



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

CASE NO: SS127/2021

**DPP Ref: 10/2/11/1
(2021/083)**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 15 March 2023

In the matter between:

THE STATE

and

GEORGE: LEROY

ACCUSED

JUDGEMENT

ALLY AJ

INTRODUCTION

[1] The Accused, Leroy George, has been arraigned before this Court on the following charges which formed the basis of an amended indictment:

- 1.1. **Count 1:** Murder of **Igshaan Shaun Wilkenson**, an adult male person, read with the provisions of Section 51(1) of Act No 105 of 1997 and Part 1 of Schedule 2 of Act 105 of 1997, as amended;
- 1.2. **Count 2:** Contravention of Section 3 read with Sections 1, 2, 103, 117, 120(1)(a) and Section 121 read with Schedule 4 of the Firearms Control Act 60 of 2000, and further read with Section 260 of the Criminal Procedure Act 51 of 1977, and further read with Section 51(2) of Act 105 of 1997, and Schedule 2 Part II of Act 105 of 1997 – unlawful possession of a firearm;
- 1.3. **Count 3:** Contravention of Section 90 read with Sections 1, 2, 103, 117, 120(1)(a) and 121 read with Schedule 4 of the Firearms Control Act 60 of 2000, and further read with Section 250 of the Criminal Procedure Act 51 of 1977 – unlawful possession of ammunition;
- 1.4. **Count 4:** Murder of **Terrance Rhodes**, an adult male person, read with the provisions of Section 51(1) of Act No 105 of 1997 and Part 1 of Schedule 2 of Act 105 of 1997, as amended;
- 1.5. **Count 5:** Contravention of Section 3 read with Sections 1, 2, 103, 117, 120(1)(a) and Section 121 read with Schedule 4 of the Firearms Control Act 60 of 2000, and further read with Section 260 of the Criminal Procedure Act 51 of 1977, and further read with Section 51(2) of Act 105 of 1997, and Schedule 2 Part II of Act 105 of 1997 – unlawful possession of a firearm;
- 1.6. **Count 6:** Contravention of Section 90 read with Sections 1, 2, 103, 117, 120(1)(a) and 121 read with Schedule 4 of the Firearms Control Act 60

of 2000, and further read with Section 250 of the Criminal Procedure Act 51 of 1977 – unlawful possession of ammunition;

[2] The State is represented by Adv. R. Barnard and the Defence by Ms Bovu from Legal Aid South Africa.

[3] The Accused understood the charges as read out fully by the Prosecutor and pleaded not guilty to all charges and raised an alibi defence in respect of the charges relating to the murders in terms of Section 115 of the Criminal Procedure Act 51 of 1977 as amended.

[4] Specifically in respect of Counts 1 to 3 the Accused stated that on the date of the incident he was at the scene but left before sunset.

[5] In respect of Counts 4 to 6 the Accused stated that he was not on the scene on the date of the incident. Specifically, he was at his residence at Flat M8, Reiger Park from the morning until during the day. He was with his grandmother and child as well as friends, Naikie and Madiba. He left his residence with his friends around 18H00 for Wadeville and returned around about 22H00.

[6] Ms Bovu confirmed that the not guilty plea was in accordance with her instructions and that the Accused was aware of the provisions Section 51(1) of Act 105 of 1997.

[7] The State alleges that the murders in Counts 1 and 4 were pre-planned and premeditated.

[8] The Court was informed by the State that the Section 220 admissions would be read out at a later stage which was done by agreement. The statement in terms of Section 220 of the Criminal Procedure Act 51 of 1997 was handed in as Exhibit "A". The statement was duly signed by the Accused and Ms Bovu. The State also handed up an amended indictment.

