



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

Case No: CC 17/2008

**THE STATE**

versus

**ROMEO MANELITTO SCHIEFER**

**Neutral citation:** *S v Schiefer* (CC 17/2008) [2013] NAHCMD 263 (25 September 2013)

**Coram:** SHIVUTE, J

**Heard:** 2 – 30 March 2011, 4 – 6 April 2011, 5 – 6 June 2011, 14 – 16 June 2013, 21 June 2011, 27 July 2011, 10 August 2011, 22 September 2011, 4 – 22 June 2012, 1 August 2012, 10 August 2012, 15 April 2013 and 23 May 2013.

**Delivered:** 25 September 2013

**Fly note:** Law of evidence – Circumstantial evidence – Two requirements – Inference sought to be drawn must be consistent with all the proven facts – The proven facts are such that they exclude every reasonable inference from them save one sought to be drawn – Circumstantial evidence in this case has satisfied the legal requirements – Accordingly an inference can be drawn.

**Criminal Procedure – Confession in terms of s 217 of Criminal Procedure Act – Confession may be excluded from evidence after it had been admitted provisionally – But only if evidence emerges later which justifies the reversal of the ruling – In this matter no evidence has emerged after the confession was ruled to be admissible that warrants a reconsideration of ruling earlier given – Confession finally admitted in evidence.**

**Summary: Law of evidence – Circumstantial evidence – Two requirements for an inference to be drawn – (a) The inference sought to be drawn must be considered with all the proven facts (b) The proven facts are such that they exclude every reasonable inference from them save one sought to be drawn – Circumstantial evidence in this matter has satisfied the legal requirements needed – Therefore an inference can be drawn that the accused committed the murders-**

**Criminal Procedure - Confession in terms of s 217 of the Criminal Procedure Act - The accused has confessed to the two murders – The confession was admitted in evidence after a trial-within-a trial - Counsel for the accused argued that the confession should be excluded from evidence – The Court ruled that although the confession may be excluded from evidence after it had been admitted provisionally, but, only if evidence emerges later which justifies the reversal of the ruling – In this matter no evidence has emerged after the confession was ruled to be admissible that warrants a reconsideration of the ruling earlier given – Accordingly the confession is finally admitted in evidence - The accused is accordingly convicted of two counts of murder.**

---

## VERDICT

---

1<sup>st</sup> Count: Guilty of murder with direct intent read with the provisions of the Combating of Domestic Violence Act 4 of 2003.

2<sup>nd</sup> Count: Guilty of murder with direct intent read with the provisions of the Combating of Domestic Violence Act 4 of 2003.

3<sup>rd</sup> count: Guilty of theft.

---

## JUDGMENT

---

### SHIVUTE J:

[1] The accused faces an indictment containing three counts namely, two counts of murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003 and robbery with aggravating circumstances as defined in s 1 of the Criminal Procedure Act 51 of 1977.

Counts 1 and 2: Murder

It is alleged that in that upon or about 18 January 2008 and at Khomasdal in the district of Windhoek the accused did unlawfully and intentionally kill Frans Schiefer, an adult male person and Fransina Jacoba Schiefer an adult female person.

Count 3 Robbery: Robbery with aggravating circumstances as defined in s 1 of Act 51 of 1977.

It is alleged that upon or about 18 January 2008 at Khomasdal in the district of Windhoek the accused did unlawfully and with intention of forcing them into submission assault Frans Schiefer and/or Fransina Jacoba Schiefer one or both of them with a knife and/or by shooting them with a firearm (a.7.65 pistol with serial

No.: D6547) and with intent to steal and take from them a Bank Windhoek Visa card with number 494106000150480 and/or a document containing the PIN code number of the above mentioned Visa card, the property of or in lawful possession of the said Frans Schiefer and or Francina Schiefer and that aggravating circumstances as defined in s 1 of Act 51 of 1977 are present in that the accused did before, during or after the commission of the crime wield a knife and a firearm and inflicted grievous bodily harm to the said Frans Schiefer and Fransina Jacoba Schiefer.

[2] Ms Wantenaar appears on behalf of the State while Mr Christiaans represents the accused on the instructions of the Directorate of Legal Aid. The accused pleaded not guilty to all charges. He denied having robbed or killed the two deceased persons.

[3] The following documents were handed in by consent namely:

Door handle with its key "Exhibit 1", spectacles "Exhibit 2", Maroon Nokia cell phone "Exhibit 3", Samsung cell phone "Exhibit 4", bend knife "Exhibit 5", handle of a knife "Exhibit 6", blade of a knife "Exhibit 7, pistol with serial no. D 65476 "Exhibit 8", broken magazine "Exhibit 9", 3 projectiles "Exhibit 10", five rounds of ammunition of 7.65 mm pistol "Exhibit 11", 8 projectiles "Exhibit 12", 15 spent cartridges "Exhibit 13", small white pillow "Exhibit 14", Tube "Exhibit 15", a pair of Nike sports shoes (generally known as "takkies" in this part of the world) "Exhibit 16", a pair of socks "Exhibit 17", a white T-shirt "Exhibit 18", a pair of green shorts "Exhibit 19", small pillow case orange/brown "Exhibit 20", Bank Windhoek Visa Card of F J Schiefer and PIN Number "Exhibit 21", plea explanation "Exhibit A", s 119 proceedings "Exhibit B", bail proceedings in the Lower Court "Exhibit C", State pre-trial "Exhibit D", reply to State pre-trial "Exhibit E", psychiatric report by Doctor Muthoko "Exhibit F", psychiatric report by Doctor Japhet "Exhibit G", post-mortem report in respect of deceased Frans Schiefer "Exhibit H", and post-mortem report in respect of deceased Fransina Jacoba Schiefer "Exhibit J", copy of firearm licence "Exhibit K", Application for scientific examination "Exhibit L", Affidavit by Mr Nambahu "Exhibit M", Last will of two deceased persons "Exhibit N", Card distribution list by Bank Windhoek "Exhibit O", Print out of cell No. 0812618961 "Exhibit P", MTC print out of cell No.

081299325 for deceased Fransina Jacoba Schiefer "Exhibit Q", Print out of accused cell phone No. 0812779475 "Exhibit R", Print out of Lee-Roy Van Neel cell No. 0813551991 "Exhibit S", and photo plan of the scene of crime "Exhibit T".

[4] I will now summarise the evidence, starting with that of State witnesses. Warrant Officer Paulus Kondjeni Lukas who testified that he attended to the scene of crime on the evening of 18 January 2008. He took photographs and compiled a photo plan, sketch plan and a combination of the sketch plan and photo plan. He collected exhibits from the scene namely 10 spent cartridges, 5 projectiles, a knife, a T-shirt, spectacles, a pistol and a magazine. Apart from the above mentioned exhibits, he stated that the police found a small pillow on the floor and the pillow case on the bed. The pillow appeared to be torn and there was a spent cartridge inside it. A similar pillow with its pillow case was also found on the bed. The exhibits were given to Inspector Unandapo in the presence of police officer Kantema.

[5] Hermanus Johannes Louw, a constable reservist, testified that on 18 January 2008 he received a telephone call, from Jo-Ann Dixon who resided at the outside building attached to the main house of the two deceased persons. She reported to him that she heard gunshots, doors being slammed and voices shouting from the main house. Cst. Louw went to the house in question where he found Jo-Ann Dixon with her boyfriend. Dixon narrated to him again as to what she heard concerning the incident. Louw called Inspector Basson to the scene who arrived around 23h25. They investigated the matter and found a knife that was bend and a handle of a knife which belonged to a different knife between two cars that were on the premises. There were other police officers at the scene. There was also blood on the floor. The witness identified the male deceased who was lying on the bed in the main bedroom. Upon further investigation, he also noticed the female deceased's body lying on the floor between the cupboard and the bed. There was some blood on the female deceased's legs. They proceeded to the corner of the house and observed spent cartridges as well as spots of blood on the stairs. The witness opened the door to the house. The door was damaged from outside; it had marks that looked like it was stabbed with a knife. The witness and his colleagues entered the house because at

first they were looking through the windows. He was facing the kitchen area and saw a pair of spectacles, two bullet holes in the cupboard as well as two bullet holes on the wall. There was a black bag on the other side of the cupboard; a firearm; part of a magazine spring lying on the floor, and a black piece of plastic lying on the table. He also saw two cell phones.

