THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

1.1 Case no: 055/05
1.2 REPORTABLE

In the matter between:

Pieter Hendrik GROENEWALD Appellant

and

The STATE Respondent

Before: Mpati DP, Scott JA, Cameron JA, Van Heerden JA and Mlambo JA
Appeal: Tuesday 16 August 2005
Judgment: Thursday 8 September 2005

Criminal law – Evidence – Admissions – Effect and interpretation of – Accused tendering admission cannot bind state to a meaning radically at variance with state's case

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JUDGMENT

CAMERON JA:

[1] The appellant was convicted in the Pretoria High Court (Pretorius AJ and assessors) of the murder of Prince Makena and Simon Chuene Kgobo, and the attempted murder of Xavier Lekgoate. He was

sentenced to an effective term of twenty years' imprisonment. He appealed to the Full Court, where a majority (Seriti J, Mbha AJ concurring) dismissed his appeal; R D Claassen J dissented. This court granted special leave for a further appeal against conviction and sentence.

[2] The case is unusual because of the time between the incident and the prosecution. The incident occurred on Saturday night 6 May 1990. The appellant was arrested three days later. Despite initial opposition by the state he was granted bail. Some months later, in late 1990, he left South Africa in breach of his bail conditions for Portugal, where attempts to extradite him on the present charges failed. He returned for unrelated reasons in 2000, and was arrested some two years later. His trial commenced in the Pretoria High Court on 10 February 2003, nearly thirteen years after the fatal events.

[3] The case is singular also because of the nature of the state's evidence. Two eyewitnesses testified against the appellant – the complainant in the attempted murder charge, Mr Xavier Lekgoate, and Mr Brian Chester-Browne, who was in the appellant's company at the time of the events. Lekgoate and Chester-Browne testified to similar effect regarding the shooting that led to the deaths and to Lekgoate's injuries, but to radically different effect about what preceded it.

[4] The appellant pleaded not guilty and put all the elements of the case against him in issue. His counsel informed the court that there had been discussions between him and the state and that 'the necessary admissions' regarding the post-mortem reports 'etcetera, etcetera' would be formulated and handed up later to save time. In the result the state called no medical or ballistic evidence. It relied instead on agreed admissions that defence counsel formulated. These admissions became pivotal to the defence argument at the close of the trial, and in the appeal to the full court, where they formed the basis of the dissenting judgment of Claassen J.

State case

[5] Chester-Browne – whom the state undertook formally not to prosecute – testified that on the night in question he was driving the appellant, his passenger, from Cullinan to Mamelodi (a Pretoria township) in his Alfa Guilietta, when they were 'pulled over' by a Nissan Skyline that cut in front of them. The occupants, three black men, approached. One of them accused the occupants of the Alfa of throwing a stone at their vehicle and breaking the windscreen. The appellant alighted. His pistol was drawn, pointing at the black men. Chester-Browne's account of what then happened was terse: 'I didn't take part in much of the conversation. We inspected the

vehicle, the accused suggested we go to the Mamelodi Police Station. There seemed to be some discussion and then the accused shot them.'

[6] The appellant, Chester-Browne said, was at this stage a little more than an arm's length from the others. He pursued one who ran away, and later returned to the vehicle. He asked where the first person he had shot was, but he 'had in the meantime got up and run away'. Since there were headlights approaching, 'we got in the car and drove away'.

[7] In cross-examination, Chester-Browne stated that no stone was thrown from his vehicle at the Nissan; that the Nissan forced his vehicle to a halt; that the actions of the occupants were aggressive; and that 'a very tense situation' had resulted. He was firm that he himself had fired no shots, and that the appellant alone had. There was no attack upon him or the appellant, and he was aware of 'no attempt to arrest' anyone.

