

**Logical analysis of the Judgement of  
Magistrate Len Kotze in the case of the  
State vs. the Waterkloof 4  
(Case 14/2058/04)**

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## **1.) Executive summary**

It is clear that the judgement of Magistrate Len Kotze is riddled with mistakes of varying degree. The amount of mistakes he made leads me to believe that his judgement is seriously affected by some unknown element. It would be statistically improbable for a professional person to make so many mistakes in one argument. It is highly unlikely that these mistakes could be attributed to human nature. I am of the opinion that Magistrate Kotze was biased in his application of the law. His application of theories and logic is not consistently applied to both the witnesses and accused. He ignored basic principles in applying the law and in doing so negatively affected the rights of the accused.

It is my opinion that these four individuals were wrongfully convicted of a serious crime. They were not presumed innocent until proven guilty. They were never afforded the benefit of the doubt. It is clear that their guilt was established well before the weighing of the evidence started and the arguments were then forced, sometimes quite brutally, to support the assumption of guilt. In my opinion it would be impossible to prove guilt beyond a reasonable doubt in this case. The amount of assumptions that would have to be made in order to support the testimony of the witnesses would be staggering. This is bad logic and that equates to irresponsible and detrimental application of the law.

The testimony of the witnesses were obviously inventive and it is clear that their version is the least likely to fit in with the physical evidence that exists. It is my opinion that they were deceitful, whether deliberately or otherwise. Magistrate Kotze relies so heavily on the testimony of the witnesses that he even dismisses physical evidence in order to reach his verdict. Magistrate Kotze continuously confuses possibility with probability. This is wrong. The basic rights of these four individuals were denied and that makes this trial a farce.

## **2.) Purpose**

The purpose of this document would be to attempt to follow the logic applied by Magistrate Len Kotze during the trial in order to determine if I can come to the same conclusion as he did. During the analysis I would also attempt to differentiate between possibility and probability.

## **3.) The judgement of Magistrate Len Kotze**

There are two incidents of importance in this case. The first is an alleged attack on an individual sitting next to the road near the then Qualilife Gym in Constantia Park, Pretoria. The second is an assault and alleged murder of an individual believed to be a robber that ran into a public park in Moreleta Park also in Pretoria. The accused individuals deny the first incident categorically and deny intentional or accidental murder in the second incident. They admit to assaulting an individual in the park in Moreleta Park and they admit that it was a rather brutal assault.

### ***3.1) Incident 1: alleged assault in Constantia Park***

There is no direct proof for (or against) this incident and Magistrate Kotze relies heavily on the testimony of the witnesses. Magistrate Kotze finds the testimony of the State witnesses reliable on no real solid basis and dismisses the anomalies in the versions of events as memory problems due to the time between the events and actual court proceedings. Magistrate Kotze states that he has no reason to suspect any collaboration between the witnesses. This is a dangerous assumption that later presumably led to the mishandling and even dismissal of evidence.

The truth is that the case only broke a year after the actual events and the witnesses had more than enough time to collaborate with each other regarding their stories. Their testimonies were taken down by an advocate

acting on their behalf and there is no way of knowing if there was some kind of cooperation between the various individuals involved at that point. I would think that this uncertainty would necessitate that physical evidence be considered very carefully to fairly try the accused.

It is also noteworthy that the witnesses' answers to all controversial questions were something to the effect of: "I do not know, I only report what I can remember". In my mind it makes some form of coaching possible and, once again, highlights the necessity of measuring the testimony against the physical evidence. It is my opinion that Magistrate Kotze wrongly accepted the witnesses' testimony as beyond reproach. To be fair he should have considered the possibility of collaboration or at the very least recognised the doubt that existed in their testimony.

The testimony of accused-1 is dismissed as a lie based on the testimonies of two brothers, their cousin and their mother. This relationship in itself would make me careful to accept their version as infallible truth. None of the other witnesses in this case could condemn the accused as effectively as the von Landsberg family did. The actual testimony of accused-1 is not unreasonable and is a far simpler version of the events that took place that night (Ockham's razor). It does not require high-speed manoeuvring and high-speed assault and complex conspiracy. Furthermore, where the witnesses are given the benefit of memory decay due to time, this luxury is not given to accused-1. This is unfair and is actually a factor in swaying the case in the State's favour.

The memory decay issue is not applied uniformly to the testimony of the witnesses either. The witnesses can not remember the weekend in question. They can not remember the content of certain telephone calls. However, they remember clearly the number of telephone calls, exactly where they were headed at any given time on that night, fine details about conversations and certain incriminating actions and, even more spectacularly, the face of the person assaulted in the middle of the night during the second incident. All of this, a year after one of the witnesses allegedly kicked the

victim once and another observed the body from a distance, after a high-speed, adrenalin-filled, night of mayhem. This is suspicious at the very least.

The testimony of the witnesses and the accused regarding the first incident oppose each other and the only real evidence to consider is cellular phone records of accused-1 that pin down a time-frame for the incident. There are various stories about the content of these calls and in my opinion they only serve to highlight possibilities rather than prove or disprove anything. Magistrate Kotze's handling of these calls is completely wrong.

There are four calls on record that are of interest for that early morning and they happened as follows:

02:09 (Hatfield) witness' mobile phone to accused's mobile phone: The witness Reinhart von Landsberg stated that he could have made this call to get the older kids out of the club but his memory about it is vague. The accused testified that this was the call to ask them to leave the club in order to go home.

