told me that he want somebody to go and kill someone who bought the investigating officer and the magistrate to take him to jail. I refused to do that and I told him that I am from prison and I was warned by court by the court that I must not come closer to the firearm, I knew and saw him until I was discharged.*

*13*

*He calls me one day while I was at my sister's place and I told him we must meet at Caltex garage, we met and he was with Fourie. There he was travelling by the Toyota. He told me he was from an auction in Johannesburg and he told me he wants a bakkie. I told him that my girlfriend Dineo in selling the Mazda bakkie and I introduced him to her and they make their deal. I heard that he bought that bakkie with R25 000 00.*

*14*

*One day I drove to Mamelodi West from Soweto to see my wife and I met Mike on the street and I was the Range Rover green in colour and he was in the Toyota Corolla. He asked me what am I saying about the request he asked me in hospital and I said*



*no I am still saying no and said he want somebody to kill someone.*

15

*I drove back to Soweto and my vehicle stuck on the way due to tensing. I drove until I reached Soweto at Diepkloof. I bought the car from Khotso who was staying with my girlfriend Dineo in Johannesburg next to petrol station.*

16

*I drove back to Pretoria to see my uncle at Mamelodi with the name of Kagiso who stays in Mamelodi East and I found he was not present he left to church. Again I met with Mike and Fourie and I asked Mike where can I renew the licence as it was lost and he said I can go to Cullinan 400 metres away from court.*

17

*I drove to that place with my friend Vaughn who stay in Eldorado Park and when I fish at Licence Department I went to Cullinan Court where I met Mike and Fourie and we went to Sasol garage and we bought food and eat. Before to the garage we waited for them under the tree near the court, and we end up calling on Mike's cell phone and they said they were outside the court.*

18

*While we were eating at the garage he asked me about that story I refused to kill the person and asked Vaughn and Vaughn said no. Later he asked me about Solly who was in jail and I told him Solly was in Soweto and I told Mike that I am having the numbers of Solly, and I called Solly same time and we separated back to Soweto.*

19

*While in Soweto Mike called and I called Solly to meet at the garage and Solly came at Caltex garage at Diepkloof, and Mike arrived with Fourie, and me and Fourie moved aside, and they both talked and exchanged numbers. We took different ways and I left Mike repairing the tyre for his car.*

20

*I don't remember the day Mike drew the amount of R25 000 00 and try to give it to me but I refused but I was with my friend Vaughn. After that he called me and I did not answer the calls. After two days I called him and I told him I won't do this. That is how Solly was involved as I explained above. After that Solly called me over the refusal on my cell phone and I said I must take him to Mike. I told him I don't have petrol. We met Mike and Fourie driving the black Mercedes Benz as they were contacting each other over the phone.*

21

*We followed Mike until the court and we parked outside under the tree, while Mike and Fourie entered the court. Solly alighted from my car to Mercedes Benz and they were following other vehicle which was from court to Spar, but they came back as we were parked at a distance.*

22

*We stay there until late between 16h00 and 17h00 and they called us and said lets go and we must follow them. We drove to the direction of Bronkhorstspuit and it was obvious that there was a vehicle that they were following it.*

23

*We drove until the houses and Vaughn asked to urinate and I parked aside the street not far when I heard the sound of the gun. I saw Solly getting out of Mike's Benz and sound of the gun fired and I hear five times. After that I saw Solly running into Mike's Mercedes Benz, and they drove to our direction where we were parking and drove away. I asked Vaughn really Solly and Mike arranged to come and kill the person. We followed them and drove to Mike's house and I asked him how did he know the residential place of this person and he answered that he long time watched him.*

24

*He gave Solly R25 000 00 and we drove to Mainlake Mall and he find that the banks are closed. He took Vaughn and Solly to Soweto and I went back to my Mum's place and Vaughn was scared and did not want to go. I left my Range Rover at Mike's place and he borrowed me a bakkie. When I brought the bakkie to him he gave me R25 000 00, and I took the money and he said I must keep quiet and not tell, if I talk I will also die.*

25

*I took my Range Rover and left Mike. After one day I took the money back to Mike and I told him what you have done I don't like it. He took the money back and never talked to me.*

26

*I got the story from Solly that he hired the gun from Botsotso of Protea Glen where my girlfriend Dineo stays. Botsotso was arrested as that is the firearm that was used by Solly to shoot the man. I recognised the firearm when the police recovered it at Protea Glen that that was the firearm that was used by Solly at Bronkhorstspuit during the shooting. I never knew who was shot there as Mike told me that police officer (Investigator) and Magistrate were paid to take him to jail. The police told me they have arrested Mike and Fourie as well as Macavelli. I only know the name of Macavelli.*

27

*I want to state that me, I never shot any person and I never touch any firearm with my hand. It was the first time to be in that place.”*

12.2 The relevant comments accused 3 made during the pointing out read as follows:

At Steve Biko hospital – ward 4.4:

*16:08 That time Fourie and Mike came to visit me. I’m going for the operation. Mike asked what’s wrong. He tells he feels bad about the case of Cullinan, he feels he is going to prison. Mike asked me to make a deal to kill thee investigating officer, I refused.*

*17:13 Pointing to the door of the Standard bank:*

*We came here to draw the money R25 000 00 first Mike said it was for a car then he wanted to give me the money for the deal he made in the hospital So I left Mike there with the money.*