[8] Lekgoate gave a completely different account of events leading to the shooting. He and his companions, the deceased Simon Kgobo and Prince Makena, were travelling to Cullinan in the Nissan. He was in the front passenger seat; Kgobo was driving. A white vehicle passed them. It flicked its lights at them, but Kgobo declined to stop in the dark. The vehicle passed them again. This time the front

passenger threw an object at the Nissan, which broke its windscreen. (Police photographs after the incident showed a damaged windscreen.) Kgobo slowed down and stopped. The other vehicle stopped ahead. Two white men alighted and approached. The person from the passenger side had a firearm in his hand. The men ordered them from the vehicle. The driver challenged Kgobo for not stopping when ordered to do so. Lekgoate noticed that the vehicle was not a police vehicle – but the armed man told him that the registration plate was incorrect. The men alleged that cards they displayed were police appointment certificates; but Lekgoate could see they were not. The driver asked them if they knew of the Wit Wolwe.[1] Kgobo and Lekgoate denied knowing of them. The driver then asked for their identity documents. Lekgoate and Kgobo produced theirs. When Makena wished to retrieve his from the vehicle, someone said: No, leave it, old chap (*Nee, los dit, ou kerel*). The driver then asked his companion: Shouldn't we just let them go? The other replied: Why?

[9] Lekgoate was then shot. He suffered two gunshot wounds to the abdomen, and one to the left elbow. He fell to the ground. The shooting continued. When he heard footfalls, of the men running away from where he was, he managed to crawl and hide himself in

[1]Cognisance may be taken of this as a reference to a white supremacist organisation, one of whose members, Barend Strydom, gunned down a number of black bystanders in Pretoria in 1988.

the grass next to the road. Shots continued. Then he heard the men close by, asking each other where he had hidden himself. One said: No, man, leave them, let us get in the vehicle. The doors slammed and they drove off. Lekgoate dragged himself from the grass to the road surface. A passing motorist stopped but did not assist. He crawled to the vehicle, where he found Kgobo lying close to the driver's door. Kgobo proved unresponsive to efforts to rouse him. Lekgoate then drove the Nissan to the Mamelodi police station. He was taken to Mamelodi day clinic and thence by ambulance to Kalafong hospital, where he was operated upon.

[10] Lekgoate insisted that he was the first person to be shot, and that only one person fired. This was the passenger of the other vehicle. The driver, he stated, was not armed and did not fire. On 16 May, a week after the appellant's arrest, Lekgoate identified the appellant at an identification parade. However, at the same parade he also made a second, mistaken, identification, while omitting to identify Chester-Browne, who was present.

[11] On Monday 7 May, two days after the shooting, the investigating officer, detective warrant officer Oosthuizen, visited Lekgoate in hospital. Later that day or the next day, Oosthuizen made a note on the case dossier. This recorded that Lekgoate had described the man who shot as blond, with longish and slightly curly hair. It was

not disputed at the trial that this description would apply to Chester-Browne, but not to the appellant. Oosthuizen's note also recorded that the blond-haired person was wearing khaki (Chester-Browne testified that he could not recall whether he was wearing khaki, or what the appellant was wearing).

[12] Later, after his discharge from hospital, Lekgoate made a formal written statement to the police. In this, his description of the man who fired the shots (shorter than his companion; black hair) accorded with his identification of the appellant at the identity parade. At the trial Lekgoate did not recognise the appellant in court as his assailant, but confirmed that the man he identified at the identity parade was he.

[13] The investigating officer, Oosthuizen, who had the dossier from Monday 7 May until he left the police force at the end of June 1990, testified that spent cartridges (doppies) were collected at the scene by warrant officer Viljoen, who was first at the scene, and who handed them to him on Sunday 6 May. Oosthuizen stated that he too was at the scene on the night of the events, though only briefly. After taking over the investigation on the Monday, he visited Lekgoate in hospital. Lekgoate was in shock, but could speak to him. He did not read the notes he later made on the dossier back to Lekgoate nor did he confirm them with him.