[9] An Exhibit file containing the following exhibits was handed in by agreement:

- 9.1. Exhibit "A": Section 220 admissions signed by the Accused and Ms Bovu;
- 9.2. Exhibit "B": A Post-mortem report compiled by Dr E.A. Apatu in respect of Count 4.
- 9.3. Exhibit "C": A forensic report compiled by Warrant Officer T.L. Rikhotso;
- 9.4. Exhibit "D": A photo album compiled by Sergeant M.J. Mogashoa;

- 9.5. Exhibit “E”: A Post-mortem report compiled by Dr M.I. Kolodi in respect of Count 1;
- 9.6. Exhibit “F”: A photo album compiled by Sergeant Mtshali;
- 9.7. Exhibit “G”: A forensic report compiled by Warrant Officer R.J. Macheru;
- 9.8. Exhibit “H”: A forensic report compiled by Captain R. Viljoen.

SUMMARY OF THE EVIDENCE

[10] The State called Mr Chadwin Lionel Swanepoel, hereinafter referred to as Chadwin, as its first witness to testify in respect of the incident involving the murder of Terrence Rhodes on the 5th June 2021.

[11] Chadwin recalled that he knew the Accused for about 10 years but not personally because they were from the same area and they saw each other at the soccer grounds in Reiger Park. He also saw the Accused during the times they played ‘dice’, a gambling game, and knew him also by his nickname, “Peer”.

[12] Chadwin knew the deceased, Terrence Rhodes, through gambling and soccer training. He also referred to the deceased, as a ‘knocksman’ – a person in charge of the ‘dice’ game.

[13] On the 5th June 2021, the day of the incident involving the murder of Terrance Rhodes, the deceased in Count 4, Chadwin had played soccer in Geluksdal until about 17H30 and returned to Reiger Park at about 18H00.

[14] Chadwin testified that he first visited his girlfriend after having played soccer in Geluksdal and thereafter went to visit his friends which included Terrance Rhodes, the deceased. What he recalls is that Terrance had requested, Timothy, his cousin to put water on for coffee because he, Terrance, had to go open the 'dice' game.

[15] Chadwin testified that he accompanied Terrance and Timothy to open the 'dice' game which took place at the corner of Roos and John Collins streets in Reiger Park. Present at the 'dice' game was about seven people, namely, himself, Terrance, Imraan, Damian, Keena, Dylan and Jermaine. The 'dice' game was played on a board.

[17] On this particular day they had made a fire. Chadwin recalls that Jermaine used his cellphone torch to show the game as it was dark already and the fire and the cellphone enabled the 'dice' players to see the game they were playing. The 'dice' was, what Chadwin described as a 'snakes and ladders' dice. He stated that the light from the fire and the cellphone was sufficient enough to show the number of dots on the dice.

[18] The board on which they played 'dice' was about 1.5 metres in length and about a half a metre wide.

[19] Chadwin testified that whilst they were playing the 'dice' game he noticed someone walking pass. He indicates that the person was coming from the direction of Honeysuckle Street as depicted on the Sketch plan of Exhibit "F". He states that he did not take notice of the person until Imraan and Damian were pushed. He states that he saw the person who pushed Damian and Imraan when this person came closer and noticed that this person had a black Nike jersey and had a thick or full beard and then saw his face.

[20] Chadwin testified that he saw that the person that pushed Damian and Imraan was "Peer", the Accused. He states that the Accused was right next to him. He could see from the jersey logo to his face.

[21] Chadwin testified that at the stage he had noticed that it was the Accused he also noticed a firearm in the possession of the Accused. This firearm was pressed against the deceased, Terrance's head. Terrance got up and that is when Chadwin heard the first gunshot. He states that the Accused fired the gunshot. At the time that the Accused fired the gunshot, he said nothing to the deceased, Terrance. Chadwin states that he just heard a scream and saw a spark of fire. He then ran around Roos Street in the direction of Honeysuckle Street. As he was running, he

heard further gunshots fired. He testified that he did not know what happened to Jermaine but him, Imraan and Damian ran in the same direction as he did.

[22] Chadwin testified further that he did not see anyone else with a firearm but the Accused. All in all, he had observed the Accused for approximately 90 seconds.

