

REPUBLIC OF SOUTH AFRICA



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

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

19/9/2022
DATE

SIGNATURE

Case number: SS52/2020

In the matter between:

THE STATE

and

SUSANA CATHARINA HESTER MAGDALENA NOETH

ACCUSED 1

BERNARD NOETH

ACCUSED 2

JUDGMENT

AFRICA AJ:

INTRODUCTION

[1] Mr. **BERNARD ABRAHAM NOETH**, an adult male, 52 years of age, hereinafter referred to as ('the accused 2') is charged with:

AD COUNT 1: **MURDER**; read with the provisions of section 51(1)¹ of the Criminal Law Amendment Act 105 of 1997, ('the CLAA'), as amended². It is alleged that on or about 16 to 20 July 2018, and at or near Plot 82/83 Robson street, in the district of Randfontein, the accused did unlawfully and intentionally kill **ALICE MANJODZI**, a 34-year-old female.

AD COUNT 2: **MURDER**; read with the provisions of section 51(1)³ of the Criminal Law Amendment Act 105 of 1997, ('the CLAA'), as amended⁴. It is alleged that on or about 16 to 20 July 2018, and at or near Plot 82/83 Robson street, in the district of Randfontein, the accused did unlawfully and intentionally kill **PRIVILEGE TAPIWA CHIKOHORA**, a 41-year-old female.

[2] Mrs. **SUSANA CATHARINA HESTER MAGDALENA NOETH**, an adult female, 37 years of age, hereinafter referred to as ('the accused 2') is charged with:

AD COUNT 3: **ACCESSORY AFTER THE FACT TO MURDER**, It is alleged that upon or about 20 July 2018 to 6 January 2020 and at or near plot 52, Dwarskloof, Randfontein in the district of Randfontein, accused 1, being aware of the identity and whereabouts of accused 2 and being aware he committed the offences mentioned in counts 1 and 2, unlawfully and intentionally engaged in conduct that intended to protect accused 2 from arrest by the police, by failing to report the whereabouts of accused 2 to the police, with the intent to enable accused 2 to evade liability for the crimes of murder and/or to facilitate accused' evasion of liability for murder.

¹ Part 1 of Schedule 2.

² Also read with sections 92(2), 256, 258, of the CPA 51/77.

³ Part 1 of Schedule 2.

⁴ Also read with sections 92(2), 256, 258, of the CPA 51/77.

ALTERNATIVE TO COUNT 3: **DEFEATING OR OBSTRUCTING THE COURSE OF JUSTICE.** It is alleged that upon or about the date and at or near the place mentioned in count 3 of the indictment, in the district of Randfontein, the accused did unlawfully and with intent to defeat or obstruct the course of justice, committed an act or omission, to wit, knowing the identity and whereabouts of accused 2 and that he committed the offences mentioned in counts 1 and 2, accused 1, failed to report the whereabouts of accused 2 to the police, which act or omission defeated or obstructed the administration of justice.

[3] The State is represented by Adv. Badenhorst. Accused 1 is represented by Adv. Mvatha from Legal Aid South Africa and accused 2, is represented Adv. Botha, respectively.

[4] The court explained the applicability of the provisions of section 51(1) of CLAA 105 of 1997, as amended and Competent verdicts in terms of the provisions of section 256,258,259, and 92(2) of the Criminal Procedure Act 51 of 1977 ('CPA').

[5] The accused indicated that they fully understood the provisions of the abovementioned sections and their respective legal representatives also confirmed that they fully explained the said provisions to the accused, which the accused understood.

[6] The charges were put to the accused and they indicated that he understood the charges levelled against them. Both accused pleaded not guilty to the said charges.

[7] Accused 1, through her legal representative elected not to give a plea explanation in terms of section 115 CPA 51 of 1977 and exercised her right to remain silent in this regard.

[8] Accused 2, elected to tender a plea explanation and same was read into the record by Adv. Botha, EXHIBIT "AAA"

Accused 2 in terms of section 115, states as follows:

1. I am accused 2 in this matter being charged with two counts of murder.
2. My intention is to plead not guilty on both charges against me. I deny that I was ever involved in committing these murders, neither was I present at the time and place when and where these murders were committed. I also had no part in the planning of these murders as I had no reason to kill these ladies.
3. At the time when these murders were committed, I was not at my home but busy looking for car parts in Krugersdorp and Randfontein to service my wife's car, the Red Nissan Almera in question. It was agreed between my wife, Susana Noeth, that on that specific day being 16 July 2018, she will use my car to go to work. I will then use her car to collect helpers to clean our home and I will also make use of the opportunity to service her car as she is using it every day to drive to work with it.
4. After I collected the two ladies from the place where they were usually standing next to the road, I then took them to our home and put them to work as it was the agreement that they will help with the household chores for the day. Later in the day at around 12h00, I instructed one of them to go buy bread, where after they then made food for themselves. While they were busy with the preparation of the food, I told them that I am leaving to do shopping for parts that I will use in servicing my wife's car and that I will be back shortly to drop them back off after their work was done, at their gathering place next to the road where I originally found them.
5. After I came back from town, I found these 2 ladies dead in my home. I do not recall the exact time I found them, but it was later in the afternoon, maybe around 15h00 on 16 July 2018. It was a great shock finding these bodies. I went into a panic and locked the door of the room where the bodies were lying, having in mind that the killer/s might still be around.
6. Immediately it sprang to mind that I previously received death threats from former colleagues of mine, and instantly thought that they were

the ones responsible for these killings and that they are still around, busy looking for me, wanting to kill me. I ran away, hiding in the bush behind the house, fearing for my life.

7. Evidence of these death threats may be found on my cell phone under WhatsApp application. The phone is currently in possession of the police at the SAP13 store.
8. Further to my plea of not guilty, my legal representative will state my version to the witnesses as they are called by the state.

[9] Further evidential material also consisted of the *viva voce* evidence of the thirteen (13) state witnesses and that of accused 2. No defence witnesses were called.

[10] Documentary evidence:

Exhibit	A1	Admissions in terms of section 220 ⁵ made by Accused 1
“	A2	Admissions in terms of section 220 made by accused 2
“	B	Report on a Medico-Legal Post Mortem Examination done on body bearing number DR 699/18
“	C	Photographs depicting the body of ALICE MANJODZI
“	D	Report on a Medico-Legal Post Mortem Examination done on body bearing number DR 700/18
“	E	Photographs depicting the body of PRIVILEGE TAPIWA CHOKOHORA
“	F	Photographs depicting the scene of crime
“	G	Photograph of the deceased ALICE MANJODZI
“	H	Photograph of deceased PRIVILEGE TAPIWA CHIKOHORA
“	J	Photographs depicting Lenasia SAPS 13 camp

⁵ CPA 51 of 1977.

“	K	Vodacom- Certification of extract from data message
“	L	Affidavit: Surprise Muziwakhe Nhlapo
“	M	Photographs taken during the arrest of accused 2
“	N	Statement by Susana Noeth (accused 1)
“	AAA	Plea explanation Accused 2
“	BBB	Statement Blessing Mbande
“	CCC	Statement Moira Chalken
“	DDD	Statement Mchenje Munashe
“	EEE	Cell C- Certification of extract from data message
“	FFF	Statement by Susana Noeth (accused 1)
“	GGG	Ex Parte Application- section 205
“	HHH1	Accused 1: Heads of argument in terms of section 174
“	HHH2	Accused 2: Heads of argument in terms of section 174
“	HHH3	Heads of argument by State
“	JJJ1:	Accused 1: Closing argument
“	JJJ2:	Accused 2: Closing argument
	Real evidence 1:	Footage
	Real evidence 2:	Cell phone of Priviledge (deceased)

SUMMARY OF EVIDENCE

[11] Mr. **BLESSING MBANDE** ("Blessing") testified under oath that around 8h00 on the morning of 16 July 2018, he was at his place of employment at Plot 82, Robson street, Randfontein, when he noticed a lady washing the red vehicle, belonging to accused 2. Blessing knows both accused 1 and 2 as they lived together on the said Plot, as (tenants).

He proceeded to greet the lady, who greeted him back and he continued with his chores. When Exhibit "H" was shown to him, he recognized the photo as that of the lady who he saw washing the red car on the morning in question. Blessing said that the Police arrived at the Plot on the 20th of July 2018 and showed him that photo of the same lady, when they enquired whether he knew her. Blessing told them that he only saw her once, on the Monday, past, washing the car.

When the police informed him that the lady was missing, he said that he does not know what has happened because to him, it looked like she was just doing a piece-job. The police enquired the whether the Landlord was home and Blessing left to call his employer. When they entered the accused house or cottage, they noticed that one of the bedroom doors were locked. The police asked whether the landlady had a key to the locked bedroom and she replied no. The landlady called accused 1 at her workplace, asking whether she had the key to the locked door, which she denied. She explained that accused 2 is in possession of the keys and that is when the Landlady kicked in the bedroom door and a foul smell came from inside.

[12] Blessing said that his house were approximately 10 meters from the accused place and the accused' place were approximately 200 meters from the main house. He said that he was doing gardening outside, on the 16th of July 2018 and while doing his chores on the Plot, he usually will walk around on the property, which is fenced in with two entry-gates. According to Blessing, the gates are always locked and he did not know whether the accused had keys to the gates.

[13] Blessing said that there are also other houses on plot number 83, which is adjacent to plot 82. The road that passes the Plot is gravel and the area is quiet. He usually takes his launch-break at 12h00 and has never seen the

accused receiving any visitors at their place, over the period of ± 3 months, whilst they resided there.

- [14] Blessing confirmed that from his house, he would be able to hear someone scream, as the Plot is quiet, but he was not sure if you are able to hear from his employers' house.
- [15] During cross examination by Adv Mvatha, Blessing said that he did not know the whereabouts of accused 1 on the 16th of July 2018, and could not dispute that accused 1 was at work. Blessing said that, the police came around 18h00 in the evening on the 20th and accused 1 was not present. Blessing intimated that he could not dispute the version of accused 1 as was put, as he was mostly not present when accused 1 was conversing with the landlady. According to his recollection the police was present when the bedroom door was broken down, but he also conceded that he may have forgotten. When asked how he managed to identify the lady in photo, if he did not see her face, Blessing said that he saw her hair.
- [16] During cross examination by Adv Botha, Blessing explained that the gate at Plot 83 which they use to enter Plot 82, was not locked, as they used a chain to hold the gate but the entrance-gate at the accused place is locked, to which he, the landlady and the accused, had the key to.
- [17] Blessing said that he has been employed there for the past 11 (eleven) years and confirmed that the Wendy house on Plot 83, was occupied by white people. He said that the accused also owned a White car, and he did not see accused 2 leave around 12h00 on the 16th of July 2018, to buy spare parts, because that was during his lunchtime.
- [18] Blessing denied that the he was ever inside the house of the accused without their permission, saying that's not possible as he does not carry any of the house-keys. Blessing confirmed that it's possible to jump the fence, but he was not aware of any break-ins on the property. He said that he never had any problems with the accused prior as they will usually just greet in passing.
- [19] Following from the courts question, it was put to Blessing that he didn't have a good relationship with accused 2, because he was caught stealing the

belongings of accused 2, which Blessing denied, saying that he has never stolen anything, which is the reason why he was still employed there today. Blessing also denied that a camera was installed and shown to him, where after the theft at the premises of the accused stopped.