02:43 (Hatfield) accused's car phone to irrelevant number: The witnesses made no reference to this call. Accused-1 states that he made a call to an ex-girlfriend. This not really relevant, but it places his vehicle in Hatfield. The number called did not belong to any of the witnesses or the accused.

02:57 (Moreleta Park) accused's mobile phone to witness' mobile phone: This call is in dispute regarding the witness' story. It might have been that this was accused-1 enquiring where they were just after accused-2 assaulted the first victim. The witness informed accused-1 of the attack and accused-1 told him to stay there until they arrive. The witness also claimed that there was another call (for which there is no record) and that this call might have been the one asking them to purchase milk after the entire assault on the first victim was completed. If we accept this, then the call at 02:57 must be the milk call and the "missing" call was the assault call. Accused-1 claims that shortly before this call they stopped at the crossing of Lois Avenue and Hans Strijdom Drive. Accused-1 instructed accused-4 to get out of the car and inform the witnesses in the other car that they should purchase milk. Accused-

1 then proceeds to drive away, as a joke, leaving accused-4 to get into the other car. The call was made moments later to establish if the other car did indeed pick up accused-4.

02:59 (Moreleta Park) accused's mobile phone to witness' mobile phone: Witness claims that this is when accused-1 called them to inform them about apparent burglars crossing the street at the public park in Moreleta Park. Accused-1 confirms this story.

Witness Heinrich von Landsberg insists that there were three calls relevant to the first assault. The first call was to ask where they were at which stage Heinrich von Landsberg informed accused-1 that accused-2 assaulted an unknown person. The second call to arrange a meeting place and to instruct the witness to purchase milk and the third to inform the witness of the apparent burglars at the park and to request help. There are only records for two of these calls in the Moreleta Park area. Magistrate Kotze finds that the first call was the call at 02:09 (see p820 In10 onwards of court documents). This is completely incorrect for a number of reasons. The call at 02:09 was made from the witness' phone to accused-1. The witness testified that accused-1 called him to enquire where they were moments after accused-2 assaulted the first victim. The call at 02:09 was made whilst the phone of accused-1 was still in the Hatfield area. Magistrate Kotze chooses to believe the witnesses in spite of hard evidence.

If we try to account for the missing call we might consider that other phones were available as the Magistrate briefly speculates. Nobody knows whether the other individuals in the car of accused-1 had cellular phones, but it could be possible. The problem with this hypothesis is that accused-1 was the only person in the BMW that was friends with the people in the Tazz, making it unlikely that anybody else would have made a call to them. There are no indications during the entire trial to suggest that the other individuals were so blithe with making calls as accused-1 was. It would be a risky assumption to make that all these youngsters had money to burn and would therefore make calls at a whim. Apart from this fact it must be noted that accused-1 had no problem using his phone or the car phone in his dad's

BMW to make calls. Why would he suddenly change his modus operandi when nothing has happened yet? In the unlikely event that accused-1 instructed one of the other individuals to make the call to the witnesses; it is likely that he would have told them to use his phone. To corroborate this theory further, the testimony of the witnesses makes no mention of ever speaking to anybody other than accused-1 over the phone. Although this does not disprove the “missing call”, it does throw a rather large shadow of doubt over it. The phone records fit perfectly into the description given by the accused. In spite of this, Magistrate Kotze chooses the more complex explanation of the witnesses where a number of assumptions need to be made in order to make their version feasible. Once again, if we apply Ockham’s razor to this situation, the description given by the accused is the most reasonable.

The second element discussed was the time it took to execute the first attack. The calls discussed above, frames the incident between 02:43 (still in Hatfield) and 02:57 (in Moreleta Park). This is 14 minutes. The call at 02:59 is commonly understood to be the call where accused-1 requested the assistance of the witnesses to apprehend apparent burglars in Moreleta Park. The accused maintains that they travelled in convoy all the way to at least the crossing of Lois Avenue and Hans Strijdom Drive, shortly before the call at 02:57.

The witnesses’ story states that accused-1 sped away from them from the time they left the club in Hatfield. Magistrate Kotze uses the call at 02:43 as proof of the State witnesses’ story (see p823 ln7 onwards of court documents). This is totally unfounded. As previously described the call at 02:43 was made to a number that did not belong to any of the individuals in the second car (the Tazz). How then does dialling an unrelated number prove that two cars are not together? Even in the event of calling a person in another car it would be impossible to prove the distance between the cars without area information from phone records and that would be very rough at best. Magistrate Kotze argues that it is unrealistic that someone would phone another person at this time of night and therefore it must have belonged to

one of the people in the witnesses' car, even though the witnesses clearly stated that they did not know this number at all. This argument is ridiculous. Magistrate Kotze is forcing the argument in his preferred direction. At this stage it is clear that he has made up his mind about the guilt of the accused long before weighing all the evidence.

Magistrate Kotze speculates that accused-1 travelled at a high speed in order to get from Hatfield to Witdoring Avenue in Moreleta Park. This is not necessarily true. Accused-1 testified that moments before the call at 02:57 they stopped at the crossing of Lois Avenue and Hans Strijdom Drive. To make this journey in fractionally less than 14 minutes is realistic if there were no other incidents on their way. It should also be kept in mind that these were under-aged, unlicensed individuals driving around under the influence of alcohol in their parents' cars without consent. It would be realistic to assume that they would have been very aware of the trouble they would be in, should they be stopped by the police. It would therefore be realistic to assume that they would have driven in the least conspicuous way. Once again this makes the version of the accused more realistic than that of the witnesses.