[23] When the gunshots had stopped Chadwin and Imraan went back to check if the deceased Terrance, was alive. Chadwin noticed the position of the body and that Terrance, the deceased, had a ten rand note in one hand and a cigarette in the other. He observed further that Terrance had a hole in his neck and blood was coming from his mouth.

[24] The State then called Damian Ashwin Greene, hereinafter referred to as Damian, to testify in respect of both counts of murder.

[25] Damian testified that he knows the Accused from playing soccer and that the Accused worked for Ekurhuleni Municipality. In respect of the soccer, he and the accused played for different teams.

[26] Damian indicated that he had no issues with the Accused.

[27] Damian knew the deceased, Igshaan Shaun Wilkenson, hereinafter referred to as Shaun Wilkenson, because they stayed in the same area.

[28] Damian also knew the deceased, Terrance Rhodes because they stayed in the same street.

[29] Damian testified that he did not know of any issues that the Accused had with both deceased, Shaun Wilkenson and Terrance Rhodes.

[30] Damian testified that he was present during the first incident on 24 April 2021 when Shaun Wilkenson was killed. He stated that they were playing a game of 'dice'. His testimony is that there were two games of 'dice'. A big game and a small game. The big game was played in front of the face depicted on the wall in photograph 7 of Exhibit "D" and the small game was played to the right of the face in photograph 7 of Exhibit "D".

[31] He testified that there were a lot of people at the 'dice' game. He recalled that Terrance Rhodes was at the big game as well as Shaun Wilkenson. He testified that the Accused was at the big game.

[32] Damian further testified that an argument ensued between Piero and Ryan regarding money. The Accused, according to Damian grabbed money from the

board during the argument between Piero and Ryan. This money had belonged to Ryan and Ryan tried to retrieve his money from the Accused and the Accused refused. The Accused reacted violently towards Ryan accusing him of taking the money. The rest of the gamblers requested the Accused to give the money back which he did and he then left the game.

[33] Before leaving, the Accused remarked that Ryan will see what happens when he returns.

[34] Damian does not know how the Accused left the gambling game at that time. Ryan continued to gamble and then left after the Accused had left.

[35] Damian states that it was quiet for a while and then the Accused arrived with his friends in a Toyota Tazz. At this time the Accused was a passenger in the Tazz. The Accused alighted from the Tazz and stood in the middle of the road with a firearm pointing towards the game. At this time the Accused was approximately 7 to 8 metres from him.

[36] Damian then testifies that he knew it was the Accused because the person that stood with the firearm in the middle of the road had the same clothes on as the Accused wore earlier on when he was gambling. He stated that the Accused was wearing a black and grey hoodie but he did not know the make.

[37] Damian testifies that several shots were fired by the person that was wearing the same clothes as the Accused. He further states that the person that was shooting was firing in general. Damian says he ran away when the shots were fired and returned to the scene about 5 minutes later, when the shots that were fired had stopped.

[38] Damian testified that on his return he saw Shaun Wilkenson on the ground and there was a lot of blood. At the time that the several shots were fired, Damian states that the deceased, Shaun Wilkenson had his back to the shooter.

[39] Damian then testified that he was also present during the second murder, that is, the murder of Terrance Rhodes.

[40] When Terrance Rhodes was killed, it happened whilst they were gambling and it was dark already.

[41] Damian states that he was standing next to Imraan during the incident involving Terrance Rhodes.

[42] Damian states that his back was facing towards the Church and this incident happened during loadshedding. He testified that there was a light from a cellphone that was used as lighting and there was also a fire at the time. He recalls that he could see the dots on the 'dice' during the game.

[43] Damian recalls that this incident involving Terrance Rhodes occurred between 19H00 and 20H00.

[44] He testified that whilst they were gambling, somebody came from behind and pushed him and Imraan aside. This person had a firearm. Damian states that he did not know that there was a person behind them. He recalls that the person pushed him and Imraan aside with an outstretched hand that also had the firearm.