*17.27 Still at the bank: When Mr Mabunda was killed I was not there I was there when they planned it for Solly to kill Mr Mabunda. It is that one he said is not arrested.*

*17:57 Stop next to the road, pass railway lines and Cullinan court. Mike and Fourie were standing here watching for the Magistrate’s car to come out. Me*

*and Vaughn were standing that side. Mike called me on my phone and told me that I must come drive the car. Mike and Fourie followed that car. Fourie called and said I must follow the road of Spar. I never saw that car. Fourie told me to come back here, they gave us bananas. I went to the garage with Solly after we was called. Solly got out of the car and came to Mike. Solly went into the court and came back to Mike. We looked for Mike and the court said that Mike will attend tomorrow. There was a Mercedes Benz coming out of the court and Mike followed that car. I just followed Mike.*

*18:23 Turn left to Bronkhorstspuit:*

*Fourie phoned me and told me to turn left.*

*18:35 Stop after the 4 way stop. Thatho explained something to the interpreter: There were two vehicles, Mike and Fourie in one and Thato(accused 3) and Vaughn in the other car. Mike said he will buy petrol I must follow. Mike went to Total garage in Cullinan to buy petrol. They lost the car they followed. Mike gave him petrol, he heard over the radio that the magistrate was killed. He did not think it was Mike because Mike wanted someone to shoot the magistrate."*

The State proceeded to adduce further evidence on the merits.

13.

13.1 Constable Mashigo (Witness 8 in the trial within a trial.)

He was the initial investigating officer. Exhibit G is the bank statements of accused 1. These statements were obtained in terms of section 205 of the CPA from Standard Bank, Sunnyside, after he had read the confession of accused 1. The statements showed that accused 1 had withdrawn large amounts. He also obtained the cell phone numbers of the three accused. Cell phone numbers of the accused:

Accused 1: 0730546254 - from the confession of accused 1;

Accused 2: 0796159919 – from the warning statement of accused 2;

Accused 3: 0722818392 – from the warning statement of accused 3.

The analysed data was received when he was not the IO anymore – Exhibit J.

Exhibit F is the downloaded photos of the CCTV camera at the Magistrates Court Cullinan. The photos depict the images of certain individuals: a man called Vaughn (a coloured man), whom he knows, who is also a suspect in

this case, but failed to locate him. On 7 October he established that Vaughn was presently in the Johannesburg prison; Camera 4 depicts accused 3 and Vaughn. The downloaded images were from the CCTV cameras inside the court building recorded on 10 January 2018. The recordings showed Vaughn and accused 3 in various parts of the building. The downloaded images are not very clear but he looked at the video recordings himself which were much better. He confirmed that Vaughn and accused 3 were clearly identified.

Cross examination by Mr Maluleka. He conceded that accused 1 and 2 did not personally provide him with their cell phone numbers.

Cross examination by Mr Kgagara. He personally watched the video recordings. The images were downloaded by Police analysts.

Accused 3's version is that on 10 January he enquired about accused 1's case and was told it would be on the roll the next day.

- 13.2 Lieutenant Colonel M Beetge. She is a member of the Cyber Crime Investigation Detective Service of the SAPS. She was provided with the cell phone numbers of the three accused – Accused 1: 0730546254(MTM); Accused 2:0796159919 (Vodacom); Accused 3:0722818392. She made print outs of the data



reflecting cell phone calls made by the accused on 10 and 11 January 2018. Exhibits R1, R2 and R3. Exhibits S1, S2 and S3 are charts reflecting consolidated data of the cell phone connections between the three accused on 10 and 11 January 2018.

The data also shows from which cell phone tower the respective calls were made.

States case closed

Defence case.

14.

14.1 Ngoata Thomo Michael (accused 1). Concerning his whereabouts on 10 January 2018: He lives in Mamelodi, that morning he travelled to Cullinan to purchase building material for a building project, he returned to the building site at Magube, but at around 16h00 he drew R5000 from the ATM at Mamelodi, he then went to the building site, from where he went to purchase bricks next to Baviaanspoort, and then returned to his home. It was about 5pm. He could not remember where he was at 6pm, and even when he was asked whether he was at Mamelodi, he said he could not remember, but then added that at some time he went to Menlyn. He denied that he was in Bronkhorstspuit on 10 January. He knew the deceased from court, he was the

magistrate in his case. On 11 January he had to take the stand in that case. I court he was notified that the deceased had been killed. He did not know about it. He did not see accused 2 on 10 January but on the 11<sup>th</sup> he saw him at court, accused 2 was his witness. He was shocked to hear that the deceased is dead. He met accused 3 as a prisoner. When asked whether accused 3 was still an inmate on 10 January he said he did not know but then added that he was not in prison. He said he bumped into him at Cash Build and realised he was released. They exchanged cell phone numbers. He could not remember whether he phoned accused 3 before 10 January. He also had accused 3's girlfriend's cell phone number and he used to phone her about the selling of a bakkie. He met accused 3 at Bronkhorstspuit after the 10<sup>th</sup> but could not remember when. On 2 February he and accused 2 appeared in court. He met accused 3 again around the 15<sup>th</sup>. He denied that he is guilty of the murder of the deceased. The deceased used to crack jokes but he never took him seriously. He remembers the words spoken by the magistrate (about a severe sentence) in January 2017. He did not believe it because the dagga in that case was a small amount, 1,8 grams, for which a person usually gets a suspended sentence. The case was transferred to Pretoria. He knows Machavele. He was also an inmate at Baviaanspoort. He

gave him a job after his release, but he was not with him on 10 January, only the builder was.