If we assume that they were indeed speeding, the amount of assumptions to include the first attack becomes unreasonable. It would be realistic to assume that a Tazz would have great difficulty keeping up with a BMW, even if the Tazz was also speeding. The witnesses testified that they did not speed, but Magistrate Kotze corrected their testimony on their behalf and stated that they were probably speeding. If they were not speeding it would only exacerbate the impossibility of their version and therefore it would have been important for Magistrate Kotze to amend their testimony in an attempt to legitimise the first attack. The witnesses testify that they turned off of Lois Avenue into Garsfontein Drive where the accused continued on in Lois Avenue. The witnesses continued to General Louis Botha Avenue where they turned right and followed it until they were close to Hans Strijdom Drive where they turned right and shortly right again into William Nicol Street to get to the Qualilife Gym. This is in Constantia Park. Looking at the map of the area it becomes clear that the route followed by the witnesses is significantly

removed from the route travelled by the accused and it would have added a significant amount of travel time, thus decreasing the probability of the first incident. This route will be discussed in more detail further on in this section.

The strange route deviation is the source of many questions among which is the time that it would have added to this event. Every event included in their version must be subtracted from 14 minutes. Possibly less than 14 minutes if there was another call before 02:57 as claimed by the witnesses. This course deviation is the first. If we continue with the assumption that at least accused-1 was speeding along Lois Avenue we must speculate where exactly they would have been at this stage. According to the phone records, they were somewhere in the Moreleta Park area. The distance from the witnesses becomes significant because they would have to travel all this way back, to help assault the first victim. This time must also be subtracted from the 14 minutes. This would only be after an amount of time spent by the witnesses looking for an open shop to buy milk and then stopping to assault the first victim initially. They were clearly not in any hurry because the witnesses testify that accused-2 gets out, requests one of the witnesses to walk with him and loosens his muscles before hitting the man in the face. Then they walk back to the car and proceed to drive back to Qualilife Gym; apparently oblivious to the fact that the assaulted individual might call the police. The time that this took must also be subtracted from the 14 minutes.

After all this, accused-1 calls them to inquire where they were, at which time accused-1 is informed of the assault. They are requested to remain there until accused-1, 3 and 4 arrive. The witnesses testify that they waited at least 5 minutes for the BMW to arrive. This would be realistic if you consider that the BMW kept on speeding on route to their destination. After all this, if we should accept the 5 minute wait, the time to travel from Hatfield to Moreleta Park would be in the lower tens and that would be a physical impossibility. Once again Magistrate Len Kotze comes to the rescue of the witnesses and amends their testimony to allow some possibility to their version of the story. He states that it is his opinion that the 5 minutes is incorrect and he makes a ridiculous reference to the call made at 02:09 (see p818 In12 onwards of court

documents). Magistrate Kotze is desperately trying to make the story of the witnesses believable and I can not help but ask why. Instead of weighing the evidence, he is creating the evidence. This must be wrong.

If we shorten the waiting time and then include the assault by the passengers of the BMW we reach the point of ridiculous speeds between Hatfield and Moreleta Park once again. The problem with this is that the Tazz would be the determining factor in the time question and therefore all the speeds would have to be measured against the performance of the Tazz. The Tazz was first on the scene of the alleged assault after a significant route deviation and various activities as described previously. All this happened in less than 14 minutes. The thought of a Tazz doing this, is preposterous. It makes this argument even more ridiculous, if that is possible at this stage. Adv Kruger, the State prosecutor, attempts to convince the court that chasing the victim down and assaulting him would take less than 30 seconds. He fails to account for the time it would take the BMW to return to the Qualilife Gym from wherever it would have found itself at that stage. This is highly unlikely. Once again the story of the accused fits the timeframe far easier than that of the witnesses.

If we assume that this action-packed 14 minutes did happen. It follows that the call at 02:57 must have been to change the meeting venue and request the witnesses to purchase milk. At this stage it becomes necessary to clarify the reason for changing the meeting venue. According to the accused they were on their way to play pool at the home of the witnesses' mother, Ms Wendy von Landsberg. According to the witnesses they were never planning to go there and, instead, the plan was to meet at Augustahof 16. This was an uninhabited unit owned by the father of the witnesses, Mr Hein von Landsberg. This theory has a number of problems in that the witness, Heinrich von Landsberg, testified that they were never on their way to their mothers' house. This would explain why they turned out of Lois Avenue into Garsfontein Drive, as this would be the most direct route to Augustahof 16. Once they turn right into General Louis Botha Drive, as previously discussed, their version of events does not make sense anymore. There are numerous

service stations with shops on Garsfontein Drive and there was no apparent reason to go to Constantia Park. The witnesses testified that this was the only place they knew that had a café. Magistrate Kotze states that this is believable because one of the witnesses, Christo Bouwer, is new to Pretoria. This is bad logic. One reason is that there were three other individuals in the vehicle that were very familiar with the city. Another reason is that it would be unreasonable to think that a normal café would be open just before 03:00 in the morning. If they were looking for a café, they would probably have gone directly to a service station. This theory also raises questions and speculation as to the reason why the BMW continued on to Moreleta Park. Whether the BMW was speeding or not is irrelevant if the final destination was a commonality. Magistrate Kotze makes a half-hearted attempt to credit route anomalies to the fact that Christo Bouwer, the driver of the Tazz, was new to Pretoria. He ignores the fact that there were three other people in the Tazz that knew the city quite well. He also fails to note that this does not explain why the BMW took the more adventurous route to a common destination.

