



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Magasela v The State (1257/2023) [2025] ZASCA 08 (31 January 2025)

Today the Supreme Court of Appeal (SCA) dismissed the appellant's appeal against conviction and upheld the appeal against sentence. The appellant was convicted of murder in the Regional Court, Benoni (the trial court) and sentenced to 15 years' imprisonment. The trial court granted the appellant leave to appeal against the conviction and sentence imposed. The appeal served before the full bench of the Gauteng Division of the High Court, Pretoria. It dismissed the appeal on both conviction and sentence. Aggrieved by this, the appellant applied for and was granted special leave by the SCA to appeal both the conviction and sentence.

The brief facts are as follows: According to the appellant, he heard a noise outside of his unit and he went to the door and opened it. The deceased was aggressive, shouting and insulting the appellant. The appellant opened his gate and exited the unit. The deceased hit the appellant with his beer bottle. When he tried to hit him for the third time the appellant pushed him. The appellant was wearing his firearm in a holster. He heard the deceased say that he noticed the appellant had a firearm, and the deceased asked whether the appellant was going to shoot him. He looked up and saw the deceased coming. The appellant pulled the firearm out of the holster and held it behind his right-hand thigh. He told the deceased not to come near him. The appellant turned around to push his son into his unit and at this point he felt a hand grabbing the firearm. He pulled the firearm towards him and that was when the shot was fired. The appellant denied that he intended to kill the deceased and his defence was that the shooting was accidental, having occurred during a struggle between him and the deceased over the appellant's firearm. The trial court rejected the appellant's version and accepted the testimony of the single state witness.

Before the SCA, Weiner JA penned a minority judgement, where the learned judge found that the trial court adopted a novel approach to the evaluation of evidence by beginning with its evaluation of the appellant's version and not properly evaluating the evidence of the single state witness. Weiner JA went on to find that the trial court erred in accepting the evidence of a single witness and to reject the appellant's version, without first critically scrutinising the testimony of the single witness. The learned judge reasoned that both the trial court and the high court ignored the fact that the single witness did not see how the shooting happened. Thus, although his testimony may have been 'substantially satisfactory', it was not so 'in every material respect', as he was unable to testify on the crucial element of the firearm being discharged. Furthermore, there was also no corroboration of his testimony in this

regard. Thus, the finding of the appellant's guilt, on the facts was clearly wrong. As a result, Weiner JA concluded that the murder conviction should not stand.

Weiner JA went on to evaluate whether the SCA should find the appellant guilty of murder on the basis of *dolus eventualis*, alternatively culpable homicide. She found that the State had not proved 'subjective foresight' beyond a reasonable doubt and accordingly, the State had not proved *dolus eventualis*. In light of these findings, Weiner JA held that the appellant should be found guilty of culpable homicide instead and that the matter should be remitted to the trial court to consider an appropriate sentence afresh.

In a majority judgment, penned by Mabindla-Boqwana and Keightley JJA (Chili and Molitsoane AJJA concurring), it was held that the appellant's version could not be found to be reasonably possibly true, and that the trial court had correctly rejected it. The Court found that the State's version must be accepted: the appellant was facing the deceased and deliberately fired his firearm. It was clear that the appellant acted with the requisite intention.

The majority judgement further found that even if the appellant's version was considered, his conviction on the charge of murder was justified. The reasoning that the majority judgment adopted was that the appellant must subjectively have foreseen that his actions could possibly result in a fatal shot being fired. The appellant deliberately removed the loaded and primed firearm from its holster in advance. He did so in circumstances where, on his version, he anticipated a struggle. The appellant elected, not to avoid a possible struggle by retreating, but instead, to confront it by removing the firearm from the holster. When he turned his back on the deceased, the appellant placed the firearm directly within his path, knowing that he was a short distance away. This is the conduct of one who foresees the possibility of death and proceeds reckless of that possibility eventuating. The majority judgment found that conduct was a clear case of someone acting, not negligently, as the minority judgment found, but with the requisite *dolus eventualis* for murder. Therefore, even on the appellant's own version, his conviction on a charge of murder was sound.

When considering the appeal on sentence the majority judgment found that the trial court misdirected itself in finding that the mitigating factors present did not constitute substantial and compelling circumstances warranting a deviation from the minimum sentence.

The SCA held that cumulatively, the circumstances giving rise to the scuffle and the personal circumstances of the appellant constitute substantial and compelling circumstances warranting deviation from the prescribed minimum sentence of 15 years' imprisonment and held that a period of eight years' imprisonment was appropriate in these circumstances.