

1. Condoning the late noting of an Appeal, alternatively extending the time limit for noting the Appeal
2. Ordering the Respondent to pay the costs of Application should the Application be opposed
3. Further and/or alternative relief.

BE PLEASED TO TAKE NOTICE FURTHER that the Affidavit of Dumisani Hamilton Zondi as well as the Confirmatory Affidavit of the Appellant annexed hereto, will be used in support hereof.

DATED at JOHANNESBURG on this the 9th day of JUNE 1998


D.H. ZONDI

Appellant's Attorneys
6th Floor
Liberty Life Broker Centre
112 Main Street
Corner Main & Eloff
P.O. Box 8236

JOHANNESBURG 2000

TEL : 331-5911/2/3

FAX : 331-7055

REF : DHZ/D81

**TO : THE REGISTRAR OF THE
ABOVE HONOURABLE COURT**

**AND TO : THE ATTORNEY GENERAL
(TRANSCAAL PROVINCIAL DIVISION)**

Received copy hereof on this the

day of JUNE 1998

FOR : RESPONDENT'S ATTORNEYS

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO : CC61/97

In the matter between :-

DE VRIES : ANTHONY LOUIS

Appellant

and

THE STATE

Respondent

AFFIDAVIT IN SUPPORT OF APPLICATION FOR CONDONATION OF
LATE NOTING OF AN APPEAL

I, the undersigned,

DUMISANI HAMILTON ZONDI

do hereby state under oath as follows :-

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1. I am the Appellant's attorney of record in these proceedings.
2. The facts herein contained are within my own personal knowledge and to the best of my belief true and correct.
3. On the 30th April 1998 I received instructions from the Appellant's brother, Selwyn de Vries to note an appeal against both conviction and sentence which was imposed on the Appellant on the 22nd April 1998. In view of the fact that I was not the attorney of record at trial I indicated to him that I would have to obtain a transcript of the Court Record in order to be able to note an appeal.
4. On or about the 30th April 1998 I then requested Vic and Dup, the transcribers to prepare a Court Record as a matter of extreme urgency. I annex hereto marked "A" a copy of the letter I faxed to Vic and Dup on the 30th April 1998.

4D2

5. On the 6th May 1998 I telephoned Mrs Viljoen of Vic and Dup to enquire about the Court Record. The said Mrs Viljoen advised me that she was still working on the matter and that she would fax through their quotation once she had worked on it. On the 6th May 1998 I received a fax from Vic and Dup in which they were outlining their charges. I annex hereto marked annexure "B" a copy of the said letter. I immediately advised the Appellant's brother of Vic and Dup's charges for the Court Record and also requested him to furnish me with payment.

6. Upon receipt of payment from the Appellant's brother I immediately deposited the required amount into Vic and Dup's banking account. I annex hereto marked "C" a copy of the letter addressed to Vic and Dup on the 8th May 1998. I also telephoned Mr Du Plessis of Vic and Dup to confirm receipt of payment and which he confirmed. Vic and Dup had undertaken to have the Court Record delivered to me within 48 hours of receipt of payment. I received part of the record from Vic and Dup on the 14th May

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1998 and Mr Du Plessis informed that part of the record relating to judgment had been forwarded to the trial judge for signature after which it would be made available to me. After some numerous enquiries from Vic and Dup about the remaining part of the Court Record I only received it on the 29th May 1998.

7. On the 29th May 1998 I briefed Advocate H J Brandt to draw me Notice of Appeal. He informed me telephonically that he was out of town and that he would come to collect the brief as soon as he returned to town. On the 6th June 1998 Advocate Brandt came to collect the brief and confirmed that he was available to do the matter on Appellant's behalf.
8. In the premises I accordingly ask the Honourable Court to condone late noting of an appeal as non-compliance with the time period stipulated in the Rules of the above Honourable Court was not due to my fault or that of the Appellant.

4D2

9. I respectfully submit that Appellant has reasonable prospects of success in this matter and therefore humbly pray for an order as set out in the Notice of Motion.



DEPONENT

SIGNED and SWORN to before me at JOHANNESBURG on this the 9th day of JUNE 1998 by the Deponent who has acknowledged that he knows and understands the contents of this affidavit and has no objection to taking the prescribed oath and considers same to be binding on his conscience.