[6] They went to the main bedroom. There was a blood trail from steps to the bedroom where the female deceased was lying. The blood trail stopped there. The female deceased had a black object stuck on her throat and a bullet hole on her leg around the thigh. She appeared to be dead. A footprint was spotted in the bathroom. The male deceased had blood around his head. There was also a spent cartridge lying on the bed and two spent cartridges lying on the carpet. He noticed a bullet hole at the back of the bedroom door, one cartridge and a projectile near the hole that was on the wall. There was also a bullet hole on the ceiling. Inside the cupboard, he observed an electronic safe. The safe did not have any signs of forced entry. Inside it there was a camera and a watch. He further observed bullet holes in curtains in the main bedroom.

[7] Footprints were observed in the corridor and a pillow that had blood on it as well as a pillow case were found in the middle bedroom. Upon entering the third room, the witness saw a pair of shorts, Exhibit "19", on the floor. After the two bodies as well as exhibits were removed from the scene, he and one Mathias were tasked to guard the scene of crime. According to the witness, the bloody shoe prints that were found in the bathroom were similar to the prints of the shoes that were worn by the accused. The witness guarded the scene of crime up to 13h00. Thereafter he went to the police station at the office of the Serious Crime Unit where he met the accused. At the police station he and the accused had a smoke and he told the accused to tell the truth. The accused informed him that he would tell the truth. The accused allegedly told him that he knew the combination to the accused's parents' safe and that he was aware of the contents of his parents' last will and testament. He stopped the accused and went back to Unandapo's office. He told Unandapo that the

accused had something to tell him. The accused sat down and discussed the matter with Unandapo.

[8] Jo-Ann Dixon testified that during 18 January 2008, she was residing at the flat owned by the two deceased persons who are the accused person's parents. On 18 January 2008, whilst she was in the sitting room of her flat and the accused and his mother were in their kitchen or balcony near the washing area, she heard the accused talking to his mother at around 22h00. They spoke loud. At around 22h45 she heard gun shots. After the first shot, she heard the female deceased shouting for help. She shouted the name 'Romeo'. After she shouted the door was slumped and more shots followed. The accused asked his mother in an anxious manner by saying: 'What is it?' She telephoned the female deceased on her cell phone. The call was picked up but a person switched off. She telephoned the male deceased but the call was not answered. She telephoned the landline but it remained unanswered. Thereafter she decided to telephone witness Louw. She recognised the accused's voice because she knew it as she had stayed at the flat for six months. The accused was staying with his deceased parents in the main house. She was familiar with his voice. Although he did not have a distinctive voice, the accused had a particular style when he spoke to his mother. The space between the main house and the flat was about a metre. The flat was adjacent to the house. There was a gate that connected the house with the flat and the washing place was an open space. The witness had seen the accused that particular day leaving the house through the back gate but she heard him talking to his mother after 22h00. It was put to the witness that there was a bar opposite the deceased persons' house and it was normally noisy. The witness responded that although there was a bar at that particular time the bar was not noisy and she did not observe many cars at the bar.

[9] Lee-Roy Rodrick Van Neel testified that he was the accused's friend. On 18 January 2008, before 21h00, he made a call to the cell phone of the accused's father with the view to speaking to the accused. He spoke to the accused. At around 21h30 the witness went to the accused's place. It took between 5 and 10 minutes to drive to the accused's place. He waited for the accused about 10 minutes outside the

accused's house. He did not wait for a long time and the accused came from the front door up to the boundary wall. The accused was wearing a dark T-shirt and a pair of dark shorts with stripes on the sides. He identified the pair of shorts as Exhibit 19. The accused was inside the yard and the witness was outside. The accused left and returned to the witness with a N\$20.00 and he told the witness to go and buy the accused's mother 'credit' or airtime. The witness went to buy credit and returned about 30 minutes later and gave airtime to the accused. The accused went inside the house. It took about 10 – 20 minutes for the accused to come back to the witness. When the accused came back he was wearing a striped white and black T-shirt, Nike sports shoes (Exhibit "16") white in colour and a blue pair of jeans. They drove to the police flats. At the time the witness was at the accused's place, he did not hear any shot. From the police flats they drove back to the accused's place because the accused said he was going to collect his ATM card. He did not stay long in the house and they went away.

[10] The next State witness was Ernst Sisamu, a Sergeant in the Namibian Police Force, who testified that on 22 January 2008, he received exhibits in respect of this case. They were in a sealed box with official seal number 0008 from sergeant Kantema. He registered the box under serial number 89/2008 and placed it in the strong room. He delivered it to the National Forensic Science Institute where it was allocated a serial No. 91/2008. He identified the sealed box as Exhibit "DD", photograph 1.

[11] Chief Inspector Michael Unandapo testified that on 19 January 2008 between 01h00 and 02h00 he visited a scene of crime in Khomasdal. He observed that the kitchen door looked as if it was kicked down. There was a pistol on the cupboard and a firearm spring on the ground. He also saw blood spots in the corridor leading to the main bedroom. They found two corpses in the main bedroom. The male body was lying on the bed whilst the female body was lying on the floor. Clothes were scattered in the room. In the room there was a small safe inside the wardrobe. The safe was open however its content appeared to be in order. He observed a camera in the safe. There were bloody stained shoeprints on the toilet floor. The shoeprints



appeared to have come from the corridor to other rooms. The shoe prints appeared to be for tekkies. Exhibits were collected and handed over to Sergeant Kantema in his presence. They left the scene and went to the Serious Crime Unit offices with the accused and his two brothers. The only purpose to take the accused and his brothers to the police station was to get information from them and find out whether they were present when this incident happened. The following day he returned to the scene of crime with one of the accused's brothers. They discovered a pair of shorts belonging to the accused and a pillow with bloodstains. The witness had also referred to the pillow as a pillow case. From the scene of crime the witness drove with the accused's brother to the house where he was. The accused was found outside. The witness showed the accused his appointment certificate and told the accused that he was under arrest. He informed him of his legal rights. The accused told him that he did not want a lawyer. When they went to the police station the witness asked for the takkies that were worn by the accused the previous night because he was of the opinion that the bloodstained shoe prints looked similar to the accused's shoe print. The shoes were collected from the house where the accused spent the night. They were white sports shoes or takkies. Although they appeared to have blood stains, they also appeared to have been washed. He further recovered white sports shoes or takkies which appeared to have bloodstains. Inside the takkies there were white socks. The accused explained to him that the pair of shorts belonged to him and it was stained with blood because he was cutting meat. The accused was found with an ATM card bearing one of the deceased persons' names, to wit F. J. Schiefer and a PIN number. He did not give any explanation how he came to possess the ATM card. Chief Inspector Unandapo further received 3 projectiles and a knife blade from the late Dr Shangula during the post-mortem examination. The projectiles and the knife blade were removed from the female deceased's body. Blood was also drawn from the two deceased's bodies for purposes of forensic examination. The exhibits were given to Sergeant Kantema to take them to the National Forensic Institute. The witness further testified that he did not hear the accused's brother talking about a lawyer; he also did not see a lawyer at the police station. The witness further testified that he gave instructions for the accused to be taken to Chief Inspector Viljoen for purpose of giving a confession. After the

accused gave his confession he was brought to the office. However, he changed his version and said it was only the statement that was brought to him.

