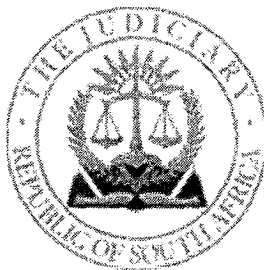


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
LOCAL SEAT, JOHANNESBURG

CASE NO: SS 125/2017

DATE: 23 NOVEMBER 2018

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED <u>✓</u>
<p>23.11.18 DATE</p> <p>..... SIGNATURE</p>	

In the matter between:

THE STATE

and

CINDI, MUSA GILBERT

ACCUSED

JUDGMENT

WRIGHT J

1. The accused, Mr Cindi is a 44 year old man charged with six counts:

Count 1 – Murder – in that on 23 August 2017 at Jabulani, Soweto he murdered Grant Mtolo.

Count 2 – Robbery with aggravating circumstances – in that at the same time and place he robbed Grant Mtolo, Percy Mollo and Ethel Irene Mollo of R23 350.

Count 3 – Attempted murder – in that at the same time and place he attempted to kill Ethel Irene Mollo by shooting at her with a firearm.

Count 4 – Attempted murder – in that at the same time and place he attempted to kill Percy Mollo by shooting at him with a firearm.

Count 5 – Unlawful possession of a firearm.

Count 6 – Unlawful possession of ammunition.

2. Ms Ranchod appeared for the state and Mr Mavatha appeared for Mr Cindi.
3. Mr Cindi pleaded not guilty. He gave no plea explanation but made a number of admissions under section 220 of the Criminal Procedure Act 51 of 1977.
4. The incident in question happened in Jabulani, Soweto. During the trial the place names Zola or Zola 1 were used interchangeably with the place name Jabulani. Nothing turns on this.
5. Ms Ethel Irene Mollo testified. On 23 August 2017 she left Absa bank, Maponya Mall branch in Soweto. She left in the company of her two sons, Mr Grant Mtolo and Mr Percy Mollo. They has just drawn R23 350 in cash so that they could pay a firm of undertakers for the funeral expenses of Ms Mollo's daughter, Lindiwe, who had died on 17 August 2017. They had spent about 10 – 15 minutes in the bank. Ms Mollo could not estimate the time of day at which they had been at the bank other than to say that it was about 9am or 10am. Grant drove in his car from the bank to the funeral parlour. Ms Mollo sat next to him and Percy sat in the back. They stopped at the undertakers. Ms Mollo got out of the car. In her hand she had a bag which she thought contained the money. She did not realise that the money was still in the car. As she was about to climb the stairs to the undertakers, she

looked back and saw a man, unknown to her, dragging Percy out of the car. A white motor vehicle was parked just ahead of their car. Grant was standing next to the car, feeling dizzy, having been hit on the head by a firearm. The unknown man told Ms Mollo to give her the money.

6. Ms Mollo saw a total of two unknown men participating in the attack. One of the men had attacked her and Grant and the other man had been fighting with Percy. When the man had demanded the money of her he had threatened to kill her. He fired a shot into the air. He did so when he was so close to her that the sound hurt her ears. He was about an arm's length away. She got a good look at him. She identified Mr Cindi in court as her attacker. She had looked at him, face to face when he grabbed her bag. He pushed her to the ground. After she got up she went to the other side of the car. She saw Percy crying and asking her why they had killed his brother. Grant was lying dead on the ground. Mr Cindi got into the getaway car which then departed.
7. According to the common cause autopsy report, Percy died of a penetrating gunshot wound to the chest. He had three other bullet wounds, one to the left upper arm and two over the left knee. A spent bullet was found *"buried over the right lower back, situated at 112cm above the right heel and 9cm from the midline."*
8. Ms Mollo testified that the attackers took the R23 350. Ms Mollo heard only one gunshot. The accused, Mr Cindi, shot at Ms Mollo when she was on the ground. The bullet grazed the side of her head. She was treated in hospital and discharged straight away.
9. In cross-examination Ms Mollo conceded that she had not seen Mr Cindi before the incident and that she had not seen the two attackers get out of their car. She also did not see Percy or Grant being shot. She was clear that she had seen the accused face to face when he grabbed her bag. She described her attacker as having broad, ugly lips. In cross-examination it was put to Ms Mollo that the accused took no part in the attack.
10. Ms Mollo told the police that she would be able to identify her attacker. About 10 or 14 days after the incident she went to the office of the investigating officer, Colonel Ndwandwe. On his laptop he showed her photographs of a number of men. He scrolled through the photographs. He showed her about 4 or 5 photos of