Cross examination by Ms Coetzee.

He was asked why he remembered in detail what he did on 10 January 2018. To this he said it was when his building project had finished. The building actually stopped the previous day but he could not remember what he specifically did on that day. He could not say why accused 3 supported him at court and said accused 3 should be asked that question. He did not deny that he was contacted by accused 3 on his cell phone. He did not pick up his lawyer on the 11th as he was used to do because he was tired.

On the day he was arrested did not tell the police that he was framed because he was in the cells when he received that information. When asked why he did not tell the Magistrate or Colonel Mabasa he was framed, he said the colonel told him he was not going to entertain anything about rights. He also did not tell Constable Seaga that he was framed. He added he was refused his right to silence. When confronted that he was charged with dealing in dagga he said he did not deal in dagga. He conceded that he lost his job because of the dagga charge, and that the deceased threatened to send him to gaol for a long time.

### Questions by the Court.

He could not explain why his attorney representing him during his first appearance in Bronkhorstspuit, to whom he told he was framed and tortured, failed to tell the magistrate, or why his attorney did not lodge an urgent application to the High Court for his release. He conceded that he knew he was framed and that he was an innocent man. He also conceded that he was an educated man and that he knew he was innocent but said he did not know that he could ask his lawyer to do something. He knew that accused 2 was also charged with murder because they were together at Krugersdorp. He had heard the contents of the three confessions read into the record after it was provisionally admitted and that it is clear that all three statements, consisting of many pages and a lot of detail, read that the three of them were together on 10 January, the day the deceased was killed. This he insisted was a concocted story by the police. He was surprised when accused 3 joined them as an accused and asked him in the cells why he was there. Accused 3 was also surprised. He was not surprised when accused 2 appeared with him at court. Accused 2 had his own lawyer.

In respect of his last answer it was put to him by Ms Coetzee that he could not have been surprised because

he had implicated accused 2 in his confession. He said that came from the police.

14.2 Mr Jacob Elias. He is a pastor for 27 years. His duties included reaching out to all people, not only inmates. He knows accused 1. At Atteridgeville prison he met one of the inmates, Mpho Malefesa, who said he needed to tell him that he got involved with the wrong people and that he is sorry for what he did, and that he wanted to confess. Ms Coetzee objected that the evidence would constitute hearsay. Mr Maluleka said he would call the person as a witness.

I ruled that he should do it instead of wasting time in leading the evidence of the pastor.

The pastor was then asked to testify about accused 1 and his condition, and that he was in pain, and what he told him at Kgosi Mampuru. (Ms Coetzee also objected against the admissibility.) I asked Mr Maluleka whether the evidence will not be about a previous consistent statement, and if so, whether it would be admissible evidence. Mr Maluleka conceded and abandoned the evidence.

Ms Coetzee asked the pastor when he had the interview with accused 1. It was on 2 April 2018.

(Accused 1's second witness, Mpho Malafetsa, was called after accused 2 had testified.)

14.3 Accused 2. Paulos Fourie. On 10 January 2018 he was at his place and did not see accused 1. He added that maybe he called accused 1. He knew accused 3 from Baviaanspoort prison but did not see him on the 10<sup>th</sup>. He knew the deceased as a magistrate at Cullinan. He knew about accused 2' case. He was a defence witness. On 11 January 2018 accused 1 had to appear in court. He travelled with accused 1 and his attorney to court. Accused 3 was not there. They were informed of the deceased's death. They went to Sunnypark where accused 1 drew money because he wanted to buy a car at Sandton, but they found that the car had already been sold.

On 31<sup>st</sup> January he was arrested. He had heard from neighbours that the police had been looking for him.

Accused 1 did not tell him he was framed.

He knew that the deceased had said that he would send accused 1 to jail, but added that the magistrate used to make jokes. Accused 1 was not agitated by it, he just talked about it.

On the 31<sup>st</sup> he heard that accused 1 had been arrested when he took a vehicle to Baviaanspoort. They eventually found accused 1 at Mamelodi. Accused 1 told him he was to be questioned. Accused 1 was arrested in the middle of the day. He asked accused 1 about a firearm but accused 1 said he knew nothing about it.

The police asked accused 1 about the firearm and mentioned the murder of Mabunda. Accused 1 did not tell him the police were looking for him, but the police wanted to know whether he "hang out" with him.

He was then arrested during the early hours of the next morning. He co-operated with the police. The police only wanted to know about a firearm, and they searched for it. During the torturing he became aware that he was arrested for murder. He was forced to say the things in his statement. He denied having received any money for the part he played in the murder of Mabunda. He conceded that accused 1 drew money, but said he did not know what amount. Accused 1 said he was going to buy a car. He did not receive money from accused 1 that day. He denied that he purchased T-shirts from Markhams as stated in his confession. They only discussed the demise of Mabunda when they returned from court with the attorney. During questioning by the police he when he was told that he was implicated in the murder of Mabunda, he was surprised. At Kgosi Mampuru he received medical treatment. He was reminded of Machaveli, an ex prisoner, by accused 1. He did not know Solly or Botsotso. What he said about Machaveli in his statement came from the police. Exhibit U is a document from Kgosi Mampuru reflecting the injuries he sustained during the torturing; an injury to his right eye, and a bruise to his waist. He also suffered

from hypertension and trauma. He opened a case against the police.

