



IN THE HIGH COURT OF ESWATINI

JUDGMENT

HELD AT MBABANE

CASE NO. 171/17

In the matter between:

THE KING

VS

QING MING HE

Neutral Citation : The King V. Qing Ming He (171/17) [2021] SZHC
65(28th April 2021)

CORAM : J.S MAGAGULA J

DATES HEARD : 15/04/19; 18/01/19; 19/9/19; 11/12/19 and
12/12/19

DELIVERED : 28th April 2021

[1] In this matter the accused is charged with twelve (12) counts as hereinafter set out.

"COUNT ONE

The accused is guilty of the crime of KIDNAPPING.

In that upon or about the 16th April 2017 and at or near Matsapha area in the District of Manzini, the said accused person acting individually and/or jointly in furtherance of a common purpose with another or other person (s) unknown to the prosecutor did unlawfully and intentionally deprive ALMOR OLIVEIRA a male adult, of his freedom of movement by holding him hostage and did thereby commit the said crime of kidnapping.

COUNT TWO

The Accused is guilty of the crime of MURDER.

In that upon or about the 16th April 2017 and at or near Matsapha area in the Manzini Region, the said accused person acting individually and/or jointly in furtherance of a common purpose with

another or other person (s) unknown to the prosecutor did unlawfully and intentionally kill one ALMOR OLIVEIRA and did thereby commit the crime of MURDER.

COUNT THREE

The accused is guilty of the crime of ATTEMPTED EXTORTION.

In that upon or about the month of April 2017 and at or near Sandla, Mbabane area in the Hhohho Region, the said accused person acting individually and/or jointly in furtherance of a common purpose with another or other person (s) unknown to the prosecutor and being the kidnappers (s) of one ALMOR OLIVEIRA, did unlawfully and intentionally inspire fear in the mind of Audilia De Oliveira Simoes (Mrs Oliveira) of Sandla Township, Mbabane by threatening to make Almor Oliveira, her husband, to disappear from her for life unless she pay them an amount of E5Million and did by means of such threat unlawfully and intentionally attempt to extort and

obtain from the said Audilia De Oliveira Simoes the sum of E5Million and did thereby commit the crime of ATTEMPTED EXTRORTION.

COUNT FOUR

The Accused is guilty of the crime of CONTRAVENING SECTION 11(1) AS READ WITH SECTION 11(8) (a) (c) (i) AND 14(2) (a) OF THE ARMS AND AMMUNITION ACT 24/1964 AS AMENDED.

In that upon or about 28th April 2017 and at or near Ezulwini area in the Hhohho Region, the said accused person did unlawfully possess a short gun (pump action) Karatay serial number 555624 without licence and did thereby contravene the said Act.

COUNT FIVE

The Accused is guilty of the crime of CONTRAVENING SECTION 11 (2) AS READ WITH SECTION 11(8) (c) (ii) OF THE ARMS AND AMMUNITION ACT 24/1964 AS AMENDED.

In that upon or about the 28th April 2017 and at or near Ezulwini area in the Hhohho Region, the said accused person did unlawfully possess four (4) live rounds of Ammunition of a short gun without a valid permit or licence and did thereby Contravene the said Act.

COUNT SIX

The Accused is guilty of the crime of CONTRAVENING SECTION 11(8) (C) (ii) OF THE ARMS AND AMMUNITION ACT 24/1964 AS AMENDED.

In that upon or about the 28th April 2017 at or near Ezulwini area in the Hhohho Region, the said accused person did unlawfully possess a .357 Revolver with an erased number (Make: Taurus) without a permit or licence and did thereby Contravene the said Act.

COUNT SEVEN

Accused is guilty of the crime of CONTRAVENING SECTION 11 (2) AS READ WITH SECTION 11 (8)(c) (ii)

OF THE ARMS AND AMMUNITION ACT 24/1964 AS AMENDED.

In that upon or about the 28th April 2017 and at or near Ezulwini are in the Hhohho Region, the said accused person did unlawfully possess three (3) live rounds of Ammunition of a Revolver without a valid permit or licence and did thereby Contravene the said Act.

COUNT EIGHT

The Accused is guilty of the crime of CONTRAVENING SECTION 11 (8) (c) (ii) OF THE ARMS AND AMMUNITION ACT 24/1964 AS AMENDED.

In that upon or about the 1st May 2017 and at or near Matsebula Flats in the Manzini Region, the said accused person did unlawfully possess Fifty-Six (56) live rounds of Ammunition of a 7.65mm without a valid permit or licence and did thereby Contravene the said Act.

COUNT NINE

The Accused is guilty of the crime of CONTRAVENING SECTION II (3) AS READ WITH SECTION 11 (8) (b) (i) AND 14 (2) OF THE ARMS AND AMMUNITION ACT 24/1964 AS AMENDED.

In that upon or about the 1st May 2017 and at or near Matsebula Flats in the Manzini Region, the said accused person did unlawfully possess a magazine of a 7.65mm without a valid permit or licence and did thereby Contravene the said Act.

COUNT TEN

The Accused is guilty of the crime of THEFT.

In that upon or about the 6th November 2016 and at or near Happy Valley Hotel in the Hhohho Region, the said accused person did unlawfully and intentionally steal a number plate (MSD 801 BH) the property of or in the lawful possession of KENNETH CHIRWA and did thereby commit the said crime of THEFT.

COUNT ELEVEN

The Accused is guilty of the crime of HOUSE BREAKING WITH INTENT TO COMMIT A CRIME UNKNOWN.

In that upon or about the 16th December 2016 and at or near Sandla area in the Hhohho Region, the said accused did unlawfully and intentionally and with intent to commit a crime unknown enter the residential premises there situate of Audilia De Oliveira Simoes, and did thereby commit the said crime of HOUSE BREAKING WITH INTENT TO COMMIT A CRIME UNKNOWN.

COUNT TWELVE

The Accused is guilty of the crime of CONTRAVENING SECTION 11 (1) READ TOGETHER WITH (2) OF THE PASSPORT ACT, 1971.

In that upon or about the 17th April 2017 and at or near Sandlane area in the Manzini Region, the said accused being a person ordinarily resident in

Eswatini did unlawfully and intentionally leave Eswatini for the Republic of South Africa without being in possession of a valid passport, document of identity or travel document issued to him under the provisions of the said Passport Act, 1971 or the Identity and Travel Documents Act, No. 54 of 1959 or a passport or similar document recognized by the Minister and issued by a foreign country and did thereby contravene the said Act.

[2] Upon arraignment the accused pleaded guilty to counts 4,5,8 and 9. He pleaded not guilty to the rest of the charges. The prosecution then led evidence of eleven witnesses to prove commission of the offences by the accused person.

SUMMARY OF EVIDENCE

Pw1 – 4875 Constable Zakhele Kunene.

This is the scene of crime officer who attended and covered the scene of crime in respect of this matter. This was at the business premises of Mr Almor Oliveira. He found Mr Oliveira's Mercedes Benz parked there.

Next to the drivers door he observed struggle marks on the ground trailing to the boot of the car. At the back of the car there were buttons on the ground. There was also some tissue paper on the ground with blood.

[3] Inside the motor vehicle this witness observed the following;

- (i) blood drops on the armrest, front passenger seat and on the rear passenger seat.
- (ii) rear view mirror broken from the roof.
- (iii) roof light cover on the floor of the car.
- (iv) a button next to the driver's seat as well as a pair of glasses.

[4] The struggle marks he observed next to the car were actually drag marks which led towards the boot of the car. This witness also took photos showing the surroundings of the crime scene as well as the route leading to the crime scene and of all his observations on the crime scene as detailed above. The crime scene was covered by this witness on the 16th April 2017, the day Mr Oliveira disappeared.