Another problem with the previously mentioned theory is that the witness, Heinrich von Landsberg, testified that one of the calls, presumably the one at 02:57, was to change the venue to Augustahof 16 and also to purchase milk at the Shell service station. If they only agreed to go to Augustahof 16 at this stage, the previous statements of the witnesses about always going there were false. Another peculiarity is that the quickest and arguably the shortest route to Augustahof 16 from Constantia Park would be to turn left into Hans Strijdom Drive and follow it until it crosses Garsfontein Drive. Not one of the cars had any business going down Rubenstein Drive if the witnesses are believable. At this stage they have already agreed to go to Augustahof 16. Did the accused then decide to go significantly out of his way to find some public park in the hope of finding someone to assault? This does not make sense. Once again the story of the accused seems simpler than that of the witnesses. The credibility of the witnesses is seriously compromised at this stage.

To further highlight the improbability of the previous argument we assume that for some or other reason both cars then decide to drive down Rubenstein Drive. The reason for this was never addressed. The only reasonable explanation was given by accused-1 and that is, that they were on their way to play pool at the mother of the witnesses. The witnesses followed and did not give any explanation for this action, possibly because the destination was actually their Mothers' house. At this point the BMW is not only speeding away from the Tazz, presumably because of the crime they just committed, but the Tazz still had to stop for milk close to the crime scene and apparently indifferent to the crime that was just committed. This does not make sense at all. That being said, accused-1 then phones the witnesses at 02:59 to ask for their assistance to apprehend apparent burglars running across the street in Witdoring Avenue. Going down Witdoring Avenue does not make sense if they all agreed to go to Augustahof 16. It must be kept in mind that all this happened during the 2 minutes between the calls at 02:57 and 02:59. Driving from Constantia Park to the public park in Witdoring Avenue in 2 minutes is a serious stretch of the imagination, even if we assume that accused-1 is speeding like a maniac.

At this point Magistrate Kotze postulates that the fact the Tazz turned right into Wekker Road, one turnoff later was proof that they were not on their way to the witnesses' mother (see p823 In19 onwards of court documents). If so, both cars should have turned off in Witdoring Avenue. He goes further to suggest that the Tazz must have past Witdoring Avenue, on its way to Augustahof 16, by the time they got the call for help. This is not entirely reasonable. The witnesses testify that it took them at least three minutes to get to the park. This could not have been possible if we assume that they passed Witdoring Avenue and note that Wekker Road passes right next to the park and furthermore, if the first incident is true, they have an obvious tendency towards ridiculous speeds. At this stage the people in the Tazz knew about the intentions of the accused to apprehend the apparent burglars and from studying a map of the area it is clear that both the mentioned roads border the park. It could well have been that they were told to go there or even decided to flank the burglars. The true reason is unclear, but the route

does not irrefutably confirm the story of the witnesses. This is another clear logic mistake made by Magistrate Kotze.

Magistrate Kotze refers to the last two calls and declares that accused-1 must have known that the Tazz was close at the time of those calls and that the only possible contact must have been at the Qualilife Gym. He is correct in the fact that accused-1 knew that the Tazz was close, but the assumption that the Gym was the only possible point of contact is seriously flawed (see p827 ln17 onwards of court documents). Accused-1 testified that they travelled together from Hatfield right up to Hans Strijdom Drive. They paused there long enough for accused-4 to get out and move to the Tazz. Magistrate Kotze states that if this point of contact was true, then the making of the last two calls would be unnecessary (see p823 ln12 onwards of court documents). His argument is wrong. Seeing a car in your rear-view mirror does not eliminate the possibility of making a call to that vehicle. That being said, the description of the accused will fit perfectly into this call structure. This point of contact is a far simpler version of events and if not the only option then at least the most likely. Once again Magistrate Kotze zealously pursues the complex version with the most assumptions. He ignores all possibilities that might interfere with his pursuit. This is bad logic. The accused were never given a chance in this case.

To complicate matters further, Adv Kruger, near the end of the examination of the first incident, states that the witnesses might have mistaken this event with something that happened on another day and this is the reason that he does not want to make a big deal out of it.

*“Edel Agbare, oor hulle getuienis daarop kan hulle dit dalk verwar het met ‘n ander dag. Dit is hoekom ek nie hard wil betoog oor hierdie klagte nie.”*  
(see p792 ln20 onwards of court documents)

Adv Kruger, the State prosecutor, injects a massive amount of doubt regarding this particular incident but Magistrate Kotze chooses to ignore this completely in order to pursue the verdict he has obviously decided on. It is also important to note that although the people involved in this incident were

familiar to each other, they were not regular friends and an incident on another day would, in all likelihood, not have included the same group.

This incident is riddled with doubt and improbabilities. The version of the witnesses is extremely complex and as I have shown, near impossible to fit into the framework created by the phone calls. The version of the accused is simple without theatrics and can easily fit into the framework of the calls. In spite of this, the accused were refused the benefit of the doubt that Magistrate Kotze promised at the start of his judgement. I have no doubt that Magistrate Kotze made serious mistakes with his logic in this incident and he later uses this incident to establish intent for the following incident. This is a huge mistake and at this time the independence of the Magistrate must be seriously compromised and with it, all chances of a fair trial.