Admissions recorded during state case

[14] At an advanced stage of Lekgoate's cross-examination, the appellant tendered certain formal admissions. Their purpose, his counsel said, was to assist the state to dispense with certain witnesses who would not be necessary. The admissions concerned the doppies and the firearm used at the scene, and the identity parade. Counsel recorded that it was common cause between the state and the defence, and that the accused consented in terms of s 220 of the Criminal Procedure Act 51 of 1977 (the Act),[2] that certain facts be placed on record. These included that the doppies from the scene were discharged from a firearm the appellant used during the incident on 5 May 1990. It was also recorded that:

> It is common cause that only five doppies were on the scene of the incident and the parties admit that the five doppies were picked up and handed to Wolmarans a ballistic expert for analysis.
>
> (*Dit is gemeensaak dat daar slegs vyf doppies op die betrokke toneel van die voorval was en erken die partye dat die vyf doppies opgetel is en aan Wolmarans 'n ballistiese deskundige oorhandig is vir ontleding.)*

[15] Later, during the cross-examination of the third state witness, investigating officer Oosthuizen, further admissions were made.

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[2] Section 220 of the Criminal Procedure Act 51 of 1977 reads:
Admissions An accused or his or her legal representative or the prosecutor may in criminal proceedings admit any fact placed in issue at such proceedings and any such admission shall be sufficient proof of such fact.

These concerned the deaths of Makena and Kgobo and the correctness of the state's medico-legal reports concerning the shooting of Makena, Kgobo and Lekgoate.

[16] The post-mortem reports on Makena and Kgobo revealed that, aside from the three shots that apparently struck Lekgoate [in the absence of medical evidence, it was not clarified whether one of Lekgoate's two abdominal wounds might not have been coincident with his elbow wound], the dead men each had three gunshot wounds. At least six further shots had therefore been fired. This rendered a total of eight or perhaps nine shots.

[17] Kgobo's post-mortem report recorded also that in his thorax there was 'a semi-circular piece of plastic, with fine pieces of metallic material and a copper cartridge casing'. It was not disputed at the trial that these were the remnants of a 'safety slug'. This Chester-Browne explained in cross-examination was a bullet in a frangible jacket which tended 'not to perform at longer ranges'. It was suggested to him that the appellant always loaded a 'safety slug' (if he had one) first, and that it would therefore be fired first. Chester-Browne granted that this sounded 'intelligent', but could not say if that was either 'normal procedure' or the appellant's habit. 'Where one puts it in your weapon would be over to personal preference and over to personal experience'.

[18] A further recordal was made. This concerned a police statement a constable, Petrus Marthinus Beukes, made on 14 January 1991. Beukes was apparently unavailable to testify. He had been instrumental in the arrest of the appellant, in that he had furnished critical information regarding a shooting practice at the Premier Shooting Range, Cullinan, on Saturday 5 May 1990, in which the appellant had participated. Doppies from the range were analysed and linked to those at the scene.

[19] Beukes' statement averred that on the day of the incident at the shooting range the appellant had 'a big full beard and moustache'. The state, in accepting that Beukes was out of the country and unavailable to testify (and that he in any event no longer had an independent recollection), accepted also that Beukes' averment about the appellant's beard and moustache had been made in good faith: in other words that if he erred, he had no motive to fabricate and had not deliberately lied.

[20] The person Lekgoate described, as also the appellant when he identified him at the identity parade on 16 May 1990, was clean-shaven. In his evidence Lekgoate maintained that the person who had fired was clean-shaven.

Appellant's evidence

[21] The appellant testified that he had received training in offensive action, inter alia as second in command of the South African Defence Force's VIP protection unit, as a means to forestall attack. He left the formal operations of the SADF in 1988 to work full-time for 'covert intelligence', but continued to receive remuneration in cash from the commander of his unit, commandant De Castro.

[22] On the evening of the incident he was a passenger in Chester-Browne's father's vehicle, which Chester-Browne was driving from the Cullinan shooting range to Mamelodi. A vehicle from behind forced them off the road. It was an extremely dangerous situation. Both he and Chester-Browne were armed: Chester-Browne with a revolver (which does not eject doppies); he with his official Browning Hi-Power pistol (which does). Chester-Browne was dressed in khaki and he in black jeans and a russet leather jacket.