Cross examination by Ms Coetzee. When confronted that being involved with the killing of Mr Mabunda would also cause trauma, he said he killed no one. It was pointed out to him that he initially said accused 1 only said that the police were looking for a firearm, but that today, after the postponement, he added that accused 1 also talked about the murder accusation. He responded that he was only answering questions. He denied that accused 1 was his friend, and said they were neighbours. In respect of the version in the statement regarding what the magistrate said in court, he was evasive and added that some the information the police told him to say. He also answered that even the information that had nothing to do with the murder he was taught by the police. He added that the court should take note that the police planned to frame him. The police told him what to say and he was not required to make his own story.

He could not remember what he did on 8 January 2018. He remembered what he did on 10 January because it was the day before the court day, and he remembered that he was fixing his shack. He could not remember what day of the week the 10<sup>th</sup> was. He denied that his version was fabricated and added that it was not he and



his friend who fabricated the version. When asked why he now referred to accused 1 as his friend, he denied that they were friends and said it was a slip of the tongue. He could not remember about what he talked with accused 1 on the cell phone on the 10<sup>th</sup>. It was pointed out to him that expert evidence about the cell phone calls showed that he made calls from the Cullinan area to accused 1 at about 7h00 on the 10<sup>th</sup>. He then said the place where he stayed fell within the Cullinan cell phone tower. He denied that his home was closer to the Derdepoort tower. It was pointed out to him that part of his statement to Captain Salemane seems to be exculpatory and he was asked why the police would have said that. He responded that Captain Salemane and the police planned that version. When questioned where the name of Mpho Mafetse in his statement came from, he said he was made to remember the name by accused 1. He remembered that the man Machaveli was a gangster.

(Accused 1's second witness.)

- 14.4 Mpho James Malefetse. He knows all three accused from the prison where he was an inmate. In respect of the murder charge, he said he knows everything. Mr Pienaar (from Baviaanspoort Prison) *framed* them. He was promised money and reducing of his sentence to

make a statement implicating accused 1. He did not know what caused the conflict between Pienaar and accused 1. The dagga case against accused 1 was a trap. (The witness then rambled on about gangsterism in prison until I asked Mr Maluleka about the relevance. Mr Maluleka was at loss.)

The witness continued and testified that the arrest of the three accused was planned, and that he was part thereof. He made a statement to that effect. On 25 April he retracted his statement. When asked what changed his mind he rambled on and added that Oscar Pretorius was also there, and that a pastor visited the prison. He then approached the pastor.

He stated that accused 1 did not commit the murder and that accused 2 knew nothing. The conspiracy to implicate the accused was pre-planned for a long time. He was not paid but Pienaar sometimes gave him R3000 or R4000.

Cross examination by Mr Kgagara.

When asked how accused 3 was implicated, he said he belonged to another gang. He then said he was promised R150 000 00 and reducing of his sentence.

He said he was arrested for hi-jacking a vehicle, it was a Jeep or a RAV 4. Pienaar told him the charge against him would be withdrawn, and it was later withdrawn.

Cross examination by Ms Coetzee. On the 29<sup>th</sup> he took the police to accused 2's house but accused 2 was not there. He was not present when accused 1 and 2 were arrested. He denied that he was a police informer and that he was hired to kill Mabunda, but conceded that he had made a statement to the effect that he was hired by accused 1 and 2 to kill Mabunda. This is the statement he later withdrew. He denied that he implicated accused 3, and said he did not know him.

- 14.5 Thato Maringa. (Accused 3.) He was sleeping at the time the police came to arrest him. They did not tell him why he was arrested. They read from a paper but he did not know what it said. They searched his house. They took the cell phone from the person he was staying with. The policeman (WO du Pisani) who testified he found the car key on the fridge, lied. The green Land Rover was not in the yard. He was then taken to Kameeldrift and booked into the cells. He was handed a document concerning his rights. He fell asleep and was later called. A white policeman charged him and he was returned to the cell. Later he was taken to Johannesburg. They told him not to ask why he was

taken there. A warning statement, Exhibit J, was taken from him. He denied that he saw Constable Mashigo at Kameeldrift and denied that he said that he wanted to make a confession. He only met Mashigo at the off ramp to Johannesburg. He was booked into the cells. He thought he was arrested for a car and did not know it was for murder. He denied that he made a confession. He saw accused 1 in January in Johannesburg. He was told by his girlfriend that accused 1 came to fetch a vehicle, a Bantam bakkie. When he had met accused 1 at Magube he was loading cement in a Corolla and they agreed that accused 1 needed a bakkie.

(The matter was delayed on several occasions during the three weeks scheduled for the trial due to a various problems, none caused by the State. On 29 October, after expiration of the scheduled three weeks, the matter was again postponed for possible finalization on 1 November. On that day, apparently due to administrative reasons accused 3 arrived at 12h30. The matter was then postponed to 7 November for finalisation. Counsel for accused 3 was warned to have any witness he intended to call on behalf of accused 3 available. Counsel for the State and defence were requested to be prepared to address the Court on the merits at the closing of the defence case.)

On 7 November the evidence of accused 3 continued.