[12] Sergeant Joseph Ndokosho testified that he collected 10 spent cartridges from the scene of crime and placed them in plastic containers. He further collected the firearm that was loaded with one round of ammunition. There were also seven rounds of ammunition but these were not loaded on the firearm. He placed the firearm in a forensic evidence collection bag and handed it to Sergeant Kantema. He further collected a spring of the magazine and six projectiles which he handed over to Sergeant Lukas. The following day, he returned to the scene of crime and recovered 2 spent cartridges from the main bedroom. The accused was interrogated at the offices of the Serious Crime Unit in connection with a pair of shorts that was found in his room and he said the shorts were bloodstained because he was cutting meat. Concerning the T-shirt, he said it did not belong to him. The accused was also found with a ATM card and he explained that he was send to collect it from the bank by his mother but he did not give it to her.

[13] Felix Ndikoma a Warrant Officer in the Namibian Police Force testified that he went with Sergeant Ndokosho and Sergeant Kantema to the scene of crime. He observed some clothes which appeared to be wet. On top of those clothes, there was a white T-shirt that appeared to have blood spots. Desmond a brother to the accused identified the T-shirt as that of Mario. When he entered the house he observed blood on the floor. The blood marks were on the kitchen and the corridor leading to the main bedroom, Mario's room and the accused's room. When he went to the second room belonging to Mario, he observed a small pillow or cushion (as he put it) that had two holes. Those holes had black spots which appeared to be like gun powder. Inside the pillow, there was a spent cartridge of a pistol. The pillow had blood spots. In the room there were two big pillows and another small pillow. There was small pillow case that was lying on the floor. The clothes were lying on the floor. On the third room which belonged to the accused, clothes were thrown on the ground. Among those, there was a grey pair of shorts with spots which appeared to

be blood spots. The scene of crime did not appear like a robbery scene of crime because if it was a robbery, a person could have taken a DVD and the firearm that was found at the scene. The witness collected a pair of shorts, a pillow case, and a pillow and a white T-shirt.

[14] Inspector Zacharia Amakali gave evidence that on 19 January 2008 he collected white Nike takkies and a pair of socks from a certain house that were allegedly worn by the accused on the date of the murder of the accused's parents. He identified the takkies in court. Furthermore, the witness testified that he formally charged the accused. The socks were found inside the takkies. He observed something on the socks and on the shoes that appeared to be bloodstains. Apart from collecting the shoes and socks, the witness also took a warning statement from the accused. The accused stated that he was going to stick to the statement he gave to Chief Inspector Viljoen. The warning statement was identified and produced in court and marked as Exhibit "FF".

[15] Sergeant Frans Kantema testified that he went to the scene on 18 January 2008. Chief Inspector Basson, Hermanus and Ndokosho were also there. Before he entered the kitchen, he observed blood on the balcony that appeared to be wet. There were bullet holes in the kitchen door and the handle was lying with the lock and key on the cupboard inside the kitchen. Some of the blood appeared to be dry. He saw a firearm lying in the kitchen. They looked into the first room and found the two deceased lying. The male deceased was lying on the bed with a bullet wound on the head. The female deceased was lying on the floor with a knife blade stuck in her neck. There were also some bullet wounds on her legs. The wardrobe was open; inside it there was an electronic safe. Clothes were removed from the wardrobe and put on the floor. Inside the safe there was a camera. He called Detective Chief Inspector Unandapo to come to the scene. They observed bloody shoeprints within the corridor and in the toilet.

[16] The witness continued to testify that Warrant Officer Lucas collected a firearm, eight live bullets, ten spent cartridges, 2 projectiles, spectacles, a door handle with

keys, a knife, a handle of a knife, and two cell phones. The exhibits were given to him and he kept them in safe custody. Arrangements were made for the house to be guarded throughout the night. The following day they returned to the scene between 07h00 – 08h00. Ndokosho drove him there. There were other police officers at the scene. They entered a laundry room and found a white T-shirt that was bloodstained. They went to the main bedroom and saw two spent cartridges. Ndokosho recovered them and gave them to the witness. A pillow was found in Mario's room. It appeared to have gun powder on it because it had black marks. The pillow was open on its two ends. They discovered a spent cartridge inside the pillow. There was also a pillow case. These items were taken by Ndikoma and handed over to the witness. On the bed there were other pillows, two big ones and a small one that looked similar to the small pillow that had black marks. In that room clothes were taken out of the cupboard and placed on the floor.

[17] From the second room the witness proceeded to the third room which is said to be accused's room. A pair of shorts was found on the floor. There was something that looked like bloodstains on it. After the Scene of Crime officers and Forensic officials finished what they were doing, exhibits were collected and handed over to him. All the exhibits having been collected from the scene of crime, they were booked in, packed and sealed and handed over to Sergeant Sisamu. Sergeant Kantema further confirmed that the photo plan depicts the scene as was found and identified the photographs depicting the sealed box which he handed to Sgt. Sisamu. The exhibits indicated on Exhibit L were put in forensic evidence bags by Ndikoma in his presence. He further confirmed receiving the white takkies from Inspector Unandapo. He identified the exhibits with reference to the photo plan and the physical evidence produced in court.

[18] Doctor Dean Patrick Hildebrand testified that he is the Acting Director of British Columbia Institute of Technology (BCIT) in Canada. His field of expertise is biochemistry and molecular biology. He identified a receipt from Exhibit "X1" from Ms Swart of National Forensic Science Institute (Namibia). It was a box which had an inner bag with serial No. NFE02357. The overall bag had multiple cases and was

sealed. This case concerns with evidence bag NFB08275. The witness further testified about the procedure to be followed for testing DNA. When he received the evidence bag, he examined parts of the known samples and did the DNA extraction of the known samples and compiled a report. All the other laboratory techniques were conducted by Mr Moore. After Mr Moore had finished with his examination, he gave it to Dr Hildebrand who compiled the report. His report is marked as 'R 2009 - D 193 -1 dated 7 February 2009 DNA Testing Report'. The samples originated from NFS No. 91/2008 received from Ms Swart on 11 March 2008. Overall bag NFE – 02357. The bag that concerns this case had questioned exhibits labelled Q1–Q7. They were clothing cuttings and individually marked as Exhibit 1, Exhibit E1, Exhibit E2, Exhibit F, Exhibit G1, Exhibit G2, Exhibit G3 and Exhibit H. The other samples received were known or reference samples. Sample K1 was an FTA Card. K2 was a swab. The purpose was to determine whether DNA profiles from questioned exhibits can be generated and compared against that of the reference samples for the purpose of identification.

[19] Exhibits Q1–Q7 had sub-samples Q1-1, Q1-2, Q1-3, Q1-4, Q1-5, Q1-6 and Q1–7. Clothing cuttings that were sampled and processed for the isolation of DNA from stains. Selected exhibits were screened for the presence of blood. Exhibits K1, samples K1–1 FTA card K2, the K2–1 swab, were sampled and processed. In the report, he concluded that blood was identified on Exhibits Q1, Q4, Q6 and Q7. Exhibits Q2 and Q5 were not tested for the presence of blood. Exhibits Q1, Q3, and Q4 and sections of clothing yielded sufficient human DNA to proceed with STR analysis and each yielded the same female profile. This profile was designated as Female 1 as it was suitable for comparison purpose. Exhibit Q6, Q6–1, section of clothing cutting, yielded insufficient human DNA to proceed with STR analysis and yielded a mixed profile from at least 3 individuals at least one of which is male. Female 1 is excluded from this mixture. Exhibit 7, Q7–1, section of clothing cutting, yielded sufficient human DNA to proceed with STR analysis and yielded a male profile. This profile designated as male 1 is suitable for comparison purposes. Male 1 is excluded as a donor to the mixed profile reported for sample Q6. Exhibit K1, namely sample K1–1 section of this FTA card yielded sufficient human DNA to

proceed with STR analysis and yielded a male profile. This profile is suitable for comparison purposes. The donor exhibit K1 cannot be excluded as the donor of the sample Q7-1 which was referred to as male 1. The probability that a randomly selected individual unrelated to male 1 would coincidentally share this profile is estimated to be 1 in 1 quadrillion based on the Canadian Caucasian population database. In other words the donor of sample K1 the male reference sample that male is included as a donor to Q7. The DNA profile would overlay specifically. There is a match in this. The two profiles were the same. In this case, his conclusion is that he cannot say these two profiles did not come from the same person, because they are indistinguishable.