[45] Damian testified that this person then went towards Terrance Rhodes with the firearm and held it at Terrance's neck. He states that the firearm was black in colour and was one that you had to cock before you fired. He states that he did not look at the person when he was pushed aside.

[46] He states that he, Chadwin and Imraan ran away when the shot was fired and he did not see who fired the shot.

[47] Damian testified that he did see that the person that fired the shot had a small foot and was wearing a size 5 Nike takkie. He was unable to identify the Accused as the person that fired the shot.

[48] The State then called Imraan Chadlie Nevin Abdullah, hereinafter referred to as Imraan, to testify. Imraan testified in respect of the murder of Terrance Rhodes.

[49] Imraan testified that he knows the Accused from soccer and from gambling in Reiger Park. He has known the Accused for approximately five years. He has had no issues with the Accused.

[50] He testified that Terrance was his neighbour and was called 'the knocksman'. He knew of no trouble between the deceased, Terrance, and the Accused.

[51] Imraan recalls that seven people were gambling, namely, Chadwin, Damian, Terrance, Dylan, Jermaine, Keena and himself. They were gambling on the corner of Roos and John Collins streets in Reiger Park.

[52] Imraan testified that he cannot remember the time that they were gambling but it was before 20H00 because Pick n Pay was still open.

[53] Imraan states that the visibility was not so good but lighting was provided by a cellphone and a fire. He recalled that he could see the dots on the dice.

[54] Imraan testified that they gambled on a board and this board was approximately 1 metre in height. The gamblers, at the time, were standing in a circle. He stated that the positioning was Terrance, Chadwin, himself, Damian, Dylan, Keena and Jermaine. The fire that was burning was between Chadwin and Terrance. He recalls that the fire was small.

[55] Imraan testified that whilst they were gambling, the Accused shoved him and Damian and then shots were fired. He states that the Accused came from behind from the direction of John Collins Street. He states that he did not see the Accused approach but noticed him the first time when the Accused shoved him and Damian. The Accused shoved Damian to the right and himself, Imraan, to the left.

[56] At the time that he shoved, the Accused used his right hand. Imraan testified that he looked at the Accused's face when he was shoved by the Accused. He noticed that the firearm was black in colour and that it was a pistol.

[57] Imraan testified that he saw the Accused point the firearm at Terrance's neck and a shot went off. He states that he then ran around the corner to his house. When he ran away, he ran with Chadwin and Damian. He states further that whilst

he was running 2 shots were fired and when he was in the house, further shots were fired.

[58] After approximately, three to five minutes, Damian, Chadwin and himself returned to the scene where Terrance was shot. He did not want to go near but he saw that blood was coming from Terrance's face.

[59] Imraan testified that he saw the Accused before the first gunshot was fired. He was approximately an arm's length away from the Accused. He states that he looked at the Accused for approximately 1 minute. He recalls that the Accused was wearing a Nike top with a hoodie and black pants with gloves. He further recalls that he had seen the Accused wearing these clothes at the shop and at soccer. He states that he has not seen any other person with similar clothes. He further recalls that the Accused wore a full beard at the time but this beard was not long.

[60] The State then called, the Investigating Officer, Sergeant Goodwill Khoza to testify. This witness testified that the Accused was arrested after the murder of Terrance Rhodes and the Accused was linked to the murder of Shaun Wilkenson after the murder of Terrance Rhodes.

[61] The witness testified that a photograph of the Accused was taken and uploaded on a database which is reserved for serious cases. The photograph of the

Accused is contained in a profile which was handed in as Exhibit "K". The photograph shows that the Accused had a beard.

[62] The State closed its case and indicated, without objection from the Defence that the Section 220 admissions would be formally handed in at the end of the case for the Accused and the said Section 220 admissions which were signed by the Accused and Ms Bovu were formally handed in as Exhibit "A" after the defence case.

[63] The Accused then testified in his own defence.