[5] On the 1st May 2017, this witness also covered the accused's place of residence at Matsebula Flats in Manzini. The accused and his wife occupied flat No.9 thereof and inside the flat the witness found the following items.

- (i) a short gun,
- (ii) boxes of live rounds of ammunition;
- (iii) Two cartridge cases of ammunition;
- (iv) five foreign passports

The witness also took photos of the accused at Matsapha Police Station. In particular he took a photo showing the accused with the tips of all his fingers injured. This witness confirmed that the fingers were injured after the accused was arrested and whilst he was in police cells.

[6] During cross –examination this witness confirmed that the blood drops found on seats inside the vehicle were those of Mr Oliveira. He did not know if other blood samples were taken and analysed. He however knew

and was last seen speaking to Mr Tommy Kirk who has business in Matsapha.

[9] The witness went to Matsapha to look for Mr. Kirk and when he got hold of him telephonically Mr. Kirk confirmed meeting with Mr. Oliveira in church , but both ended up going separate ways. Whilst in Matsapha he received a phone call from Nomsa Mlangeni, one of Mr Oliveira's employees. She was panicking and she asked this witness to come to Mr. Oliveira's car at his business premises in Matsapha. She said the car had blood all over.

[10] He managed to stop a police vehicle and these police officers called others whom he then followed to the scene. He had been advised by the police not go to the scene alone. Upon arrival at the scene the police took charge. They however allowed him to come closer and look inside the car to observe what had happened. The witness was then referred to Exhibit "H" which is a photo album. From this exhibit he identified Mr . Oliveira's car, blood stains inside the car. Outside the car he saw some struggle marks as if people were

fighting next to the driver's door. There were also drag marks on the ground going towards the back of the car.

[11] The following day, 17th April 2017, this witness 2017, this witness took Mrs Oliveira to the scene where she looked through the window and seeing a lot of blood she cried. Looking around the car she saw buttons on the ground and stated that those were the buttons of her husband's shirt. The witness was also referred to some newspaper articles with photos of Mr. Oliveira. He explained that the articles referred to Mr. Oliveira's case and were written after his disappearance in 2017. The witness also confirmed that he has never seen Mr. Oliveira since 2017. The witness was not cross-examined.

PW3 – MRS ADDILIA DE OLIVEIRA SIMOES.

[12] PW3 is Mr.Oliveira's wife. She told the court that her husband went to church on the 16th April 2017 and he

never returned. He was due to have lunch at the Royal Swazi Spa after church on that day. He however never made it to the hotel. She further told the court that her husband was a businessman and had business premises in Matsapha. He had a habit of going to his business place after church. On the fateful day his car was found abandoned at his businessne's premises in Matsapha.

[13] This witness further told the court that pursuant to the disappearance of her husband she reported the matter to the police using their emergency number 999. She stated that she reported a suspected kidnapping because prior to this day, one Mike Mamba, had come on four occasions to warn her husband that someone wanted to kidnap him.

[14] The witness was then referred to exhibit "F" which contained cellphone messages and she confirmed that she received them. Two of these messages were sent from a local cellphone number on the 16th April 2017, the day Mr . Oliveira disappeared. The first message was received at 4:57: 56 pm and it reads;

" Hey, who speaking to me, can I talking to the madam".

The name of the sender is not given.

The second message was received from the same number at 05:01 pm on the same day and reads:

" Ur husband with us, we just need money. Don't paying the game, if we cant get money. You cant see him for all life, don't call police, don't talk to anyone, I will call you again".

[15] The 3rd message was received from a South African cellphone number +27631198494 on the 26th April 2017 11:56: 43 am and it reads:

" I 'm tell u Swaziland police do nothing. Cant help u. because your husband not in Swaziland. Only one way you must paying. Your husband believes you. Now u make him life become danger."

The sender's name is also not given.

[16] The 4th message is from the same South African number and it was received on 27th April 2017 at 11:33:21 am and it reads:

" We don't have patience, your husband pocket tablets also finish now if u won't to help him, he become danger don't call me. U just sms to me."

The senders name is also not disclosed.

[17] The fifth message was also from the same South African NO: +27631198494. This message was received on the 28th April 2017 and it reads;

" If you want ur husband come back to you, you have to work with us. U must know if we can't get the money ur husband never come back to u. when will you be ready for five million. U must to now if we can't get the money ur husband never come back to u. when will you be ready for five million rand. And bring to S.A I will tell you where about."

[18] The 6th message is from the same South African cellphone number and it was received on the 28th April 2017, at 03:41;06pm and it reads;

“ I will keep staring at u don't let your husband down. We also know that you have called the police. If you want the police to help you then your husband will also that you have called the police. If you you want the police to help you then your husband will be dead. This is your last chance to help him.”

[19] Mrs Oliveira saw these messages on the 27th April 2017, some ten days after the disappearance of her husband. She told the court that these messages were brought to her attention by her employee Ncamsile Cynthia Gina. She had no knowledge of the messages till then. Her employee happened to use her phone on this day and saw these messages. It is then that she brought them to Mrs Oliveira's attention. She then became aware that a ransom of E5million was being demanded for the release of her husband.

[20] On the same day, 27th April 2017, Mrs Oliveira replied to the message by sending the following message;-

“ Sorry for the delay, I did not know how to use sms only now I see your message, talk to me again how much you want, how and where, I like to speak to my husband. Mrs Oliveira.”

According to Mrs Oliveira she sent this message at about 8:00 pm on the 27th April 2017. It would appear therefore that the two messages of the 28th April 2017 were prompted by Mrs Oliveira's response. Mrs Oliveira's also received a call from the South African number from which the messages were sent. There was however no response when she answered although she could tell that there was someone on the line.

Mrs Oliveira also told the court that her husband was on regular medication when he disappeared. She has never received any accounts since his disappearance in April 2017 and she has never seen or heard from him since then.

This witness was not cross – examined.

PW4 – NCAMSILE CYNTHIA GINA

[21] This witness was working for Mr. Oliveira as an accountant. She told the court that Mr. Oliveira disappeared on the 16th April 2017. He could not be found at his business premises.

She was in the company of Mrs Oliveira on the 27th April 2017. Mrs Oliveira asked her to make a phone call using her (Mrs Oliveira's) cell phone. Upon taking the cellphone she noticed that there were several messages on it. She showed these to Mrs Oliveira. The messages related to the disappearance of Mr. Oliveira. When this witness was showed the messages in Exhibit F, she confirmed that these were the messages she found on the cellphone.

[22] She further identified the message sent by Mr Oliveria in response to the messages. She further confirmed that a cellphone call was received by Mrs Oliveira from a South African a number on this day. However when Mrs

Oliveira answered there was no response from the other side. She further told the court that she has never seen Mr. Oliveira since April 2017 and that there has been no transactions on his bank account since then. She has not received any accounts in respect of his cellphone since then. She has also not received any accounts for his regular medication.

[23] During cross – examination this witness was asked about a newspaper article carried in the Sunday Observer of the 4th March 2018. The article reported that Mr. Oliveria's gold card was found in the possession of two house breaking suspects. Her response was that the article never came to her attention.

PW5 - KENNETH BRICKS CHIRWA

[24] This witness testified in respect of count No.10, theft of a number plate. He told the court that on the 6th November 2016 he was on duty as surveillance manager at the Happy Valley Hotel. His duty commenced at 2;00 pm and finished at 11:00 pm. He had parked his car at the staff parking which was not open to members of the public. He drove home after

knocking off from work. However when he arrived home he realized that the rear number plate of his car was missing.