[20] Doctor Jason Moore from BCIT testified that he examined the questioned samples first followed by the DNA extraction of those samples. Doctor Hildebrand examined the known samples and the extraction of the known samples. The witness testified further that he was responsible for the DNA amplification for all of the samples of this case and generic analysis. Thereafter he gave the DNA profiles to Doctor Hildebrand who did the interpretation and wrote a report. He took photographs namely; of the case No assigned to this case NBCIT and the photographs of the evidence bag from NFSI that was sealed when he received it with serial No. NFB 08275. Inside the evidence bag there were multiple test tubes, a swab and a container for an FTA card. Tubes were marked properly by NFSI before they were assembled. He took photographs of the 7 test tubes containing fabrics, swatches with what looked like bloodstains No D193Q1-1 from case no 91/2008 Exhibit E-1. Exhibit E-1 grey and green fabric with a stain. D193Q3-1, Exhibit E-2 clean fabric with stain, D193Q3-1 Exhibit F white fabric with stain D193Q4-1 Exhibit G1 white fabric with a stain. D193Q5-1, Exhibit G1 white and green fabric with a stain. D193Q6-1 exhibit G3 portion of a lace with a stain. D193Q7-1 exhibit H white fabric with a stain. He took an extra cutting for sample Q1-1, Q3-1, Q4-1, Q6-1, Q7-1 to test using EBA Code for haema trace dipped the haemastix in extraction buffer containing the cuttings. Q1-1 was a strong positive haemastix and the haematrace was positive. Q3-1 haemastix was medium positive (faint) haematrace was a negative result. Q4-1 strong positive haemastix and haematrace positive result. Q6-

1 medium positive fainter and those for haemastix and haematrace positive result. Q7-1 the haemastix was a strong positive result, haematrace was 7 positive result. He called it control sample with a different blood sample. The haemastix from the control sample gave a positive result and the haematrace also gave a positive result. There was different lot numbers of the haemastix and the haematrice (haematrace confirmatory of human blood or a primate or a ferret blood)

[21] When forensic DNA quantification was made all the samples had enough DNA to proceed except Q5. Male profile Q7 was compared to K1 and male profile could not be excluded as a match. Item examination form was marked as Exhibit Z2-Z3 pages 1-20.

[22] Maryn Swart, formerly employed by NFSI as Chief Forensic Scientist, testified that she attended the crime scene with Mr Roberts on 19 January 2008 and assisted him with the collection of bloodied footprint. She examined the biological evidence that was submitted to the National Forensic Science Institute. On 23 January 2008 she received 1 pistol, spent cartridges, projectiles magazine, box with one pair short trousers, a T-shirt, a pair of Nike Air shoes with white socks, one small pillow bloodstained and two blood samples from Sergeant Sisamu. The short, T-shirt, a pair of Nike Air shoes, pillow and blood samples were sealed with a tape and official seal number 0008. The box was opened by Mr Roberts in her presence. After Mr Roberts took shoeprints, he handed over the exhibits to her namely Exhibit H; small pillow, Exhibit E; a short trouser, Exhibit F; a T-shirt, Exhibit G; a pair of Nike Air shoes and Exhibit 1, two blood samples in the tubes. She produced a photo plan which she compiled and was marked as Exhibit "AA". Upon receiving the exhibits, she did a screening test. The pair of shorts tested for human blood as depicted in photograph No.1. Photograph No. 2, no point of interest observed. Photograph 4, T-shirt that tested positive for blood but not human blood. Photograph 6, a pair of shoes which had points of interest on the shoe lace. The shoelace tested positive for human blood. Photograph 11, there was a pair of socks that was in the shoes and tested positive for human blood. Photograph 13 Exhibits H, a pillow, tested positive for human blood. One of the blood samples spilled. Cuttings were made from Exhibit E,

E2, F, G and sent for DNA analysis. Cutting from shoe laces were designated as a3. A cutting from a pillow designated as Exhibit H was also sent for DNA analysis. Blood collection tubes with blood samples were marked as exhibit 1 and sent for analysis. The blood that was intact was collected from the tube onto an FTA Card. The witness identified the exhibit bag with serial No. NFB 08275 as that she sent to BCIT. The exhibit bag was put in one big NFE bag Serial No. 02357.

[23] The witness further identified her preliminary report that was produced in evidence and marked as Exhibit BB. She further produced another report. She wrote with regard to the reconciliation of the exhibits that were sent to BCIT and it was marked as Exhibit CC. According to her, this was an interpretation of the BCIT report.

[24] Phillipus Jaco Roberts testified that he is a laboratory Forensic Scientist at NFSI. He attended to a scene of crime in this matter and compiled a report that was marked as Exhibit "DD". The scene was attended to on 19 January 2008 and re attended to on 21 January 2008. He scientifically examined exhibits obtained from the scene. The scene was chemically treated for the enhancement of bloodstained shoe prints. Prints were made of Exhibit G, a pair of white Nike Air shoes. The imprints were compared to the crime scene photographs. Class characteristic could be marched between the imprints of Exhibit G and the crime scene photographs. In considering the above, it was possible to infer that Exhibit G could have been a source of the bloodied shoe prints at the scene. Photographs of the shoeprints were marked as Exhibit "EE", enhancement of bloodstained shoe prints.

[25] Hartmund Riedel, a General Manager of risk management at Mobile Telecommunication Corporation (MTC) testified that the MTC tower near NAMPOL in relation to this case is at Bahnhof Street. He explained the coverage on the map on Exhibit R with reference to the 19 January from 10:11:55 in connection with cell phone No. 277945 that was investigated in this case. The first call was made for 41 seconds. Whenever a person makes a call that has gone through or sends a short message, the tower of the area wherein a person is using the phone is being reflected. According to Exhibit R, there is a column which reflects column 900a and



column 1800 and Eros micro. He explained that column 900 and column 1800 are technologies that are used by MTC. They first had a frequency of 900 and now they had an additional frequency which is 1800. They are at the same cone namely cone 1. The micro is a cell that is stored or implemented at shopping malls or areas. The Eros micro is installed at Eros Shopping centre near Woermann and Brock and Joe's Beer House. There is a possibility that cone 1 will pick up at Bahnhof and vice versa but the possibilities are very slim because the cell phone will normally look for the strongest signal which will be Bahnhof 2 or Bahnhof 3 one will not normally look into cone 1. If a person is at Eros, the cell phone will normally pick up at cone 1. It will normally pick up in the area where the person gets a stronger signal. In relation to the cell phone number in question, the call indicated in Exhibit R at 11:23 (Cone 99 1) and 11:52 (Bahnhof 1800 2) shows a lapse of 30 minutes an indication that the person had moved from where he made the first call. The subsequent call at Bahnhof followed until 14:55.

[26] William Onesmus Nambahu, a Chief Forensic Scientist and a ballistic expert at NSFI, testified that he examined one pillow marked Exhibit H. The exhibit did not reveal any bullet hole or gun short residue (GSR) deposited on it. The pillow was showed to the witness in court and he observed something that looked like bloodspots. He examined the pillow and he observed a hole and burnt marks. He informed the court that it was highly probably that the burnt marks were caused by the firearm being discharged whilst it was rubbed inside the small pillow. The witness testified that he did not examine the pillow inside when it was sent for forensic examination because the instructions of the police were that he should examine "on" the pillow. An application was made for the witness to do forensic examination on the small pillow. Mr Nambahu's conclusion was that the appearance was probably caused by pyrolysis of the fibres strands of Exhibit H. The appearance was highly probably caused by discharging a firearm rubbed.