different men. They were clearly not her attacker. Then she immediately pointed to a photo of the man who had been her attacker. In court, Ms Mollo identified photos G2-8, including the small side photos at G2, G6 and G8 as those shown to her by Colonel Ndwandwe. In court she said that her attacker and the person in photos G2-8 was the same person, namely the accused.

11. Photos G2-10 depict scenes in a bank.
12. In cross-examination it was not put to Ms Mollo that the accused was not the person in photos G2-8. It was stated to Ms Mollo that this aspect of the case would be dealt with later.
13. Common cause ballistic evidence established that at least two 9mm pistols had been used in the attack.
14. Mr Percy Mollo testified. He and his mother and brother had spent about 15 minutes in the queue at the bank. At the teller, they had spent about 20 minutes, giving a total time of about 35 minutes in the bank. Percy was not sure of when they had arrived at the bank but he estimated that it was about 10am. When he and his mother and brother walked out of the bank he noticed a suspicious looking man. The man was holding a cellphone to his ear and looking around. He looked at Percy and then looked away.
15. Grant drove his dark green Audi A4 to the funeral parlour. Percy sat in the front next to Grant. Ms Mollo sat in the back. Grant stopped the car in Jabulani outside the funeral parlour. The journey from the bank had taken about 15 minutes. At about 12 noon, as Grant stopped his car, a white Chevrolet Spark stopped in front of Grant's car and two men got out, each holding a firearm. One of the men went to Grant's side of the car. The other came to Percy's side. Percy tried to get out. The man said "*Voetsek, go back into the car.*" The man spoke in isiZulu. The man hit Percy with a firearm on the side of the head. The man said that he would shoot Percy.
16. The other man was busy with Grant. He hit Grant on the head with the butt of a firearm. At that stage, Grant was standing next to his car. The man told Grant to get back into the car. The man kept asking Grant "*Where is the money?*" The same man then went to Ms Mollo. He searched her, opened her coat and asked her the same question about the money.

17. Percy identified the accused, Mr Cindi, in court as the person who had attacked him.
18. The other man asked Grant for "*the money*". That man also spoke isiZulu.
19. The accused told Percy not to look at him and kept asking him for the money. Grant struggled with the other man. The accused, realising that his accomplice had a problem with Grant went to go and help his accomplice. Percy followed. The accused said to Percy, "*Voestek, go back, where do you think you are going?*" Grant and the other man fell down and the accused hit Grant with a firearm. The accused shot twice at Grant while the accused was standing right next to Grant. When Grant was shot he was in a squatting position. The other man was trying to cock his firearm. He pointed it at Ms Mollo and tried to shoot her.
20. The two men took the money and went towards the white car. Percy followed and was shot in the left thigh by the accused. The accused and the other man went towards the white car and entered it through its back doors. The car drove away.
21. Percy was taken to Jabulani hospital and then to Chris Hani hospital. He refused to be admitted. The next day, he went to the Jabulani police station and signed a typed statement which I admitted in evidence as exhibit H1. He also signed a handwritten statement, exhibit H2(1-4). The two statements are about the same set of events but the typed version is not an exact copy of the handwritten version. I admitted these statements into evidence at the request of Mr Mavatha, he having submitted that they contained allegations prior to and inconsistent with Percy's evidence in court. Mr Mavatha had cross-examined Percy to that effect. Ms Ranchod did not object to the statements being admitted into evidence.
22. There are differences between Percy's prior written statements and his evidence in court, but in my view they are so minor as to be irrelevant. In exhibit H1 Percy had not said that his attacker had moved from Percy to Grant, while when he testified, Percy had said this. When challenged on this point in cross-examination Percy said that as H1 had been made the day after the attack he was still traumatised. In my view, the difference is irrelevant. In exhibit H1 the attack is recorded in bare terms. Percy's testimony in court was naturally more detailed.
23. Percy testified that on 28 August 2017 Colonel Ndwandwe had fetched Ms Mollo and Percy and had taken them to his office at Jabulani police station. Colonel