[25] He drove back to his work place hoping to find it along the way but he never found it. He then went to the Lobamba police station to report the missing number plate. He was later called by the same police who told him that they had found it. The police told this witness that they had found it in a flat occupied by the accused's wife.

In cross examination it was put to this witness that one Huang Hua Xing is the one who took his number plate. The witness was also told that Huang Hua Xing stayed in another room of the flat occupied by accused's wife. This witness had no comment on that.

PW6 – NOMSA AGNES MLANGENI

[26] This witness was employed as a nurse aid for Mr.Oliveira. she told the court that Mr. Oliveria was suffering from Diabetes and High Blood Pressure. He

had to take his medication daily and three times a day. She has never seen Mr. Oliveira since the 16th April 2017. In cross –examination the witness was asked if failure to take the medication could have dire consequences in light of the seriousness of the illnesses and she confirmed this.

PW7 – MSAKATO FAKUKWENTE SIMELANE

[27] This witness was giving evidence in relation to count 11 (House breaking) with intent to commit a crime unknown). The witness is a security guard employed by Guard Alert. On the 16th December, 2016 he was on duty at the property of one Fatima. He assumed duty at about 5:30 pm. Next door to the premises he was guarding was Mr Oliveira's house. He knew Mr Oliveira as a businessman.

[28] This witness told the court that at about 3:00 am in the morning of the same night a motor vehicle came and parked next to his place of work. A person alighted from the left rear door. He opened the boot of the car and took out a set of number plates. He then removed the number plates of the car he had alighted from and

fixed the number plates he had retrieved from the boot. He put the number plates he had removed from the car into the boot.

[29] Two more people alighted from the car. The first man led the two and they proceeded straight to Mr. Oliveira's house. One of them hid next to a truck at the same time checking if the security guard did not see him. One of them tried to jump over the fence. As he tried to jump some corrugated iron sheets made noise and the dogs rushed there. When the dogs charged towards him he retreated. They stood there for a while but eventually went back to the car, changed the number plates again and left. This witness did not see the letters before the figures in the number plate of the car. He saw the figures and the last two letters and they were 618 BM. The people who had alighted from the motor vehicle were of Chinese origin.

[30] This witness was only separated by a wall with these people and they were about three to four paces away. There was a street light direct towards them. The one who was changing the number plates was

carrying a gun which was not a revolver but was short and about 30 centimeters in length. After alighting from the car he hid the gun inside his jacket. This witness never saw these people again. He also told the court that he does not know the accused person. He had to climb a stepladder to see these people as they were separated by a wall fence. This witness was not cross-examined.

PW8 – NONHLANHLA WITNESS SHONGWE

[31] This witness was employed by the Oliveira's as finance and administration manager. He is still employed as such. She knows the accused person. He was a tenant for the Oliveria's between 2009 and 2012. The lease was meant to terminate in 2014. However in April 2012 the accused left the premises. He came to drop the keys at the office on the 30th April 2012.

[32] When the accused came to drop the keys he was driving at high speed in a white BMW. He came in and threw the keys of the house over the counter and left without saying anything. The time was around 12:30 pm. From his facial expression he looked angry. During

cross – examination this witness was asked if the accused said who it is that he was angry with. She said the accused did not say anything.

PW9 – MLAMULI MAXWELL HLOPHE

[33] This witness is a Security guard who, at the time of the incident, was employed by Swaziland Security Guards. On the 16th April 2017 he was on duty at the Matsapha Industrial sites. During his evidence the witness was referred to photos 33 and 34 in exhibit H. He was guarding premises opposite the premises depicted in photo No.34. The two premises are separated by a road. The premises he was guarding are not depicted on the picture.

[34] He was seated in his guard house when he saw a car driving at high speed. It first drove past the opposite premises but it later came back and entered the premises. This was a silver grey BMW. He did not see the registration numbers of the car. The car went inside the premises and parked. A passenger alighted from it and the motor vehicle followed him slowly until it came to a stop next to the white building in the picture. When it

was parked this witness could only see its front side. The person who had alighted from the vehicle went behind the building where the car ended up parking. The person who alighted from the car was light skinned and not a Liswati .

[38] The witness then heard some noise like that of a person being hit by some heavy object or being pressed by something. He then heard the slamming of car doors. The car then exited the premises and took the direction from which it came driving at a very high speed. The witness did not see the other occupants of the car nor did he see any other car enter the premises about the same time. He does not know the accused person. During cross examination the witness was shown the statement he recorded with the police and he confirmed it as his statement. He also maintained that the motor vehicle did not completely disappear behind the building.

PW10- WEN MING FAR (KEVIN)

[39] This witness is a resident of Eswatini and he is a business man. He knows the accused person as he used to do

business with him. On the 16th April 2017 he was in Durban, South Africa. At about 3:00 pm on that day he received a phone call from the accused asking for Mrs Oliveira's number. He told accused that he did not have Mrs Oliveira's number but had Mr Oliveira's number. He said he wanted to know if there was another way to travel to South Africa as his VISA had already expired. Accused directed this question to this witness.

[40] In reply to the question this witness said he would need to check as he was also not sure. The accused further asked this witness (Kevin) if he could get him a South African sim card emphasizing that the sim card should not be registered with any name. Kevin told the accused that since he was in Durban he would need more time to arrange for him to cross the border but could not help him with the sim card.

[41] After some five minutes Kevin managed to contact someone working at the South African Customs Office and he said he could assist if he is on duty with the informal crossing. He would require each person

crossing to pay him R2000.00. It was not clear from the conversation if it was only the accused who needed to cross the border or there were others.

Kevin tried to give the accused the number for this officer as he would be on duty in the next four to five days. The accused however refused to take the number. He maintained that Kevin should be the contact person between him and the officer.

[42] The accused then informed Kevin that there were three people intending to cross the boarder. They intended to cross the border in the afternoon of the following day. Kevin then called the officer to confirm the arrangement. He also called the accused to tell him that everything had been arranged. The accused also asked Kevin to arrange transport for him and his two companions. Within thirty minutes Kevin managed to get someone to transport them to Bloemfontein but would need to be paid between R10 000-00 and R15 000-00.

The accused again refused to take the contacts of this person from Kevin but maintained that Kevin should remain the contact person.

[43] The accused then told Kevin that the driver should pick him up outside Boxer Supermarket opposite the Fruit and Vegetables Market in Manzini on the following day in the afternoon. Kevin also stated in evidence that the companions of the accused were Chinese. Kevin also confirmed that he is Chinese himself as well as the accused. Kevin later received a call from the accused telling him that he had arrived in Bloemfontein. The accused also invited Kevin to Bloemfontein saying that he wanted to introduce him to his friends who were in the same business as Kevin.

[44] The following day Kevin got a lift and proceeded to Bloemfontein where he met accused. He also met the other two who had crossed the border with accused. He noticed that he had met these people in Eswatini. The following day Kevin and accused visited the Industrial sites to see some business units. Although Kevin wanted to leave sooner the accused asked him

to stay for a couple of days so that they could come together to Eswatini and he obliged. They ended up going to New Castle and on their way there Kevin called his friend who had transported the accused and his companions (Juki), to come to New Castle and the following day at about 6:00 am they proceeded to Eswatini.

[45] On their way back accused suggested that they make money on the disappearance of Mr Oliveira by demanding a ransom from Mrs Oliveira. Kevin discouraged this saying they should not make a joke of the incident. After Kevin's response nothing more was said on the issue. The date was 22nd April 2017. Kevin became aware that Mr Oliveira was missing on the 19th October 2017. He made a call to his factory and was told that Mr Oliveira was missing. This witness also told the court that he did not assist accused with the South African sim card. He left the accused to do that as it was easy to get an unregistered sim card in South Africa and he told the accused that much.