- [20] **ELLAIN MOUSSOURIS** (“Ellain”) testified under oath that Moira, the landlady is her sister. Ellain was present at Plot 82 on the 16th of July 2018, and between 10h00 and 12h00, that day whilst hanging the washing, she noticed a lady with big Afro (hair) washing the red car, in the garden. She thought to herself that it was strange as she had never seen a lady washing a car and it didn’t look like the lady knew what she was doing. She presumed the red car belonged to the tenants who was renting from her sister for a period of 4 – 6 months. Ellain said that she was taking care of her sister’s property and was mostly inside the house, during the day. She has never seen any visitors at the accused place because that was their private space.
- [21] She confirmed that Blessing has been working for her sister for 11 (eleven) years and there has never been any problems, not even that of stealing and denied any incident of theft or robbery on the property. Ellain explained that the gate entrance from plot 83 was hooked on a chain during the day but was locked at night. She knows the family that resides on Plot 83.
- [22] When asked how possible it was for a stranger to enter the property, Ellain said that they have 7(seven) big dogs roaming the property and they will be alerted by the dogs barking, to any movement on the property. When visitors come onto the property, she will first have to lock the dogs away, as the dogs don’t listen to her and that they have even bitten Blessing before. The property is quiet and she has not seen anybody on the property on the 20th of July 2018, specifically between the times of 14h00 and 17h00.
- [23] She said that day, Blessing came to call her, informing that the police are there, looking for missing persons. The police showed her a photo and Ellain immediately recognized the lady with the big hair. The police requested access to the accused property and she contacted her sister Moira, who said that she was only 15 minutes away.

- [24] When Moira arrived, she took the police to the accused cottage and Ellain went back to the main house. When accused 1 came home, she came to the main house and it was explained to her that the police are looking for her husband. Accused 1 informed them that she last saw accused 2 that morning when she left for work and that the bedroom door had been locked since that Monday as accused 2 was busy making a surprise anniversary gift. They all walked up to the cottage in order for accused 1 to go and pack a few things. Ellain said that they entered through the back door and the house did not look clean or tidy. Moira then angled her foot through the burglar door and kicked open the locked bedroom door. As the door opened, they got a horrific smell and when Moira said that there were bodies, they started to scream, as they all ran out.
- [25] During cross examination by Adv. Botha, Ellain confirmed that even on the 16th of July, the dogs would have had free roaming of the yard but when it's feeding time in the morning, will they be on the other side of the plot and not the side where the lady was washing the car. She said that Exhibit "F" depicted the cottage where accused 1 and 2 were living and stated that Blessing did not have a key to the tenant's property neither was she aware of any cameras that was put up on the property by the accused. Ellain recognized the car in photos 3 and 4 as the vehicle that was being washed by the lady, at the accused cottage but did however not see when the red car left the property on the 16th of July 2018.
- [26] **MOIRA CHALKEN** ("Moira") testified under oath that she was on her way from work, when her sister Ellain contacted her, informing that there is an incident at the cottage, as the police was present, looking for 2 (two) missing women. When she arrived, the police showed her a folder of the missing ladies, who was traced to the cottage.
- [27] Arriving at the cottage, the place was a mess and they found an unknown white woman inside who appeared to be "high". Moira asked what she was doing there and she said that she was there to clean. Moira could see that she was not cleaning and asked her to leave the property. One of the bedrooms were locked and Moira did not have the key. She could hear no

sounds, or anything unusual from the other side of the door. Moira then locked up the place and telephoned accused 1 to come home. Around 18h30, when accused 1 came home, Moira informed her that the police were at the property looking for two missing women. Accused 1 said that she last heard of accused 2 in the morning and has not gotten hold of him since. When Moira asked accused 1 why the bedroom door was locked, she said that her husband was making a surprise anniversary present for her.

[28] As they walked up to the cottage, Moira called for Blessing to accompany them. Once inside the cottage, Moira kicked open the door, through the burglar-gate and when the door opened, they got hit by a smell and she could see something on the floor looking like bodies. They all ran out and reported the case to the police.

[29] During cross -examination, by Adv. Botha, Moira confirmed that they gained access to the cottage, through an unlocked door, when they find the white lady inside the house. Moira said that she knew this lady was not a burglar or a tenant as she seemed quite “out of it”. Moira confirmed that she asked Blessing to grind off the burglar door. Moira said that she did not think it was necessary to mention this white lady in her statement because she told her to leave property. Moira denied that there was ever any complainant’s made to her by the accused, about doors not working or theft at their property.

[30] **LESLEY GRANT CHALKLEN** (“Lesley”) testified under oath that he was on his way from work on the 20th of July 2018, with his wife Moira, when she received a call from her sister Ellain, saying that the police were at their premises. Moira told her that that the police must wait outside as they were only 15 minutes away. When they arrived at the premises, they took a walk to the cottage, situated at the back of the house. There was a number of police present, who informed them that they are looking for 2 (two) females who had gone missing.

[31] The police asked for permission to enter the cottage. Both the front burglar gate and door was open. The police went inside and they found a white female. Lesley asked what she was doing there and she said she was there to clean. The white female was not sober or well dressed. When the police left,

accused 1 was called and asked to come home, as the spare bedroom door was locked.

[32] During cross examination by Adv Botha, Lesley said that the accused never complained to him about the front or back doors being broken. Neither was he aware of any allegations made that Blessing was stealing their belongings.

[33] **GERNADUS JOHANNES KRUGER** (“Colonel Kruger”) testified under oath that he is a colonel within the SAPS⁶ with 38 years of service. He has been a detective for 13 years, stationed at Randfontein. He was on duty on the 6th of January, and upon receiving information about the person they were looking for, he visited a certain address. On their arrival, colonel Kruger knocked but there was no response. Looking through the key hole, he saw a key on the other side of the door and one of their members climbed through a window and unlocked the front door. They proceeded to search the house and found accused 2 hiding in the cupboard. Colonel Kruger explained his constitutional rights in terms of section 35 and placed him under arrest for double murder. He identified the suspect as Bernard Noeth, the person whom they had been looking for, for nearly 3 (three) years.

[34] Colonel Kruger said that he observed and noticed that his wife, accused 1 was also staying there. Their photos were on display and he observed female clothing and toiletries. Exhibit “M” was the photos he took on his cellphone, depicting the place where accused 2 was hiding and photo 2 depicts female toiletries. Photos 3 and 4 were photos of the wedding of the accused, which was on display.

[35] Within 6 (six) months of the murders, Colonel Kruger and Colonel Moss went to interview accused 1 at her mother’s house, in Helikon Park. They enquired whether she knew the whereabouts of her husband and whether she had a photo of accused 2 to assist in identifying him. On the day of the arrest of accused 2, colonel Kruger saw that very same photos again. During the interview, they informed accused 1 that this is a serious offence and if she is hiding information about her husband’s whereabouts then that will be a criminal offence. By then, accused 1 did not know the whereabouts of her

⁶ South African Police Services.

husband and after 4 months, he could no longer get hold of accused 1 via cellphone, as it appeared that she has either blocked him or she changed her number.

[36] Colonel Kruger got information that accused 1 was driving around in a Maroon Nissan Almera and he decided to go look for her at her mother's place. On his way to Helikon Park, he picked-up a Maroon Almera, but he could not see who the driver was. As he followed the vehicle, the vehicle drove faster, skipping two stop streets. He eventually managed to pull the vehicle over, which was driven by accused 1. He explained her constitutional rights in terms of section 35 and arrested her for defeating the ends of Justice.

[37] When he asked her for an explanation, accused 1 said that she did it for her husband because she loves him.

[38] During cross examination by Adv Mvatha, colonel Kruger confirmed that after he had an interview with accused 1 at her mother's place, he never spoke to her again. He said he tried sending messages to see if there is any information but could see that the messages went unread. He confirmed that he never physically went to look for accused 1 at her mother's address because there were no responses to his messages. Colonel Kruger said that he has no evidence to show that accused 1 knew the whereabouts of her husband when she was questioned, except for the information he received via the informants. He conceded that nowhere in his statement did he record that accused 1 knew the whereabouts of accused 2.

[39] Colonel Kruger said that he effected the arrest because he found the photos at the place where accused 2 were arrested and that accused 1 was living there, not coming to inform the police thereof. When asked whether accused 1 had a legal obligation to assist the police in their investigation, Colonel Kruger said yes, because the double murder occurred in the place where she stayed with her husband. Colonel Kruger confirmed that he did not testify in chief that accused 1 assisted or aided accused 2 to hide from the police. He said that he made certain observations at the arrest scene and the report she made to him. When asked what he understood with the statement "she did this for her husband because she loves him", colonel Kruger said that it is in

context of her staying with accused 2, but not informing the police. It was put to him that accused 1 will deny ever making that statement.

- [40] **MUNASHE MUCHENJE** (“Munashe”) testified under oath that on the 16th of July 2018, around 8h15 in the morning, she was at her “usual spot” at Sportsworld, in Randfontein, looking for work. She was with Priviledge, Alice and Mojozi. A red vehicle approached, driven by a white male and when the vehicle stopped, the man spoke to Alice and Priviledge, saying he needed people to do some laundry. Both ladies got into the vehicle and that was the last time Munashe saw her friends, the deceased.

As they will usually wait for each other at the bridge, on that Tuesday, the deceased did not join them. She tried reaching the deceased on the numbers she recorded in her statement, but to no avail. When her friends became unreachable, she went to make a report at the police station. After some time, she was shown the photo of a red vehicle by the police and it was the same vehicle that drove off with the deceased. She confirmed that Exhibit “J3-7” depicts the red vehicle, Exhibit “G” she recognized as Alice and exhibit “H”, she recognized as Priviledge. Munashe said that they have been standing at that same place for approximately 5 years and accused 2 is not one of the people that will usually come to pick them up for work.

- [41] During cross examination by Adv Botha, Munashe was asked why will the deceased get into the car of someone who was not a regular, she replied that when the vehicle stopped, she also rushed to the vehicle but the deceased got to the car first and the man told them that he needed someone to sweep and do the laundry.

- [42] **NYARAI GANDIE** (“Nyarai”) testified under oath that on Monday, the 16th of July 2018, she received an audio voice-message from Priviledge informing her that she was picked up from the place where they wait for jobs and taken to a Plot and that she was afraid because she didn’t see Alice, who went with her. Priviledge told Nyarai, that she is afraid of this person, who picked them up as he is now wearing a boxer shorts and a gown. Priviledge told her that this person told her not to enter the house, until she is told to do so. Priviledge informed that the place she was sent to buy the milk was at a faraway tuck-

shop. Around 12h00, Priviledge called again uttering the words, “Nyarai, Nyarai”. Priviledge sounded afraid and the phone went dead. Nyarai tried calling back as from that Monday but with no success. Nyarai confirmed that she recorded both the cellphone numbers of the deceased in her statement. She also tried calling Alice and went looking for the people that Alice had shared a house with. Just like Priviledge, the people informed her that Alice never returned home. Nyarai went to report the incident to the police.