Ndwandwe had told Percy that he had video footage taken at Absa bank. He asked Percy if he could recognise anybody in the footage. Percy viewed about 10 images on a laptop. These were moving images of people moving in Absa bank. Percy identified two people. One was the suspicious man who had been outside the bank as the family had left the bank. The other was the accused. In court, Percy identified the accused as the person in exhibit G2. The images which Percy had seen on the laptop in Colonel Ndwandwe's office were those in exhibit G, particularly G2.

24. Percy testified that the clothing of the person in photo G2 was the same clothing as Percy's attacker had worn during the attack in Jabulani.
25. In cross-examination, Percy conceded that he had never seen the accused before the attack. It was put to Percy that Colonel Ndwandwe had influenced Percy and Ms Mollo to point out the accused. Percy denied this.
26. There are minor differences between the evidence of Ms Mollo and that of Percy. For example, Ms Mollo had said that she had sat in the front of their car on the way to the undertakers while Percy had it the other way around. The differences are irrelevant.
27. Colonel Ndwandwe testified. He is an experienced detective, presently involved in detective management. He was the investigating officer until October 2018. He received images of scenes in Absa from Warrant Officer Khubheka. Ultimately, these images came from Mr De Wet, an investigator at Absa. Colonel Ndwandwe discussed the images with Mr De Wet. In particular, he asked Mr De Wet about an affidavit that Mr De Wet had made about the case.
28. After Colonel Ndwandwe had discussed the matter with Mr De Wet he asked Percy to view the images to see if he could identify culprits. Percy looked at still images at Colonel Ndwandwe's office at the Jabulani police station. Percy identified the accused as his attacker. On a later occasion, Ms Mollo went through the same process and identified the accused as her attacker and as a person in one of the images on the laptop in Colonel Ndwandwe's office. Colonel Ndwandwe testified that he had shown both Ms Mollo and Percy still images rather than moving images. Colonel Ndwandwe had operated the laptop and changed from one image to another as Percy, and later Ms Mollo had viewed each image.

29. Colonel Ndwandwe confirmed in evidence that exhibit G1 – 10 were extracts or photos of scenes in Absa bank as received by him from Absa.
30. Colonel Ndwandwe denied that either he or Mr De Wet had influenced either Ms Mollo or Percy to identify any person.
31. It was suggested to Colonel Ndwandwe in cross-examination that it was improper for him, as investigating officer, to have conducted what in effect had amounted to an identification parade. He answered that it was not a formal ID parade. In my view, nothing turns on this. If it is less than best practise for an investigating officer to have shown the images to Ms Mollo and Percy, and I make no finding on this point, the evidence of Colonel Ndwandwe is not inadmissible. It is relevant to the question of identification and it is not prejudicial to the accused. The image of the accused was one of a number of images shown to Ms Mollo and to Percy.
32. Colonel Ndwandwe conceded that, prior to his having met Mr De Wet, neither Ms Mollo nor Percy had given him facial descriptions of the attackers, other than Ms Mollo possibly having described her attacker by the shape of his mouth. He confirmed that Ms Mollo had immediately identified her attacker when shown an image of the accused.
33. I admitted into evidence, as exhibit J, Colonel Ndwandwe's written statement of 15 September 2017. This was done at the request of Mr Mavatha who submitted that it contained allegations inconsistent with the evidence in court of Colonel Ndwandwe. Ms Ranchod did not object. In exhibit J, paragraph 6, Colonel Ndwandwe had used the word "*footage*" rather than the words "*still images*" when referring to what he had shown Percy. The Colonel testified that perhaps he had used the wrong word in exhibit J. In my view, nothing turns on this.
34. Paragraph 6 of exhibit J does however, contain a reference to the accused as a person with a violent history and having been convicted of murder for which he is serving a 20 year sentence. This fact, if fact it is, is no pointer to either the guilt or innocence of the accused in the present case and I leave it out of account in weighing the evidence.
35. Colonel Ndwandwe testified that he had, on the day he testified, that is 14 November 2018 made a written statement just before he testified. He testified that he had interviewed the accused at Modderbee prison. He had warned the

accused of his right to remain silent and of the consequences of not remaining silent. He denied that the accused had told him that he wanted to speak to a lawyer first. He confirmed that the accused had chosen to remain silent. Colonel Ndwandwe's written warning statement, exhibit P1-15, is referred to below.