COMMISSIONER OF OATHS

SICEBI JUSTICE ZULU
EX OFFICIO COMMISSIONER OF OATHS
PRACTISING ATTORNEY - TRANSVAAL
112 LIBERTY BROKER CENTRE
CNR. ELOFF & MAIN STREETS
JOHANNESBURG

D.H. ZONDI

ATTORNEYS

Dumisani H. Zondi

B Juris (FH) LLB (Natal) LLM (Georgetown) (USA)

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P.O. Box 8236
Johannesburg 2000

6th Floor
41 Rissik Street
Johannesburg
2001

Our Ref: DHZ/D18

Your Ref:

30 April 1998

Vick and Dup

Very Urgent

PER FAX : (012) 325-5423

Dear Sir

Re : **THE STATE vs ANTHONY DE VRIES**
CASE NO : CC 61/97 - CRIMINAL CASE

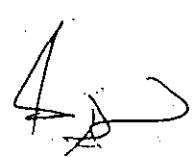
We write to you on behalf of our client who has instructed us to lodge an appeal against both conviction and sentence. The matter appeared before Justice de Klerk on the 20th, 21, 22 and 23rd April 1998 at Court GA, Pretoria High Court.

Kindly prepare for us a transcript of the Court Record as a matter of urgency.

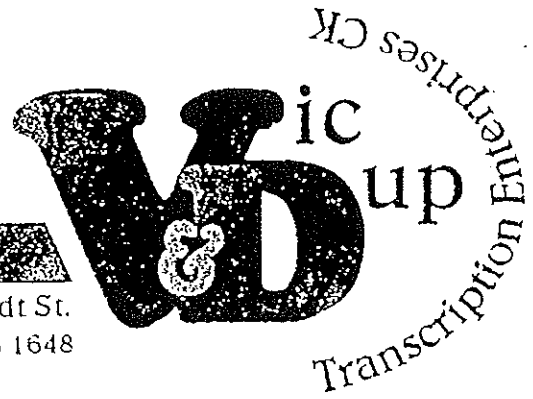
Please kindly advise us when the record is ready for collection.

Yours faithfully


D.H. ZONDI



Head Office: 1st Floor (West Wing), Rentbel Building,
Bureau Ave, P.O.Box 1610, Pretoria 0001
Tel:(012) 325 7718 / 325 7721 Fax:(012) 325 5423



Johannesburg: High Court Building, 9th Floor, Cnr. Prichardt St.
& Small St. Johannesburg Tel:(011) 336 1646/7 Fax:(011) 336 1648

Our ref. / ons verw. Nichiel du Plessis
Your ref. / u verw. DH2/D18

Date/ Datum 06/05/98

Meneer/ Dame D.H. Zondi A.Hainys
Sir / Madam,

Your fax no/ U faks no.: (011) 834 4292

Case number/Saak nommer cc 61/97 - State vs. Anthony de Vries

Scenario 1.

Your letter of 30/04/98 refers. The estimated cost for the typing of the U brief van 30/04/98 verwys. Die beraamde koste verbonde aan die tik record / judgment / argument / witness / bail on the normal basis will be between van die / rekord / uitspraak / betoog / getuienis / borg op die gewone sal tussen R. 3000,00 and R. 3400,00. Should you accept the estimated cost, then we R. 3000,00 en R. 3400,00 wees. Indien u die beraamde koste aanvaar sal daar will require a deposit of R. 2500,00 (delivery 4 - 5 weeks) 'n deposito van R. 2500,00 verlang word. (aflewering 4 - 5 weke)

Scenario 2.

The estimated cost to type the record / judgment / argument / witness / bail on an Die beraamde koste vir die tik van 'n / rekord / uitspraak / betoog / getuienis ~~borg~~ urgent basis will be between R. 5600,00 and R. 5700,00. Should you accept this op 'n dringende basis te tik, is tussen R. 5600,00 en R. 5700,00. Indien u die beraamde estimated cost, then we will require a deposit of R. 4500,00 (delivery 48 hours) koste aanvaar, word 'n deposito van R. 4500 verlang. (Afwering 48 uur)

Scenario 3.

The estimated cost to type the /record / judgment / argument / witness / bail / on an Die beraamde koste vir die tik van 'n rekord / uitspraak / betoog / getuienis / borg op 'n overnight basis will be between R. and R. Should you accept this oornag basis sal tussen R. en R. beloop. Indien u hierdie prys aanvaar price, then we will require a deposit of R. (Delivery next morning at 10:00) verlang ons 'n deposito van R. (Lewer volgende oggend 10:00)

To mean, tape for overnight

Allow at least 14 days, should you require a signed Judgment. !
Laat asseblief 'n 14 dae grasie-tydperk toe, indien u 'n getekende uitspraak verlang. !

Bank - Volkskas, Rek: 690 145 200

[Signature]
Vic & Dup Transcriptions Enterprises CK.