[43] During cross examination, by Adv. Botha, Nyarai confirmed that she only made her statements 2 (two) years after the incident.

[44] **JOEL MAFOLE** (“Constable Mafole”) testified under oath that he is a constable within the SAPS with 12 years’ experience and stationed at Randfontein. He is part of the visible policing Unit and was on duty on the 19th of July 2018. On that day he received a complainant of two missing African females and proceeded to the corner of Union and Stegman Street, Randgate. He was the investigating officer (“I/O”) in the matter, and the place where the missing persons were last seen, were reported to him. He found a group of females, who are usually there, looking for jobs. When he made enquiries, he was informed that the missing ladies were picked up by a red vehicle.

[45] Upon further investigations, he discovered a nearby fat-cake shop, who had a camera operating on the 16th of July 2018. He requested the manager if there was any footage of a vehicle that can be seen passing near the shop, on the day in question. One of the ladies in that group was present and she identified the vehicle. The manager then said that he knows the driver of that vehicle. The I/O managed to get the information of the driver and the vehicle was identified from the footage, as a red Nissan Almera. This information led him to a Plot on Robson street, on the 20th of July 2018.

The I/O found an African male on the property, who introduced himself as Blessing, the gardener. He spoke to Blessing through the fence because the gate was closed. He showed Blessing photos of the missing ladies and Blessing confirmed that he had seen one of the ladies on the plot, washing the car belonging to accused 2. Blessing pointed out the cottage where

accused 2 stayed, which was next to the parked vehicle. The I/O requested to be taken to the cottage and upon knocking on the door, a white lady opened. She identified herself as Annemarie who resides in Venterspos. She said that she knew nothing about the missing ladies and that she was asked by the owner of the cottage to look after the place, as he is going to Cape Town.

[46] A lady by the name of Ellaine was also present and she handed the I/O her cellphone, saying that Moira, the owner of the property said not to search the property, but to wait for her. When Moira arrived, they searched the house but could not find access to one of the rooms, which had a locked burglar gate. Moira's husband Les⁷, took the I/O' number and said he will call, once he see the accused.

[47] Later that night, Lesley called to say that they managed to break open the door and that they could see something that looked like a human being lying on the ground, with bad smells coming from that room. When the I/O arrived on the scene, the burglar door was still locked. The I/O asked for a grinder and Blessing was called to grind open, the said door. Inside the room they found the half-naked body of a lady facing up and the other one facing down had her hand around the one facing up. They had (plastic) shopping bags around their heads.

[48] The I/O confirmed that photos "1 and 2" was the plot that he searched on the day in question. When accused 1 was back from work, he told her that a case of missing persons was opened and that her husband was last seen in their company. Accused 1 informed him that she had given her husband money that morning for a license disc. She then informed the I/O that she did not know the whereabouts of her husband and that the story of him leaving for Cape Town, was not true. The I/O requested accused 1 to notify her husband that the police is looking for him, to which accused 1, agreed.

[49] When accused 1 was interviewed, she informed the I/O that since the Monday, her husband has prevented her from entering that room because he was preparing something for their anniversary, as a surprise and that he had slept on the couch, that whole week, being edgy. The I/O said that the cottage

⁷ Lesley.

is not a big place but it appeared untidy, with clothes lying around. He said he was present on the scene⁸ until the bodies were removed.

- [50] The I/O stated that he recorded the information about Annemarie's details and intimated that she did not look sober on the day they found her in the cottage.
- [51] During cross examination by Adv. Mvatha, it was put to the I/O that accused 1 agrees with most of his testimony relating to her, except that she will say that the anniversary gift being prepared by her husband was for her father, Pieter Denysshzen. This was denied by the I/O.
- [52] During cross examination by Adv Botha, it was put that accused 2 will say that he was receiving death threats and found them there, after he came back from doing the license. Accused 2 will also say that he drove the White Golf and accused 1 drove the red Almera, to which the I/O responded saying it was all lies.
- [53] **SIMPHIWE MAJOZI** ("Simpfiwe") testified under oath that he is employed at Cell-C as a law enforcement analyst at the Forensic Services in Midrand, for the past 19 years. He confirmed that he prepared and signed a statement or report, marked exhibit "EEE" and states that his report relates to a specific cellphone with IMEI number and cell number as per paragraph 5.1. He intimated that he received the information from where it's stored on their fraud management system. The information is send to the Cell C towers and stored on their system and this computer generated information cannot be interfered with. On the 16th of July 2018, cell number 0847710586 was used by the handset with IMEI number, 3575320877, which is a unique number.
- [54] Simphiwe proceeded to explain the content of Exhibit "D" that at 9h24, there was an outgoing SMS from cell number 0847710586. At 9h28 there was an incoming call for 28 seconds. At 12:25 the Farmers Exchange Tower was activated and at 13:41, Venterspos being the nearest tower, was activated. Simphiwe also compiled the google map as to establish the distances between the 2 Towers. According to him, in the present case, the cell number

⁸ Exhibit "F" photos 7 to 10 depicts the condition of the room, where you can see a vacuum cleaner, 2x handbags on top of a blanket; photos 8 to 12 depicts a padlock, a jacket, a green net and refuse bag at the foot of blanket. Photos 13 to 14 showed when the bodies were moved by the photographer.

activated a Tower in Venterspos because it means that the cellphone has moved closer to Venterspos, as the cell number could not jump 10.8 meters from the Farmers Exchange Tower to the Venterspos Tower.

- [55] **DR. GINA ROWE** (“Dr. Rowe”) testified under oath that she is attached to the forensic pathology services at Roodepoort since 1997. She holds the qualifications MBChB obtained from Wits University in 1998 and a Diploma of Medicine in 1995. She has performed over 10 000 post mortem examinations and is an expert in her field.
- [56] Dr. Rowe recognized Exhibit “B”, as a post mortem examination performed and completed in respect of DR699/18 and Exhibit “D” as a post mortem examination performed and completed in respect of DR700/18. She confirms her signature and the correctness of the content of both documents, with the cause of death in Exhibit “D” determined to be “Ligature Strangulation”. In explaining paragraph 4, Dr. Rowe stated ligature was tied horizontally around the neck, therefore ruling out suicide. There was contusion on the left side of the neck, and the increased pressure caused the blood vessels in both eyes to burst. These findings are typical in cases of strangulation. The injuries sustained can be as a result of being dragged against a rough surface and the bruises are caused by blunt force trauma. Dr. Rowe confirmed that the items on photos F14 and F15 depicts the items that was still found tightly around the neck of the deceased, which she removed and where the abrasions were found.
- [57] In respect of the Post Mortem conducted on Alice (Exhibit “B”) the cause of death was Unascertained, having regard to the state of decomposition of the body. Dr. Rowe said that if she had seen the plastic bags as depicted in photos F14 and F15, in respect of Body A (Alice), then her suspicion would have been aroused by it because someone can be killed without leaving any marks, implying that suffocation could not be ruled out in the present case. In respect of the Post Mortem conducted on Privilege (Exhibit “D”), the body had numerous bruising or contusions, indicative of blunt force injury, showing that the deceased had put up a fight.

[58] During cross examination by Adv. Botha, Dr. Rowe confirmed that she could not find any Natural causes of death, in respect of Body A (Alice), but it cannot be ruled out that the deceased in this matter defended herself, due to the abrasion sustained.

[59] During re-examination, Dr. Rowe said that the degree of stench in a closed environment would have been very bad and by day 3 (three) of decomposition, the smell would be unique, like that of a dead animal.

Dr. Rowe further stated that the bodies will start smelling after 3-4 days, but it depends how the door was secured, where the bodies were kept in. She conceded the fact that Winter, could have slowed down decomposition but also stated that if the ladies went missing on the 16th, does it not mean that they were killed on the 16th of July. Dr. Rowe intimated that Body 699/18 (Alice) appeared more decomposed than Body 700/18 (Privilege); and that maybe so because that person died later.

[60] **MKOSONKE SITHOLE** (“Sergeant Makosonke”) testified under oath that he is a sergeant within the SAPS, with 13 years’ service. He is stationed at the Krugersdorp Criminal Centre as a photographer, with 11 years’ experience. He attended the scene as depicted in Exhibit “F” and confirm the correctness of the photos. He states that photos 7 to 12 depicts the bodies in the same position as found and photos 13 to 20 depict the bodies after it was moved. He explained that the reason for moving the bodies is to depict how the bodies were found but also to depict the individual photos of the bodies. He stated that there was no tampering with the scene.

[61] He intimated that the bodies were lying on top of a blue blanket and there were two handbags next to the bodies, one brown and one cream. On the scene a black bag, blue bag, spar bag and a green shopping bags were also found. The room appeared to be used as a storeroom.

[62] **MADEI CHIHORA** (“Madei”) testified under oath that Privilege Chihora is her sister and Alice is a friend of Privilege. She states that she knows the phone that Privilege was using at the time of her death. After her sister’s death, I/O Mtambo brought a phone to her, wanting to verify if it was her sister’s phone.

She recognized the phone sealed in Forensic Bag 13/1782/2018 as her sister's phone. The phone number was 0847710586. She also recognized the white handbag in photo "F" as belonging to her sister and the brown handbag belonging to Alice.

- [63] **JOSEPH MTAMBO** ("Detective Mtambo") testified under oath that he is a member of the SAPS, with 17 years' experience. He is stationed at the Provincial Organized Crime Unit and is the (current) Investigating Officer in cas 527/07/2018. He intimated that he visited the crime scene on the 6th of August 2018, to familiarize himself with it and to get additional clues. He had difficulty accessing the plot, even when using the car hooter, they could not hear him. You had to make pre-arrangements to access to the property and on the 6th of August, he accessed the property via the main gate and then via the gate at Plot 82. Blessing opened the cottage, for him to gain entry. By then, accused 1 had taken most of the belongings, but there was scrap left outside, next to the front-door. Things like photo-frames and broken drawers were left outside, in which he found a cellphone. The cellphone was dead, but after it was charged, detective Mtambo, managed to retrieve and record the IMEI number as per his statement.
- [64] The Vodaphone cellphone, Exhibit "2", belonged to Privilege as per the section 205 statement, for which approval was obtained. Detective Mtambo confirmed the truth and the correctness of Exhibit "GGG" and confirmed that Exhibit "EEE" depicted the area of Middlevlei. He confirmed that there are other houses in that area and the distance from Farmers Exchange to Venterspos, when driven, is about 10 km.
- [65] Detective Mtambo confirmed that he knows Annemarie Volschenk, as he had made numerous attempts to trace her. He managed to trace her on the morning of the hearing of the trial, but she did not appear sober. He said that health-wise she did not look strong as she had a 9-month old baby.
- [66] When asked if he had made any attempts to trace accused 2 during the investigation of the case, detective Mtambo said that he made several attempts. He said that he was in contact with accused 1 from the time after the incident, but as from September 2018, her phone would go to voicemail,

when he tried calling her. All along accused 1 had been co-operative and indicated a willingness to notify him if she hears anything of accused 2' whereabouts. Detective Mtambo intimated that the Farmers Exchange Tower is 4km from the crime scene.