36. I admitted into evidence, as exhibit K, the written statement of Colonel Ndwandwe of 14 November 2018, made moments before he testified. This was at the request of Mr Mavatha who had submitted that it contained allegations inconsistent with the Colonel's evidence in court and inconsistent with an earlier pro-forma written statement made by the Colonel. This pro-forma statement was later admitted into evidence, as exhibit P1-15 during the evidence of the accused. It was suggested to the Colonel that paragraph 6 of exhibit K contained a recording of something allegedly said by the accused to the Colonel but which had not been recorded in the pro-forma written statement, that is exhibit P1-15. The recordal in paragraph 6 of exhibit K is to the effect that the accused had told Colonel Ndwandwe that he had been at Maponya Mall on the day of the incident and had then gone to visit his girlfriend in Zola. This evidence had not been led by Ms Ranchod. Colonel Ndwandwe said that this recordal had not been made in his earlier written pro-forma statement as he had intended to make a fuller statement later. In my view, for reasons set out below, it is irrelevant that the recordal is in exhibit K but not in the earlier pro-forma statement.
37. Percy testified that he had seen moving images on Colonel Ndwandwe's laptop. Colonel Ndwandwe was firm in his evidence that he had showed still images to Percy. In my view, the difference is irrelevant. In paragraph 11 of exhibit A, which is a list of admissions made by the accused under section 220 of the Criminal Procedure Act, exhibit G is described as "*The photo album compiled by w/o Z A Kutumela from the video recording of the 23 August 2017, obtained from ABSA Bank, Maponya Mall.*"
38. The repeated demand of the attackers in asking "*where is the money*" rather than demanding valuables generally, or rather than demanding to know if the family had money shows that the attackers knew that the family had money. Given that the family had obtained the cash only about 15 minutes before the attack and had driven straight to where the attack occurred, the demand for "*the money*" links the attackers to the family's visit to the bank. At least one of the attackers must have

been at the bank when the family drew the cash or he must have had recent knowledge of the fact that the family had just drawn cash from the bank. Percy testified that a man, who was not the accused, had acted suspiciously outside the bank.

39. In paragraph 7 of exhibit H1 and in paragraph 7 of exhibit H2 the statement is made by Percy that the owner of the funeral parlour did not know that the family had made a cash withdrawal. Evidence to this effect was not lead by Ms Ranchod but the allegation became evidence when exhibits H1 and H2 were entered into the record at the request of Mr Mavatha.
40. By agreement, exhibit L was handed up. It contains admissions, made by the accused and recorded under section 220 of the Criminal Procedure Act, to the effect that the CCTV video recording, later to become exhibit N, made at the Maponya Mall branch of Absa bank on 23 August 2017 has not been tampered with and that it shows the accused wearing a black cap and a black jacket "*as shown on Exhibit G*". It is further admitted by the accused that he was in the branch at the time indicated and that while he was in the bank he did not carry out any transactions.
41. Mr De Wet testified. He was in the SAPS for about 18 years. He has worked for Absa for 7 years. He is a national investigator for Absa for violent crimes and integrity management. The Maponya Mall branch of Absa had about 30 or 31 working cameras on the day in question. He viewed footage and made a composite video of about an hour long. This video was handed in as exhibit N by agreement. Exhibit M1-15 is a series of still pictures taken from the video. Picture M10 is cut off on the right hand side. The accused is not visible in M10. Mr De Wet testified that the accused is visible on the right hand side of the relevant portion of the video, looking at the family receiving cash from the teller and that the accused can see the family receiving cash.
42. Mr De Wet explained photos M1-15. In M1, at 11:03:30am the family enters the bank. In M2, at 11:22:51 spotter 1 enters the bank with his head covered by a hoodie. In M3, at 11:36:28 spotter 2 enters the bank wearing a cap. In M4, at 11:42:32 the accused is seen just having entered the bank. In M5, at 11:42:40 spotter 2 leaves the bank before the family leaves. In M6, at 11:42:43 the family