[46] During cross –examination it was put to this witness that the reason the accused needed an unregistered sim card was that he could not use his passport to get a registered sim card as his VISA had expired. The witness confirmed that to get a registered sim card one needed to have a valid passport. It was also put to Kevin that the suggestion by the accused that they should make money on the missing Mr. Oliveira was a joke and nothing serious and he answered in the affirmative. It was further put to Kevin that accused wanted to export 50kg flour from Bloemfontein. He replied that it was 50kg maize for making popcorn.

[47] It was also revealed during cross examination that Kevin often went out of the country without a passport and that is why the accused sought his assistance. Kevin confirmed this. It was further put to Kevin that accused knew three people being Zhang Xiao Jian, Chen Xian Qin and Chen Guo Qin. Kevin said he did not know these people. It was put to Kevin that two of these people were going to Bloemfontein and one was going to Mozambique and Kevin had to make arrangements for them to go to Bloemfontein. They

had carried with them an amount of R12 000.00 An amount of E6000 -00 was for cross –boarder arrangement and the other R6000-00 was transport to Bloemfontein. Kevin told the court that Juki, the transport organizer, had told him of E10 000-00 but he did not know if the money ended up being R12 000-00. It was further put to Kevin that he met the accused in Bloemfontein for purposes of transporting a truck load of popcorn maize. He said in Bloemfontein they only visited a few factories and came back home. He however confirmed that all they did in Bloemfontein was business. It was further put to Kevin that the accused had no VISA and he crossed the border illegally. Kevin confirmed this. In re –examination Kevin confirmed that he did not know that he would meet the accused in Bloemfontein prior to the invitation by the accused.

PW11 -3703 D/S SUPT DERRICK MAKHANYA

[48] This is the investigating officer in the matter. He attended to the scene where Mr oliveira's car was

discovered on the 16th April 2017. Upon arrival at the crime scene he obtained information from PW9 that a BMW had entered and left the premises on the same day. The witness was referred to photos 9,10 and 11 in exhibit "H". He then deduced from the position and manner in which Mr. Oliveria's Mercedes is parked there and the position PW9 said the BMW was parked the vehicles would have been parked that boot to boot.

[49] Blood was found in the vehicle as depicted in the photos in the photos as well as drag marks leading from the Mercedes Benz to the boot of the BMW. Buttons were also found on the ground and were identified by Mrs Oliveira phone (PW3) as those from the shirt of her husband.

Continuing with investigators this witness was first shown messages on Mrs Oliveira cellphone. The witness was referred to exhibit "F" and confirms the messages as those he found on Mrs claiming a E5million ransom for the release of Mr.Oliveira. The first two messages were

sent from a local MTN number and the last two were from a South African number.

[50] This witness traced the local number and discovered that it was from a Samsung phone belonging to the accused. This phone had recently used a SIM card belonging to the accused's girlfriend. Her name was Dao Thanta Hue. This lady was accused No. 2 but charges were withdrawn against her. Her cellphone number was 76668888. This witness then proceeded to her residence. This residence was at Ezulwini just opposite corner Plaza at the compound of one Lisa Marakaglia. Police already had information that she stayed in flat NO. 4 and they proceeded there.

Before knocking on the flat they first spoke to Boisy Littler, a nephew to Lisa. After explaining their mission they requested Boisy to accompany them to Flat No. 4.

[51] This witness told the court that when they knocked at Flat No. 4 they were attended by both the accused and his girlfriend. They introduced themselves as Police Officers investigating a kidnapping case which had occurred in Matsapha and sought their assistance.

Among the police officers was constable Nkambule who interpreted for the accused. They then asked if any of them had the number 76668888. They were not cooperative and did not want to entertain the police. This witness decided to call the number on his cellphone. One of the cellphones on the table in the kitchen rang. The police then knew that one of the people they were looking for was there. This witness then told them that they were now under arrest on suspicion that they were now involved in the kidnapping case.

[52] This witness cautioned them according to the judges rules and they opted not to say anything. The police officers requested to search their house. In the bedroom and at the top of the wall wardrobe they found a pump action short gun. It was a karataki with serial number 550624 loaded with four live rounds of ammunition. In the same area the police found a Taurus revolver loaded with three live rounds of ammunition. The weapons were placed on the top shelf inside the wardrobe. This witness demanded a permit for possession thereof and none was produced.

[53] In the kitchen the police discovered a red rope and two face masks in a cardboard box. These items were confiscated by the police. The cellphones that the police found in the kitchen were apple phones and they were of the same colour. The police asked each of the occupants of the flat to identify their phone but they refused to do so. The police then confiscated the cellphones for further investigations.

[54] The police then proceeded to search a BMW motor vehicle parked just adjacent to their window. In the cubbyhole thereof they found a black Glock pistol with serial No. PGX 217 loaded with eleven (11) rounds of ammunition. There was also one loose 9mm round of ammunition in the cubbyhole. The police demanded a licence for the firearm. The accused said the firearm was his and its licence was in Manzini. On the back seat there was a black baraclava and in the boot there was a taser. The motor vehicle was a silver grey BMW with registration NO. TSD 618 BM.

This witness told them that they were also being arrested for possession of the firearms and ammunition

without a licence. The Pistol and the BMW were registered in the name of the accused person. All the items together with the motor vehicle were seized and kept at the police station as exhibits. The accused and his girlfriend were taken to Lobamba police station where they were detained pending further investigations.

[55] The following morning, 29th April, there was a message on the face of one of the phones and it read;

“ sorry I did not know how to use the cellphone. I can organize the money. May I speak to my husband.”

Further investigators revealed that the message was from Mrs Oliveira responding to a demand for a ransom for the release of her husband. The message was shown to the accused and her girlfriend and none of them claimed ownership of that cellphone. During interrogation the two were non-cooperative and did not want to say anything regarding the kidnapping of Mr. Oliveira.

[56] On the 1st May 2017 the police proceeded to Matsebula Flats in Manzini. They went to flat No.9 where they found the accused's wife. They introduced themselves and told her that they wanted to search the flat. They asked Sibusiso Simelane and Evert Ngwenya to be present during the search. In the main bedroom they found a 7.65mm pistol magazine. They also found a motor vehicle number plate with registration MSD 801 BH. These are the items referred to in count 9 and 10. They also discovered a lot of live rounds of short gun ammunition as depicted in photo 46 in exhibit "H".

[57] The police also discovered 56 live rounds of ammunition for a 7.65mm pistol. This is the ammunition referred to in count 8. There were also live rounds of ammunition for a 9mm pistol which the police had no problem with since this firearm was licensed. They also discovered a black pump action TZARM firearm with serial No. PA 9398 (depicted in photo No. 43 in Exhibit "H"). This firearm is also registered in the name of the accused. There were also two 9mm cartridges shown in picture 45 in exhibit "H" a Licence for possession of the

magazine and the 56 rounds of ammunition was demanded but none was produced. Accused and his wife were arrested for the possession of such. All the items were seized and marked exhibits.

Regarding the number plate, the police discovered that it belonged to Kenneth Chirwa (PW5) who had reported it missing in November 2016.

[58] This witness also told the court that in the flat of accused and his wife there was another Chinese national staying in another room. This room was locked. The number plate was found in the main bedroom of the accused and his wife. The other Chinese National was called from his work place and he opened his room. They were arrested and the accused was transferred from Lobamaba to Matsapha correctional facility for security reasons.