[27] Chief Inspector Gerrit Johannes Viljoen testified that he took a confession from the accused. He cautioned and informed the accused of his rights. He used a pro-forma. The confession was disputed by the defence. The court subsequently

held a trial within a trial. The confession was ruled to be admissible and was produced as part of the State case and marked as Exhibit HH. The content of the Statement is as follows:

*"I failed my Grade 10 exam during 2006 and repeated it in 2007 at Namcol. I failed to hand in my last projects of four subjects. This made my mother angry as she said that I wasted her money. I went with my brother to Namcol who said that they will send out our results on the coming Monday 2008/01/21. My mother was very upset she swears at me and pulls me around on Tuesday 2008/01/17. On Friday 2008/01/18 I assisted my mother in the kitchen and watched TV with my father. I left home at about 21:00 and went to the shop. The bar is next to the shop. I purchased a cigarette at the bar and I went home. When I reached at home my friend Lee-Roy arrived. We sat in the car and discussed our plans to go out for the evening. I told him to come back later so that I can prepare myself first. I went into the yard and went to the back where I smoked. The lady in the outside room saw me. I finished and went into the house and asked my mother money. She asked me to purchase Tango credit. My mother swore at me and accused me that I do not want to learn, waste her money and just walk around doing nothing. That triggered me and I decided that this is enough. I went to the drawer where the knives were kept and I took one. I stabbed my mother. Do not know where I stabbed her and I went to my father's room where he was asleep. I closed the door, went to the cupboard and took his pistol. I was crying and a teardrop fell on him and he turned. I first shot him through the pillow which I hold in front of the pistol. I went out of the sleeping room and found my mother still in the kitchen. I went out of the kitchen and my mother closed the door. I shot three or four shots through the door. I forced the door open and went in. I found that my mother was inside their sleeping room and the door was locked. I kicked the door open and went inside. I fired one shot in the air and my mother stormed at me. And I shot at her several shots. I went out of the room and my friend Lee-Roy arrived. I asked him to purchase the Tango Credit. While he was away I put on a jean, T-shirt and takkies. My trousers were blood smeared. Lee-Roy arrived and I took the credit and pretended as if I gave the credit to my mother. While inside I start to stab my mother again but I cannot recall where I stabbed her. I left the pistol on a table in the kitchen. I throw the knife between the two cars and closed the garage doors. I went with Lee-Roy. I did not say anything and Lee-*

*Roy asked me what is wrong but I not tell him anything and we went to Vaalhoek. We went to Lee-Roy's house. Arriving there he had to wait for other girls and we start to drink wine. At about 01:00 my brother Mario phone me and he said that there are problems at home. I went home and met them all there. We went to police station. Answered some questions and I went to my aunt's house where I slept the night. I think there is something wrong with me since I was a small boy. I also consulted a psychologist several times. My house language is Afrikaans but I am acquainted with the command of the English language and do not need an interpreter. I made the statement in English".*

That concludes the summary of the State case. I will now proceed with the summary of the defence case.

[28] The accused gave evidence under oath and called four witnesses. Starting with the evidence of the accused, Romeo Mannellito Schiefer, testified that on the 18<sup>th</sup> January 2008, he was staying with his parents and his brother, Mario. During that time the accused was studying at an educational institution called Namibia Education College. He was in Grade 10. He failed Grade 10 and that was the reason he went to the above mentioned college. The accused was also a member of the NG Church Youth Group. His parents were employed. However, they used to earn extra income by selling meat. At school, the accused was a slow learner. He further testified that their house is at the corner of Kanna and Gladiola Streets. Next to the house are a shop and a bar. Opposite the house, there are police flats. Their house consists of three bedrooms, a garage, two bathrooms, a lounge, a kitchen and an outside apartment. The accused and his brother were sleeping in separate rooms. The outside apartment was occupied by Jo-Ann. She stayed there for about 6 months before the incident. The accused did not know Jo-Ann well but he used to see her. She only visited the main house when she had to pay for her rent. She also used to come and buy meat from them. On the 18<sup>th</sup> January 2008 around 18h00, the accused was at home with his family assisting his mother (now deceased) to sort out meat by packing it. Between 19h00 and 20h00, his brother Mario left the house. During that evening the accused and Jo-Ann saw each other behind the house on the side of the flat where she stayed.

[29] On the date of the incident it was a Friday, the accused and his friend Lee-Roy were supposed to go out around 21h00. Lee-Roy called the accused on the accused's father's phone. By then the accused was not yet ready to go out. He informed Lee-Roy that he would call him and tell him when he should come to pick him up. The accused did not call Lee-Roy as he was still busy helping his mother. Lee-Roy came to the accused. The accused told him that he was still busy. Lee-Roy did not enter the house, they met at the gate. Lee-Roy left and came back for the second time. By then the accused was not yet ready to go out. The accused said he did not send Lee-Roy to go and buy credit for his mother's cell phone. Lee-Roy left the accused's place and came back for the third time. The accused drove off with Lee-Roy to a place called Vaalhoek. This was between 21h30 and 21h45. When the accused left with Lee-Roy, his parents (the two deceased) were still at home. At Vaalhoek, Lee-Roy picked up his aunts and drove them to Lee-Roy's house in Khomasdal. The accused and his friend Lee-Roy stayed at Lee-Roy's house for about 45 minutes to an hour waiting for two girls. From there they drove to a certain service station. Whilst they were at the service station, one of the accused's friends came and the accused drove with him, leaving Lee-Roy and the two girls behind. The accused came back and rejoined Lee-Roy and the girls. They all drove back to Lee-Roy's house. The accused's brother Mario called him after midnight and informed him that there was a problem at home. The accused and his company drove to the accused's house. The accused further testified that it was not correct that he was nervous and smoking a lot as it was testified by Lee-Roy. The accused only shared two cigarettes with Lee-Roy.

[30] When the accused arrived home, they found a lot of police officers and bystanders there. His brother Desmond informed him that their parents were murdered. After 30-45 minutes, the police told them to go to the police station. He drove with his brother Mario to Windhoek Police Station. At the police station, the accused and his brothers were questioned concerning their parent's murders and the police were accusing them that they were involved in the commission of the crimes.

The accused informed the police that he was with his friend Lee-Roy. After they were interviewed by the police, they went to sleep at their aunt's place at about 04h00 and returned back to the police station at 10h00 the following day after the police fetched them. The accused was dressed in jeans, a T-shirt and slippers.

[31] At the police station, the police confronted the accused with a pair of shorts that was bloodstained. The accused explained to the police that the reason why there was blood on the shorts (Exhibit 19) was because he was helping his mother to pack the meat the previous night. He was also confronted with a knife, a pillow and the police were forcing him to admit that he killed his parents. Among the three police officers who were questioning the accused was Inspector Unandapo. The accused and his brothers were initially questioned in separate rooms. However, at a later stage, he was joined by his brother Desmond. The accused testified that he could not recall having seen Hermanus Louw at the police station the previous night.

[32] The police alleged that the accused used a knife to stab his parents. They also said that he used a pillow in the commission of crimes. The accused was not able to recognise the pillow he was shown by the police. There was no pillow case. The police forced him to admit that he was the one that committed the crimes and should he accept they would not punish him and would be granted bail. The accused was asked continuously until he could not take it anymore. He only admitted. Unandapo told him to admit. The accused's brother Desmond wanted to call a lawyer but Inspector Unandapo told him that it was not necessary.

[33] The accused was shown takkies and Unandapo said the takkies had blood on them. However, there was no blood on them; they were only slightly dirty. The accused further testified that the police found him with his wallet containing N\$125 and his mother's ATM card. The money belonged to him and he took the ATM card from his mother's handbag. He explained that the reason why he gave a different version of how he came to possess his mother's ATM card during his bail application was because he was confused. The accused vehemently denied that he was the author of the confession he gave to Chief Inspector Viljoen. Inspector Unandapo told

the accused to tell Chief Inspector Viljoen in his statement personal things like that the accused went to see a psychologist and all the things he mentioned in the confession. The accused only came to see his lawyer after he gave a confession.