is seen at teller 7. In M7, at 11:42:43 spotter 1 is seen leaving the bank. In M8, at 11:42:47 the family is seen, at the top, middle of the picture, at teller 7. The accused is seen in the top right of the picture, wearing a cap and looking at the family which is at teller 7. In M9, at 11:42:53 while the family is still at teller 7, spotter 2 walks towards the camera, but within the roped queue area, that is in a direction opposite to that in which the queue is moving. In M10, at 11:42:54 the family is still at teller 7 but spotter 1 is leaving the teller area while spotter 2 is leaving the queue area, that is walking in the opposite direction of the queue but within the roped queue area. The accused, according to Mr De Wet, is to the right of M10 and not in it but is in the video looking at the family taking money at the teller. It was common cause, during cross-examination of Mr De Wet that the accused, in the video at M10 is to the right of the queue and looking at the family. It was put to Mr De Wet that the accused could not see the cash being handed over to the family. In M11, at 11:43:03 the accused is the last person at the back of the queue. The family is still at teller 7. In M12, at 11:43:12 the accused is seen directly in front of the camera but no longer in a queue. M12 is the same photo as G2 and G3. M13, at 11:43:24 shows the accused at the back of the queue but facing towards the exit. M14, at 11:43:26 shows the accused, at the back of the queue but facing away from it and towards the exit. The accused is leaving the queue. M15, at 11:42:50 shows one of the family leaving the bank with a bag in his hand.

43. In court, and in the presence of Mr De Wet, Mr Mavatha and Ms Ranchod, I viewed, on a laptop operated by Mr De Wet, portions of a video stored on a compact disc which disc was handed up, by agreement as exhibit N. I invited the accused to the bench to view the video but he declined, saying that it was sufficient that Mr Mavatha was there. Both Mr Mavatha and the accused had earlier viewed the video. The video had been made by Mr De Wet. He explained certain parts of the video. In particular, he said that at 11:42:28 the accused comes into view on the right of the picture. Mr De Wet testified that at 11:42:43, corresponding to M6, the accused can see the teller with cash. At that point the accused is joining the queue at the back. The queue is a snaking queue, that is with two rows of people, with each row facing a different direction. At the moment when the accused joins the queue he is right next to the person at the head of the queue and he is about,

at most, 6 or 7 meters from the teller. At 11:42:57 cash is handed over to the family.

44. From my own observation, in M6, at 11:42:43 the legs of the accused are visible in the top, middle of the image. In M8, at 11:42:47 that is four seconds after M6, the accused can be seen looking at the family at teller 7.
45. Mr De Wet testified that the cash counting machine makes a distinctive whirring noise which would have been audible to the accused, assuming that he had normal hearing. At no time was the accused ever at a teller. The accused left the bank about two seconds after the family left. The identity of spotters 1 and 2 remains unknown. Neither spotter 1, nor spotter 2 did any transactions while they were in the bank. The accused did not have any account with Absa on the day in question.
46. Mr De Wet denied influencing either Ms Mollo, Percy or Colonel Ndwandwe.
47. Mr De Wet identified Mr Cindi as a suspect because he clearly was a spotter who had left the bank immediately after the family had left with their cash, he having seen the family receive their cash. Mr De Wet had compared the accused's image with that in a data base of persons involved in robberies kept by Absa. Mr De Wet conceded that the accused had never been convicted in any Absa robbery case.
48. By agreement, a written statement made by Mr De Wet to the police on 24 August 2017 was admitted into evidence as exhibit O1-6. This was at the request of Mr Mavatha who had suggested to Mr De Wet in cross-examination that his statement in paragraph 2 of exhibit O, to the effect that spotters will refrain from going to the scene of the robbery, contradicted Mr De Wet's testimony in court to the effect that spotters might go to the scene of the later robbery. In my view, there is no relevant difference between Mr De Wet's written statement and his testimony in court. Mr De Wet explained that, in effect different syndicates use different methods at different times.
49. In paragraph 4 of exhibit O, the statement is made by Mr De Wet that "*The person from the Funeral Services however insisted in 'Cash Notes'.*" This statement contradicts the statements in paragraphs 7 of exhibits H1 and H2. It is not necessary for me to resolve the conflict as in my view, there is no possibility,