[64] The Accused gave the Court a brief background relating to where he resides and with whom. He stated that he resides at Flat M8 in Reiger Park and he resided there for the past 10 years. He lived there with his grandmother and his daughter.

[65] At the present time his grandmother is late. He stated that his daughter is 10 years of age. He is an artisan assistant and worked for the Ekurhuleni Metro Municipality.

[66] The Accused testified that on the 24th April 2021 he was at home from the previous evening until the morning.

[67] He testified that he does not know Damian and that he had seen him for the first time when he testified in Court. He denied that he played 'dice' with Damian and stated that he never saw him.

[68] He testified that when he did gamble, he played now and then at John Collins Street.

[69] On the 24 April 2021 he went to gamble before sunset. He stated that this was just after 18H00. He stated that 19H00 was too late.

[70] When the Accused arrived at the gambling place, he was standing around and there was an argument between Piero and Ryan. He testified that the argument centred around money that was taken. He states that Piero had taken Ryan's money. As they continued the argument, the Accused then took R100-00 from the board which he stated was his money. He further testified that he placed the R100-00 back after the argument had finished.

[71] The Accused testified that he told Piero that he should not fight and that he has R100-00 for him. They continued playing for a while and he told the other people gambling that he was leaving. He states that they had played for approximately 20 to 30 minutes before he decided to leave.

[72] The Accused testified that after he left the gambling place, he went home and never went anywhere thereafter.

[73] He testified further that the next day, a close relative of the deceased came to fetch him and they went to the police station.

[74] Before going to the police station, this relative took him to the deceased's house. There were about 10 people there and the deceased's girlfriend or wife was also there and according to the Accused, the girlfriend was doing most of the talking.

[75] The Accused says he explained to the people in the house that he walked away and knows nothing of what happened. He states that he was then taken to the police station where he explained his story and he was accompanied by an eye witness. This eye witness was tall and dark and a football player.

[76] The Accused stated that he was with Thabang at the police station and there were about six other people but he cannot remember their names. This included the person that fetched him.

[77] The Accused testified that Thabang was also gambling when he was at the gambling place, and when he left, Thabang was still gambling.

[78] The Accused then states that he does not know Thabang's exact address but knows the street.

[79] The Accused testified that he does not own a black and grey jacket with a hoodie. He testified that he wore a Blue Adidas top with white stripes and the number 25 on it. He then showed the Court the top that he was describing which was indeed as he described.

[80] The Accused testified further that he only heard of the death of Shaun Wilkenson, the deceased in Count 1, the following day.

[81] In respect of Counts 4 to 6 the Accused testified that he still resided at the same place with his grandmother and daughter, namely, Flat M8, Reiger Park.

[82] On the 5th June 2021 when Terrance Rhodes was killed, he was at home and the power was out. He states that he was at home the whole morning. He states further that he woke up at approximately 10H00 and did his daily chores. His grandmother also asked him to check when the power was coming back on. He states that he did not go and check because there was no way of checking.

[83] The Accused then stated that his friends Naikie and Madiba were outside as well as another friend. They were busy talking outside and he had a glass of water. His daughter was also there playing in the yard.

[84] The Accused recalls that Naikie and Madiba asked if he wanted to eat and they decided that they would go to Wadeville. They travelled in a two-door car and there was also an SUV. At the time they left, it was late afternoon.

[85] After Wadeville, the Accused recalls that they went to Hookah lounge but did not stay long because it was the Covid epidemic. He stated that his daughter was left with his grandmother.

[86] In answer to a question from Ms Bovu as to how he remembers about the 5th June 2021 the Accused stated that he was arrested the following day in Reiger Park. He states that he was arrested by the deceased, Terrance Rhodes's step-father.

[87] The Accused then described the circumstances of his arrest and that when he was arrested, he was wearing the same Adidas top that he described and showed to the Court. He testified further that he wore a size 8½ sneaker but the size of the shoe depends on the make.