[23] As they were forced off the road, Chester-Browne shouted to him to 'be ready' (*staan reg*). The three occupants of the other vehicle – black men – stormed their vehicle. He, the appellant, immediately alighted, pointing his firearm at them, and warning that he was armed. He told them to back off. One of the men accused them of throwing an object at their vehicle, causing the windshield to break. Though he knew this to be a total lie, it merely made the situation more tense.

[24] He ordered the men back to their vehicle, to ascertain if there was damage to its windscreen. There was – though no pieces of shattered glass inside. This made him even more uneasy. He told the men that he didn't wish to argue, but suggested that they all proceed immediately to the Mamelodi police station. On his way back to Chester-Browne's vehicle, one of the men expressed reluctance. The appellant insisted. At that stage he saw a movement to his left, and as he turned shots were fired. He did not know immediately who had fired, but at the very moment that his attention was distracted he was physically attacked. A tussle ensued. He struggled to free his weapon, which was still in his hand. More shots were being fired. He managed to free his weapon, and fired three shots at his attacker. After the third shot, his assailant fell to the ground and no longer constituted a threat to him.

[25] The first round in his magazine, he testified, was always a Glazer safety slug. He loaded his magazine thus in preparedness for short-range situations, where he wished to avoid the risk of 'over-penetration' (ie, not to hit someone behind the target). The rest of his magazine was loaded with fully-cased military bullets. He therefore inferred that the person he had shot was Kgobo – not Lekgoate. It was Chester-Browne who had been talking to Lekgoate. What was more, he had fired a total of only five shots: three at Kgobo (his

attacker after the shooting to his left started); and a further two at the third person – who was fleeing as Chester-Browne was firing at him. He tried to shoot low at this person, at his upper legs. He fired no shots at the person struck by the first shots fired.

[26] He saw a vehicle approaching from Mamelodi. Since he did not know if the vehicle was with those who had just attacked him, he and Chester-Browne decided to get as far away as possible from any further potential problems. They drove to his home. There he informed his commanding officer, commandant De Castro, of the incident by telephone. De Castro told him that it was quite late, and that he should go to sleep. He ordered the appellant to report to him the next morning with his firearm, which he did.

[27] He denied referring to the 'Wit Wolwe': if Chester-Browne did, he did not hear it. He had a reasonably thick full beard on the day of the incident. He shaved this off the day after the incident, after he had seen De Castro. For this he could give no account, other than to state that it was 'probably the dumbest thing that I could have done'.

[28] After he obtained bail, De Castro instructed him to leave the country with him as soon as possible, giving him two passports and $10 000 in cash.

[29] The appellant attributed his actions during the shooting to self-defence. His work within the townships for the military was against

radical or extremist elements within Umkhonto we Sizwe (the armed wing of the African National Congress) and the Azanian People's Liberation Army (the armed wing of the Pan Africanist Congress), and he lived in a state of constant fear for his life. It had not been his intention to kill or injure anyone. The road was dark, visibility was limited. He wished to ward off the attack on him and to 'anchor' the fleeing third person so as to arrest him.

Findings of trial court and of full court

[30] Pretorius AJ regarded Chester-Browne as a possible accomplice, and approached his evidence with caution. From the difference between his account of the events preceding the shooting and that of Lekgoate she inferred absence of collusion. What was important was what happened after the initial events: and on this their evidence was substantially corroborative. She accepted Lekgoate's identification of the appellant and rejected the appellant's version as not reasonably possibly true and found that he had the necessary intention to kill.