[Signature]

1
C 11

D.H. ZONDI

ATTORNEYS

Dumisani H. Zondi
B Juris (FH) LLB (Natal) LLM (Georgetown) (USA)

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834-4293
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P.O. Box 8236
Johannesburg 2000

6th Floor
41 Rissik Street
Johannesburg
2001

Our Ref: DHZ/D81

Your Ref: *Michael de Vries*

8 May 1998

Vic and Dup Transcription
Enterprises CK
P.O. Box 1610
PRETORIA
0001

PER FAX : (012) 325-5423

Dear Sir

Re : THE STATE vs ANTHONY DE VRIES - CASE NO : CC 61/97

Your letter dated 6 May 1998 refers.

We enclose herewith a deposit slip confirming that an amount of R4 500-00 has been deposited into your Volkskas Bank account number 690 145 200 as we need the record on an urgent basis.

We await to hear from you.

Yours faithfully


D.H. ZONDI

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IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO :

In the matter between :-

DE VRIES : ANTHONY L

Appellant

and

THE STATE

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

ANTHONY DE VRIES

do hereby make oath and say :-

1. I am an adult male residing at 83 Sylvine Street, Ennerdale.

M.L.
A.L. de V.


2. The facts herein contained are within my own personal knowledge and to the best of my belief true and correct.

3. I have read the Founding Affidavit and confirm its contents in so far as they relate to myself.


DEPONENT

CULLINAN

SIGNED and SWORN to before me at JOHANNESBURG on this the _____ day of JUNE 1998 by the Deponent who has acknowledged that he knows and understands the contents of this affidavit and has no objection to taking the prescribed oaths and considers same to be binding on his conscience.



COMMISSIONER OF OATHS

SETATI M LEONARD

ZONDERWATER MEDIUM

PRISON

P/BAG 11003

CULLINAN 1000

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO :

In the matter between :-

DE VRIES : ANTHONY L

Appellant

and

THE STATE

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SELWYN WINSTON DE VRIES

do hereby make oath and say :-

1. I am an adult male residing at 83 Sylvine Street, Ennerdale.

S. W. De Vries
[Signature]

2. The facts herein contained are within my own personal knowledge and to the best of my belief true and correct.

3. I have read the Founding Affidavit and confirm its contents in so far as they relate to myself.



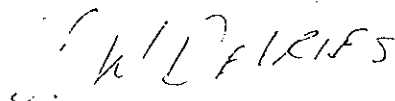
DEPONENT

SIGNED and SWORN to before me at JOHANNESBURG on this the 3rd day of JUNE 1998 by the Deponent who has acknowledged that he knows and understands the contents of this affidavit and has no objection to taking the prescribed oaths and considers same to be binding on his conscience.



COMMISSIONER OF OATHS

PATRICK HASANI MALUNGANA
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
1ST FLOOR, 3 WEST STREET
KEMPTON PARK



an effective term of three life sentences and two terms of 15 years imprisonment.

See: Record page 229

3. He now appeals against both the convictions and sentences leave having been granted to him to appeal to a full bench of the Honourable Court.

See: Record page 231

AD THE MERITS

4. The acceptance by the Trial Court of the evidence of identification by the witnesses Derek Wayne Gibson and Francois Wilhelm Riekert that the Appellant was the driver of the blue BMW motor vehicle is pivotal to the finding of the Court.
5. It is submitted that the evidence of identification given by the two witnesses Derek Wayne Gibson and Francois Wilhelm Riekert is not honest and reliable and is not sufficient to convict Appellant.
6. The evidence of the two witnesses does not stand up to test when tested according to the factors laid down in case law.

See: S V Mthetwa 1972 (3) 768
S V Zitha 1993 SACR 718
S V Maradu 1994 (2) SACR 410
S V Ngcobo 1986 (1) SA 905

FRANCOIS WILHELM RIEKERT

7. His evidence as to how much time he had to observe the Appellant when he saw him in the BMW is very vague and uncertain.

See: Record page 41 lines 10 – 13
Record page 50 lines 3 – 15
Record page 50 lines 28 – 29

8. It is submitted that Riekert did not see the driver of the BMW for a long enough time to be able to identify him at a later stage. He admits in his evidence that he only had a fleeting look at the driver of the BMW.

See: Record page 62 lines 24 – 26

9. Apart from a leather jacket allegedly worn by the driver of the BMW and long curly hair Riekert cannot give any other identifying features of the driver of the BMW.

See: Record page 51 lines 3 – 6
Record page 51 lines 14 – 17
Record page 55 lines 16 – 26



10. Riekert admits in evidence that the Appellant was not known to him prior to 28 March 1994.

Record page 54 line 29 – 30
Page 55 line 1

11. It is submitted that in these circumstances he could very easily mistake the Appellant for the person he saw driving the BMW and in fact did.