[67] During cross examination by Adv. Mvatha, he said that he spoke several times over the phone with accused 1, as he got her cell number from her statement. It was put to detective Mtambo that accused 1 will deny that she ever spoke to him telephonically, she only spoke to Colonel Kruger and a lady officer. Detective Mtambo said that accused 1 will be lying and unfortunately he does not have the cellphone records, nor did he mention same in his statement, but during one of their conversations accused 1 told him of a case she had that was thrown out. It was put to him that accused 1 agrees, but states that this conversation took place when he escorted her to the Randfontein cells.

[68] **ANNEMARIE VOLSCHENK** ("Annemarie") testified under oath that she knows accused 2 as Bernard. The first day when she met him, she was hitchhiking towards Venterspos, where she resides. Accused 2 was driving a red or maroon vehicle, when he stopped to give her a lift. Whilst socializing, they spoke of drugs and crystal meth. They travelled to the house of accused 2, on a hillside Plot, where they discussed the issue of "friends with benefits". Annemarie said as men do sleep around, they discussed how he can solve her problems and how she can help him out sexually.

[69] Thereafter, accused 2 took her home. Early the next morning, accused 2 drove a white car and they travelled to Randfontein as she had to go to SASSA⁹ and accused 2 had other business to attend to. He picked her up an hour later and they used a "lollie" to smoke crystal meth together. On that 2nd day, Annemarie noticed a smell as she entered the living room area of accused 2, but she is not the type to tell you that your place stink. She noticed the safety gate on the 2nd bedroom door. They drank coffee and smoked crystal meth. They continued their discussion of friends with benefits thoroughly before she could just decide to engage sexually with accused 2.

⁹ South African Social Security Agency

Nothing happened between them on the 2nd day, they only smoked and socialize. On day (3) three, which was the Friday, (the day the police came), Annemarie was picked up by accused 2 from her place and he was driving the maroon/red car.

[70] At the place of accused 2, they again drank coffee because when using crystal meth, it causes sleeplessness. Around 8h00 that morning, they went to his bedroom where they smoked a “lollie” and accused 2 touched her inner thigh. He told her, “did you know that I kill women” but Annemarie thought that he was just having a big mouth. She thought it was something awkward to say as they have been together for 3 days; however, she did not take it seriously. They continued to smoke where after accused 2 said that he will be come back now. Accused 2 left and shortly thereafter, she noticed that the police were standing in the living room door. The police confronted her with questions and she told them that she only knew accused 2 for 3 days and that she does not know where he is. One of the officers offered her a lift to the High-way. She said that she nearly got arrested for the phone, which accused 2 had given to her, but had hid the phone in her panty, which she later sold for a fix. She sold the said phone at the Taxi rank, but do not know to whom.

[71] During cross examination by Adv Mvatha, Annemarie confirmed that she was mostly “high” during her visits with accused 2, over that period of 3 days. When it was put to her that the evidence on record was that Blessing, Ellain and Moira did not smell anything, in the cottage, Annemarie said that she has a sensitive smell, whether she is “high” or not.

[72] During cross examination by Adv. Botha, it was put to Annemarie that accused 2 will say that he picked her up only once, and that was 3 (three) weeks prior to the 16th of July 2018. This was denied by Annemarie, who said that she has witnesses who will disagree with accused 2. Accused 2 will also say that on the day he picked her up, Annemarie never even got out of the car. Annemarie disagreed, saying that how will she know what was happening inside his house and he even came back the next day. It was further put to Annemarie that she will out of own accord come to accused 2' place and bring him drugs. Annemarie said that it was accused 2 who called the drug

merchant from his phone, whilst she was at SASSA. Thereafter, accused 2 picked her up and they went and “crash” at his place. It was also put to her that accused 2 will deny giving her a phone, to which Annemarie responded that the Taxi rank where she sold the phone, always have cameras.

[73] When asked why she told the police that accused 2 went to his brother in Cape Town, Annemarie said that accused 2 seemed like a nice guy as he gave her a phone and at that moment she was not going to tell the police that she was a “*whore and is there to have sex*”

[74] When it was put to Annemarie that people do drugs to escape their reality, she said that drugs was meant to calm your stresses and that addicts will steal to maintain their addiction. It was put to her that accused 2 will deny giving her a cellphone.

[75] During re-examination, when asked how drug usage affects memory, Annemarie said that it does affect memory, long term, but she stopped in April 2019 until present. Her highest level of education is matric where after she enrolled at University to study law, but then according to her, life happened.

THAT CONCLUDED THE EVIDENCE FOR THE STATE

BOTH ACCUSED 1 AND 2 LAUNCHED AN APPLICATION IN TERMS OF SECTION 174 OF THE CPA 51 OF 1977.

[76] Adv Mvatha argued that the state has dismally failed to prove a *prima facie* case against accused 1 and the evidence adduced at the end of the state’s case is so poor or non-existent, that no reasonable court acting carefully may convict the accused 1.

A plethora of authorities were cited, prominently so the cases of *Lubaxa*¹⁰, *Shuping*¹¹, *Ndlangamandla and another*¹², *Mthembu and Others*¹³, to list but a

¹⁰ 2001 (4) SA 1251 (SCA).

¹¹ 1983 (2) SA 119 (B).

¹² 1999 (1) SACR 391 (W).

¹³ 2011 SACR 286 (GSJ) @ 37.

few. The defence correctly argued with reference to the case of *Binta*¹⁴ in my view that the failure to report a crime, does not *per se* constitute an offence unless the law confers such a legal duty upon you.

[77] This court with reference to the case of *Nooroodien en Andere*¹⁵ was of the view that firstly that it could not be said that the evidence of the state was of such a poor quality for it to be said that no reasonable court acting carefully, may convict and secondly the court does not look at the failure of accused 1 to report her husband's whereabouts in isolation. It is the failure to report the offence, coupled with other circumstances of the accused's conduct, which constitutes an association with the crime whereby material assistance is rendered to the principal offender.

[78] In respect of accused 2 it was argued that the state's case which is premise on circumstantial evidence, did not establish a *prima facie* case against accused 2 but rather against Annemarie, who was found in the cottage and admitted that she was in possession of a cellphone that belonged to one of the deceased and that the cellphone evidence suggests that Annemarie walked from the crime scene to her house. In light hereof, it was argued that none of the witnesses placed accused 2 at the scene of the crime at the time when the murders were committed and he should be entitled to a discharge if there is no possibility of a conviction other than if he enters the witness box and incriminates himself.

[79] The state opposed both applications and submitted that in respect of accused 1 it proved a *prima facie* case and in respect of accused 2 it submitted that the state beyond a reasonable doubt proved the charges levelled against accused 2 and that a reasonable court acting carefully, may convict, under these circumstances.

[80] THE COURT ACCORDED WITH THE SUBMISSIONS MADE BY THE STATE AND BOTH APPLICATIONS IN TERMS OF SECTION 174, WERE REFUSED.

¹⁴ 1993 (2) SACR 553 (C).

¹⁵ 1998 (2) SACR 510 (NC).

[81] **MAGDALENE NOETH** (“accused 1”) elected not to testify and closed her case.

[82] **BERNARD ABRAHAM NOETH** (“accused 2”) testified under oath that early in the morning on the 16th of July 2018 he went and collected two ladies as he needed help to pack up some stuff as he and accused 1 wanted to move the following weekend. When they arrived at the house, he described what he needed them to do. One of the ladies worked inside the house, whilst the other cleaned and vacuumed the car outside. He went to take a shower around 11h45 and then gave them money to buy bread. He then went to get some service-kit for the car and left them alone. That was the last time he saw them alive.

[83] On that day he was driving the Nissan Almera and only arrived back home after 15h00. He noticed some of the doors open and that the house was quiet without movement. He looked for the two ladies and went into one of the bedrooms that contained his tools. He then saw the ladies lying on the floor and was afraid in that moment, not knowing whether the suspects were still in the house. Because both ladies died that day, he can't see how one person could have killed two ladies and he strongly believes that the suspects were in fact there to kill him. He then went into panic mode, and got some drugs which he used that day. The drugs are meant to “cut him out” and keeps him awake for days.

[84] He knew that he had to call the police but he was on the drugs and scared that he will automatically be seen in a bad light. He said that he depended on drugs to calm him down but the side effects are paranoia. Accused 2 said that he used drugs for that entire week until that Friday when Annemarie came to his house to deliver more drugs. When she left he had left too and went to sit in the veld opposite the house, where he proceeded to use more drugs.

Three to four (3-4) weeks prior, he had seen Annemarie walking next to the road, carrying bags and he could see that she was tired. He stopped to asked where she was going and he offered her a lift to Venterspos. He however first went to his house to collect paperwork and told her to sit in the car but when he turned around, she was standing inside the house. He took her home that

day and thereafter, she was there numerous times, being a nuisance but mostly to deliver drugs. He saw her between 10-15 times, mostly uninvited. She could walk onto the property at any time because the dogs were kept on one side of the property. He would phone her if he wanted a supply of drugs and then he would just see her walk in, uninvited. He once found her inside the house, even when he had locked the doors. Accused 2 denied that they had a friends for benefit relationship, as she was only his supplier of drugs. He further denied that he made a statement to Annemarie that he kills women. He concedes that at times they would use drugs together but thereafter he would ask her to leave.

[85] He saw that the double wooden door was clearly damaged and he has on numerous occasions asked the owners to replace it. Anyone could have had access to the house without any difficulty and that locking the doors did not mean a lot.

[86] He intimated that he respected Blessing but on occasion they had arguments. A safe (vault) that was standing outside had gone missing and he discovered that Blessing was stripping his scooter for spares. To prevent any further damage, he placed a dash-cam on the outside of the house and told Blessing that he was recording everything. He said that the camera was put up just for show but Blessing was angry about it.

[87] Accused 2 said that when he left for East London, he returned to Randfontein a year later. On the day of his arrest, he was in bed asleep, when he heard a bang at the door. When he got up, he saw someone climbing through the window from the outside. He did not know what was happening and because he got scared, he hid himself. He could hear another person by the door and was scared to go and confront them, because this is South Africa. As he was alone, he was not stupid enough to confront two people. These two people did not announce themselves as police officers.

[88] During cross examination, by Adv. Mvatha, accused 2 confirmed that when he went to pick up the ladies, his wife was not present. When she returned home that Monday night on the 16th of July, she did not know of the bodies he had locked inside the room. Accused 2 conceded that he lied to his wife when he

gave her the reason why the room was locked and that she did not have access to the said room from the 16th until the 20th. He said there was no smell in the house and when he left for East London on the 20th of July, he never informed his wife and she did not know his whereabouts.