reasonable or otherwise that the undertakers were part of either the surveillance at the bank or the attack outside the undertakers.

50. Mr Cindi testified in a vague and evasive manner. At the time of the incident he lived in Thembisa. He did not know Soweto well. He took no part in the attack. He was at Maponya Mall that day. He had gone there to meet a friend called Leonard. He must have gone there to meet Leonard because that is the only reason why he would have gone to Maponya Mall. He roamed around the mall, waiting for Leonard. He recalled entering the bank only when shown the video, sometime after his arrest in January 2018. He was not a client of Absa at the time. He cannot recall what he was doing in the bank that day. He had frequently done transactions at that branch of Absa. He conceded not having done any business at the bank that day and not having made any enquiries there. He could not recall why he left the bank. He suggested that perhaps he had received a message from Leonard or he perhaps had realised in the bank that he had left documents behind. He had been to Maponya Mall a number of times before the day in question and after it. He and Leonard used to go to a favourite shop of Leonard in Maponya Mall called Ndlovini. He does not recall where he went after leaving the bank.
51. Very little of the accused's evidence had been put to state witnesses despite Mr Mavatha having had ample opportunity throughout the trial to consult prior to completing cross-examination. I infer that the alibi-type defence raised is recent fabrication by the accused.
52. He denied having seen the teller handing money over to the family. When asked to explain why he was looking at teller 7, where the family was, as depicted in exhibit M8, he said that one looks around when one has walked into a bank. He said that he did not hear the sound of money being counted by the teller. He did not testify that his hearing was other than normal.
53. I have a reasonable doubt that the accused saw cash being handed over to the family. Mr Mavatha made the valid point that the camera showing cash being handed over to the family was behind the teller and at an angle to him or her. That said, the evidence is overwhelming that the accused was part of a group, consisting of at least three people in the bank, namely himself and spotters 1 and 2. This group was clearly not in the bank for the purpose of transacting legitimate

business. Rather, it was there on the lookout for customers making large cash withdrawals. In my view, the possibility that two syndicates, independent of each other, were operating simultaneously in the bank is so remote that it can be excluded.

54. The accused conceded not having met Mr De Wet. He could not say that Mr De Wet had influenced Ms Mollo or Percy. The accused testified that an associate of Mr De Wet, Brenda, had assisted Mr De Wet. In 2013 she had brought pictures to the accused while he was in Modderbee prison. The accused suggested vaguely that Ms Mollo and Percy had implicated him because Brenda had earlier been in possession of pictures of him as a suspect in Absa bank crimes. The existence of Brenda had not been put to either Colonel Ndwandwe or Mr De Wet in cross-examination, even though it had been put to both that they had influenced witnesses.
55. The accused testified that he did not say to Colonel Ndwandwe, as recorded in paragraph 6 of exhibit K, that he had gone from Maponya Mall to visit his girlfriend in Zola. It is not necessary for me to decide whether in fact the accused did tell Colonel Ndwandwe that he went to Zola on the day in question. I shall assume, in favour of the accused that he did not say it. With reference to exhibit P1-15, referred to below, once the accused had indicated to the Colonel that he wanted to remain silent, the Colonel should have left it at that and not proceeded to ask the accused where he had been on the day in question.
56. I admitted into evidence, as exhibit P1-15, the warning statement by Colonel Ndwandwe of 15 January 2018. The year 2017, seems erroneously to have been inserted in this exhibit. This exhibit was admitted in evidence at the request of Mr Mavatha as it contained a statement that had been signed by the accused below words by him to the effect that he chose to remain silent. This evidence is relevant to rebut the evidence in paragraph 6 of exhibit K to the effect that the accused had told Colonel Ndwandwe that he had gone to Zola to see his girlfriend. For the reasons set out in the previous paragraph the statement about the accused having gone to Zola is inadmissible.
57. The accused did not suggest, when he testified, that he was licensed to possess a firearm or ammunition.