[31] The majority of the full court in substance endorsed these findings. In his dissenting judgment, Claassen J reasoned that the court was obliged to accept as a proven fact the admission that there 'were' only five doppies on the scene. The state, though admitting to an

error in agreeing to the formulation, had not sought to withdraw the admission. It followed that where this fact conflicted with other evidence on behalf of the state, the admitted fact had to prevail. In consequence, the evidence on behalf of the state that only the appellant had fired shots, that the appellant had fired first at Lekgoate, and that only the appellant had a firearm had to be rejected. By contrast, the admitted fact accorded with the essence of the appellant's case, and rendered his account of the shooting reasonably possibly true. The appellant had also conducted his case on the basis of the admitted fact – for instance in not seeking to call De Castro – and to ignore it now would impeach his right to a fair trial. Despite a 'very strong possibility that the appellant in fact fired all the shots', he therefore had to be acquitted of the murders and the attempted murder. On his own version, however, though he acted reasonably in killing Kgobo, he acted without justification in shooting at Makena. In respect of that killing he was guilty of assault with intent to commit grievous bodily harm and should be sentenced to imprisonment with the option of a fine.

The effect of the admission concerning the doppies

[32] Before this court, the appellant pressed substantially the argument that found favour with Claassen J: that the state was bound by the

admission that there 'were' only five doppies on the scene; that the inevitable corollary was that more than one firearm had been used, since otherwise the number of gunshot wounds did not square; that this impugned Chester-Browne's self-exculpatory version, while casting doubt on Lekgoate's recollection; that the statement of Beukes about the appellant's beard, and the investigating officer's notes about Lekgoate's hospital description of the killer added considerable doubt to the mix, while Chester-Browne's account of the preceding events supported appellant's version of self-defence; and that in consequence the version of the appellant could not be rejected as false beyond reasonable doubt.

[33] The keystone of these contentions is the admission. But the argument is fallacious. It seeks to impute to the admission a meaning and effect it was clearly never intended to have. An admission is an acknowledgment of a fact. When proved or made formally during judicial proceedings, it dispenses with the need for proof in regard to that fact. *Wigmore on Evidence* calls it 'a method of escaping from the necessity of offering any evidence at all': a 'waiver relieving the opposing party from the need of any evidence'.[3] Section 220 of the Act accordingly makes it possible for a contested

[3] *Evidence in Trials at Common law* by John Henry Wigmore, revised by James H Chadbourn (1972), vol 4, § 1058.

fact to be put beyond issue, since once made the admission constitutes 'sufficient proof' of it.

[34] But what was acknowledged when the parties recorded that it was 'common cause' that 'only five doppies were on the scene of the incident'? Appellant contends that this constituted an admission by the state that as a matter of absolute truth there 'were' at all times only five doppies on the scene. But this is an ambitious interpretation, which asks us to read the admission in isolation, as though disembodied from the events at the trial. An admission does not stand in isolation, and cannot be interpreted in isolation. Like all other recordals or documents admitted at the trial, its proper meaning and effect must be determined in its setting.

[35] An admission may be equivocal or ambiguous, permitting of more than one interpretation: this has prompted the beneficent rule that where the defence makes an ambiguous admission, the construction more favourable to the accused should be adopted in relation to his case: *S v Maweke* 1971 (2) SA 327 (A) at 329H. And as *Phipson on Evidence* points out, the weight of an admission 'depends on the circumstances under which it was made'.[4] This applies whether the admission is made inside or outside court.

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[4] *Phipson on Evidence* 15ed 2000 (general editor, MN Howard) para 28-09 page 712 (referring to informal admissions; but the point is more general).

[36] Context and background, as elsewhere, thus inform both meaning and effect. Counsel rightly conceded this. Here, dealing first with effect, the trial record shows that the admissions were made ‘namens die beskuldigde’ (on behalf of the accused). The acknowledgement of fact was thus tendered and recorded as an admission, not by the state, but by the appellant. The Act was amended in 1996 to make it possible for the state – and not only the accused – to make admissions in terms of s 220: hence the appellant’s emphasis that the state, too, was bound. But, though the admission recorded a fact that was ‘common cause’ between the parties, the state did not proffer it. The appellant did. Its effect must therefore be assessed in the light of the fact that its declared object when tendered was to relieve the state of part of its duty in relation to the case it set out to prove.