[34] The accused confirmed that Exhibit 16 (sports shoes/takkies) and Exhibit 17 (a pair of socks) belonged to him. The room depicted in photograph 3 in Exhibit T was occupied by his brother Mario while the one that was depicted in photograph 42 was his room. The sandals depicted in photograph 12 in Exhibit "MM" belong to the accused and he wore them before he put on the takkies. The accused testified that he had no knowledge of the bloodied shoeprint found in the corridor and what Jo-Ann testified in Court that she heard his mother calling his name and that he responded: "What is it?" He explained that it was impossible for Jo-Ann to have heard their voices because the bar that was opposite their house was busy, and it gets busier on weekends. The accused further disputed Lee-Roy's evidence that they turned around upon the accused's request to collect his ATM card.

[35] The accused testified that he could not say that the pillow produced before Court came from their house. He could only recognise the pillow case. The accused confirmed that the firearm, Exhibit 18, belonged to his father but added he, the accused, had never used the firearm before. Although Louw testified that the accused told him that he knew the combination to the safe that was in the parents' room and the contents of his parents' last will and testament, the accused denied having told him so.

[36] The accused testified that it was impossible for him to kill his parents because he loved them. It is not correct that there was an argument between him and his mother that triggered this incident as stated in the confession. His mother never said bad things to him as stated in the confession that she said he was useless and he had no future and that he was wasting their money. The accused stated that at no stage was he informed of his legal right to remain silent. He only came to be informed of this right for the first time by Mr Dos Santos. After he was informed of his rights, he wrote a letter to the police.

[37] Desmond Schiefer testified that at the time of the incident, he was not residing at his parents' house. On 18 January 2008, he received a short message regarding the incident. He drove to his parents' home where he found the police and his brother Mario. He was informed of his parents' death. The accused was the last to arrive home among the brothers. When they told the accused that their parents were killed, the accused cried and he was very sad. They were told to go to the police station where they were questioned. Afterwards they were allowed to go and they went to their aunt's house. The following morning, he accompanied the police to the scene of the crimes.

[38] At the scene, he observed bloodstained clothes lying on the floor, the back door appeared to have been shot and kicked. The handle was lying on the ground. It appeared blood was spilling from the house to the outside. There was a lot of blood in the kitchen that led to the parents' room. There was a lot of blood on the floor and on the bed. There was a bullet hole in the ceiling. Another bullet went through curtains, through the window and against the wall. Cupboards were open, it appeared the safe was tampered with, but he could not tell whether there was something missing because he did not know what was in the safe before the incident. He did not know the combination of the safe. The witness took the police to the rest of the rooms and explained to them who was sleeping in what room.

[39] The police removed a small pillow from Mario's room which was open on one side. It appeared to have had a hole on the other side and to have been burnt. They moved to the other room. There were blood stains on the carpet and on the cupboard. In all rooms, clothes were removed from the cupboards and put on the floor. A grey pair of shorts was found in the accused's room. It had stains which looked like blood. He explained that near his parent's house, there is a shop and a bar. The bar is usually busy on Fridays and Saturdays and that there is always music playing. People would park their vehicles in front and play music. The place is noisy. He testified that between the kitchen and the flat where Jo-Ann was staying there is

a corridor. The flat's front window was on the direction of the street in front of the bottle store. The door was at the back side far from the main house.

[40] He confirmed that the accused had consulted a psychologist and that the relationship between him and his parents was good. The accused was the youngest of the three siblings and the accused was a spoilt child. If the parents scolded him, he would cry. The witness and his brother Mario were allowed to learn how to use the firearm but the accused was not allowed to use it because he was young.

[41] Isabel Schiefer, the accused's sister -in -law, also testified for the defence. She stated that she attended the scene of crime. She observed how the accused was crying, shocked and sad. The following day she was requested by the police to go and fetch the accused's shoes from his aunt's house. They handed the sports shoes/takkies to the police. The accused was wearing her slippers at the time of his arrest.

[42] Randall Van Neel testified that he is a brother to Lee-Roy Van Neel. On January 2008 he was at his mother's house where he was found by the accused and Lee-Roy between 22h30 and 23h00. Why he was saying it was around that time was because the witness does not normally pay visits after 23h00.

[43] Uushona Hiskia, a camera operator at the Namibian Broadcasting Corporation (NBC), testified that before midnight, he received a call in connection with the murders that took place at Khomasdal. When he drove to the scene, he found the police and onlookers. He took a video footage of the crime scene. The reason why this witness was called was to produce a DVD containing footages that he took from the scene, especially inside the house and the movement of the people outside the house. The DVD will show the Court that there were footprints inside the house. There were several other people in the house and the footprints found in the house could not be necessarily that of the accused. Mr Hiskia received the call before 00h00. He took the footage with his service camera. He took some shots from the kitchen door. He went a few steps into the house and took visuals of the



deceased couple's bodies as well as blood spots. The DVD footage taken by the witness was shown in Court and the witness explained the footage. Among others, the DVD showed part of a pair of shorts and a person who was wearing takkies at the scene. The DVD was marked as Exhibit 22. That concludes the defence case.

[44] Moving on to submissions by counsel, counsel for the State argued that the accused's claim that the police couched the content of the statement to him could not be reasonably true because the accused failed to explain the following:

- (a) The fact that he told Chief Inspector Viljoen that he was seated with Lee-Roy in the car to discuss the plans for the evening;
- (b) The police could not have known that the pillow was used to kill the accused's father, because by the time the confession was taken they did not know whose blood was on the pillow;
- (c) That he failed Grade 10;
- (d) That he consulted a psychologist since he was a young boy;
- (e) The police could not have known that he pretended to give the credit to his mother.

[45] As for the evidence of Mr Randall Van Neel, she argued that his estimation of time could not be trusted. Concerning the evidence of Mr Ushona, counsel argued that this witness arrived at the scene after it was already discovered by Mr Louw and the bloodied shoe print was already observed before members of the public and the police had arrived there. Therefore it was not possible for the shoe prints to have been planted at the scene as suggested by counsel for the defence.

[46] With regard to the accused's version, counsel argued that his version is tainted with untruthfulness and should be rejected as it could not reasonably possibly

be true. Counsel further argued that apart from the confession made to Chief Inspector Viljoen, the State adduced other evidence which include the following: the shoe print found on the scene of crime was of the same pattern and size as the left shoe worn by the accused on the night of the murder; the accused person's father's DNA (blood) was found on the pillow that was used as a silencer to kill his father with his own pistol; the DNA profile (blood) was found on one of the socks belonging to the accused; this goes for the same female DNA profile (blood) that was found on a pair of shorts worn by the accused on the eventful night. Furthermore Ms Jo-Ann Dixon's evidence that she heard the mother of the accused (deceased) calling the accused's name "Romeo" and the accused replying "what is it?"

[47] Concerning counsel for the defence's argument that the confession should be ruled inadmissible, once a confession is admitted it is indeed provisional but only in the sense that thereafter evidence may emerge which requires the confession to be excluded. Counsel for the State referred me to several authorities regarding circumstantial evidence, the burden of proof and when evidence of a confession should be excluded after it has been provisionally admitted in evidence.