On 10 January 2018, on his way from Soweto to Mamelodi to see his wife, in passing Cullinan, he decided to enquire at the court about accused 1's criminal case. A woman at the court told him that the case was on the roll for the next day, the 11<sup>th</sup>. He then proceeded to Mamelodi and returned to Johannesburg. He did not check the time but it was already late. He had accused 1's phone number and accused 1 had his. On that day he used his wife's phone. He could not dispute that his wife called accused 1 on that day but denied that he conversed with accused 1 on that day. He denied that he was in possession of the green Land Rover's keys on the day of his arrest. The Land Rover was not parked inside his yard. He knew nothing about a green Land Rover. When he went to bed that night before his arrest the Land Rover was not there. He denied that he knew a person called George. He denied that accused 1 paid him any money and denied that he saw accused 1 on the 11<sup>th</sup>. The person who started all this is the man called Pienaar at Baviaanspoort prison. Pienaar even arranged to have him killed at Kgosi Mampuru Prison. He did

not know the policeman, Mashigo, and only met him at the *White House* and Muldersdrift Police Station. The standard bank referred to in his pointing out was a bank where he had drawn money.

Cross examination by Mr Maluleka. The reason why he went to Cullinan Court on the 10<sup>th</sup> was that accused 1 had told him in December of his trial date, but he was wrong with the date and he did not diarised it.

Cross examination by Ms Coetzee.

He denied that the police took a cell phone from his home at the time of his arrest. Ms Coetzee pointed out to him that his version is contradictory to what was recorded before that the phone taken by the police belonged to his wife. He stated his phone was only taken at Kgosi Mampuru. He denied that Mashigo took his warning statement. The green Land Rover was not in his yard. I respect of his confession he conceded that he told the officer that part about his personal issues. When asked why he did not call accused 1 on the 10<sup>th</sup> instead of enquiring about his case at the Cullinan court, he said he did call accused 1 but his phone was off, and he tried to leave messages to accused 1 to be called back, but his phone was off he then

added that he had run out of air time. It was pointed out to him that evidence was adduced that he did call accused 1 on that day. He responded that Denebo shared his phone and that she would call accused 1 about business. Pienaar also completed a memorandum and he told Colonel Mboko about it. He conceded that when he was arrested the police also took the green Land Rover according to his wife's evidence during the trial within a trial. When asked why he denied it previously, he said that he is not denying it but the Land Rover was not inside the premises. He conceded that he was the only accused in the matter concerning the hi-jack of the Land Rover. His wife, Denebo, spoke to accused 1 on the cell phone. He conceded that he did not communicate with accused 1 on the 10<sup>th</sup> but decided to inquire at the court because he was close to the court. Accused 1 had told him before, in January, that the case was on the 10<sup>th</sup>. He denied that he was at the court on the 10<sup>th</sup> because they were waiting for the deceased. He conceded that he was in the court building on the 10<sup>th</sup> as depicted on the CCTV camera but denied that he knew the person close to him as depicted on numerous down loaded photo's. It was pointed out to him that the evidence showed that that person was also a

suspect and that he could not be traced at the time. He remained adamant that he did not know that person. He knew nothing about any payments to him by accused 1.

- 14.6 After cross examination of accused 3, Mr Kgagara indicated that he was instructed to call Ms Dinebo Mashego, the wife of accused 3, who testified in the trial within a trial, as a witness. Ms Mashego was not at court and Mr Kgagara stated that they have lost contact with her. Mr Kgagara then applied for a postponement to locate Ms Mashego. I then pointed out to Mr Kgagara that he had been warned a week ago to have any prospective witness available. I also pointed out to Mr Kgagara that accused 3 can rely on Ms Mashego's evidence given at the trial within a trial.

It was not in the interests of justice to have the matter again delayed and the application for postponement was refused

Accused 3's case was then closed

## EVALUATION

15. On the very same day they were arrested all three accused made confessions. Accused 2 and 3 also made pointing outs. They were arrested about three



weeks after the murder of the deceased. The admissibility of the confessions and pointing outs was contested in a trial within a trial. After the trial within a trial the confessions and pointing outs were provisionally admitted in evidence and I stated that the reasons will follow at the end of the trial. The reasons are as follows:

15.1 The admissibility of the confessions and pointing outs was contested on the following grounds:

- (a) All three accused were tortured in order to force them to make confessions and pointing outs. All three accused were suffocated with a car tube and bound with a car's seatbelt;
- (b) The five commissioned officers tasked to take down the confessions of the three accused and to handle the pointing outs by accused 2 and 3, were aware that the accused were assaulted and tortured. Despite their complaints the said officers, notwithstanding, proceeded to take down the confessions and deal with the pointing outs;
- (c) The said five officers denied them their Constitutional Rights;
- (d) The contents of the statements did not originate from them and were fabrications of

the police, of which the officers taking down the statements were aware. The officers were in cahoots with the torturers.

16. It was further questioned by defence counsel that the confessions were taken by police officers, and not by magistrates during normal work hours. To that the State submitted that police officers above the rank of lieutenant are Justices of the Peace and in that capacity entitled to take down confessions. The evidence however showed that the confessions in respect of accused 1 and 2 were taken soon after arrest and outside of normal working hours and that the policemen who took down the confessions were all senior members not connected to the investigation unit. In this regard the Investigating Officer was entitled to use police officers to take down the confessions, and pointing outs, in any event, is only handled by police officers.
17. Whether the procedure was sinister, and executed with a hidden agenda, will depend on the circumstances and the finding of the court in respect of the allegations of torturing and assault of the accused, as well as pertaining to the allegation of a conspiracy, amongst all the policemen involved, to mislead the court to find that the confessions and pointing outs were freely and

voluntarily made by the accused in accordance with their constitutional rights.