[37] The state’s case was that five doppies linked with those the appellant had fired earlier on the fatal day ‘were on the scene’. It was no part of what it was trying to prove that ‘only five’ doppies were on the scene. And the appellant by proffering an admission to this effect could not and did not relieve the state of any duty in relation to the case it was seeking to prove. Still less could he tie the state to a proposition that was radically at variance with its case: an accused cannot by purporting to relieve the state of duties in relation to its

case burden it with millstones in relation to his own. This is therefore a converse case to *Maweke*, since here the accused seeks to impose on the state an unfavourable construction of an admission.

[38] In any event, I am disinclined to accord the admission the meaning appellant's counsel sought to ascribe to it. The admission does not specify at what time there 'only five doppies were on the scene'. It could mean either that there were at all times only five, or there were only five when Viljoen visited the scene. Since the state did not call Viljoen – no doubt in the light of the admission – we do not know precisely when he retrieved the doppies. Oosthuizen said (without stating the time) that both he and Viljoen visited the scene that night, and that Viljoen handed the doppies to him the next day. But an exact time specification was crucial to the far-reaching meaning appellant's counsel sought to extract from the admission, since without it other possibilities, such as that doppies may have been removed from the scene, or that they were dispersed by passing traffic, loom large. Without a time specification, the more obvious meaning is that there 'were only five doppies' when Viljoen retrieved them.

[39] In determining what the admission meant, it is moreover relevant that it was formulated by appellant's counsel. The rule that ambiguous written provisions are interpreted against the party

drafting them is not merely applicable in contract law; it embodies a sensible practical approach also in determining the extent to which the state is bound by a meaning an accused who formulates an admission seeks to impose on it.

[40] Here it is clear that the state intended merely to acknowledge that only five doppies were found on the scene when Viljoen visited it. At no stage did it intend to acknowledge that at all times there 'were' no more than five. When appellant's counsel handed up the admission, Chester-Browne had completed his testimony, and the cross-examination of Lekgoate was close to completion. Both testified that only the appellant had fired shots: neither specified or estimated how many. But it was apparent from both that a substantial number was fired. At no stage did appellant's counsel put to either Chester-Browne or Lekgoate, or even imply, that the appellant fired only five shots. The suggestion that the admission ineluctably entailed that further shots were fired by another person was alien to the proceedings at that stage.

[41] The further implication arose for the first time during cross-examination of the third state witness, Oosthuizen. And when counsel suggested the meaning now sought to be imposed, he received the obvious response: 'It is hard for me to say how many

shots were actually fired. The possibility surely also exists that not all the doppies were picked up on the scene.'

[42] Counsel for the state complained in his written argument that the state had been trapped into making an admission whose ambit and implications it had never intended to endorse. That may be so. But as pointed out in the dissenting judgment in the full court, the state never sought to retract the admission. That has proved to be the correct course, since, interpreted in its context, the admission can not support the meaning or effect the appellant seeks to extract from it.

The strength of the evidence against the appellant

[43] Without the meaning sought to be ascribed to the admission, the state's case against the appellant was strong. Chester-Browne and Lekgoate corroborated each other on the critical details: that the appellant alone was armed, that he fired first at Lekgoate – the survivor who escaped and managed to hide – and that he alone fired all the shots that struck the Nissan's three occupants.

[44] It is true that the two principal state witnesses contradicted each other radically as to what preceded this. But it is clear from the record that Chester-Browne had a motive to distort those events – namely to minimise his own involvement in them, since on Lekgoate's account and without the state's indemnity he was liable to

be prosecuted as an accomplice or accessory to the shooting. By contrast to Chester-Browne – who rebuffed his cross-examiner with patent hostility – Lekgoate volunteered a full, coherent and candid account of those events.

[45] What is more, while Chester-Browne had a motive to minimise his involvement in the entire sequence, and thus to lie about whether he shot – Pretorius AJ for this reason rightly approached his evidence with caution – Lekgoate had no such motive. It may have been possible, without Chester-Browne's evidence, to infer that Lekgoate might have erred about the number of firearms wielded. But the possibility that he could have erred about the other critical details is remote. These included the fact that the man who alighted from the passenger seat of Chester-Browne's vehicle was the one who shot him; that his attention was on this man when the shooting started (and not on Chester-Browne); and, critically, that he, Lekgoate, was the first of the three to be shot. All these features, on which it is highly unlikely that Lekgoate could have erred, point strongly to the appellant's guilt.