[48] On the other hand, counsel for the defence argued that the bloodied shoe print could not be said to belong to the accused, because it could have been planted there. He relied on this argument because of a DVD footage captured by witness Uushona when he went to the scene of crime depicting a person seen wearing takkies at the scene. Concerning Chief Inspector Unandapo's evidence, he argued that it was unreliable and inconsistent. Counsel contended that Chief Inspector Unandapo deliberately lied by saying that after he had arrived at the scene, he observed that the kitchen door looked like it was kicked down while through cross-examination he said that he did not say the door was kicked down but he meant that it looked as though it was kicked because even if one kicks the door it gets damaged. He also said the safe was in the main bedroom on the floor and again said it was in the wardrobe whilst it is common cause that the safe was in the top part of the cupboard. Unandapo also testified that the next day the police found a bloodied pillow case. However, the matter was postponed for lunch break and when

he came back he tried to change his initial version and said it was a pillow because he claimed to have made a mistake. Unandapo's evidence that he went to Eros to arrest the accused was a fabrication and should be rejected. His evidence was contradicted by his colleagues Ndokosho and Kantema who said they went to Eros to collect the family members for questioning. None of Unandapo's version as to what transpired at the house is confirmed or corroborated by any other witnesses. Therefore Unandapo's version is categorically denied by the accused. It was further argued that Unandapo had such a poor recollection of events.

[49] Similarly, his version that he warned the accused of his rights in his office again before the accused confessed to him should be rejected as false. This version was not corroborated by the other police officers. The accused's version that he was never informed of his rights by Unandapo should not be rejected under the circumstances. Unandapo even prevented the accused's brother to get a lawyer and asked him whether they had something to hide. Thereafter he reassured them that his was just a routine questioning. Furthermore, counsel argued that Unandapo lied that after the accused gave a confession. He came back to his office just to turn around and say that the accused was not brought back to his office. It was only the document that was written by Viljoen that was brought. This was contrary to Nghilalulwa's evidence that when he returned to the police he handed both the confession and the accused to Unandapo.

[50] With regard to the ATM card that was found in possession of the accused, Unandapo said the accused did not give an explanation, whilst it is common cause that the accused gave an explanation. It was argued that if Unandapo did not know about it he clearly had no honesty to say so. Unandapo testified that he saw a little blood on the grooves of the shoes and suggested that the shoes have been washed. It was counsel's submission that if the shoes were washed, the socks were also going to be washed. When Unandapo was confronted that no bloodstains were found on the shoes except on the shoe laces, he changed to say that he never said that shoes were bloodied but they looked like blood. Although Unandapo testified

that the accused was the only person he saw wearing takkies at the scene, Louw testified that the accused's brother Mario was also wearing takkies.

[51] Counsel argued further that concerning the confession, it is trite law that the election by an accused not to be represented or to say something incriminating must be based on informed consent. An accused must be informed of his rights in a sufficient and adequate manner. The mere rumbling of his rights in an incomprehensible manner from a pro-forma without explaining further cannot be said to be sufficient and adequate. The accused's version was that he was coached by Unandapo about what to say in the confession. It was argued further that the version given by the accused in the confession lacked detail and it is not consistent with the evidence surrounding the murders. The only conclusion that one could arrive at is that the confession was given by a person who did not have firsthand knowledge of the events surrounding the murders. Therefore there should be doubt that the accused was present when the offences were committed.

[52] With regard to the bloodied shoeprint in the bathroom (Exhibit DD) stated that the first shoe could be the source of it but it merely showed class characteristics but it was not conclusive that it was indeed the source of the footprint. No identifiable blood was found on the shoe. Concerning the same female DNA found on a pair of socks and on a pair of shorts, counsel submitted that it was not conclusive that the DNA came from the blood. It could have come from other sources of DNA like saliva or by a person touching an object and one could assume that the accused's mother touched his clothes.

[53] It was again a point of criticism by counsel for the defence that Jo-Ann Dickson's evidence about recognising the accused's voice talking to his mother is unreliable and should be rejected. Counsel again argued that if Lee-Roy's evidence is accepted about what they did that evening, it was impossible for the accused to be at the crime scene around 22h45. According to Lee-Roy's evidence, after they left the house, they returned to get an ATM card and proceeded with other activities. Counsel argued that it was not possible for Jo-Ann to hear the accused and his

mother's voices because on Fridays, there is always noise coming from the bar opposite the house. The accused gave an explanation as to how he came to possess his deceased mother's ATM card.

[54] Concerning the deceased persons' last will and testament, it could not be said that the accused had a motive to kill his parents because there was nothing extraordinary for the accused to inherit in equal shares with his brothers. It was not possible for the accused to kill his parents because he loved them and he also had a soft heart.

[55] Counsel argued that the Court should rule the confession made by the accused inadmissible and should accept the accused's version. The police, in the submission of counsel, failed to do a proper investigation. It was referred to several authorities regarding circumstantial evidence, the burden of proof and confessions. Counsel again argued that should the court decide to rely on the confession, the accused should only be convicted on the two counts of murder and be acquitted on the charge of robbery.

[56] With that long but necessary summary of the evidence and submissions, I propose next to consider whether or not the State has established its case beyond reasonable doubt. It is of course plain that in a criminal case, the State bears the burden of proof and that it should prove its case beyond reasonable doubt. There is no onus on the accused to prove his innocence. These principles are so trite that I do not find it necessary to cite authorities for the propositions. With those general principles in mind, I propose to proceed with the consideration of the evidence with additional facts that are common cause. It is common cause that:

(a) The two deceased persons died on 18 January 2008 at the house in Khomasdal, Windhoek and their names are stated in counts 1 and 2 of the indictment;

(b) The deceased were the accused's biological parents;

- (c) The bodies of the deceased persons did not sustain further injuries from the scene of crime to the mortuary;
- (d) As stated in the post mortem reports, the cause of death of the late Frans Schiefer was gunshot injuries and that of deceased Francina Schiefer was multiple projectile injuries of the head, neck, chest, legs and abdomen;
- (e) A 7.65 mm pistol, with serial number D65476 with license number as depicted on Exhibit K, was in a good working condition;
- (f) A pair of Nike sports shoes belonging to the accused was confiscated from the accused and compared with a blood stained shoeprint found at the scene of crime. Samples from the shoes, shoelaces and socks that were inside the shoes were sent for DNA test;
- (g) A pair of shorts that was also sent for DNA analysis belonged to the accused.

[57] The following issues are in dispute:

- (a) It was disputed that the accused was at the scene of crime at the time of the commission of the crimes;
- (b) It has been disputed that the bloodied shoe prints found at the scene of crime were made by the accused's shoes;
- (c) It has been disputed that the voice of the person who was heard talking to the accused's mother by witness Jo-Ann was that of the accused;

(d) It was disputed that the DNA profile on Q7 and K1 with regard to male 1 and DNA profile with regard to the same female 1 could not be said with certainty to have come from human blood as DNA profiling could come from other sources such as saliva or sweat. It could also be contended that it was left by human contact.

[58] The first observation to make is that there is no witness who saw the accused committing the crimes he has been charged with. The State rests its case on circumstantial evidence, evidence of the confession and forensic evidence. In assessing circumstantial evidence, it has been said that the court should not approach the evidence on a piecemeal basis so as to subject each individual piece of evidence to the consideration of whether it excludes the reasonable possibility that the explanation given by an accused is true. What is required is to consider the evidence in its totality from which the court would then be able to draw certain inferences if (a) the inference sought to be drawn is consistent with the proven facts and (b) the proven facts are such that they exclude every reasonable inference from them save the one sought to be drawn. *R v Blom* 1939 A D 188 at 202-3.

[59] Counsel for the accused criticised the evidence of Chief Insp. Unandapo. He characterised his evidence as being unreliable and urged the Court to reject it. It is to be noted that the main criticism of Unandapo concerns his alleged failure to inform the accused of his rights to legal representation at the time of his arrest as well during the events that led to the accused making a confession. He was accused of having coached the accused into what he should say in the confession. His evidence was also criticised regarding the state in which a door at the crime scene was found as well as his testimony that there was something that looked like blood on the accused's shoes but that the shoes appeared to have been washed.