12. Riekert's examination of the person, the Appellant, when he was brought back to the scene of the collision was also very fleeting and hurried as Riekert was concentrating on other matters at this time.

See: Record page 62 line 24 – 26

13. The only positive identifying feature Riekert mentions in his evidence is that the person driving the BMW had long curly hair and that the Appellant also had long curly hair when Captain Smit brought him to the scene of the collision.
14. It is submitted that long curly hair is not an uncommon feature in coloured males. This evidence should therefore not have been accepted as sufficiently reliable to identify the Appellant as the driver of the BMW.
15. It is submitted that Riekert believed that he had shot the driver of the BMW and therefore on seeing the injury on the Appellant's face when Smit brought him hastily concluded that this injury had been caused by his shot. He therefore incorrectly believed that Appellant was the person who had run away from the BMW.
16.  Riekert does not mention the dent or bump Appellant has on his forehead although this is the Appellant's most outstanding facial feature. 
17. His evidence in totality amounts to nothing but a bald assertion that he recognised and identified the Appellant as the driver of the BMW.

DEREK WAYNE GIBSON

18. Gibson's evidence as to the amount of time he had to observe the people in the BMW is vague and I submit indicative of the fact that he did not see the driver of the BMW long enough to be able to identify him later.

See: Record page 72 lines 16 – 17

19. In his evidence in chief he also says that he only saw the right side of the driver's face.

See: Record page 72 line 20

20. The circumstances under which he saw the driver's face are also to be doubted as Riekert in this regard contradicts his evidence.

See: Record page 39 lines 17 – 22

Record page 70 lines 3 – 6

Record page 71 lines 27 – 30

21. Gibson also did not know the accused before the day of the incident and I submit would not be able to identify the driver of the BMW easily after a short observation period.

See: Record page 73 lines 1- 5

22. Gibson also states in his evidence that the after showing the BMW to pull over they drove past the BMW on the right to prevent it from turning left.

See: Record page 77 lines 1 – 11

23. This does not make sense and is indicative of the fact that Gibson did not observe the people in the BMW as he stated in his evidence.

24. His evidence that they stopped to indicate to the driver of the BMW that he should pull over is also contradicted by Riekert who says that, they pulled the BMW over by switching on their blue lights and sirens only when the traffic lights had changed to green and they had commenced crossing the intersection.

See: Record page 48 lines 20 – 27

25. I submit that his evidence with regard to time and opportunity for observation of the BMW is unreliable and should be rejected.

26. Gibson is unable to describe the clothing the driver of the BMW was wearing although he was sitting closer to the driver of the BMW than Riekert was.

See: Record page 71 lines 15 – 27

27. Gibson admits under cross-examination that he did not look specifically at the occupants to be able to identify them at a later stage.

See: Record page 77 lines 26 – 28
Page 78 line 5

28. In his evidence in chief when describing the bump on the Appellant's head Gibson says that he is uncertain about this bump.

See: Record page 71 line 15 – 17

29. When again asked by the Court by what features he had recognised the Appellant as the driver of the BMW Gibson does not mention the lump on the Appellant's head.

See: Record page 87 lines 1 – 10

30. I submit that the Trial judge had erred in not finding that this omission and uncertainty on the part of Gibson is indicative of the fact that his evidence of identification is unreliable.

31. Gibson did not give evidence that he at any stage identified the Appellant as the driver of the BMW to Constable Marries or to Captain Smith.

32. His evidence under cross-examination is that he was busy with other tasks and therefore did not pay much attention to the Appellant when he was brought to the scene of the collision.

See: Record page 82 lines 4 – 18

33. The other witnesses contradict the evidence of both Riekert and Gibson.

34. The witness Harold Koen says in his evidence that the person who ran into the veld from the BMW was a black person.

See: Record page 34 line 10

Page 34 line 17 – 20

35. The witness sergeant J.A. Smit says in his evidence that Riekert and Gibson did not give a description of the person who had fled.

See: Record page 88 lines 17 – 18

36. When later asked what description he had been given of the person who had fled by Gibson, he says that Gibson could not tell him if the person was a black man, a white man, or anything. He further says that Gibson told him that the man was wearing a light coloured top and dark trousers.

See: Record page 90 lines 13 – 18
Page 98 lines 6 - 14

37. In contradiction to this Gibson's evidence was that he could not see what the driver of the BMW was wearing as he was sitting to low in the vehicle for him to be able to see.