[46] And if Chester-Browne had been armed, or if he had participated in the shooting, Lekgoate had no conceivable reason to exculpate him: nor was any reason put to him, or suggested to us in argument. His evidence on this score must therefore be accepted as reliable.

[47] It is plain that Lekgoate cannot be held responsible for the description of the killer in Oosthuizen's dossier notes. They were not read back to him, nor did he confirm them. As he stated in cross-examination, his statement then was confused 'because at that stage I also was confused' (*volgens my is die verklaring deurmekaar omdat ek ook deurmekaar was op daardie stadium*). Oosthuizen stated that Lekgoate was 'not one hundred percent comfortable at that stage in making a statement': and this is why he waited until his discharge from hospital before securing a formal statement.

[48] Lekgoate's later sworn statement depicted the appellant accurately; and his identification of the appellant at the parade eleven days after the shooting points powerfully to the accuracy of his recall – particularly when it is borne in mind that at this time the appellant denied that he had fired any shots at all. As Lekgoate stated in cross-examination: 'The person I identified is the person who shot at me. He and I looked at each other during the incident. That is why I identified him.' And his failure to identify Chester-Browne, together with the mistaken identification, is explicable on the same basis – that he was not looking at Chester-Browne, but was concentrating on the man who was armed and dangerous.

[49] I would add that Lekgoate was a careful and candid witness who readily conceded uncertainty, doubt or inability to recall. He gave a

chillingly detailed and consistent overall account of the events. The fact that Chester-Browne corroborated him on the essential details of the appellant's role points powerfully to the appellant's guilt.

[50] By contrast, the appellant was a poor witness. He was unable to give a plausible account for his failure on the night of the incident to go to the police – on his own version he, after all, suggested this before the shooting started – nor for his failure to enlist the assistance of the police thereafter. If he had indeed been attacked, as he claimed, he surely had little to fear in 1990, with his security-apparatus connections, from making a clean breast. Instead, when Oosthuizen informed him that his firearm had been linked to the shooting, he deviously replied that it must be the wrong firearm. This may have been technically correct, since the Browning Hi-Power pistol seized at his home was apparently that of his father: but it was nonetheless a telling evasion; one made more significant by the fact that he also initially denied to Oosthuizen that he had fired any shots at all.

[51] The appellant's account of the shooting itself was unconvincing: he was for instance unable to account plausibly for the fact that Kgobo – whose frontal attack he claimed to have warded off – had a bullet wound in the back of his head. And he could give no coherent

account for pursuing and shooting Makena. On the appellant's account there was, after all, no reason to try to arrest him.

[52] The statement by Beukes, in January 1991, that on the day of the shooting practice in January 1990 the appellant had full facial hair, though made in good faith, was obviously mistaken. Lekgoate was clear that the appellant was clean-shaven: he would hardly have been able to identify him, clean-shaven, at the identity parade if he had a full beard nine days before.

[53] I would add that there is substance to the state's suggestion that the appellant appeared to have cobbled his version together on the basis of inventive scrutiny of the police dossier. This applies to his averment about the 'safety slug'. But his attempt by this means to escape liability must fail in the face of the damning direct testimony against him.

[54] The appellant's guilt on the charges of murder and attempted murder was clearly established. There is also an appeal against sentence, but in my view Pretorius AJ, both in imposing 20 years for each murder, and ten years for the attempted murder, as also in deciding on an effective term of only 20 years' imprisonment, blended her discretion with a measure of mercy that renders her sentence immune to criticism.

[55] The appeal is dismissed.

E CAMERON
JUDGE OF APPEAL

CONCUR:
MPATI DP
SCOTT JA
VAN HEERDEN JA
MLAMBO JA