18. What therefore remained to be considered is whether the State succeeded in proving that the confessions and pointing outs were made and done by the accused personally, freely and voluntarily, with their Constitutional Rights recognised and respected.
19. In the trial within a trial the State relied on the evidence of the arresting officers, and their commanders, other police officers who escorted the accused to various locations for detention or interviews, and five senior commissioned officers who were tasked to take down the confessions and deal with the pointing outs by accused 2 and 3. The latter five officers had no knowledge of the case and were from different units than the investigating team. These officers dealt with the confessions and the pointing outs, independently and at different locations.
20. Most of the police officers involved were accused of either mistreating the accused, and/or not explaining their rights or negating their Constitutional rights, and/or assaulting and torturing them, and/or forcing them to make confessions and pointing outs, and in

respect of the five senior commissioned officers, that they were in cahoots with the other police officers and well aware that the accused were assaulted, and they, themselves, denying the accused their Constitutional Rights including their right to have their lawyers present at the time. The policemen denied that they committed anything unlawful.

21. As to be expected in matters where the suspects alleged that their rights were violated, the police, and the State for that matter, could do little more but deny the allegations and rely on the circumstances to prove that the allegations of the accused are not reasonably possibly true.
22. The three accused testified in detail how they were mistreated by the police, tortured, and their constitutional rights were violated. One of the main issues were the allegations that the five senior officers who took the confessions and dealt with the pointing outs, were in cahoots with the rest of the police members. It means that the court was requested to find that it is reasonable possible true that the said officers, who had no connection or relationship with the investigating team, and who, uncontested, knew nothing about the case, would have risked their positions as commanders of police units, and their careers, to mislead the court.

23. Keeping in mind that the accused bore no onus, the version of the accused in this regard was so improbable that it was rejected as not true at all.
24. Apart from that, this court is obliged to find that the evidence of he accused about the alleged torturing, and its results, which intensified as their versions were elaborated upon, and tested during cross examination, were that fraught with inconsistencies, and contradictions, that it could never be found to be reasonably possibly true.
25. The accused, in their evidence on the merits, still denied that they were the authors of whatever was written in their confessions, and what was allegedly said or pointed out at the pointing outs by accused 2 and 3. They also kept on denying that they were the authors of the contents of their statements.
26. It was remarkable that despite accused 1's version that his lawyer was aware of his complaints in respect of his alleged torture and the injuries he sustained, and obligated as an officer of the court, to tell the presiding magistrate about it, he was not called as a witness to inform this court of his reasons of not having done that, despite this court's suggestions to accused 1 and his legal representative to call the lawyer as a witness. Keeping in mind that the accused bear no onus, the failure of accused 1 to call his erstwhile lawyer as a

witness, at least called for an explanation, but it was never addressed. Accordingly it materially affected accused 1's reliability and the issue whether the version of the alleged assault was reasonably possibly true. When Mr Maluleka was asked about this during argument, he stated that accused 1 decided himself who to call as a witness.

Accused 1 also referred to medical records completed at Kgosi Mampuru, dated two weeks after his arrest, reflecting that he suffered from anxiety and pains and complaining of an assault. In this regard Ms Coetzee remarked that he only *reported* his condition after several weeks.

In view of the issue about not calling his erstwhile lawyer, referred to above, the reporting at Kgosi Mampuru did not avail him at all.

27. The witnesses called by accused 1 added nothing to the material aspects of his defence.
28. Accused 2, in evidence, for example, specifically again denied contact with accused 1 on 10 January, and he vividly recalled that he did not see accused 1 on that day. This evidence did not add anything to his evidence during the trial within the trial.

29. Accused 3 attempted to explain his presence at the Cullinan Magistrate's Court on 10 January, as depicted in the CCTV recording inside the building at about 11h30 that day by saying he only enquired about accused 1's case, but was clearly in trouble when he was asked why did he not call accused 1 directly on his cell phone. In this regard he contradicted himself and added that accused 1 had told him in January that the trial was set for the 10<sup>th</sup>. Coincidentally his presence at the court that day is consistent with the evidence that the assassins probably followed Magistrate Mabunda to his home at Bronkhorstspuit where he was killed.
30. The versions of the respective accused in the confessions consists of comprehensive and detailed personal information of the respective accused, including what they specifically did on the 10<sup>th</sup> and 11<sup>th</sup> January 2018, and the specific roles they played when the crime was planned and executed, to the extent that it gives the lie to the versions of all three accused that what is contained in the statements actually comes from the police, and that the police "*framed*" them and concocted a story to implicate them. Most of the detail in the said versions could clearly only have fallen within the personal knowledge of the accused. The three accused were unable to explain during cross

examination the obvious devastating problem they encountered in this regard.