[59] On the 2nd May 2017 in the morning the accused was found to have bitten all his finger tips. When this officer asked him why he had done this he did not answer. The pistol that was found in the BMW was packed and

sent for further examination. The cellphones were also sent for further examination and unlocking.

[60] This witness also told the court that earlier in their investigations they got information that during December 2016 there was an attempt to attack Mr. Oliveria. This is the story told to the court by PW7. He confirmed that they got such information from the same witness. He also referred to CCTV footage from the Matsapha branch of standard and First National Bank. These footages show events of the 16th April 2017. The FNB footage depicted a BMW similar to that of the accused being followed by a Mercedes Benz similar to that of Mr Oliveira at 11:28. The Standard Bank footage depicted the same scenario but the time on this one was 11:41. The Standard Bank footage also shows the BMW pulling off and allowing the Mercedes Benz to pass still at 11:41. At 11:42:09 the Mercedes Benz passes and the BMW follows. This was at the back gate of Standard Bank. The motor vehicles were driving towards the direction of the factory shells where the incident happened.

[61] The witness also told the court that the church in which Mr . Oliveira worshipped is about 200 metres from the Matsebula flats where accused stayed. He further told the court that the accused together with two other Chinese nationals crossed to the Republic of South Africa illegally through Sandlane Border without using passports. The witness further told the court that Mr. Oliveira's cellphone was found on the 9th February, 2018 at the Dwaleni junction near the army Headquarters. This is about four kilometres from the Matsapha Industrial sites.

[62] The witness further stated that the accused never mentioned that he lent his car to other Chinese men and that had he mentioned such, police would have investigated such. He further stated that if they found that these other men were responsible for the kidnapping of Mr . Oliveria they would have released the accused if no evidence linked him to the offence. The witness further revealed that during his bail application the accused never mentioned other people using his BMW. The witness further pointed out that in exhibit "E" there are photographs and messages

downloaded from the accused's cellphone. The messages were also found in Mrs Oliveria's cellphone. After the messages are newspaper clippings relating to Mr Oliveria's disappearance and these have pictures of Mr. Oliveria.

[63] The witness was further asked why the accused bit the tips of his fingers. He said he thought the accused did not want to open his phone since it is finger print activated. Asked if accused gave an explanation for possession of the number plate the witness answered in the affirmative. He however pointed out that the explanation given was inconstant with what the owner of the number plate had said:

[64] During cross –examination it was put to this witness that the names of the kidnappers of Mr. Oliveria were given. His response was that he saw that in the newspapers. He was also asked if he knew that phones can be opened using a face ID or a code. He answered in the negative. It was further put to him that the message on accused's phone was a screen shot and not message sent. He maintained that it was a message sent. It was

also put to him that a gold card of Mr. Oliveira was found. He said no person was found with the gold card. Asked if the accused denied knowledge of Mr Oliveria's kidnapping, he answered in the affirmative.

[65] The witness was further asked if he assumed the BMW in the cctv footage was the same throughout, he answered in the affirmative. He was further asked how come the FNB footage recorded the time the vehicles passed to be 11:28 am whilst the Standard Bank footage recorded the time as 11:41 am. His answer was that the time in the two footages of the two banks could be different. He was further asked what explanation the accused gave regarding the number plate. He said the accused said it was removed by his friend from Mr Chirwa's car which was blocking their way. It was then put to him that accused never removed the number plate therefore. He said Mr. Chirwa said his car was in a staff parking where members of the public had no access. He could not block the way. The said friend was also never found. In re-examination he was asked if the names he was referred to in cross –examination were ever mentioned

during investigation and he answered in the negative. The crown closed its case.

DEFENCE CASE

[66] The accused took the stand and gave evidence in his defence. He told the court that he was born in Mainland China on the 17th April 1973. He came to the Southern region of Africa on the 19th February 2004. He obtained a firearm licence in Lesotho after he stayed there for a year. The licence was for a short gun licence and the other was for a 7.65mm pistol which he also obtained in the same year.

[67] In Lesotho he was operating a supermarket, a hardware shop and a clothing shop. He applied for a firearm to protect himself. He came to Eswatini in October 2006. He came with the firearms and ammunition after he had obtained a licence for them in South Africa. He bought a supermarket in Eswatini on the 1st January 2007. The owner of the business premises was a company whose name he does not recall. In

2009 he rented a warehouse from Mr.Oliveira in Matsapha. About two or three years later he moved to a warehouse next to the police station. One Thursday he had an argument with his wife and he returned the key to Mr. Oliveira since he had a new warehouse already and good had been delivered.

[68] Between 2011 and 2012 he applied for a licence for the 9mm pistol and for the shortgun. He did not obtain a licence for the shortgun in Eswatini. He also did not have a licence for the 7.65mm ammunition.

[69] He denied ever kidnapping Mr. Oliveira either alone or with any other person. He heard about the kidnapping when he returned from Bloemfontein in South Africa. He got the information through a group chat facility. He first met Zhang Jian Chen Xiao Jian Qin and Chen Guo Oin in 2016 and he got to know Chen Guo at the Happy Valley Hotel Chen Guo told him that he wanted to operate a business in Eswatini and he was from South Africa. He said he wanted to run a motor vehicle tyre business. After his return to South Africa they would communicate through sms and sometimes they would

call each other. Sometimes he would visit Eswatini. Sometimes Chen Guo would bring his friends along .

[70] The accused had a wife and a girlfriend who were accused in this matter. He was staying at Matsebula Flats in Manzini. His girl friend was staying at Ezulwini opposite Corner Plaza. He would visit his girl friend now and then.

In 2017 the accused already knew the three Chinese men namely, Zhang Xiao Jian, Chen Jian Qin and Chen Guo Qin. In April 2017 he was the owner of a BMW motor vehicle. The three Chinese men would sometimes stay in his girlfriend's apartment and sometimes at the Happy Valley Hotel. They would often use his BMW as their means of transport. He kept his 9mm pistol in the cubbyhole of this car and never removed it from there. That is why the police found it in there.

[71] On the 15th April 2017 the accused booked two rooms at the Happy Valley Hotel and he spent E1200-00 on alcoholic beverages. He was having a gathering with the same Chinese friends. They stayed at the hotel until

12:00 midnight or 1:00 am. He was planning to sleep at the hotel but his wife called him to come home. One of these friends of his drove him home since accused was already drunk. He however used the accused's BMW to take him to Manzini and after dropping the accused he left with it.

[72] In the morning he woke up and prepared something to eat. He also sent a message to his friends enquiring about their whereabouts and what they were doing. Their response was that they were just hanging around somewhere. After that he used another car and went to the Gables to buy some food for himself. On the very same day, 16th April 2017 two of his Chinese friends returned his car. They brought it to his wife's apartment in Manzini.

[73] On the 16th April 2017, after doing his shopping at the Gables, the accused got a message from Chan Guo and Zhang. They told him that they do not have their passports since they were left in the car that was with the other guy. However they wanted to return to South Africa and they needed his assistance. They were still

driving the accused's BMW at this time. The accused then paid Kevin to assist them cross the border illegally. He paid Kevin around E10,000.00.

[74] The accused's South Africa VISA had expired on the 30th March and he did not have plans to go to South Africa. He however ended up deciding to go to visit Bloemfontein because he wanted to visit a certain person and try to explore business opportunities there. He indeed went to Bloemfontein with the two Chinese men. In Bloemfontein he visited Simba Factory as well as a toilet tissue factory. He also visited a garment factory.

On their arrival in Bloemfontein the three spent the first two nights in a hotel without Kevin. He only joined them on the 3rd day and thereafter they spent two or three more days visiting factories and businesses. Thereafter the accused, Kevin and two friends of Kevin returned to Eswatini. They left the two Chinese man in Bloemfontein.