- [89] During cross examination by the state, accused 2 confirmed that he loves his wife and that their marriage was still intact. He stated that his wife does not use drugs but that she was aware that he was on drugs on and off. Especially during the course of that week, she probably knew he was on drugs because he did not sleep that entire week. He slept on the couch and used drugs without her knowledge.
- [90] Accused 2 conceded that his use of drugs was the reason why he reacted so strangely when he saw the dead bodies. He further conceded that this explanation was not contained in his plea explanation however this is because he feels ashamed of his drug use. It was put to accused 2 that this version is an afterthought because it only came to the fore when Annemarie spoke of the drugs.
- [91] Accused 2 confirmed that despite having used drugs, he was still able to drive to fetch the car-parts and he was in his senses. He said that when he found the bodies as depicted on exhibit "F7" and froze-up. He went into panic mode and locked the door. When asked why he did not enter the room to first check if the ladies were still alive, accused 2 said that he could see the way they were lying, that they were not alive because if they were, they would have knocked on the door. It was put to him that the reason why he never went to check on the deceased was because he knew that they were dead already.
- [92] He confirmed that photo "F10" depicts how the arm of the one lady was around the neck of the other and that the vacuum as per photo "F9" was used when one of the ladies cleaned the car. He said that he does not know where the blue blanket which the deceased are lying on came from, because they don't own a blanket like that. He said that their plastic bags, similar as depicted on photo "F11", are kept in the kitchen area and he could see that there had been somebody there. The blue plastic bag in photos "F12,13,14" looks like a shower curtain they have in the house, which you will find in the

bathroom walk-in closet. He recognizes the brown scarf around the neck of the one deceased, as it belongs to his wife and its kept in the walk-in closet. The handbags next to the bodies belonged to the deceased. It was put to accused 2 that after the ladies were strangled, their bodies were neatly placed on the polka-dot blanket and therefore the person who committed the murder had a lot of time. Accused 2 said that indeed a lot of trouble went into putting the scene in place.

[93] Accused 2 conceded that the two ladies had to be separated for the murderer, to “take on” one lady at the time but intimated that their screams would have been heard. When it was put to accused 2 that the audio received by Nyarai was that the male person had changed into a boxer short and gown and she was told not to enter the house, accused 2 conceded that when he came from the shower, he was wearing a boxer-shorts. It was put to accused 2 that he had sufficient time to kill one lady whilst the other was away at the shop which was far away.

[94] It was put to accused 2 that the reason why he never mentioned in his plea explanation that he went to sit and smoke his drugs in the veld was not because he was scared that the killers might still be there but because he in fact was the killer. Further, it was put that the cellphone evidence shows that @ 12h25 Priviledge screamed the words “Nyarai Nyarai”. Accused 2 said that he could have been in Randfontein at that time and at 12h00 he had sent one of the ladies to the nearest shop. He did not see her coming back but he saw her walking behind his vehicle, when he left to buy the spare parts. It was put to accused 2 that from 12h25 when the one lady was still alive until 13h31 when the phone moved to Venterspos, the murderer had enough time to search the house for plastic bags, sheets and other items used and the only person who had sufficient time to do all that, was accused 2.

[95] Accused 2 said that on that Friday, he saw Annemarie leave on foot, where after he went to the veld to smoke drugs. When asked whether he did not see the police arrive, whilst smoking in the veld, accused 2 said that you can't see the house from the veld. It was put to accused 2 that according to Annemarie, they both sat in the room when he just got up and left and within a few

minutes, the police arrived and found Annemarie inside the cottage. Accused 2 said that both Annemarie and the police are lying but he can't think of a reason why they would.

[96] When asked what he meant with previously receiving death threats as per paragraph 6 of his plea explanation, accused 2 intimated that he thought that it was them, his ex-business partners who bankrupted their business. He said he had believed these people to be dangerous which is why he slept on the couch to guard his wife, in case they came back. Accused 2 confirmed that he did not inform his wife or the police of this. When asked what changed on that Friday, when he just decided to leave and walk away for a year, accused 2 said that he got a phone call the previous night from an old friend who told him to "just get away". When asked why he did not take his wife with him, accused 2 said that the threat was not against her.

[97] When asked why on that Friday he decided, after smoking his drugs in the veld, to just up and leave, without even taking his car, accused 2 said that he decided to take a taxi. It was put to him that the reason he left was because he saw the police as he did not even pack any clothes or took his cellphone with him.

[98] When asked to show on Photos "F" any boxes that was packed up by the deceased, the accused said that there was no photo of the walking closet, where the boxes were stored. Accused 2 conceded that they did not give the landlord any notice that they planned to leave. It was put to him that his plea explanation states that he picked up the ladies to do house chores not to pack up boxes, accused 2 said that packing boxes are part of household chores.

[99] Accused 2 said that he did some work as a private investigator and knows a bit of the law which is why he knew that if he reported the bodies to the police, he would have been the number 1(one) suspect. When asked why he made himself a suspect by running away, accused 2 said that he was avoiding to be arrested. It was put to him, that he fled because he knew what he did. Accused 2 said that he thought by fleeing the scene, it will give the police enough time to investigate the real suspects.

[100] When asked how long after he fled, did he make contact with his wife, accused 2 said, maybe 2½ months later. When asked why will the death threats received caused him not to make contact with his wife sooner, accused 2 said, that he does not know, but that he was the one that first made contact with her, sending messages. He said that he would send messages via someone else and his wife would ask why he could not give himself up because he is wanted by the police. He concedes that his wife knew that the police were looking for him but he just wanted a place to stay for a little while. His wife came to stay with him and she did not inform the police. He denied that his wife was protecting him by doing the driving around because all along she begged him to go to the police. Accused 2 said that he will not know how the cellphone of the deceased went from Venterspos and a few days later was found in a drawer on the crime scene. Accused 2 denied that he killed the two ladies.

[101] During re-examination accused 2 said that he was under the influence of drugs on the 16th when the bodies were found and could not have committed the murders because he has a fear of dead people. He said that when he takes drugs he can still think clearly but he has paranoia. He said that Annemarie brought the drugs on that Friday and he saw her leave the property and is it possible that she could have returned without him seeing her.

The State argued for a conviction and the defence argued for an acquittal.

[102] A CAREFUL CONSPECTUS OF THE EVIDENCE DEMONSTRATES THAT THE FOLLOWING ASPECTS OF EVIDENCE ARE NOT IN DISPUTE

- That accused 2 on the morning of the 16th of July 2018, picked-up the deceased from where they were standing, waiting on peace-jobs.
- Accused 2 took the deceased to his house, where one of the deceased washed his car and one were sent to buy milk at the tuck-shop.
- After discovering the bodies, accused 2 locked the room and he was the only person who had the key and had access to the room, which was secured by a burglar gate. The said burglar gate had to be grind open.

- The place, manner and condition in which the bodies were found on the 20th of July 2018, is not in dispute.
- That accused 1 and 2 are married and shared the residence where the bodies of the deceased were discovered.
- That accused 1 was called from work on the 20th of July, to ascertain whether she had the key to the locked room.
- Accused 2 fled the scene.
- After the incident, accused 1 moved in with her mother, where she showed the police wedding photos of accused 2, in order to identify him.
- Accused 1 was staying with accused 2 at the time of his arrest.
- Accused 1 was arrested after being pulled over by the police.

[103] THE ISSUES IN DISPUTE ARE

- a) Whether the state has proved beyond a reasonable doubt that accused 2 is guilty of Murder as envisaged in terms of section 51(1) CLAA and whether accused 1, by her actions or omission, was an accessory after the fact to murder or defeated or obstructed the course of justice.

[104] Labuschagne J: stated that “the onus to prove all the essential elements of the alleged crime against the accused rests on the state throughout. The state must discharge that *onus* beyond a reasonable doubt. There is no onus on the accused and if he gives an explanation which may reasonably possibly be true, then he cannot be convicted.¹⁶ It is my duty to carefully consider the totality of the evidence and the probabilities in order to decide if the state has discharged its *onus*. The concept of reasonable doubt does not mean all doubt and it is not expected of the state to close every conceivable avenue of escape.”¹⁷

[105] In *Shackell v S*¹⁸ it was stated:

“A court does not have to be convinced that every detail of an accused’s version is true. If the accused’s version is reasonably possibly true in

¹⁶ S v Radebe 1991 (2) SACR 166 (T).

¹⁷ S v Ntsele 1998 (2) SACR 178 SCA 182 b-d.

¹⁸ 2001 (4) All SA 279 (SCA).

substance the court must decide the matter on the acceptance of that version. Of course it is permissible to test the accused's version against the inherent improbabilities. But it cannot be rejected merely because it is improbable; it can only be rejected on the basis of inherent probabilities if it can be said to be so improbable that it cannot be reasonably possibly true."

[106] The state called a number of witnesses in proving their case against the accused, none of whom witnessed the murder of the deceased. The state's case against accused 2 is premise on circumstantial evidence.

[107] In assessing circumstantial evidence one needs to be careful not to approach such evidence upon a piece-meal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by an accused is true. The evidence needs to be considered in its totality. It is only then that one can apply the oft-quoted dictum in *R v Blom*¹⁹, where reference is made to two cardinal rules of logic which cannot be ignored. These are, firstly, that the inference sought to be drawn must be consistent with all the proven facts and, secondly, the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn²⁰.

[108] This matter is well put, in the following remarks of Davis AJA in *R v De Villiers*²¹:

"the court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter differently, the crown must satisfy the court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond a reasonable doubt inconsistent with such innocence"

[109] In *Cooper*²² it was is stated:

¹⁹ 1939 AD 188 at 202-3.

²⁰ S v Reddy 1996 (2) SACR 1 (A).

²¹ 1944 AD 493 at 508-9.

²² 1976 (2) SA 875 (T).

“When triers of fact come to deal with circumstantial evidence and inferences to be drawn there from, they must be careful to distinguish between inference and conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which are sought to be establish. In some cases, the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases, the inference does not go beyond reasonable probability. But if there are no positive facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.”

[110] The defence from the onset indicated²³ that accused 2 will deny being involved in the commission of the murders as he was neither present at the time or place where these murders were committed. Further, he had no reason to kill the deceased. Accused 2 stated that he previously received death threats from former colleagues and instantly thought that they were the ones responsible for these killings and that they were still around, looking for him and wanting to kill him. He therefore ran away, hiding in the bushes behind the house, using drugs, fearing for his life.

[111] In support of the aforementioned version, accused 2 cast his net of suspects, to also include, amongst other, Blessing the gardener, the people living in the Wendy house, Annemarie Volschenk or his former business associates. In trying to convince this court that Blessing could be a suspect, accused 2 painted a picture of Blessing as a liar and a thief, who would enter the house of the accused when they were not present. Ironically this allegation that accused 2 caught Blessing stealing his belongings only came to the fore after the courts questioning about the relationship between Blessing and the accused before court. This version that Blessing had access to their property, and in light thereof could therefore have perpetrated the murders, also does not form part of accused 2’ protracted plea explanation, neither was this version put to Moira or Lesley, the employers of Blessing. Had this been done, then surely this court would have heard and observed their response thereto. In fact, one would have expected accused 2 to lodge a complaint with his landlords, unless this version was simply an afterthought and fabrication,

²³ Section 115 plea explanation.

to mislead this court. Moira undoubtedly intimated that there have never been any allegations of theft made by the accused and that Blessing has never stolen anything from them, quite the contrary, they provided him with a car. This feeble attempt to brand Blessing as a suspect, falls to be rejected.