### ***3.2) Incident 2: assault and alleged murder in Moreleta Park***

The only physical evidence for this incident is a body discovered in the same park two days after the incident occurred. The body had certain injuries that might be explained by the assault, but it is far from certain. The body lacks a number of injuries that would be expected if the assault did occur as described by both the witnesses and the accused. The accused admitted to assaulting an individual in the park and they admitted the assault was rather brutal. They deny killing a person, either intentionally or otherwise. It is indeed possible that the person could have died as a consequence of the assault, but that would have to be proven beyond a reasonable doubt. Magistrate Kotze relies heavily on the testimony of the witnesses in his arguments. Unfortunately, as in the previous incident, his logic is seriously flawed.

Before starting the argument regarding the second incident, Magistrate Kotze lists a number of examples where the witnesses slipped up in their testimony (see p828 In17 onwards of court documents). He then states that in his opinion this does not affect the credibility of the witnesses. Their credibility is definitely compromised at this stage, but Magistrate Kotze ardently pursues

the avenue he has chosen. Magistrate Kotze states that the defence never questioned the credibility of the witnesses on the murder charge (see p828 ln24 onwards of court documents). This after the defence went to great lengths to show that the body found was not that of the person that was assaulted. He then states that the lack of medical evidence to confirm the witnesses' story, does not affect the credibility of their testimony (see p829 ln6 onwards of court documents). How could this be acceptable? Would it not be sensible to look into the possibility that the witnesses are mistaking? If their testimony is completely accepted without suspicion, what weight does the physical evidence still carry at this time? This does not bode well for the accused.

Magistrate Kotze claims that accused-1 was not very believable as a witness based on his testimony of the previous incident. He continues to say that some of his answers demonstrated astonishing arrogance (see p831 ln13 onwards of court documents). As I have already shown, the testimony of accused-1 regarding the previous incident is far easier to align with the limited evidence than that of the witnesses. Regarding the answers that were arrogant, Magistrate Kotze refers to only one specific answer. When asked why the accused disposed of the knife he had with him, he answered that his mother taught him not to run with knives. Granted that this is a suspicious answer, it does not invalidate his entire testimony. If that was the case, then the testimony of the witnesses should have been thrown out halfway through the previous incident. What would a person's mindset be if he is running along an uneven surface with a dangerous object in his hand? Is there not the slightest possibility that he acted without thought and could not think of a reasonable way to answer the question? Would someone that intended to kill not be a little more careful with physical evidence?

Moments earlier the Magistrate states that all should remember that we are working with children here and that their thought patterns can not be expected to be the same as an adult (see p825 ln20 onwards of court documents). Although he claims that this counts for both the witnesses and the accused, he only applies this logic to the unusual actions of witnesses.

Another point to remember is that arrogance does not, under any circumstance, equate to guilt. The accused could be under the impression that he is innocent until proven guilty and that guilt would have to be proven beyond a reasonable doubt. Magistrate Kotze's bias is painfully clear at this stage.

### **3.2.1) Intent**

The first aspect to be dealt with by Magistrate Kotze is the intent to murder. As with most of his previous arguments this is riddled with assumptions that highlight, rather than eliminate, doubt. Magistrate Kotze recounts some of the behaviours of accused-1 as indicative of knowledge of the victim's impending death (see p832 ln8 onwards of court documents). The witnesses claim that accused-1 and accused-3 were arguing about whose fault it would be if the victim died. The accused denied this. Accused-1 claims he can not remember what exactly they discussed after the incident. To Magistrate Kotze this is clear evidence that he is lying. Should his previously used theory of memory decay over the long period between incident and trial not be uniformly applied to this situation as well? I believe the correct statement is that he might be lying, not that he is lying. So, the only thing to go on would be verbal testimony of the witnesses. For Magistrate Kotze they are infallible, but from what I have shown, their version is seriously questionable. Another point to consider is that at least one of the accused, Heinrich von Landsberg, actively participated in this attack. He explains that he half-heartedly kicked the victim once due to peer pressure. Could a reasonable person accept his testimony without at least some doubt? Magistrate Kotze relies heavily on the testimony of Heinrich von Landsberg . Should it not be considered that this witness might downplay his role and amplify the roles of the accused in an attempt of self-preservation? This witness was warned that he would be giving testimony that could incriminate him. He had full knowledge of this. Can his testimony really be used as an absolute truth? Should it not at least be considered that he might, subconsciously or otherwise, try to avert attention from himself? There is significant doubt here

and there is no realistic way to eliminate it. The benefit should belong to the accused as stated by Magistrate Kotze in the opening of his judgement.

Magistrate Kotze claims that the fact that the accused took knives with him although he did not intend to use it is unbelievable and therefore he must have intended to use the weapons. The witness testifies that when he arrived at the scene accused-1 was standing behind the victim, making stabbing movements to the head and shoulder area, and accused-3 was standing in a crouched position in front of the victim making stabbing motions towards the legs of the victim. He claims that he could not see if they had knives in their hands and he never saw either of them actually make contact with the victim. The wound is on the back of the victim's thigh but nobody ever saw anybody make stab motions in that area. There are no other stab wounds or cuts or defensive wounds on the victim's body or hands. There are two small wounds on the victim's head, one already scabbing over and another with little or no visible bloodstains. Should we include these injuries as a possible result of the wild stabbing, then we would invalidate the hammer attack. So there are no cuts or stab wounds were the stabbing motions were performed and no bloody knives were found. At this stage there is no physical link between the actions of the accused and the wound. It is all circumstantial. Does this prove intent? Not at all! It is possible that they intended to kill the person, but it is not necessarily probable and that is a huge distinction to make. It is possible that they stabbed the victim, but there is nothing to make it probable. Should the benefit of the doubt not go to the accused as stated by Magistrate Kotze in the opening of his judgement?