[75] After his return from South Africa and some two or three days thereafter the accused found chats on his

cellphone about Mr .Oliveira's disappearance. In the chats many people were talking, some in English and some in Chinese and he kept the messages. Some of the people were saying they were involved in the kidnapping of Mr.Oliveira. He particularly noted that his Chinese friends were talking about the kidnapping of Mr .Oliveira. He asked if the three of them were involved in the kidnapping. They said they had already sent Mr Oliveira to Mozambique. They asked the accused if he could assist collect the ransom from Mrs Oliveira and he refused . He told the court the that he had nothing to do with the kidnapping or killing of Mr. Oliveira.

[76] The accused further told the court that he never sent the extortion messages referred to in count 3 to Mrs Oliveira. Regarding the Taurus revolver referred to in count 6, the accused said he was not the owner of the weapon and did not know the owner of the ammunition referred to in count 7. He also said he was not guilty of the offences referred to on count 10 and 11 i.e theft of a number plate and house breaking with intent to commit an offence not known. On count 12,

illegal crossing he maintained that the section of the passport Act referred to in the charge was not applicable to him and that legal argument would be advanced in this regard.

[77] During cross-examination a number of issues relating to the charges faced by the accused were raised and discussed at length. First it was the issue of the Taurus Revolver and ammunition which were found in the flat of the accused's girl friend at Ezulwini. The accused flatly denied knowledge of the weapon maintaining that he only saw it for the first time when it was retrieved by the police. It was however put to him that what he was saying could not be true because in an affidavit which was handed into court by consent paragraph 13 thereof, states that he resided in the apartment and he was aware of the presence of the Taurus revolver. In response to this he denied knowledge of the affidavit saying he did not make it. He was shown the statement and asked if it was not his signature that appeared on it. He answered in the affirmative.

[78] Regarding the accused's knowledge of the Chinese men, he said he first met one of them, Chen Guo Qin, in December 2016. The other two he met in either January or February 2017, he was not sure. He was further asked if the three had visited him in Eswatini prior to the 16th April 2017 and stayed at his girlfriend's flat. He said he had offered the apartment to Chen Guo Qin (the first Chen) but does not know if the three ever stayed there prior to the 16th April 2017. He was further asked why he offered the flat to the three men. His answer was that the first Chen wanted to do business in ESwatini and he thought he could assist him since he wanted to partner with him in the business. So he offered him the flat even though he was a stranger. Asked If he offered the flat to the other two for the same reason, his response was that those were friends of the first Chen and he did not make any particular offer to them.

[79] The accused was further asked when he knew that the three were coming to Eswatini. He responded that he did not recall, it could either be the end of March or sometime in April 2017. Asked if this was the day he

heard they were coming or the day they were in the country, he said he never knew about their visit until they messaged him saying they were in the country. He was further asked if he got the message that they were in the country in March or April. He did not give a direct answer to this question but simply said the three would normally message him when they were in the country.

[80] The accused was further asked when last he had contact with the Chinese men. He said it was in late April 2017 when he asked if they were involved in the kidnapping. He was then arrested on the 28th April 2017. He learned through a group chat that the three were involved in the kidnapping. This was after his return from South Africa in April 2017. He got this information through some posting in the group chat.

[81] It also came out during cross –examination that on the 15th April 2017, the day before Mr Oliveira disappeared, the accused person made a reservation for these Chinese men at the Happy Valley Hotel. Asked if the meeting of the 15th April 2017 was a planned one, he answered in the affirmative. The accused was further

asked what was the purpose of the meeting. His response was that the meeting was just for drinks and food, it was a normal gathering. Asked where the three men stayed before the 15th April, he said he met them a couple of days before the 15th April. He further said they were staying at his girlfriend's apartment. since he had given the key to it. On the 15th April he booked them in the hotel so that they could relax and enjoy themselves.

[82] It was also revealed in cross-examination that the three men came to the Happy Valley Hotel in their own motor vehicle. It was further revealed that one of the men did not take alcoholic beverages and this was Zhang. He used accused's BMW to drive him home and that this is the very same vehicle which was found by the police next his girlfriends's place the day he was arrested. Accused was further asked if he knew where Zhang went with his car and he answered in the negative. When he woke up on the 16th April his car was not there. He never had his car on the 16th April 2017.

[83] The accused was also asked if he asked the three men why his car had not been returned. He answered in the negative. He further said about noon on the same day he received word that one of them had left with their car to Mozambique and the remaining two were driving his car. He was further asked if he had called them to find out about his car before this message he said he had not done that. He said his reason for not enquiring was that they had posted a message in the group chat from which he assumed that the car was with them. He was also asked how he could easily entrust such valuable property to people he barely knew. His response was that they had met many times and he considered them to be some kind of friends.

[84] The accused was further questioned if his reason for calling Kevin was that the two Chinese men wanted to cross the border to South Africa without passports. He confirmed that this was his only reason for calling Kevin. When it was put to him that Kevin had told the court that accused called him asking to make arrangements for the accused to cross the border illegally since his VISA had expired, the accused said that was the initial

conversation. The one in which he requested assistance for the Chinese men was a second one.

[85] It was also put to the accused person that he called Kevin asking for Mrs Oliveira's number and was asked why he wanted this number. His response was that the number was needed by Chen Guo Qin. However he only told Kevin that someone wanted to rent a warehouse and would like to have contacts of the landlord or owner. Chen Guo Qin had told him that he could not find Mr Oliveira and that is why he wanted Mrs Oliveira's number. The accused was further asked why Chen Guo Chin would be looking for Mr Oliveira to discuss business matters on a Sunday and when these Chinese men wanted to leave the country. His response was that he did not know. He further added that Kevin never gave him Mrs Oliveira's number and he never gave it to Chen Guo. When it was put to the accused that Kevin gave him a number, he said he did not recall if Kevin gave him Mr Oliveira's number.

[86] It was further put to the accused that it could not be sheer coincidence that Mr. Oliveira disappeared after

11:00 am on the 16th April 2017 and at about 3:00 pm accused calls Kevin looking for Mrs Oliveira's number and at 16:57 pm on the same day Mrs Oliveira receives the first message about her husband having been kidnapped. Accused did not respond to this. He was further asked if he knew if the Oliveira's had means to pay the ransom and he answered in the affirmative. Asked about the Samsung cellphone which was used to send ransom messages to Mrs Oliveira, the accused told the court that he never allowed the Chinese men to use it and that he also did not use it. He said he just put the phone aside. Asked if these men never used the phone he said he does not know since it was in his girlfriend's flat. When he was asked if he allowed these men to use the cellphone he did not answer.

[87] It was put to the accused that he refused to answer the question because he knew that his phone was used to convey the first two ransom messages to Mrs Oliveira. His answer was that he did not know that until the time of the trial. It was put to him that he had already admitted this in Exhibit "D". He then said "*if you say so*".

His statement that two or three days after his return from South Africa he saw a discussion in a group chat concerning the kidnapping of Mr. Oliveira and in which chat two of the Chinese men were confirming their involvement in the kidnapping, the accused was asked the size of the group chat. He responded that the group was between ten and twenty people some of whom he did not know. Asked if it was not risky for someone to admit involvement in such serious offence to such a big group, his response was that he thought it was risky.

[88] The accused also admitted in cross examination that the three Chinese men had his car on the 16th April 2017 and that inside the car there was his loaded Glock pistol. He however maintained that he did not know how they used the car.