31. It follows that it has to be found that the accused were untruthful and throughout lied in their attempts to mislead the court with their versions of torture, mistreatment and not having made any statement of own accord.
32. There was no further evidence forthcoming to persuade the court, in re-visiting the provisional admission of the confessions and the pointing outs, to arrive at a different conclusion about the admission thereof.
33. It is trite that an extra curial statement of an accused, like confessions, and during a pointing out, cannot be held or used as evidence against a co-accused, unless the contents of the statement is confirmed by the author under oath, during evidence.
35. The contents of the respective confessions made by the three accused have the following common denominators:
  - (i) The three accused knew each other well.



- (ii) Accused 1 was an accused on a charge of dealing in dagga, before the deceased, the presiding magistrate, at the Cullinan Magistrate's Court.
- (iii) The deceased threatened to impose a severe sentence on accused 1 should he be convicted;
- (iv) Accused 1 was perturbed by what the deceased said;
- (v) Accused 1 had to appear in court again on 11 January 2018;
- (vi) The three accused and others conspired to kill the deceased and arrangements were made with the contracted assassins;
- (vii) On 10 January accused 3 and another person were tasked to monitor the deceased's movements;
- (viii) When the deceased left the court building the afternoon of 10 January, the three accused and two other men followed the deceased to his home at Bronkhorstspuit;
- (ix) The deceased was subsequently shot at his home;
- (x) On 10 and 11 January 2018 accused 1 drew large amounts of money to pay the assassins, what he did.

36. The above mentioned common factors in the confessions are consistent with numerous objective facts proved during evidence adduced by the State, or admitted under oath by the accused. It includes the following:

- (i) The three accused are much more than casual acquaintances. Accused 1 and 2 were former colleagues in the Department of Correctional Services, stationed at Baviaanspoort, and became involved with each other after they were dismissed from their employment. Accused 3, a former inmate at Baviaanspoort, was acquainted with accused 1 and 2, and including that they had cell phone connections and were involved in business deals.
- (ii) Accused 1 was the accused in a partly heard matter on a charge of dealing in dagga, tried before the deceased, at the time the presiding magistrate, at the Cullinan Magistrate's Court. Accused 2 and 3 were intimately aware of the case.
- (iii) All three the accused were aware that the deceased had expressed sentiments that he would sentence accused 1 to a severe sentence of imprisonment if he would be convicted.

- (iv) On 10 January 2018 accused 3 and a person named Vaughn were recorded by the CCTV cameras inside the court building at Cullinan.
  - (v) The deceased left the court building at Cullinan after 15h00.
  - (vi) At 16h04 the deceased was shot and killed in his drive way at his home at Bronkhorstspuit. The deceased's vehicle was still idling when he was killed. It is inescapable to find that the murder was pre-planned;
  - (vii) After the deceased was shot a vehicle similar to the short base Land Rover belonging to accused 3, was seen by the deceased's neighbour, leaving the area of the deceased's home.
  - (vii) On the 10<sup>th</sup> and 11<sup>th</sup> accused 1 drew large amounts from his bank account, R25 000 00 and R50 000 00.
  - (viii) The three accused, admittedly, were, in each other's company on the 11<sup>th</sup>.
37. The statement made by accused 1, quoted above, contains an in-ambiguous confession of the pre-planning of the murder of Magistrate Mabunda, including the conspiracy to kill him, the contracting of the assassins and the eventual execution of the murder, as well as the

payment of the assassins and accused 1's co-conspirators.

38. Certain paragraphs of accused 2's statement, at first blush, are exculpatory. In paragraph 13 accused 2 stated that had been paid "*another*" R5000 00 by accused 1 "*to keep quiet*", and in the pro forma statement it was recorded that he would assist the police in arresting the real culprits. However, when read in context, he actually said he was paid for the part he played in assisting accused 1 to carry out the plan to kill the deceased. What accused 2, obviously did not do, without expecting or requiring him to bear the onus to prove his innocence, is his failure to explain his actions concerning the conspiracy to kill the deceased by supplying accused 1 with the name and number of an assassin, and his continuous presence since the conspiracy was discussed with the contracted assassins, as well as his active assistance of accused 1, on the day of the murder, when the deceased was followed by the assassins with the purpose and intention to kill him. Accused 2's incriminating actions throughout surely called for an innocent explanation. However, what he admitted having done concerning the inculpatory parts of his statement are absolutely inconsistent with any possible innocent or exculpatory explanation. His statement

therefore contains admissions of his unlawful conduct in regards to the killing of Magistrate Mabunda.

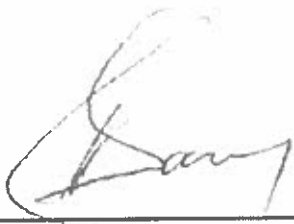
39. During argument Mr Maluleka conceded that it is not required that a confessor should unambiguously address and admit all elements of the crime.)
40. The statement of accused 3 is also to some extent exculpatory. Accused 3 stated inter alia that he was not aware that the assassin was going to shoot the deceased and implied that he was not actively involved. He, however, when it was absolutely called for, without shifting the onus, failed to advance any innocent explanation of his presence at the time of the conspiracy and the actual killing of Magistrate Mabunda. What further adds to his predicament, is the circumstantial evidence, that a vehicle similar to his green Land Rover was observed leaving the area where the deceased was shot shortly after the killing. This evidence is consistent with his version that he was in the immediate vicinity of where Magistrate Mabunda was killed. It leaves but one reasonable inference, being that he was actively involved in the killing of the deceased. In considering the totality of the inculcating parts, any exculpating part should be rejected as a poor and abortive attempt to escape liability.
41. Mr Kgagara, differed from Mr Maluleka, and submitted during argument that it is required that a confessor

should, like a plea of guilty, unambiguously address and admit all the elements of the crime. This submission is wrong in law. In considering whether a statement is indeed a confession a court has to consider and evaluate the admitted facts.