- [112] Blessing testified that he usually takes his lunchbreak at 12h00 and has never seen accused 2 receive any visitors. He did not see accused 2 leave the premises around 12h00 on the 16th but confirmed that one of the ladies was outside, washing the car. It was put to Blessing that the Wendy houses along the road was infact an old school building where many people lived and someone could easily have accessed the property by jumping the wall. Blessing conceded that a person can jump the wall without being seen but intimated that he knew the people living on Plot 83 and that they have stayed there most of their lives and has never heard of any break-ins on the premises. Blessing materially confirms the version of Ellain, Moira and Lesley, in that Moira kicked in the door and the burglar gate had to be grinded open to access the bodies of the deceased. He further confirmed that accused 1 was from work and that she did not have the key to access the locked room. Ellain corroborates the version of Blessing that they never had any incident of robbery or theft on their plot and that they know the family that resides on the adjacent plot because they provide them with borehole water in exchange for their horses to graze on plot 83. Ellain was adamant that it will not be possible for strangers to simply walk onto the property as they have 7 vicious dogs that roams the property, unless they are busy feeding. She says that the dogs have the run of the property and if there is any movement on the property, the dogs will alert them by barking. Ellain said that the dogs will bite anyone that comes onto the property and have on occasion even bitten Blessing.

- [113] When Moira was asked why did she not think that Annemarie could have been the murderer when they found her inside the cottage, Moira responded that Annemarie appeared "high" and she could see that Annemarie was not there to clean, as the cottage appeared in a mess, hence she chased Annemarie from the property and further that by then they already knew that the ladies were missing since that Monday.

- [114] The evidence of Ellain, Moira and Lesley is not open to criticism. They corroborated each other as to Annemarie being found in the cottage, how the

bodies were eventually discovered and the fact that they summoned the police to the scene. They confirm that accused 1 was called from work, as they did not have a key to unlock the door. Ellain also intimated that the cottage was untidy, which is why Moira chased Annemarie. Ellain and Moira intimated that they only got a horrific smell, once the door was opened. Apart from corroborating the version of Blessing that nothing was ever stolen on the property, is it also their testimony that they were never informed of any camera installed on the property, by the accused. Lesley specifically testified that there were never any complaints to him about broken doors. It is peculiar why accused 2 especially, will not have these broken doors repaired, especially in light of the fact that he received death threats before. The conclusion becomes inescapable that the version of killers accessing the property, gaining access to the cottage through a broken or damaged doors, appears to be a fabrication. Blessing, Ellain, Moira and Lesley impressed as honest and credible witnesses whose version is accepted as trustworthy.

[115] Annemarie can best be described as unrefined, but that the test to be applied to the evidence of a single witness was authoritatively set out in *R v Mokoena*²⁴, where it was stated that the uncorroborated evidence of a single competent and credible witness is no doubt declared to be sufficient for a conviction... but that section should only be relied on where the evidence of a single witness is clear and satisfactory in every material respect. Moreover, the exercise of caution should not be allowed to displace the exercise of common sense.

[116] Bearing in mind that there is no rule of thumb, test or formula to apply when it comes to a consideration of the credibility of a single witness, the trial judge will weigh the evidence, will consider its merits and demerits and, having done so will decide whether there are shortcomings or defects or contradictions in the testimony, and that he is satisfied that the truth has been told. Moreover, this court is mindful of the provision of section 280 of the CPA 51 of 1977 which provides for a conviction to follow on the single evidence of a competent witness.

[117] Annemarie is a person who does not mince her words, she is direct and frank, volunteering information spontaneously, whether solicited or not. She

²⁴ 1932 OPD 79 at 80.

characterized her relationship with accused 2 as “friends with benefits”. She made no secret that she used drugs and to support her drug habit, she would perform sexual favours. Accused 2 labelled Annemarie as a “nuisance and a liar”. He said she has come around to his place 10 -15 times, uninvited and that he would never leave his wife for a woman like Annemarie. He branded Annemarie as his drug supplier, whom he will contact telephonically, but that she could access the property at any time because the dogs were only kept on one side of the property. He conceded that even though they used drugs together, Annemarie was telling lies when she said that she was present at the accused’ house on Friday the 20th when the police arrive or that he left minutes before the police arrived.

[118] Accused 2 wants this court to believe that not only Annemarie, but also the police are lying when they confirmed that Annemarie, was found inside the property. Bearing in mind that Annemarie’s version was also corroborated by Moira, Ellain and Lesley, who all said that when they found Annemarie inside the cottage, she appeared high and was chased from the property. The version of Annemarie is that she arrived early that Friday morning around 8h00, and accused 2 offered her coffee, where after they smoked a crystal meth “lollie”. It was also at that time when accused 2 told her that he “kill women”.

Annemarie conceded that she lied when she told the police that accused 2 went to his brother’ in Cape Town because at that moment she was not going to tell the police that she was there to have “sex”. She said that she covered-up for accused 2 because he seemed like a nice guy, who gave her a cell phone, which she hid by her private parts. That very same phone she later sold at the taxi rank for money.

If the court accepts Annemarie’s version which is corroborated by at least 4 other people, then it stands to reason that the version of the accused 2 that he saw Annemarie leave the property, and that she could have come back later, is so improbable for it to be rejected as false beyond a reason doubt. Bearing in mind that the police escorted Annemarie from the property.

Further, if the court accepts Annemarie’s version as aforementioned, then it stands to reason that Annemarie assertion that she smoked drugs with accused 2 on that Friday, where after he gave her a cell phone, is probable.

This is so because it was the evidence of Ellain, Moira and Lesley, that Annemarie appeared high, when they found her inside the cottage. The version of accused 2 that Annemarie was only there to deliver drugs, where after he saw her leave on foot, is an outright fabrication and is rejected.

[119] This court is mindful that the truthfulness or untruthfulness of a witness can rarely be determined by demeanour alone without regard to other factors, including, especially, the probabilities of the matter at hand. The fact that Annemarie lied to the police about the whereabouts of accused 2 must be seen in light of the circumstances that she was found in, namely being high on drugs. Her reason for lying to the police when questioned about accused's 2 whereabouts, is thus plausible, under those circumstances, but this does not warrant a rejection of her evidence in totality, as argued. Annemarie also made no secret of the fact that the phone which accused 2 gave her, was hidden by her private parts when the police found her in the cottage. She explained that the reason she lied to the police was because accused 2 appeared to be a nice guy, who gave her a phone.

[120] Annemarie, had the opportunity and could most certainly have fabricated a version against accused 2, if she had such malicious intent. She never said that accused 2 admitted to killing missing ladies, which she could have said, upon being questioned by the police about accused's 2 whereabouts, instead it was her testimony that she covered for him because he was good to her. She rather brushed aside the utterances made by accused 2, as him having a big mouth, than believing that he was sinister.

[121] This court having observed and heard Annemarie's testimony is cognizant that she at times came across as crude in her account of events, but she nonetheless impressed as an open and forthright witness. This court is mindful that demeanour can be most misleading, as the hallmark of a truthful witness is not always a confident and courteous manner or appearance of frankness and candour.²⁵

[122] It is however the view of this court that the probabilities of this case favour the version of events as portrayed by Annemarie. She maintained steadfast in her account of events, despite rigorous cross examination and I have no hesitation whatsoever in accepting her evidence as truthful and reliable.

²⁵ R v Lekaota 1974 (4) SA 258 (O) at 263

[123] The state then proceeded in mapping out a time-line to prove the events that led up to the demise of the deceased.

[124] Neither the evidence of Munashe who saw the deceased enter a red vehicle as depicted in the photos shown to her, nor the evidence of constable Mafole who tracked and viewed the said red vehicle on the footage from a nearby fat-cake shop, is open to criticism. The information given by the manager of the said shop, led constable Mafole to the Plot where he observed the said red Nissan Almera, being parked outside the cottage. Blessing informed him that one of the missing ladies from the photos was seen washing the car. The evidence of Mafole, is materially corroborated by Blessing, Moira, Ellain and Lesley as to how the discovery of the bodies unfolded.

[125] Further, accused 1 also materially agreed with the version of constable Mafole, insofar as it related to her, except that she will say that the anniversary gift was being prepared for her father, Pieter Denysshzen. The evidence of Constable Mafole was not broken down in any way during cross examination and is his evidence accepted as reliable and trustworthy.

[126] It was further mistakenly argued²⁶ by Adv. Botha that the Post Mortem confirms the death of Alice Manjodzi as “Ligature Strangulation” and the death of Priviledge Chikohora was unascertained at the time of death due to the bodies’ state of decomposing. The court safely accepts that the names of the deceased have to be switched around

It is a fact that Dr. Rowe confirms that the ligature (brown scarve) as depicted in photos F14 and F15 was still found tightly around the deceased (Priviledge) neck, and that this is typical in cases of strangulation. She could not find any natural causes of death with regard to Alice, but did allude that abrasion on the shin could be signs of a struggle like when a person is dragged. When Dr. Rowe was shown the plastic bags on the scene, as depicted on the photos, she opined that suffocation in the case of Alice, cannot be ruled out as the cause of death because the deceased, in this manner, could have been killed without any visible marks or injuries, being left behind.

Noteworthy is the evidence of constable Mafole, who stated that when the bodies were found, both deceased had plastic shopping bags around their heads. The inference by Dr. Rowe based on the scene-photos that a possible

²⁶ Page 1 and paragraph 4.16 of accused's 2 heads of argument.

cause of death, in the case of Alice could also be strangulation, in the absence of any injuries, is accepted as highly probable.

I however pause to mention at this juncture, that this court has however serious reservations about the states assertion that Dr. Rowe's evidence prove that the bodies were moved to the locked room after the murders and placed on the blanket. On this aspect I will elaborate later.

[127] The evidence of Detective Mtambo who visited the scene on the 6th of August 2018, is noteworthy, in that he said that he had difficulty accessing the property, despite using his car hooter and he had to pre- arrange access. The version of accused 2 is that anyone can literally access the property at any time, which included Annemarie and the killers. This version flies in the face of the evidence of Ellain especially, who intimated that with 7 vicious dogs on the property, no one can just enter onto the property and have they never had any incidents of robbery of theft on the property. The version of accused 2 that Annemarie and the killers could access the property because the dogs are only kept on one side of the plot, refutes the version of Ellain, who said that the only time when the dogs are not roaming the property, is when they are feeding. This reasoning also accords with the version of Annemarie that she was always picked up by the accused. It is highly improbable that during the 15 times or so when Annemarie visited accused 2 uninvited, would she not have encountered the dogs, not even once.