See: Record page 71 lines 15 – 27

38. Riekert and Gibson had both given evidence that they did not look at the Appellant specifically or intently when Smit brought him to the scene of the collision. This evidence is however contradicted by Smit who says that they looked at the Appellant specifically and discussed the wound on his face.

See: Record page 111 lines 15 – 20

39. I submit that the learned Trial judge had also erred in not taking sufficient cognisance of the undesirability of the actions of

sergeant Smith in taking me to the scene of the collision to be identified by the witnesses Riekert and Gibson.

See: R v Madubedube 1957 SA

40. I submit that the circumstances under which Riekert and Gibson then identified me were fatally flawed as it was highly suggestive and therefore led to my being identified as the driver of the BMW.
41. In these circumstances I submit that the learned Trial judge had erred in finding that the evidence of Riekert and Gibson was sufficiently reliable to find that I was identified as the driver of the BMW and therefore an accomplice to the crimes perpetrated.

CIRCUMSTANTIAL EVIDENCE

42. It is common cause that I had been convicted on the basis of circumstantial evidence on the charges of robbery and murder.
43. I submit that even if it is found by the Honourable Court that I was the driver of the BMW on the day of the robbery there is insufficient evidence to support the inference drawn by the court

that the BMW was in any manner involved in the robbery at Checkers Arcon Park.

44. I submit that the inference is not supported by the forensic or ballistic evidence in respect of the bullets and shells found at the scene of the robbery and the firearms, which were found in the BMW.
45. There is no evidence that the BMW was seen at the scene of the robbery and murders.
46. There is no evidence that any of the occupants of the BMW were seen participating in the robbery and murders.
47. The court a quo did not sufficiently consider the evidence that Appellant's finger prints were not found in the BMW nor was there any explosive residue found on his hands.
48. The court did not consider the evidence that according to the state witnesses a large amount of blood was found on the drivers side of the BMW after the collision indicating that the driver of the vehicle must have ben bleeding profusely.

49. The witnesses evidence is that the Appellant had only one bleeding injury to his face which was caused by a bullet wound inflicted after the Appellant had fled from the BMW.

50. The conclusion that has to be drawn is that the Appellant was therefore not the driver of the BMW.

51. The inference drawn by the court a quo that the BMW was involved in the robbery and murders is not adequately corroborated.

See R V Ncanana 1948 (4) SA 399 (A)

Rv Galperowitz 1940 AD 485

52. There is no proper evidence connecting the accused with the crimes of robbery and murder.

See R v John TPD 295

53. In respect of the charges of attempted murder the Appellant's active participation in the attempted murder is not proven

See S V Nooradien 1998 (2) SACR 510 (NC)

54. The court a quo had erred in finding that the Appellant's version was improbable.

60. In imposing sentence in respect of the robbery the court must "Think away" the murder when imposing sentence for the robbery.
61. The sentences are shockingly inappropriate having regard to the nature of the evidence against the accused.
68. It is further submitted that the Court a quo placed too much emphasis on the seriousness of the offence and the interests of society and took not take sufficient consideration of the personal circumstances of the Appellant and his interests.
69. In the premises it is submitted that the appeal should be upheld and the convictions and sentences be set aside.

SIGNED AT JOHANNESBURG ON THIS THE
1999.

DAY OF MARCH

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

In the matter between:

APPEAL NO: A1106/98

ANTHONY LOUISE DEVRIES

APPELLANT

And

THE STATE

RESPONDENT

APPELLANT'S APPLICATION

I, the undersigned,

ANTHONY LOUISE DE VRIES

Make oath and say that;

1. I am an adult male person currently imprisoned at the Groenpunt Maximum Security Prison, Deneysville.

Handwritten initials

2. I am the applicant in this matter and the facts deposed to herein are save where otherwise stated or appears from the context within my personal knowledge and are to the best of my believe true and correct.
3. The Respondent in this matter is the Director of Public Prosecutions of 1st Floor, 28 Church Street, Pretoria.
4. On 22 April 1999 I was convicted by the Honourable Mr Justice De Klerk in the High Court, Transvaal Provincial Division on two counts of murder, one count of robbery with aggravating circumstances and two counts of attempted murder. In this regard I refer the Honourable Court to **page 225** of the trial record where the Court's judgement is set out.
5. The total sentence imposed on me in respect of the convictions was three periods of life imprisonment plus two sentences of 15 years imprisonment. The sentences do not run concurrently. In this regard I refer the Honourable Court to **page 229** of the trial record where the sentence is set out.
6. At the conclusion of the trial, I, through my counsel sought and was granted leave to appeal against the convictions and sentences imposed on me. In this regard I refer the Honourable court to **page 230** of the trial record.