The third attempt to prove intent was the call that accused-1 made to the police to alert them to the disturbance in the park. During the call accused-1 provides the police with the incorrect contact details. Interestingly enough, there are no physical records of calls to the police from accused-1's phone number for that period of time. However, according to Magistrate Kotze accused-1 is a self-confessed liar and that, in part, is why his testimony is rejected. As a matter of interest, he only rejects the testimony of accused-1 where it differs from the testimony of the witnesses (see p834 ln13 onwards of

court documents). This is not entirely fair. It must be kept in mind that accused-1 was testifying about a lie he told three years ago. We can refer to the child-mentality in this instance as well. It can not prove him to be completely untrustworthy. It must also be noted that the accused decided to tell the truth about the assault on the man in the park, thereby placing themselves at the scene of the crime. It would have been much easier to lie about the assault and leave the burden of proof, to place them at the scene of the crime, for the State. That would have been a more difficult case to prove. Regarding the telephone call to the police, it would be difficult to understand why a person who intentionally killed another would attract the attention of the police to the scene of the crime. That would be very bold indeed. It is a possibility that he wanted to report the alleged burglar as was his initial intentions before the attempted arrest got out of hand. The accused would have been in trouble for the assault, not only with the police, but also with their parents and that could have been a factor in his decision to divulge false information. One can also invoke Magistrate Kotze's argument that they did not have the same reasoning ability as an adult. The assumption that he was trying to hide a murder is not the only possible explanation for his actions and seems to be a lot less likely. This does not prove intent at all.

The next attempt to prove intent is the fact that certain individuals went back to search for the knives and the hammer. This was an event described by the witnesses. The accused denied this. The witnesses aggravates the circumstances by testifying that on their return the victim was still alive and begging for help at which point accused-2 kicked him in the face again. If we assume that this is true; then it is unclear why the victim is only kicked in the face. If they intended to kill the person in the first place and they found him alive later on, it would be reasonable to think that they would finish the job and make sure that this person can not talk to the police. This causes more doubt and erodes the credibility of the witnesses' testimony. The fact that it is unclear if this event took place or not and lack of intentional actions does not eliminate all the doubt and therefore can not be used to prove intent to murder the person.

### **3.2.2) The body**

This is probably the most controversial component of this case and the assumptions made around it are staggering. The body was found by the police two days after the assault in the park. One of the witnesses testified that he returned to the scene later on the day of the assault and found the body exactly where they left him earlier the morning. He noted that there was a heavy smell of blood in the air. He then proceeded to “test” if the person was still alive by throwing him, underhand, with a golf ball size stone against the head. He apparently confessed to a teacher that he threw the man with half a brick. In court he states that he could not remember saying that. From photos 8 and 9 there is no indication of a stone of any significant size near the body. If he threw underhand it is unlikely that the stone would have bounced very far. From the photos and testimony of inspector Jan Viljoen, the person that investigated the scene of the crime, there was no blood found at the scene. He claims that if there was, he would have photographed it. This contradicts the claim that the air was thick with the smell of blood.

According to the medical experts that testified a person of similar build to the victim would have to lose around 6-8 units of blood to bleed to death, which was the actual cause of death as per the post mortem report. There was no sign of this blood at the scene. A weather station in the area confirmed that it rained 1.2mm some time that evening. The witness, Heinrich von Lansberg, testified that it was raining very lightly at the time they entered the park. This means that the attack commenced after it was already raining. Given the miniscule amount of rain it would be unreasonable to assume that the rain continued on for a significant amount of time after the victim was killed. Magistrate Kotze is willing to accept that this tiny amount of rain could have completely eradicated all the blood evidence. This is completely unreasonable. The body was not lying on sandy soil; it was on a bed of leaves and grass. A reasonable person would expect to see some remnants of such a large quantity of blood. The photos show no signs of discolouration in the immediate area. Inspector Jan Viljoen states that, in his experience, blood

does not seep into the ground that easily. There is an attempt to say that inspector Jan Viljoen could not be expected to remember all the scenes he visits and therefore there might have been blood somewhere. This fails for a number of reasons. Firstly the inspector stated that blood stains would be important and as part of his job he would always photograph it. The other problem is that the witnesses confirmed that they found the body exactly where they left it. Photo 8 and 9 show the victim lying on his back with the injured leg flat on the ground. It then follows that the area under the wound would show clear stains. The position of the body would also protect the stain from any rain that might have fallen, especially an amount as little as 1.2mm.

The pathologist, Dr van der Hoven, claims that the clothing of the victim was drenched in blood and that clothing could absorb 6-8 units of blood. This fact was not mentioned in her report at all. If we follow the same argument that was used on inspector Jan Viljoen, we can argue that the pathologist can not possibly expect to remember all her cases three years back. It would therefore follow that the closest we can possibly expect to come to the truth would be her report. Another medical expert called in this case, Dr van den Bout, stated that he believed clothing could possibly soak up 1 unit of blood before it starts seeping out. Another problem would be the position of the body. The wound was flat on the ground and standard flow dynamics would make it impossible for all the blood to flow up and down the clothing without seeping into the ground. Did gravity cease to exist in the area? If we take gravity into account, then the flow of the blood would tend towards the ground.

While we are on the subject of blood flow, it is interesting to note that the blood on the back of the victim's leg flowed from the wound towards the inside of the leg and up towards the buttocks. There is very little or no blood flow towards the outside of the leg. This is inconsistent with the position of the body as it was found. The body was lying with the injured leg flat on the ground and the knee turned slightly outward. This position would necessitate the blood to flow towards the outside of the leg and not the inside. This then raises the possibility that the body was moved after death, possibly dumped in the park. This is speculation, but it does introduce new possibilities and doubt.