He was also asked if he reported to the police what he had seen in the group chat and he said he did not. When asked why he did not report, he said he had been given advice not to say anything in order to protect himself since he did not know where the three

fellows were at that moment. He was also asked why he did not tell the police when they arrested him that it was the three who had kidnapped Mr. Oliveira and not him. His answer was that he was worried about the safety of his wife and girlfriend if he told this to the police.

[89] Regarding the injured tips of his fingers the accused said his fingers were injured whilst being transported in a police van and handcuffed. He was trying to hold onto something when his fingers got damaged. Asked how he got the images found on his cellphone, the accused said he captured them from the group chat and they were not sent to him. It was however pointed out to him that in Exhibit "C" he says they were sent to him. His response was that there must have been a translation problem. He maintained that the ransom messages were a screen shot and the picture indicates that. He however confirmed that the three Chinese men had left the country at this stage as they left the country on the 17th April 2017.

[90] The accused was also asked how he got the pictures of newspaper cuttings relating to the kidnapping of Mr Oliveira. He said those pictures were taken by him as he wanted to keep the news. This was after he had read the news upon his return from South Africa. Asked why he had to photograph the articles since he had the newspaper, he said if the articles were in his phone they were always with him and he could take his time to read them. He was asked why he did not keep the newspaper instead. His response was that it is more easier if he has the pictures. The accused further confirmed in cross-examination that he was aware that the blood stain on is 9mm Glock pistol matched that of Mr. Oliveira and that the kidnappers probably used his pistol and his car.

[91] The accused was asked why he had a taser in his car and he said he did not know it and it was not his. He confirmed that he did ask Kevin to organize an unregistered South African sim card. He also agreed that it was unlawful to have such sim card. He however denied that any message sent to Mrs Oliveira was sent

from that sim card nor that he wanted to use the simcard for such purpose.


[92] Regarding the number plate the accused denied that he stole it. He said one Huang Wassim is the one who told him that he removed the number plate from a car belonging to one of the Casino Managers after he had lost his money on gambling at the Hotel's Casino. It was put to the accused that the number plate was found in his bedroom. He denied this saying it was found in Wassim's bedroom under a mattress. It was however brought to his attention that in exhibit "K" paragraph 18 he admits that he removed the number plate from the car. His response was that his lawyer advised him that if he admits his wife would be released. It was put to him that his lawyer could not have told him to lie. His response was that maybe he misunderstood him.

[93] In re-examination the accused was asked why he needed an unregistered South African sim card. He said he wanted to avoid roaming charges. He also stated that since he was crossing the boarder illegally

he would not be able to get a registered simcard. The defence then closed its case.

ANALYSIS OF THE EVIDENCE

[94] From the evidence of PW1, the scene of crime police officer, there can be no doubt that Mr. Alimor Oliveira was kidnapped from his business premises in Matsapha on the 16th April 2017. From the cctv footage played in court it would appear that the time of the kidnapping was between 11:41 am and 12:00 noon. The scenes of crime officer told the court that he found Mr Oliveira's car abandoned at his business premises. Inside he noted blood spats in different parts of the car and a broken rear view mirror which indicated that there was a struggle inside the car. Next to the drivers door were struggle marks. From the struggle marks there were drag marks leading to the back of the car where buttons were found on the ground. These were subsequently confirmed by Mrs Oliveira to be that of his husband's shirt.



[95] The evidence of PW2, ENGELO MANUEL DA COSTA OLIVEIRA also confirmed the kidnapping as he told the court that they were due to have lunch with Mr Oliveira on the day in question but Mr Oliveira suddenly disappeared without trace. The ransom messages sent to PW3, Mrs Oliveira stated explicitly that Mr. Oliveira had been kidnapped.

Mr Oliveira was clearly kidnapped on the 16th April 2017.

[96] It is also fair in my view to conclude that Mr Oliveira was killed. Again the ransom messages stated explicitly that if the ransom of E5Million was not paid, his wife would never see him again. That cannot mean anything else other than his kidnappers would kill him. The ransom was never paid and Mr Oliveira has indeed never been seen since the 16th April 2017. The evidence of PW4, NCAMSILE CYNTHIA GINA, who was an accountant for Mr Oliveira establishes that since the day of his disappearance, no transactions have been made on his bank account and no cellphone accounts have been received. Mr Oliveira was on regular medication

for diabetes and hypertension. No medical bills have been received since then. From these circumstances it is also reasonable to conclude that Mr Oliveira has died.

[97] The remaining question is whether the accused person was involved in the kidnapping and killing of Mr Oliveira. There are a number of factors connecting the accused with these offences.

SUBMISSIONS BY COUNSEL

[98] Mr B. Roux who appeared for the accused pointed out to the court that in respect of counts one to three, the crown relied on circumstantial evidence. He further reminded the court that in such instance two principles of law apply. Firstly, the proved facts should be such that they exclude every other reasonable inference save the one sought to be drawn from them. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.

Secondly the court does not have to believe the accused, his version must only be reasonably possibly true.

[99] In support of these submissions Mr. Roux referred the court to the South African case of R. V BLOEM 1939 AD at 188 which established the principle that the facts should not admit of any other inference other than that which is sought to be drawn. Counsel also referred the court to the case of S. V SHACKEL (2001/2)SACR 185 (SCA) 2001 (4) A 11 A 279 at para 30, where Brand AJA stated;-

“ It is a trite principle that in criminal proceedings the prosecution must prove its case beyond reasonable doubt and that a mere preponderance of probabilities is not enough. Equally trite is the observation that, in view of this standard of proof in a criminal case a court does not have to be convinced that every detail of an accused's version is true. If the accused's version is reasonably possibly true in substance the court must decide the matter on the acceptance of

that version. Of course it is permissible to test the accused's version against the inherent probabilities. But it cannot be rejected merely because it is improbable, it can only be rejected on the basis of inherent probabilities if it can be said to be so improbable that it cannot reasonably possibly be true".

[100] Mr Roux also referred to the case of S V.JAFFER 1988 (2) SA 84 (c)at 88F – 89E where Tebbut J stated.

" It is not however, the correct approach in a criminal case to weigh up the state's versionagainst the version of the accused and then to accept or reject one or other on the probabilities...The test is and remains, whether there is a reasonable possibility that the appellant's evidence may be true. In applying the test one must also remember that the court does not have to believe her story, still less has it to believe it in all its details. It is

sufficient if it thinks there is a reasonable possibility that it may be substantially true."

[101] Now coming to the two versions, the crown alleges that the accused acting individually or jointly with another or other persons not known to the prosecution and in furtherance of a common purpose, committed the offences specified in counts one to three of the indictment. The accused denies this. His version is that he has nothing to do with these offences save that some days after the commission of these offences, he got information that Mr Oliveria was kidnapped by three people namely, Zhang Xiao Jian, Chen Jian Qin and Chen Guo Qin.

[102] The crown had already alleged that the accused was probably acting together with other people when he committed the offences. His allegation that the three other Chinese men were involved is possibly true particularly in light of the meeting that took place at the Happy Valley Hotel on the 15th April 2017 where all three were present

according to the accused. The question is whether the accused was himself involved.

[103] Mr JG Leppan who appeared for the crown submitted that a summary of all the evidence of the crown witness and that of the accused himself put it beyond any reasonable doubt that the accused was involved in the commission of these offences. Mr Leppan submitted that the following were indicators of the involvement of the accused in the commission of the three offences;

103. 1 The use of accused's motor vehicle in the commission of the offence.

103. 2 The use of the accused's cellphone in conveying the ransom messages to Mrs Oliveira.

103.3 That Mr. Oliveira disappeared at about noon on the 16th April 2017. At about 3:00pm the accused called Kevin (PW10) requesting the cellphone number for Mrs Oliveira. At about 5:00 pm on the same

day Mrs Oliveira received two ransom messages for the release of Mr Oliveira.

