

Summary of the analysis done on the judgement in the Waterkloof 4 case as made by Magistrate Len Kotze

Note:

Please note that this is a summary of a detailed analysis and although the facts remain valid, it might be difficult to follow an argument in some instances. Should you require the full report you may request it via email from Charles Scheepers (charles@dilicom.co.za).

There are two incidents of concern:

1.) Alleged assault at the Qualilife Gym in Constantia Park

- 1.1) There is no evidence other than witness testimony for this event.
- 1.2) The accused individuals categorically deny this event.
- 1.3) This event is important because Magistrate Len Kotze used it to establish intent to murder in the second incident.
- 1.4) There are a number of cell phone records that frame the time during which this event took place. These calls show area information as well.
- 1.5) From the time that the group (accused and witnesses) left Hatfield until they were placed in Moreletta Park by the next verifiable call is 14 minutes.
- 1.6) During the 14 minutes the vehicle containing the witnesses deviated from the route that the second car with the accused individuals took, looked for an open café, spotted a man sitting next to the road, warmed up their muscles, assaulted the man once, informed the second car of what transpired, waited for five minutes for the second car to come back to where they were, proceeded to assault the same individual more savagely and then returned to the Moreletta Park area before the next call placed them in Moreletta Park.
- 1.7) The testimony of the accused makes the journey from Hatfield to Moreletta Park possible with no assumptions. To validate the version of the witnesses requires many assumption and impossible speeds from both vehicles. This violates Ockham's razor for logic evaluation that the courts use as well.
- 1.8) One of the state witnesses claimed that when they left Hatfield they agreed on a destination that would justify their route deviation (the accused disagreed), but towards the end of his testimony about this incident he states that after the assault he spoke to one of the accused to change the destination to the same address that he claimed they agreed on from the beginning. He contradicted himself.
- 1.9) After all the speculation State Advocate Kruger clearly stated that it is entirely possible that the individuals were referring to an incident on another night and the he did not want to make a big deal of this incident. This means that the defence denied the incident and the State

had serious doubts about the incident and instead of evaluating the evidence and giving the benefit of the doubt to the accused, Magistrate Kotze ignored the doubt and made this event fact. Magistrate Kotze is actively manipulating testimony and evidence instead of impartially evaluating it.

2.) Assault and alleged murder of a homeless man in a park in Moreletta Park

- 2.1) The accused individuals admitted to the assault and admitted that the assault was vicious. They deny murdering the victim and they deny thinking that the victim might die from his injuries.
- 2.2) As with the previous incident, the version of the accused fits the timeframes and physical evidence without assumptions whereas the version of the witnesses requires a number of assumptions and a serious stretch of the imagination to account for all the anomalies. Once again Magistrate Kotze's choice of truth violates Ockham's razor.
- 2.3) The chosen version of the truth (the story of the witnesses) is not supported by the physical evidence and even contradicts the physical evidence at times. Magistrate Kotze dismisses physical evidence in favour of the opinion of witnesses. This clearly shows his bias.
- 2.4) The person found in the same park two days after this incident, died of severe blood loss from a deep cut in the back of his left thigh. The medical experts could not conclude what the cause of the wound was. One expert said it could be a knife, but it is unsure and the other expert had serious doubts about it being a knife. The experts concluded that the blood loss was over a period of 24 to 48 hours given that no major arteries were cut. The person also had two small cuts on his head with one of the cuts already starting to scab over. There are absolutely no other injuries or deformities on the body as per the post mortem report and crime scene photos.
- 2.5) The witnesses testified that when they arrived at the park, one of the accused was standing in a crouching position in front of the victim making stabbing motions to the victim's legs and another was standing upright behind the victim making stabbing motions towards the victim's head and shoulders. The witnesses never actually saw any knives in the hands of the accused and never actually saw any of the stabbing motions making contact with the body of the victim. It is also noteworthy that the described positions are entirely wrong for the wound on the body and there are no defensive wounds of any kind on the victim.
- 2.6) The accused individuals testified that they beat the man quite viciously and when he went to ground they mauled him in a loose-scrum fashion and one of the accused stepped back and then ran in and kicked the man in the face. This person later noted that his steel-tip shoe was

dented inwards. Another one of the accused hit the man over the head with a hammer.

- 2.7) The vicious attack left absolutely no marks of any kind on the victim. There was no broken teeth, no bruising, no blood from the nose or ears or any place other than the “stab wound”. No broken nose or any other bone for that matter. There were no scratches on any part of the body consistent with a scuffle on the ground. The crime scene photos show that there was no soil or grass on the body that might be expected in a scuffle. There are no tear or stretch marks on the clothes of the deceased. Magistrate Kotze uses the vicious nature of the attacks to condemn the accused, but he dismisses the fact that there is no physical evidence that can corroborate the attack. It is clear that the State has the wrong body, but the Magistrate chooses to ignore that.
- 2.8) It is possible to think that the two cuts on the head of the body was consistent with the hammer attack, but it should be noted that one of those scars was already in the process of scabbing over. The witnesses testified that the man was standing when the first hammer blow hit. It dropped the man to his knees. The second hammer blow floored the man completely. This would sound plausible for a hammer attack, but it is noteworthy that there were absolutely no skull fractures or signs of brain trauma at all and the superficial cuts on the scalp have age inconsistencies. Either the attack did not occur, or it was so soft that it left no marks whatsoever or the State had the wrong body.
- 2.9) The witnesses testified that they went back to the site later the night and when they arrived the man begged them for help at which time one of the accused kicked him in the face again. The accused denied going back to the scene. Magistrate Kotze uses this incident as a demonstration of the brutality of the accused and as motivation for a harsh punishment. The odd thing is that if they intended to kill the man as the Magistrate concludes, then there are better ways of doing it than stabbing a person in the back of his thigh. Secondly, if they arrived back at the scene and found the man still alive it would be imperative to make sure he was completely dead. A kick would not have done it. If this was true we know that the man was beaten to a point where he was incapacitated, but there is absolutely no proof of that in the autopsy report.
- 2.10) The witnesses testified that someone washed blood from the hammer when they were back at the house. If this was significant enough to remember, why didn't the witnesses testify about people washing blood from their hands or from the interior of the car or even whether there was a need to change clothes? If the victim was stabbed and then mauled there must be traces of blood on the assailants.
- 2.11) One of the witnesses testified that he went back to the scene the next day and found the body where they left it he was convinced that the man was dead. He also noted a strong scent of blood in the air. These statements cause further conflicts with the physical evidence, because

there was very little blood found on or in the ground when the police found the body. They also did not find any blood in the area. It rained 3mm during the night of the attack, but the victim was found on his back and a small amount of rain could not wash away all the blood from underneath the body. The medical experts estimated that the victim would have to lose between 6 and 8 pints of blood to die. That is a lot of blood to disappear into thin air.

- 2.12) The dried blood on the back of the victim's leg flowed toward the inside of the victim's thigh and upwards toward his groin. The victim was found on his back with his injured leg flat on the ground and the witnesses testified that he was found in the same spot and position as he was left. The laws of gravity would make it impossible for the blood to flow upwards towards the inside of the victim's thigh and therefore strongly suggests that the body was moved some time and the complete absence of blood suggests the possibility that the person died somewhere else.
- 2.13) On more than one occasion the State witnesses contradict themselves and their story does not fit in with the physical evidence at all. In spite of this Magistrate Kotze chooses to believe them and actively dismisses the physical evidence that contradicts their version.
- 2.14) No person of sound mind would be able to convict the accused individuals with the evidence entered into court. The handling of the evidence was biased and the accused individuals were never afforded the right to be innocent until proven guilty.