[88] The Accused stated he did not know the deceased, Terrance personally and knew him by sight. The Accused did, however, state that he did not gamble with the deceased. He then stated that he did gamble with the deceased before but not on that day.

[89] The Accused recalls having spoken to the deceased in the week because the deceased was organising a soccer tournament. The deceased still told him that he, the Accused was a veteran.

[90] The Accused then testified that he knew Chadwin, the first witness but did not know his name. He knew him mostly from soccer but not that much from gambling. The Accused states that he did not see Chadwin on the day of Shaun Wilkenson's death.

[91] The Accused denied having shoved Imraan and Damian during the killing of Terrance Rhodes and knew nothing of his killing.

[92] The Accused testified further that he knew Imraan by sight and repeated that he did not shove Imraan. This then ended the Accused's evidence in-chief.

EVALUATION OF THE EVIDENCE

[93] This case turns on whether the identity of the Accused in relation to Counts 1 to 3 and Counts 4 to 6 has been proven beyond reasonable doubt. This so because the Accused has raised an alibi defence.

[94] Now it is trite that the State bears the onus to prove the Accused's guilt beyond reasonable doubt and in so doing the Court must consider the evidence in its totality. The Accused has no onus to prove his innocence and this goes for his alibi defence as well. If the Accused's version is reasonably possibly true then the case must be decided in his favour¹.

[95] The following is insightful in evaluating evidence in criminal cases:

"...the correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt."²

[96] Considering the abovementioned principles, the Court must evaluate the evidence against the Accused. In respect of Counts 1 to 3, Damian, who testified

¹ S v Shackell 2001 (4) SACR 1 (SCA) at para 30

² S v Chabalala 2003 (1) SACR 134 (SCA) at para 15

thereto, is a single witness and Section 208 of the Criminal Procedure Act³ must be taken into consideration in evaluating his evidence.

As such this Court may convict on the evidence of a single witness where the Court finds that the witness is a competent witness. The evidence of such a witness must also be treated with caution.

[97] The Court was impressed with the evidence of Damian. Damian remained steadfast in his identification of the Accused as the shooter of the deceased, Shaun Wilkenson. Damian recalled that he remembered the Accused from his clothes earlier in the day and stated that the same person with the black and grey Nike jacket returned and fired several gunshots from the middle of the road.

[98] Damian recalled the argument between Piero and Ryan and that the Accused took money from the board. The taking of the money resulted in another argument between Ryan and the Accused because the money that was taken belonged to Ryan. The Accused reacted violently and when he left the scene of the gambling game he told Ryan that Ryan will see what happens when he returns.

In my view, it is clear that Damian in observing the argument, had the opportunity to observe the Accused and to see what he was wearing.

³ 51 of 1977, as amended

The question to be asked, however, is why would Damian implicate the Accused? Damian had no issues with the Accused and the Accused also did not have any issues with Damian and none was put to Damian. The only issue raised by the defence was that because of the darkness, Damian's identity of the Accused is questionable.

[99] Now it is common cause that there was an argument between Ryan and Piero. The Accused only denies that he was involved in an argument with Ryan and that he uttered the words attributed to him by Damian. This aspect of the argument with Ryan lends credence and corroboration to the version placed before the Court by Damian in respect of Counts 1 to 3.

Furthermore, the Accused embellished on his version during cross-examination. He mentioned that he had met a certain Koskenades after he left the gambling game. His initial version during his evidence in-chief was that he left alone and went home. No mention had been made of this person, Koskenades. When confronted with this contradiction, the Accused stated that Koskenades was behind him.

[100] During cross-examination the Accused had to be reminded continuously that he was being evasive in answering Ms Barnard's questions. As such he was an unimpressive witness. This Court is of the view that, for the reasons stated above,

the version of the Accused in respect of the alibi in respect of Counts 1 to 3 can be rejected as false.

[101] The rejection of the Accused's version as false in respect of the Counts 1 to 3 is not the end of the enquiry. This Court must be convinced that the State has produced evidence of the guilt of the Accused beyond reasonable doubt.