[128] Mtambo discovered a cell phone in one of the drawers discarded outside the cottage and it was confirmed by Madei as belonging to her sister, Priviledge as well as the white/cream handbag. On a closer look at photos 9 and 10, one can clearly see that the handbags of both deceased are open and the items of the cream/white handbag appears to be protruding, as if the contents of the handbag were disturbed. This brings me to the questions of why the bags of both deceased were open and how did Privileged' phone left her possession or control and moved from Framers Exchange to Venterspos from 12:25 to 13:41, and later to an outside drawer? As stated above, accused was the only common denominator and in light of the fact that he gave Annemarie a cell phone, which cannot be confirmed as belonging to the other deceased, the probability presents itself from the proven facts that accused 2 was the only

person at that time who had access to the handbags. The evidence of these witness is accepted as reliable and trustworthy in this regard.

[129] Adv. Botha argued that the evidence of Nyarai amounted to hearsay and should be ignored. This argument is however untenable as Nyarai was a participant in the conversation with Priviledge. However, what becomes clear is that the evidence of Nyarai, fits like a hand in glove, with the cell phone evidence presented. Her account of the conversation is corroborated by none other than accused 2 himself, who confirms that he had sent one of the deceased to buy milk from the tuckshop and also that he was wearing boxer shorts and a gown at some point in time. What are the chances of Nyarai knowing all this information, if it was not told to her by the deceased? What stood out in Nyarai's evidence was that Priviledge said that she was afraid of this person and she was told not to enter the house, unless she was told to. Further, that around 12h00 Priviledge called again sounding afraid and saying "Nyarai Nyarai". Why will Nyarai fabricate this version? The inference that Priviledge was told not to enter the house unless she was told to, points to the obvious conclusion that accused 2 only wanted one deceased in the house at a given time. It is also noteworthy that Priviledge sounded afraid, having seen accused 2 walking in a boxer shorts and gown. The question is why will she sound afraid, if she was not faced with danger? This court has no hesitation in accepting the evidence of Nyarai as reliable and trustworthy.

[130] Criticism was levelled against the evidence of Simphiwe, the cell C analyst, in that the whole statement, marked exhibit "EEE" is a "cut and paste job", because the phone number at paragraph 11 refers to an irrelevant phone number and that irrelevant towers are referred to in his analyses. Ironically, the evidence of this witness stands uncontested.

[131] In the case of *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*²⁷ the following was stated in this regard:

"The institution of cross examination not only constitutes a right but also imposes certain obligations. As a general rule it is essential, when it is intended to suggest that a witness is not speaking the truth on a particular

²⁷ 2000 (1) SA 1 (CC) at 36J-37E.

point, to direct the witness' attention to the fact by questions put in cross examination, showing that the imputation is intended to be made and to afford the witness an opportunity, while still in the witness-box, of giving any explanation open to the witness and defending his or her character. If a point in dispute is left unchallenged in cross examination the party calling the witness is entitled to assume that the unchallenged witness's testimony is accepted as correct."

[132] Save to acknowledge that Exhibit "EEE" had a typing error which was rectified by Simphiwe to read 084 7710586 as oppose to 0847710556, the remainder of the contents of Annexure "D" attached thereto was also not challenged during cross examination. It is incumbent on the defence to make clear the imputation to the witness so it can be met and destroyed particularly where the imputation relies upon inferences to be drawn from other evidence in the proceedings.

[133] The cell phone evidence showing that the last incoming call on the 16th of July 2018 at 12:25:34, to cell phone number 084 7710586 (as used by Privilege) and a SMS that was received at 13:41:51, is accepted as reliable and trustworthy. The data further shows that from 09:24:19 the Cell C Farmers Exchange Tower was activated at least 8 (eight) times. The handset activated the Cell C Venterspos Tower around 13:41:51. This shows that the handset moved from the Framers exchange Tower closer to the Venterspos tower, over a distance of ± 11 km. The question is why if Privilege was at the house of accused 2 allegedly cleaning, was her phone moving, activating the nearest tower at Venterspos? The golden thread between Privilege and Venterspos, is accused 2 and not Annemarie as argued. The version of accused 2 as per his plea explanation that he left the deceased preparing food is contradicted by his oral evidence where he stated that he saw the deceased, walking behind his vehicle, as he drove off to buy the spare parts.

[134] Accused 2 blames his drug-paranoia for his peculiar behaviour on that Friday (20 July), because he had been using drugs during the course of that entire week. The question that begs answer is why then only on that Friday did the paranoia get the better of him and not on the Wednesday for example? In trying to explain this behaviour, he amends his version and states that he

received a phone call the previous night from an old friend, telling him to “just get away”. This version which now appears to be the actual reason for fleeing, is not mentioned in his plea explanation and neither did he deem it necessary to inform his wife hereof. The most probable explanation is that accused 2 was unexpectedly surprised by the arrival of the police on that Friday, causing him to flee the scene. This accords with the version of Annemarie that one minute they were doing drugs and the next minute, accused 2 abruptly got up and left. That will also explain why he just left his beloved wife, car, and phone behind.

[135] Accused 2 in his plea explanation stated that he “took them home to help with the household chores for the day”. In chief, accused 2 said that the ladies were fetched because they were instructed to pack up some stuff because he and his wife wanted to move the following weekend. Accused 2 intimated that he did not give notice to the landlord, but as a fair person he would honour his rent contract. When confronted with the fact that his plea explanation does not allude to the fact that the deceased was there to pack up boxes, accused 2 said that packing up boxes was part of household chores.

[136] Accused 1 in her statement clearly states that they do not have a helper at all, yet accused 2 in his plea explanation states that “It was agreed between me and my wife, Susana Noeth (accused no 1) that on that specific day being 16 July 2018, she will use my car to go to work. I will the use her car to collect helpers to clean our home...” Surely if there was this agreement to collect helpers, then why will accused 1 not say that. On further perusal of the plea explanation, accused 2 again states that “they will help with household chores that day.” When accused 2 is confronted about this contradiction between his evidence in chief, and to point out where on the photos the packed-boxes were reflected, he comes up with a nonsensical answer saying that packing of boxes is also household chores.

[137] The version of Munashe is that when the white male stopped his vehicle, she was one of the people who rushed to the vehicle. She then heard the white man say that he needed people to sweep and do the laundry. This version ironically accords with the plea explanation of accused’s 2, where he stated that the agreement he had with the deceased was to help with house chores for the day and not the packing of boxes, as he now wants this court to

believe. This version of Munashe was never challenged during cross examination and thus is the version of Munashe accepted as trustworthy.

[138] Interestingly, the photographs²⁸ clearly depict the cottage as a relatively small place. This will support the statement made by accused 1 that they do not have a helper at all, possibly because the size of the cottage does not warrant a helper. The photographer, meticulously went through and described what each photo depicted. How then did the photographer overlooked the packed boxes, but he did not overlook photographing a pair of gloves in the ceiling? The conclusion is unavoidable that all this fabrication, points to a last minute attempt by accused 2 to salvage his credibility.

[139] There was no significant contradictions between the version as accounted to by the state witnesses as most facts were common cause. Their evidence is accepted as reliable and trustworthy.

[140] This court is cognizant that; “Whether I subjectively disbelieve the accused is not the test. I need not even to reject the State’s case in order to acquit him. I am bound to acquit him if there exist a reasonable possibility that his evidence may be true. Such is the nature of the *onus* on the State.²⁹ However, there is no obligation upon the crown to close every avenue of escape which may be said to be open to the accused. It is sufficient for the crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the offence charged with. He must, in other words, be morally certain of the guilt of the accused.³⁰”

[141] The factual matrix as set up by the state, clearly provides a visual guide to every proven fact and it will be demonstrated that the version of accused 2 is fraught with inherent improbabilities that leads to a rejection of his version as false beyond a reasonable doubt. Accused 2 presented as a crafty and deceitful fabricator, who could not keep up with his own lies.

[142] Accused 2 intimated that upon discovering the bodies, was he under pressure to decide what to do next. Instead of calling the police, he slept on the couch

²⁸ Exhibit F.

²⁹ S Kubeka 1982 (1) SA 534 (W).

³⁰ R v Mlambo 1957 (4) SA (A) @ 738A.

from that Monday until the Friday, to protect the room where the bodies were on the one hand and on the other hand, to protect his wife from the possible attackers, not wanting them to find her or possibly kill them both. The explanation proffered that accused 2 procrastinated until the Friday when the paranoia got the upper hand and then disappeared for a year, is in stark contradiction to the picture painted that he was protecting his beloved wife. The state correctly argued that the issue of 'drugs' only came to the fore once Annemarie took the witness stand. The version that the drugs send him into panic mode, upon discovering the bodies, are false, because this material aspect was omitted from his plea explanation.

[143] In his plea explanation accused 2 created the unmistakable impression that the killers were potentially former colleagues, from whom he received death threats, and not Blessing, and most certainly not Annemarie. To give credence to the version that his colleagues may be the killers, he even referred this court to the threats that was contained in his WhatsApp application, which phone is in possession of the police. However, when Annemarie, the 'surprise witness' took the stand, the version of the accused went pear shaped. The accused now had to come up with a plausible reason why Annemarie was found inside the cottage, whilst his wife was at work. From here the version of the accused 2 became demonstrably suspect. The version of accused 2 that the reason why he fled was because he received a call from a friend the previous night, is an example of the inherent improbability in the various versions put forward by accused 2. Even if this court momentarily accepts that he did receive such a call, then it stands to reason that he would at the very least tell his beloved wife whom he protected the entire week by sleeping on the couch or inform the police so they could protect her. Instead he left, knowing that the people who killed 2 innocent people in cold blood, were still on the loose. Unless, that is, accused 2 perpetrated the murders himself.

[144] In light of the aforementioned, this court finds the version of accused 2 to be inconsistent with the proven facts, and finds it inherently so improbable for it to be rejected as false beyond a reasonable doubt.

- [145] This court being mindful of the cardinal rule laid down in the case of *Blom*³¹, is satisfied that, consistent with the proven facts that accused 2 is without a doubt the person who without justification and with direct intent, killed the deceased.
- [146] The state however wants this court to find that not only did accused 2 killed the deceased but that he did so with premeditation. In support hereof, the state submitted that; the evidence of Dr. Rowe proves that the bodies were moved to the locked room and placed on the blanket, after the murders were committed; the lay-out of the scene and the preparing of a “gift” or artwork by accused 2. The submission that the display of the bodies was an anniversary gift, as the only reasonable inference, does not find support by this court.
- [147] The concept of a planned or premeditated murder is not statutorily defined³² and the Concise Oxford English Dictionary³³ gives the meaning of premeditate as to think out or plan beforehand. Clearly the concept suggests a deliberate weighing-up of the proposed criminal conduct as opposed to the commission of a crime on the spur of the moment or in unexpected circumstances.
- [148] What is imperative is the examination of all the circumstances surrounding the particular murder, including not least the accused's state of mind, will allow one to arrive at a conclusion as to whether a particular murder is planned or premeditated.
- [149] The inference sought to be drawn by state from the proved facts cannot in my considered view be the only reasonable inference. It must be born it mind that accused 2 had access to that room for the entire week and the “arranging” of the bodies could also have happened over that period. Further, the injuries sustained could also have happened in that specific room with its tiled floor and many objects which could have been used, in causing the abrasions and blunt force injuries.
- [150] Even if there may be suspicions that the accused 2 acted with premeditation, the state bears the *onus* of proving the guilt of the accused beyond a

³¹ *Supra*.