42. The exculpatory parts of the statements made by accused 2 and 3, when read in context with the admissions in the statements are in any event that unrealistic and in conflict with the admissions and reality, and the objectively proved facts, that it is of no avail to the said two accused.
  
43. The State relied on the principle or doctrine of Common Purpose. In *Principles of Criminal Law*, Jonathan Burchell recorded the following definition: *"Where two or more people agree to commit a crime or actively associate in a joint unlawful enterprise, each will be responsible for specific criminal conduct committed by one of their number which falls within their common design. Liability arises from their 'common purpose' to commit the crime."*

See also *S v Ngedezi* 1989(1) SA 687 and *S v Thebus* 2003(6) SA 505 (CC).

44. Therefore before common purpose can be found, there must be evidence that a particular suspect actively associated himself in what occurred. This is indeed what happened in this case.
45. It is accordingly concluded that the State has proved beyond reasonable doubt that both accused made common purpose with accused 1 in conspiring to murder Magistrate Mabunda and executing their conspiracy plans in murdering him. The fact that neither of the three accused fired the shots does affect the conclusion.
46. All three accused are convicted of the murder of Magistrate Mabunda.



---

AJ BAM

JUDGE OF THE HIGH COURT

7 November 2019

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CC 154/18

STATE

VS

THOMO MICHAEL NGOATO	Accused 1
PAULOS FOURIE	Accused 2
THATO MARINGA	Accused 3

---

JUDGMENT: SENTENCE

---

BAM, J

1. The three accused were convicted of the murder of Magistrate V N Mabunda on 10 January 2018 at Bronkhorstspuit. Prior to the murder accused 1 had been charged before Magistrate Mabunda, at the Cullinan Magistrate's Court on a count of dealing in dagga. Magistrate Mabunda expressed sentiments in court that should accused 1 be convicted he would face a long term of imprisonment. Accused 1 was clearly perturbed by this remark. However, the applications for Magistrate Mabunda's recusal failed. The case would have proceeded on 11 January 2018. On dates before the 10<sup>th</sup>, accused 1, a Correctional Service Officer, formerly stationed at Baviaanspoort Prison, co-opted accused 2, a former colleague, and accused 3, a former inmate at the prison, and conspired with them to murder Magistrate Mabunda. The assistance of two assassins was procured and on 10 January the three accused and the hired assassins followed Magistrate Mabunda from the court to his home and the Magistrate was shot and killed after having entered the drive way. The murder was pre-planned and the accused acted with common purpose.



2. To impose the most appropriate sentence is not an easy task. The court has to consider the purposes of sentence. They are: Retribution (that is the punishment itself); deterrence, prevention and rehabilitation.
3. In matters like pre-meditated murder and where murder is executed with a common purpose, the Act on Minimum Sentences provides for a minimum sentence of life imprisonment. The said Act however provides further that in the event of the existence of substantial and compelling circumstances, the court shall impose a lesser sentence.
4. In order to determine whether such circumstances exist, the court has to consider the personal circumstances of the accused, the nature and extent of the crime and the interests of the community. The court also has to keep in mind that the sentence should be victim centred, which means that the court should consider what the impact of the crime was on the people near and dear to the deceased.
5. The personal circumstances of the accused can be summarised as follows:
 

Accused 1: He is 44 years of age, married with three children. He is a business man and was formerly a Correctional Service Officer. He has no previous convictions. He has been incarcerated since February 2018.

Accused 2: He is 43 year's of age and married. He was previously employed as a Correctional Service Officer, but is presently unemployed. He has no previous convictions. He has been incarcerated since February 2018.

Accused 3: He is 31 year's of age, married with one child. He is unemployed. He has been incarcerated since his arrest in February 2018. He has several previous convictions including murder, robbery and housebreaking.
6. The deceased, as already stated, was a Magistrate in the Department of Justice. He was 49 years of age. Information in possession of the State shows that he was highly regarded in the Department of Justice and held

in good esteem. His father was severely affected by his death and died of a heart attack within two weeks of the murder. The deceased would have followed up his father as leader in their community. The death of the deceased, as to be expected, also seriously affected his wife and two children, aged 17 and 18. They will probably suffer for time to come.

7. The nature of the crime is extremely serious. It is devastating that a criminal should attempt to interfere with the course of justice by killing the judicial officer presiding in his case. It reminds of Mafia-type gangster conduct. It is totally unacceptable in a country where justice is supposed to prevail and has a devastating effect on the legal system. It also shows a total disrespect for the criminal justice system and cannot be condemned suitably, effectively or sufficiently. It affects the community and their trust in the legal system.
8. In considering the issue of the existence of substantial and compelling reasons to deviate from the prescribed minimum sentence, it is trite that the personal circumstances of an accused, in that regard necessarily recede into the back ground.
9. It follows that it is found that there are no substantial and compelling circumstances to deviate from the prescribed sentence of life imprisonment. The aggravating circumstances are overwhelming.

**SENTENCE:**

The three accused are each sentenced to life imprisonment.

  
A J BAM JUDGE OF THE HIGH COURT  
7 November 2019