It follows that Magistrate Kotze can not claim that it must be the same person that was assaulted without a doubt. It is no longer the only reasonable explanation. This makes the physical evidence all the more important and the testimony of the witnesses all the more suspicious. The accused did testify that the person they assaulted was of a bigger build. This theory could also fit in with the obvious lack of injuries that could be expected from a savage beating.

The actual nature of the wounds is another hotly debated topic. There was no evidence that conclusively proved that the wounds were caused by a knife and a hammer. The experts testify that it was possible, but never once do they imply probability. Dr. van der Hoven, the pathologist, testified that the leg wound could have been caused by a steak knife if the stabbing motion was followed by a cutting action. The edges of the wound show no signs of multiple actions. Dr. van den Bout, a doctor with extensive trauma experience, highlights the fact that both edges of the wound are rounded. It is reasonable to expect that the slicing edge of a knife would leave a sharper edge in the wound. Another point of interest is that the wound is not uniformly wide. Only the surface is open wide while the centre of the wound is small, conical and deep. This shape of the wound is not entirely indicative of a stab and cut motion. Dr. van den Bout theorises that the wound could have been caused by a palisade fence and Magistrate Kotze dismisses this because Dr. van den Bout is not a palisade expert. Dr. van der Hoven states that she would have to see the palisade before she could speculate. The problem is that she has no problem speculating about the knife even though she has not seen it either. Another peculiarity is the fact that the length of the wound is on the horizontal plane. The victim was standing at the time the stabbing motions were witnessed. To inflict this type of cut, the knife would have been sideways in the attacker's hands and the cutting action would have been across his body. This is not necessarily impossible, but is an unnatural action with a knife. The witnesses did not describe any other body position that would make this more likely. Magistrate Kotze states that photo 12, a close-up photo of the wound, confirms the testimony of Heinrich von Landsberg (see p844 In5 onwards of court documents). He continues to state that the only reasonable conclusion

is that one of the accused stabbed the person (see p844 In11 onwards of court documents). This is not true in any way. It is a possibility, but a seemingly unlikely one. The doubt around this wound is significant.

If we look at the head wounds, presumably caused by the hammer blows, there are a number of inconsistencies that are noticeable. Firstly is the story of the witnesses. They claim after they arrived and saw two of the accused making stabbing motions towards the victim, the victim went to ground where they proceeded to kick and maul him. At this stage, accused-2 steps back, and kicks the victim in the face, with steel-tipped shoes that was later discovered to be dented by the force of the kick. They then proceeded to run away. The witness, Reinhart von Landsberg, testifies that after all this he saw accused-4 hitting the man on the head with the hammer. His testimony states that accused-4 hit the man so hard that the first blow dropped the man to his knees and the second blow floored him completely. The problem is that the person was already on the ground, kicked and beaten. Nobody testified that they saw him get up after the kick. The other problem is that given the lack of fractures in the skull of the victim, Magistrate Kotze makes it clear that it was a small hammer that probably just grazed the victim's head. Dr. van der Hoven says that this theory could be possible, but she never indicates probability. This would be inconsistent with the story of the witness. It would be unlikely that a small hammer grazing the victim's head would cause him to drop to his knees or any further. Another problem is highlighted by the post mortem report that stated one of the two wounds on the head was scabbing over. If these wounds were inflicted by the hammer attack, then they followed in short succession and it would be reasonable to expect that they should be similar in structure and age. It is therefore very likely that one wound was significantly older than the other. Another point of interest is that there is no sign of significant bleeding from the wound without the scabbing (photo 14). There is tiny smudge of blood on the wound and from experience I know that a scalp wound bleeds profusely. This could be indicative of the time that the wound was inflicted. Although this is speculation, it does highlight the significant doubt that exists regarding those wounds. This increases the doubt that already exists in proving this is the correct body. Magistrate Kotze

maintains that the only reasonable conclusion is that these wounds were caused by the hammer attack (see p845 ln7 onwards of court documents). There is not a shred of evidence that points to probability. The best he can hope for is possibility and that would be an unlikely possibility due to the differences in the wounds. These assumptions of the Magistrate are unreasonable and without logical support.

Another question mark is the lack of facial- and bodily injuries consistent with the brutal assault. Magistrate Kotze uses the subdural bleeding noted on the post mortem report (see p846 ln7 onwards of court documents). The report states that this bleeding was slight and that there was no other disruption of the brain structures at all. Although this can be caused by a kick to the face, the lack of other marks would require us to tone down the attack significantly and that poses other problems that will be discussed later. It also affects the credibility of the witnesses. Magistrate Kotze attempts to prove that Dr. van der Hoven would not necessarily record all the injuries of the victim like for instance the scrapes and minor cuts (see p849 ln4 onwards of court documents). Dr. van der Hoven states clearly that she would have recorded any such wounds if they were present and from the photos there are no indications of such injuries. As a matter of fact, from photo 8, 9, 10, 11, 14 and 15, we can not see any signs of a scuffle at all. The victim's clothing and skin is clean and there are no signs of stretching or tearing. If it was raining enough to wash away 6-8 pints of blood, we could expect some mud on the victim especially with five people kicking the victim and jumping on him. There is also no indication in the report of a tear in the pant-leg of the victim that would correspond with the wound in his leg. Could it be possible that the victim had a change of clothes some time after he was wounded? That would be consistent with the time that the doctors claim it would take to bleed to death from such a wound. This raises more questions about this body. It is also clear that Magistrate Kotze accepts the testimony of Dr. van der Hoven in some instances and then questions her professionalism when her testimony does not support his own opinion (see p849 ln4 onwards of court documents). This is questionable behaviour. Is the Magistrate still unbiased and fair?