58. The identifications by Ms Mollo and Percy of the accused in the office of Colonel Ndwandwe tend to show, with some weight, that Ms Mollo and Percy were able to identify one of their attackers. Their dock identifications of the accused are, in my view, relevant evidence against him. Both Ms Mollo and Percy had managed to get a good, close up look at the accused during the attack.
59. Both Ms Mollo and Percy could have testified dishonestly that they had seen the accused in the bank. They did not. This reinforces their honesty. Honesty is part of reliability and the state's case is premised, in part, on the reliability of Ms Mollo and Percy.
60. Mr Mavatha's main point on the reliability, apart from the honesty, of Ms Mollo and Percy regarding the events in Colonel Ndwandwe's office is that their identifications are unreliable, allegedly because they had been shown moving video footage featuring the accused before they were shown still images. The argument here is that once their attention had been improperly focused on the accused in the video their identifications of the accused a few moments later were the result of suggestion rather than spontaneous and accurate recognition. In my view, this argument does not hold water. Firstly, the argument does not apply to Ms Mollo. She had viewed still images only. Secondly, even if Percy had seen a moving video, this video contained images of many people in the bank. The people in the video are exclusively, or almost exclusively black people of whom many are men, as is the accused.
61. During the evidence of Ms Mollo, Percy, Colonel Ndwandwe and Mr De Wet, the words, "*video*", "*footage*", "*images*" and "*still images*" were used interchangeably. The still images in the evidence before me are all taken from the video admitted into evidence as exhibit N.
62. It matters not that Mr De Wet influenced Colonel Ndwandwe, if that is what he did, by saying to him, directly or indirectly that the accused was a suspect. So long as neither Mr De Wet nor Colonel Ndwandwe influenced Ms Mollo or Percy, their evidence as to identification in Colonel Ndwandwe's office is not excluded.
63. The day after the attack Percy told the police that he could identify his attackers. This appears from paragraphs 6 of exhibits H1 and H2.

64. Both Ms Mollo and Percy impressed me as honest, reliable witnesses. They readily conceded what they had not seen. They made no attempt to exaggerate. They answered all questions put to them without evasion.
65. Colonel Ndwandwe and Mr De Wet impressed me as honest and reliable witnesses. They gave the impression of witnesses simply telling me what they knew, without evasion or addition.
66. If I am wrong about the admissibility of paragraphs 7 in exhibits H1 or H2, to the effect that the undertakers did not know that the family was carrying cash, or wrong about this evidence carrying any weight, then in my view the state's case is not significantly weakened. Without the contents of paragraphs 7 in exhibits H1 or H2, the state's case remains overwhelming.
67. If I am wrong about the admissibility of the identifications by Ms Mollo or Percy, either in Colonel Ndwandwe's office or in court, or in attaching significant weight thereto, in my view the balance of the evidence against the accused is so strong that convictions must follow. The attack on the family, 15 minutes after they had left the bank, could only have been by persons either staking out the bank or cooperating with those who did. The accused was clearly part of the syndicate at the bank. The accused's evidence is, in all the circumstances not reasonably possibly true.

VERDICT

1. Count 1 – Murder – guilty.
2. Count 2 – Robbery with aggravating circumstances – guilty.
3. Count 3 – Attempted murder – guilty.
4. Count 4 – Attempted murder – guilty.
5. Count 5 – Unlawful possession of a firearm – guilty.
6. Count 6 – Unlawful possession of ammunition – guilty.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above the name Wright J.

WRIGHT J

Judge of the High Court
Johannesburg

Date of Hearing: 12 November 2018 – 22 November 2018

Date of Judgment: 23 November 2018

Appearances:

On behalf of the state: Adv P P Ranchod

Instructed by: NDPP

On behalf of the Accused: Adv A Mavatha

Instructed by: Legal Aid