³² *S v Raath* 2009 (2) SACR 46 (C) in para 16.

³³ 10 ed, revised.

reasonable doubt. That is an inevitable consequence of living in a society in which the freedom and the dignity of the individual are properly protected and are respected. Convictions based on suspicions or speculation is the hall mark of a tyrannical system of law.³⁴

[151] This court having found no legal grounds of justification for the actions of the accused 2 and makes the following findings.

- a) Accused 2 as per his plea explanation, collected the deceased, from where they usually stood next to the road.
- b) He was the last person seen in the company of the deceased.
- c) He took them home under the guise of doing house chores.
- d) He instructed one deceased (Privilege) to wash the car outside and not to enter the house unless she was told to.
- e) Priviledge told Nyarai that the place she was sent to buy milk was a faraway tuck-shop.
- f) Priviledge told Nyarai that she was afraid of the person who picked them up and that he was now wearing a boxer shorts and gown.
- g) Priviledge last spoke to Nyarai around 12h00.
- h) According to the cell phone evidence, the handset of Priviledge moved from Framers Exchange at 12:25 to Venterspos at 13:41. The common denominator being accused 2.
- i) That very same handset was found 17 days later at the crime scene.
- j) The evidence shows that Priviledge was somehow dispossessed of her handset.
- k) Accused 2 gave Annemarie, his drug supplier a phone, which according to the state cannot be ruled out as belonging to the other deceased.
- l) The photos clearly demonstrate that both handbags were open and the content exposed.
- m) This court finds that accused 2 is the person who dispossessed Privileged of her handset and moved with it from Farmers Exchange to Venterspos and later back to the scene.
- n) Whilst the one deceased was send away, accused 2 had the time and

³⁴ S v T 2005 (2) SACR 318(E) para 37 Plasket J.

opportunity to kill the other deceased.

- o) The utterance made by accused 2 to Annemarie that he kills women further supports the findings of this court;
- p) The medical evidence shows that there was a struggle and that the deceased defended themselves.
- q) The plastic bags which covered their heads, could easily have muffled out any sound.
- r) The photos clearly depict the position the bodies were found it, the body of Priviledge still having the brown scarves ligature, wrapped tightly around her neck. The only reasonable inference consistent with the proven facts are that Alice was suffocated to death with the plastic bag that covered her head, hence no strangulation marks were found.
- s) The death of Alice was not determined to be natural causes, that much, Dr Rowe was certain of.
- t) The version of accused 2 that either Blessing, Annemarie, his former colleagues could have access the cottage and killed the deceased is rejected as false beyond a reasonable doubt.
- u) The version that accused 2 acted the way he did was because of his drug-paranoia is rejected as an afterthought and false beyond a reasonable doubt.
- v) The only reasonable inference consistent with the proven facts are that accused 2 fled the scene on that Friday when the police made a sudden appearance and has been on the run until his arrest.
- w) Whist on the run, accused 2 was not hiding from the killer or waiting for the police to trace the real suspects, he was infact the only suspect, which will also explain why he was found hiding in the cupboard.

[152] The court is satisfied that the state through accepted evidence has proved its case beyond a reasonable doubt in that accused 2 was present at the crime scene and having the time and opportunity, killed the deceased as envisaged. Insofar as the version of accused 2 differs from that of the State, the court accepts the evidence of the state beyond a reasonable doubt and rejects the version of accused 2 as inherently so improbable, and false, beyond a

reasonable doubt.

[153] **ACCUSED 2 IS ACCORDINGLY FOUND GUILTY OF:**

AD COUNT 1: MURDER, with the requisite form of intention being *dolus directus*, read with the provisions of section 51(2) read with part II of Schedule 2 of Act 105 of 1997, as amended.

AD COUNT 2: MURDER, with the requisite form of intention being *dolus directus*, read with the provisions of section 51(2) read with part II of Schedule 2 of Act 105 of 1997, as amended.

[154] This court will now deal with the evidence of Colonel Kruger and Detective Mtambo, in relation to accused 1.

[155] The state alleges that accused 1 committed the crime of Accessory after the fact to murder, or defeated or obstructed the course of justice, in that:

- a) Being aware of the identity and whereabouts of accused 2 and being aware that he committed the offences mention in counts 1 and 2;
- b) She unlawfully and intentionally engaged in conduct that intended to protect accused 2 from arrest by the police;
- c) By failing to report the whereabouts of accused 2 to the police:
 - i. With the intent to enable accused 2 to evade liability for the crimes of murder;
 - ii. And/or to facilitate accused 2's evasion of liability for murder.

[156] Further that accused 1 did the aforementioned in the following respect:

- a) She resided with him and did not inform the police of his whereabouts;
- b) Even though she was a state witness, she changed her number and thereby blocked the police on her phone from following up with her regarding the whereabouts of accused 2;

- c) The state witnesses testified that they did attempt to follow up but found her phone to be blocked;
- d) When the police attempted to arrest her, she attempted to flee from them;
- e) She admitted to Colonel Kruger that she did it for her husband and she loves him.

[157] The argument by the defence is that the state has dismally failed in proving the above charges against accused 1, beyond a reasonable doubt. This is so as the argument goes, because when one examines the version of accused 1 as attested to by the state witnesses then the following is clear, namely that she did not act in favour of accused 2, instead:

1. When she came from work she informed the landlady and the police that she did not have the key to the locked room and that accused 2 told her that he was preparing a surprise anniversary gift for her;
2. She informed them that accused 2 appeared to be stressed and slept on the couch that week;
3. She informed them that she last saw accused 2 that morning and has been unable to get hold him telephonically;
4. Accused 1 showed colonel Kruger photos to assist with the identification of her husband;
5. She informed colonel Kruger during their interview that she did not know the whereabouts of accused 2;

[158] Further that accused 2 did not implicate accused 1 in any way. In fact, based on his evidence it is clear that accused 1 had no knowledge of the dead bodies as accused 2 was in possession of the key, whilst he was preparing the anniversary gift.

[159] Further, with reference to the case of *S v Binta*³⁵ where it was stated that defeating or obstructing the course of justice consists in unlawfully doing an act which intended to defeat or obstruct and which does defeat or obstruct the administration of justice.

³⁵ 1993 (2) SACR 553 (C).

- [160] The court agreed with the submission by the defence with reference to the case of *Nooroodien en Andere*³⁶ that with regard to the position of someone who fails to report a crime, it is clear that such failure *per se* does not constitute that person an accessory after the fact. Adv. Mvatha argues that the act of not telling the police of the whereabouts of 2 cannot in any way constitute defeating or obstruction of justice because there was no legal duty placed on her to inform the police about the whereabouts of accused 2. With this reasoning, this court is in agreement.
- [161] Adv. Mvatha labels the conduct of colonel Kruger and detective Mtambo as desperate conduct to criminalize the alleged failure of accused 1 to report the whereabouts of her husband, after she became aware of it.
- [162] The version of colonel Kruger is that accused 1 was informed that this is a serious offence, whereupon accused 1 said that she did not know the whereabouts of her husband. Colonel Kruger said that he cannot dispute the fact that at that stage accused 1 knew nothing. He testifies that about 4 months after the interview that he could no longer get hold of her as it would appear that her phone was either blocked or she changed her number.
- [163] This version was corroborated by detective Mtambo who intimated that he too was in contact with accused 1 but from the time of the incident and she had been co-operative and even indicated a willingness to notify him, should she hear anything. He said at some stage when he tried contacting accused 1, her phone would go to voicemail. He said he has spoken several times with accused 1 over the phone, but concedes that he has no cellphone records thereof neither did he make a statement to that effect. To support his assertion, detective Mtambo referred to a conversation he once telephonically had with accused 1. It was then put to him that accused 1 will agree that she did have that specific conversation with him, but that the conversation took place on their way to the police station.
- [164] Colonel Kruger conceded that he never physically tried to look for accused 1 at her mother's place because he could see that his messages went unread. He also conceded that this allegation was nowhere recorded in his statement.

³⁶ 1998 (2) SACR 510 (NC).

Colonel Kruger intimated that upon following up certain information, he spotted accused 1 driving the maroon Nissan Almera, whilst on his way to her mother's house place. He said that the vehicle drove faster, skipping two stop streets. He eventually managed to pull the vehicle over and explained to accused 1 her constitutional rights and reason for arrest, it being defeating the ends of justice. When he asked for an explanation, accused 1 said "I did it for my husband because I love him". The defence then stated that accused 1 will deny that she was informed of her rights or reason for arrest or that she made any statement to Colonel Kruger. Accused 1 however elected not to testify in her own defence.

[165] With reference to the case of *S v Boesak*³⁷ it was stated that the right to remain silent has application at different stages of a criminal prosecution. An arrested person is entitled to remain silent and may not be compelled to make any confession or admission that could be used in evidence against that person. It arises again at the trial stage when an accused has the right to be presumed innocent, to remain silent, and not to testify during proceedings. The fact that an accused person is under no obligation to testify does not mean that there is no consequences attaching to a decision to remain silent during trial. If there is evidence calling for an answer, and an accused person chooses to remain silent in the face of such evidence, a court may well be entitled to conclude that the evidence is sufficient in the absence of an explanation to prove the guilt of the accused.

[166] Adv. Mvatha argues that the written statement made by accused 1 is evidence before this court. That very well may be the case, but how does a statement made as a witness, suffice to challenge or refute the state's case. Once the prosecution has produced evidence to establish a *prima facie* case, an accused who fails to produce evidence to rebut that case, is at risk.

[167] This court in the absence of any testimony by accused 1 under oath, is seized only with the version as presented by the state and upon careful scrutiny can it not be said that Kruger or Mtambo acted with malicious intent, infact Mtambo especially did not waiver in testifying in favour of accused 1.

³⁷ 2001 (1) SACR 1 (CC) @ para 24.

[168] The actions of accused 1 cumulatively, in my view satisfy the elements of an accessory after the fact to the commission of the crime, as she engaged in conduct intended to enable accused 2 to evade liability for his crime or facilitated him in the evasion of liability.

[169] It is not the failure to report *per se* that constitutes an accessory after the fact but coupled with other circumstances of accused 1's conduct, it constitutes an association with the crime whereby material assistance was rendered to accused 2 to evade justice.

[170] **ACCUSED 1 IS ACCORDINGLY FOUND GUILTY AS AN ACCESSORY AFTER THE FACT TO MURDER AND NOT GUILTY TO THE ALTERNATIVE COUNT.**

**A AFRICA
ACTING JUDGE OF THE HIGH COURT**

Date Heard	21 June 2022
Judgment handed down	19 September 2022

Appearances:

On behalf of the State	Adv Badenhorst
On behalf of Accused 1	Adv Mvatha
On behalf of Accused 2	Adv Botha