Magistrate Kotze quotes a case of the State vs. Bernardus 1965(3) SARV 287 (Court of Appeal) where they claim that the human body is full of anomalies and that sometimes death can be caused by the slightest of assaults (see p846 ln20 onwards of court documents). This argument is completely irrelevant as the cause of death is unequivocally stated as severe blood loss. This person did not die unexpectedly of a light assault. The Magistrate is trying to justify lack of evidence instead of weighing the existing evidence. At this point he is speculating that the assault was not as violent as described, but later he condemns them based on the cruelty of their actions. Magistrate Kotze is very inconsistent with his application of logic. He continues to use the eggshell skull theory (see p847 ln10 onwards of court documents) to support the previous argument and then states it is clear that the victim did not have an eggshell skull and that is why there are no evidence of an attack. This is preposterous. He might have a very strong skull, but does that argument follow through for his skin, nose, teeth and ribs as well? It is ridiculous. It would be reasonable to expect some blood running from his nose, some broken teeth, possible lacerations in the skin, bruising or discolouration of the skin and swelling. From photo 10 it is clear that there are absolutely none of these types of signs present. This is highly unlikely. Magistrate Kotze insists on confusing possibility with probability to the detriment of the accused. His assumptions are becoming increasingly bold and it is clear that no evidence will save the accused now.

Another point of speculation that casts doubt over this story is the rate of death of the victim. The pathologist reports that no major arteries were cut in the leg and that blood loss was gradual. Dr. van den Bout states in his report that massive blood loss in a relatively short period of time would leave certain clear signs of shock in certain places of the victim's body like for instance the brain and the lungs. He is of the opinion that, if they were present, Dr. van der Hoven would have picked them up. Both doctors agree that is far more likely that blood loss took place over a period of 24 to 48 hours. This is entirely inconsistent with the testimony of events. Firstly, according to the witnesses, the body was found where they assaulted the person. This could be possible if the assault disabled the person to such an

extent that he was unable to move for that time. The problem with that is that there are no injuries evident on the body that could explain such a long time of inactivity and secondly, there was no blood found at that spot or anywhere else in the park. If we accept the fact that they came back to look for the weapons, we know that the victim was conscious, because he was asking for help. The problem is that except for the hole in his leg, there are no other injuries to suggest that he was unable to, at the very least, attempt to flee the scene. In a state of mortal fear, it would be reasonable to assume that the person would attempt to flee regardless of the pain in his leg, even if it meant crawling, rolling or hopping on one leg. If we accept that the assault was so light that it did not leave marks, the only other reason the person remained still was shock caused by massive blood loss in a short space of time. This would lead us to ask where the blood is and where the signs of shock are. This is further evidence of improbability.

Finally, another anomaly that could be examined is the events that followed the assault. It would follow that for blood loss and death to happen so quickly the wound would have to be gushing blood. The witnesses testified that at a certain stage after arriving at Augustahof 16, one of the accused washed blood off of the hammer. If this event was significant enough to remember, why does nobody remember anybody washing blood off of their hands or having to change clothes or even washing blood of the BMW's steering wheel or interior? This would have been memorable events.

Another point to consider would be the position of the victim's shoes. Both the victim's shoes were removed and one was lying at his head and the other just left of his left hand (photos 8 and 9). This might not be significant, but nowhere is it mentioned that the victim's shoes were removed. He must have had them on at some stage during the time he was bleeding, because the pathologist report mentioned some blood in one of his shoes. This does not prove or disprove anything, but it raises some questions about the witnesses' version of events.

There is a lot of contradiction in this event. The physical evidence does not support the testimony at all. There are certain parts of the evidence that can be aligned with the testimony if a number of assumptions accompany it. The claim that the victim was not the same person that was assaulted would fit the physical evidence without assumptions. If we apply Ockham razor to this situation then it is impossible to come to the same conclusion as Magistrate Kotze. Only by a significant stretch of the imagination and a large number of assumptions can we come to the same conclusion.

## 4.) Appendices

### 4.1) Maps

#### 4.2.1) Legend

Key	Meaning
	Route from Duxbury Road/Duncan Street crossing to Tanya Street. This is the route as described by the accused.
	This route covers the areas where the witnesses testified that they deviated from the route as described by the accused
	This is used to indicate possible connections between the route of the witnesses and that of the accused. These distances had to be covered, but there is nothing in the testimony about them.
A	This is the starting point of the route. The route starts at the last possible point that the Hillcrest cellular-phone tower could still serve them before switching to another tower.
B	This is the Lois Avenue/Hans Strijdom Drive crossing where the accused testified that they stopped.
C	The point where the accused turned left into Witdoring Avenue.
D	Roughly the point where accused-3 got out of the car to go into the park.
E	Roughly the point where accused-1 stopped and went into the park.
F	The area where the Qualilife Gym used to be. This Gym does not exist anymore.
G	The point where the Witnesses turned into Wekker Road to meet the accused at the park.
H	The mother of the witnesses lives in this street.
1	A map of the entire route (including the routes taken by the accused).
2	A close-up of the Constantia Park area.
3	A close-up of the park where the alleged murder took place.