103.4 Accused's conduct on the day of his arrest i.e reluctance to identify his phone, his failure to disclose who the culprits were when he already knew them according to his evidence in court.

103.5 His request to Kevin that he should arrange for him to illegally cross the border on the 17th April 2016.

103.6 His request to Kevin that the latter should arrange for him to obtain an unregistered sim card in South Africa and Mrs Oliveira receiving ransom messages from an registered South African sim card.

I am in full agreement with the submissions by Mr Lepphan.

[104] Firstly, it is clear from the evidence in its entirety and the accused himself admits that his car was used in committing the offences. Further his motor

vehicle was not stolen or forcefully taken from him. He voluntarily parted with it and gave it to people he is now identifying as the culprits. This in itself is an indicator that the accused was involved in the commission of the offence. A car was the major tool for the commission of the offence and the accused provided it.

Secondly it is the accused's cellphone that was used to convey the ransom messages to Mrs Oliveira. There is no evidence that the accused's cellphone was not in his possession at the time of conveying the messages. The accused told the court that sometime prior to the 16th April 2017 his three Chinese friends once used his cellphone to play television games on it. This incident obviously has no bearing on the conveyance of the ransom messages which were sent on the 16th April 2017. This leads me to the conclusion that he sent the messages to Mrs Oliveira or at the very least he was involved in the sending of these messages. This means that he was therefore involved in the kidnapping of Mr Oliveira.

[105] The accused also told the court that on the 15th April 2017, the day preceding the kidnapping, he booked his three Chinese friends two rooms, at the Happy Valley Hotel and entertained them with food and drinks, mainly alcoholic beverages. Asked if there was anything special about this event, the accused said there was nothing special. It was just for them to relax and enjoy themselves. This is the very same night he parted with his car and it was left in his friends hands. One cannot but conclude that the occasion was the kidnapping of Mr Oliveira the following day. This is still a demonstration of the accused's involvement in the kidnapping of Mr Oliveira and it suggests that the accused was probably the mastermind of the whole incident. This is particularly so because his friends did not know Mr Oliveira. They would therefore have no reason for wanting to kidnap or kill him.

[106] Fourthly, the accused's pistol was found with blood stains matching the blood of Mr Oliveira and it was in accused's car which is the very car that was

used to kidnap Mr Oliveira. All this shows that the accused was personally involved in the kidnapping and killing of Mr Oliveira and he probably arranged it and provided all the necessary equipment to carry out this mission.

[107] The conduct of the accused when the police came to his girlfriend's flat and found him and his girlfriend there is quite telling. The police found two cellphones on the table in the kitchen. When they asked that each of them identify their phone they were reluctant to do that. The investigating officer then dialed the number of accused's girl friend and one of the cellphones rang. When asked whose phone that was non of them claimed ownership of same. Such reluctance can only be associated with guilt. Indeed it was eventually established through forensic evidence that the messages were sent from accused's cellphone (see exhibit ("E")).

[108] There is also the evidence of the accused biting all the tips of his fingers whilst in police custody. Of

course he denied ever biting the tips of his fingers and maintained that he got hurt whilst trying to hold onto something and in handcuffs inside a police van which was transporting him. This is not probable and in any event it was not put to the crown witness and I have to reject it as an after thought. I accept the investigating officer's explanation that the intention was to disable the accused from opening his phone as it was finger sensitive. He did not want to open the phone since he knew that it had damning information.

[109] The fact that the accused also arranged for two of his Chinese friends to cross the border illegally on the 17th April 2017, just the day following the kidnap and he joining them to South Africa also shows that he was in the same mission with them. He assisted them all the way. This is particularly so in light of his statement that he had no plans to go to South Africa but after arranging for the illegal border crossing he then decided to join the Chinese men. This all goes to show that the accused acted together and in common purpose

with his Chinese friends in the kidnapping and killing of Mr Oliveira.

[110] The accused is also charged with the offence of attempted extortion. The commission of this offence is established by the ransom messages sent to Mrs Oliveira demanding an amount of E5Million at the pain of never seeing her husband again should she fail to pay the ransom. That this is attempted extortion is evident from the words used and the fact that they were communicated to Mrs Oliveira. The accused is clearly implicated by the fact that the messages were sent from his cellphone which was with him at all times. Even if he did not personally send the messages, it cannot be denied that he allowed the use of his phone for this purpose and was therefore acting together and in common purpose with whoever sent messages.

[111] Under count four and five the accused is charged with unlawful possession of a firearm being a shotgun as well as ammunition. The accused has

[113]The accused pleaded guilty to counts eight and nine and the prosecution proved the commission of the offences.

Count ten relates to the theft of a number plate belonging to Kenneth Chirwa at the Happy Valley Hotel on the 6th November 2016. The accused pleaded not guilty to the charge. The prosecution proved that the number plate was found in his main bedroom at Flat No. 9 Matsebula's Flats in Manzini. In any event in paragraph 18 of exhibit "K" (a sworn statement by accused), the accused states:

" as regards the number plate MSD 801 BH found in the house of accused No.3 I admit that I removed the said number plate from a motor vehicle parked at Happy Valley Casino on 6th November 2016 and that I had no lawful right to do so. I placed the said number plate in the home of accused No.3 where it was subsequently found by the police....."

Clearly therefore the accused did steal the number plate.

[114] In count eleven the accused is charged with house-breaking with intent to commit a crime unknown. Seeking to prove this offence the crown led the evidence of PW7, MSAKATO FANUKWENTE SIMELANE. This witness testified that on the 16th December 2016 he saw some Chinese men gain unlawful entry into the premises of Mr Oliveira at night. They were travelling in a motor vehicle and one of them was armed. As one of them tried to jump over the fence he was stopped by dogs and they then left. The witness did not know any of these men. He also confirmed in court that he did not know the accused. There is therefore nothing that links the accused with this offence save that the vehicle used by those people had a number plate whose digits and last two letters are similar to those of accused's car.

[115] In relation to count 12, contravening the passport Act, it is common cause that the accused person

did cross the border without using his passport on the 17th April 2017. It was contended on his behalf however that the relevant section of the Act makes it an offence for a resident to leave Eswatini without being in possession of a valid passport or travel document issued to him . The accused had a valid passport. The offence charged does not apply to a person with a valid passport leaving Eswatini without going through the border post. However Mr Leppan who appeared for the crown countered this argument by referring to legal authority on the interpretation of statutes and submitted that the intention of the Legislature in enacting this law was to prevent people from leaving Eswatini without presenting lawful travel documents for inspection by the relevant officials at a point of exit from the country. No other possible reasonable interpretation exists.

[116] In the premises the following verdict is returned

(i) Count one:

The accused is found guilty of the offence of kidnapping as charged;

(ii) Count two:

The accused is guilty of murder as charged;

(iii) Count three:

The accused is guilty of attempted extortion as charged;

(iv) Count four, five , eight and nine:

The accused has pleaded guilty to these counts. He is accordingly found guilty per his plea.

(v) Count six:

The accused is found guilty as charged.

(vi) Count seven:

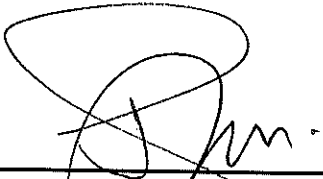
The accused is found guilty as charged.

(vii) Count ten:

The accused is found not guilty on this charge and is accordingly acquitted thereof.

(viii) Count twelve:

The accused is found guilty as charged.



MAGAGULA J

For the Crown : J.G Leppan

For the Defence : B. Roux