[60] As far as Unandapo's evidence that he saw something that looked like blood on the accused sports shoes is concerned, it is evident that he was mistaken in this respect because his version was not supported by forensic evidence. He was also evidently mistaken by referring to a pillow as a pillow case. However, with regard to

the door that he said was kicked, his evidence was corroborated in this respect by the evidence of defence witness Desmond. Regarding the allegation of coaching, it is highly improbable that Unandapo could have told the accused what to say in the confession, because some of the details in the confession were personal to the accused. For example, that the accused had consulted a psychologist; that he failed Grade 10; that he shot his father with a pistol through a pillow, and that a tear dropped on his father. Concerning the fact that Unandapo was mistaken in some respects, this does not mean that his evidence should be rejected in its entirety. As for the other criticisms, as I pointed out earlier, these relate to events that preceded the taking of the confession and the Court has earlier found that the accused was warned of his legal rights. Even if one has to accept the criticism that Unandapo did not inform the accused of his rights, this did not have a bearing on the confession given by the accused, because it was not taken down by Unandapo. It was taken by Chief Inspector Viljoen who was operating from an office kilometres away from Unandapo's.

[61] Lee-Roy van Neel testified that when he went to the accused's place around 21h00 hours, he found the accused wearing a pair of shorts, Exhibit 19. This pair of shorts belongs to the accused. Female 1 DNA profile was observed on the same pair of shorts, according to Dr Hildebrand's evidence. Human blood was also detected on the pair of shorts when Ms Swart conducted preliminary tests. The same female 1 DNA profile was also found on one of the socks belonging to the accused. Although DNA profiles could come from other sources as counsel for the defence argued, with regard to the same female 1 DNA that was found on one sock there was human blood present and Dr Hildebrand's opinion is that where DNA is found, it could be said that that the DNA profile came from blood. Furthermore, the male 1 DNA profile found on Q7 (pillow) and K1 (FTA card) was human blood. Therefore, counsel's suggestion that the DNA profiles mentioned above would have come from sources other than blood is not borne out by the evidence and is highly speculative. The submission can accordingly not be accepted. On the contrary, I accept the opinion of the forensic expert that the DNA profiles in question came from human blood.



[62] Furthermore, there is evidence from the accused that he left the crime scene at about 21h45. However, his friend Van Neel testified that after they had left, they came back to fetch the accused's ATM card. When the accused was arrested, he was found with his mother's ATM card. Although the accused and Van Neel testified that they had left the house at about 22 hours, there is evidence from Ms Dixon that during that time she heard the accused talking to his mother and his mother calling his name "Romeo" and the accused replying "What is it?"

[63] The criticism of Ms Dixon's evidence centred on the proposition that it was not possible for her to hear the accused talking to his mother, because on Fridays and weekends the bar opposite the house is normally noisy. In considering Ms Dixon's evidence, I am alive to the fact that she is a single witness as far as the hearing of voices and gunshots is concerned. I also bear in mind what was stated by Diemont JA in *S v Sauls and Others* 1981 (3) SA 172 (A) at 180E-G regarding the evidence of a single witness. It was stated:

*"There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of the single witness. The trial judge will weigh his evidence, will consider its merits and demerits and having done so will decide whether it is trustworthy and whether despite the fact that there are shortcomings or defects or contradictions in the testimony he is satisfied that the truth has been said."*

[64] Jo-Ann Dixon, although a single witness, stated that she had stayed at the outside room of the accused's parents' house for about six months and that she was acquainted with the voices of the accused's mother as well as that of the accused. Although the defence argued that there was no way she could have heard the voices because of the noise coming from the bar, the witness was adamant that she heard the accused talking to his mother and the mother calling for his name. That was followed by gunshots. The gunshots prompted her to telephone one of the State witnesses who went to the scene. Although the bar was normally noisy on Fridays and weekends, she testified that on that fateful night it was not noisy. That enabled

her to hear what she testified about. There is no evidence from the defence to contradict that of Ms Dickson that the bar was not noisy that evening. The argument that it was so is based on past experiences. The forceful argument by counsel for the defence that the bar was noisy is also based on speculation and it is therefore rejected. As far as the exact time of the incident is concerned, it appears from the evidence placed on the record that no witness could testify with certainty about the exact time. The accused, Van Neel and Ms Dickson are all estimating.

[65] Having observed Jo-Ann Dixon testifying and having considered the evidence as a whole, I'm satisfied that she had no reason to falsely implicate the accused that she heard him talking to his mother. I am also satisfied that she was able to hear the accused talking to his mother. If the bar was very noisy, presumably she was not going to hear the gunshots as well. If it was true that she did not hear because of the noise, she could not have called Mr Louw. I am satisfied that Ms Dixon is a reliable and independent witness whose evidence was given in a straight forward manner. I am satisfied that she has told the truth. On the other hand, I am not satisfied that the accused told the truth when he said that he was not at the scene at the time the incident took place. I am not satisfied that his version could reasonably possibly be true for the following reasons:

- (a) The shoeprint found at the scene of crime was of the same pattern and size as the left shoe worn by the accused on the night of the murders. Counsel for the defence's suggesting that the shoeprint could have been planted there by another person cannot be correct. The shoeprint was observed by Louw and other police officers who arrived at the scene before Mr Hiskia. Hiskia testified that when he went to the scene, he found police officers and onlookers there.
- (b) The accused's father's DNA from blood was found on Exhibit Q7, namely a pillow, with which I intend to deal later. The same female 1 DNA profile was found on one of the socks belonging to the accused that was found in the takkies he wore on the date of the murders. This goes to the same female 1

DNA that was found on the pair of shorts the accused was seen wearing on the eventful night.

- (c) Apart from the above-mentioned pieces of evidence, there is a confession that was ruled to be admissible. According to the confession, the accused indicated that he shot his father through a pillow which he held in front of the pistol. This pillow was found to have his father's DNA profile. Although counsel for the defence said that the confession should be ruled to be inadmissible, I agree with counsel for the State's submission that the confession may be excluded from the evidence after it had been admitted provisionally, but only if evidence emerges later which justifies the reversal of the ruling. It is therefore my considered opinion that in this matter no evidence has emerged after the confession was ruled to be admissible that warrants a reconsideration of the ruling earlier given. As such, to the extent that this may be necessary, the confession is finally admitted in evidence.

[66] Having considered all the evidence in its totality, the circumstantial evidence in this case has satisfied to the legal requirements stated in the case of *R v Blom supra*. The circumstantial evidence is supported by the evidence of the confession as well as by forensic evidence. Therefore I am satisfied that the state has proved its case beyond all reasonable doubt that the accused is the person who murdered the deceased persons in this case. In the light of the evidence as to how the murders were committed, I find that the murders were committed with direct intent.

[67] As to the third count, the accused gave two conflicting versions as to how he came to be in possession of his mother's ATM card. He stated that he stole it. He again said that he collected the ATM card from the bank and that he had failed to hand it over to his mother. There is no evidence about the circumstances in which the ATM card was taken. In the result it is my considered view that State has not proved beyond a reasonable doubt that the accused had any intention to rob the deceased of her ATM card. Although intention is a state of mind that can be determined inter alia by the circumstances in which the offence was committed,

there is no evidence that the accused committed robbery. It is also not clear as to which stage the accused took the ATM card. There is no evidence *aliunde* disputing the accused's version that he stole it. I therefore accept his version that he stole it and is found guilty of theft on this count.

[68] In the result, the accused is found guilty as follows:

1<sup>st</sup> Count: Guilty of murder with direct intent read with the provisions of the Combating of Domestic Violence Act 4 of 2003.

2<sup>nd</sup> Count: Guilty of murder with direct intent read with the provisions of the Combating of Domestic Violence Act 4 of 2003.

3<sup>rd</sup> Count: Guilty of theft.

-----  
N N Shivute  
Judge

APPEARANCES

STATE : Ms Wantenaar  
Office of the Prosecutor-General

ACCUSED : Mr Christiaans  
Instructed by Directorate of Legal Aid

38  
38  
38  
38  
38