[102] The evidence of Damian indicates that after the firing of the gunshots by the Accused, he returned to the scene and found that the deceased, Shaun Wilkenson, was on the ground bleeding. Damian recalled that the paramedics were called and he heard later that Shaun Wilkenson had passed away.

[103] The post-mortem report by Dr Emefa Abra Apatu formed part of the Accused's Section 220 Admissions and was admitted into evidence as Exhibit "B". The said post-mortem report revealed that the cause of death of the deceased in Count 1 was a gunshot wound to the head.

[104] I turn now to Counts 4 to 6. In this regard the evidence of Chadwin, Damian and Imraan is relevant as to the shooting of the deceased, Terrance Rhodes on the 5th June 2021.

[105] It should be recalled that the Accused also raised an alibi defence in respect of Counts 4 to 6 and stated that he was at home and that he was in the company of his friends 'Naikie' and 'Madiba'. Later in the day, he went to Wadeville and from there they went to Hookah lounge and returned later in the evening approximately 22H00, before the start of curfew.

[106] It must be stated that the evidence of the State witnesses contradicted each other in respect of what the Court would call periphery issues. This can be ascribed to the different observation points of the witnesses.

In this regard, the case of **Sithole v S**⁴ is insightful where Theron AJA stated:

"It is trite law that not every error made by a witness will affect his or her credibility. It is the duty of the trier of fact to weigh and assess all contradictions, discrepancies and other defects in the evidence, and in the end, to decide whether on the totality of the evidence the state has proved the guilt of the accused beyond reasonable doubt. The trier of fact also has to take into account the circumstances under which the observations were made and the different vantage points of the witnesses, the reasons for the contradictions and the effect of the contradictions with regard to the reliability and credibility of the witnesses."

[107] If one takes Chadwin's evidence on its own then one can conclude that the State has problem with proving the guilt of the Accused beyond reasonable doubt. Chadwin contradicted his previous statement to the police in terms of what he

⁴ 2006 SCA 126 at para 4

observed at the scene of the killing of the deceased, Terrance Rhodes. However, he was sure that the Accused is the person that fired the gunshot that killed Terrance Rhodes. He is corroborated in the identification of the Accused by Imraan who also saw the Accused.

[108] Chadwin, Damian and Imraan also contradicted each other with regard to what was observed at the scene of the killing of Terrance Rhodes and as indicated above, this can be ascribed to the different observation points of the witnesses. To recall, Damian stated that the Accused shoved him and Imraan aside with the hand that held the firearm whereas Imraan stated that the Accused shoved him and Damian with his left hand and had the firearm in the right hand. Chadwin had recalled that the Accused had the firearm in his right hand but did not indicate how Damian and Imraan were shoved.

I am satisfied, however, that the evidence of the State witnesses, considered in its totality, is reliable especially regarding the identity of the Accused as the shooter. It should, however, be noted that Damian did not identify the Accused as the shooter of Terrance Rhodes. Chadwin and Imraan identified the Accused as the shooter.

[109] It is appropriate at this stage to indicate that Imraan was an impressive witness who was unwavering in his testimony even during cross-examination. Imraan knew the Accused for some time and was sure that the shooter of the deceased, Terrance Rhodes, was the Accused.

[110] In respect of the Accused's alibi on the 5th of June 2021 it was put to Chadwin and Imraan that the Accused had gone to Wadeville to the Hookah lounge at the time when the witnesses identified him as the shooter of Terrance Rhodes. However, during his own testimony, he stated that after going to Wadeville, they went to Hookah lounge. Now it is clear to me that this change in his testimony, is a direct result of Imraan having pointed out that Wadeville and Hookah lounge are in two different directions and the Accused then adapted his evidence accordingly and forgot what he had told Ms Bovu.

The Accused had also indicated that he would call witnesses to testify to his alibi in all the counts but none were called and Ms Bovu indicated that Thabang indicated that he was not willing to testify.

I have noted the argument by the defence that the identity of the Accused, was not proven beyond reasonable doubt and that the contradictions in the evidence of the State witnesses should steer the Court to a not guilty verdict in favour of the Accused.

[111] I am satisfied that the contradictions in the evidence of the State were not material enough for the Court not to place reliance on their testimony and the Court has had regard to the totality of the evidence of the witnesses.

[112] I am also satisfied that the alibi of the Accused in respect of the killing of Terrance Rhodes can be rejected as false for the reasons stated above. The Accused, during cross-examination in respect of Counts 4 to 6 continued to be evasive when asked simple questions and Ms Barnard had to repeat her questions countless times. It is repeated here that the Accused did not impress the Court with his testimony.

[113] Now the Court is mindful that the Accused bears no onus in proving his defence and even where the Court rejects his evidence as being false, this does not mean that the guilt of the Accused has been proven beyond reasonable doubt.

[114] The post-mortem report of Dr MI Kolodi which was admitted by the Accused as part of his Section 220 admissions, indicated the cause of death of Terrance Rhodes as "*perforating gunshot wounds through the face and chest and a penetrating gunshot wound through the neck*". This objective evidence ties in with the witnesses testimony that the Accused held the gun to the neck of the deceased, Terrance Rhodes and fired a shot. When they ran away, they heard further shots fired. The only person they observed with a gun was the Accused.

[115] Mindful of where the onus rests in a criminal case, this Court is satisfied that the State has proven the guilt of the Accused in respect of the murders of Shaun Wilkenson and Terrance Rhodes beyond reasonable doubt and the version of the

Accused is rejected as being false and not reasonably possibly true, for the reasons stated above.

[116] Having found that the Accused is the person that shot the two deceased there still remains Counts 2, 3, 5 and 6.

[117] The forensic report of Captain R. Viljoen, Exhibit "H", indicates that the firearm used in the murder of Shaun Wilkenson was the same firearm that killed Terrance Rhodes. She came to this conclusion after receiving 9mm parabellum calibre cartridges in a sealed package as well as a 9mm fired bullet and compared them with each other. It should be noted that Exhibit "H" also formed part of the Accused's Section 220 admissions.

[118] Accordingly, having found that the Accused was the shooter in the killing of Shaun Wilkenson and Terrance Rhodes, this Court can only conclude that Counts 2, 3, 5 and 6 have also been proven beyond reasonable doubt. The Accused's defence of an alibi, which was rejected, implicitly reflects on Counts 2, 3, 5 and 6.

[119] Now Ms Barnard argued that besides having proven that the Accused was the shooter in the killing of Shaun Wilkenson and Terrance Rhodes, the State has also proven that the killing of the two deceased was premeditated. In this regard, Ms Barnard argued that after a consideration of the all the evidence as a whole the

Accused planned to kill and cause the death of both deceased. I agree with this submission.

There can be no other conclusion that can be drawn from the proven facts. In respect of the killing of Shaun Wilkenson, the Accused left the gambling game and stated that Ryan will see what happens when he returns. The fact that Ryan was not shot does not take away the intention of the Accused in returning to the scene and shooting Shaun Wilkenson. His plan was to shoot and kill and he did just that.

[120] In respect of the killing of Terrance Rhodes, the evidence is even clearer that the Accused approached the deceased without uttering a word and shot him in the neck. The witnesses recall that they heard further shots fired after they ran away. The post-mortem report identifies several gunshot wounds. I am satisfied that the State has proven beyond a reasonable doubt that the killing of Terrance Rhodes was premeditated.

CONCLUSION

[121] In conclusion therefore the Court finds the Accused:

- a) Guilty as charged in respect of Counts 1, 2, 3, 4, 5 and 6.

G ALLY

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Appearances:

For the State:

Adv. R. Barnard

DPP Johannesburg

For the Accused:

Ms S. Bovu

Legal Aid South Africa