

Supreme Court's JUDGMENT

delivered in Stockholm on 14 February 2023

Case no.

B 5952-21

PARTIES

I

Appellant

1. Prosecutor General

Box 5553

114 85 Stockholm

2 DM

3. SM

4. WM

2-4 represented by the Prosecutor General

Respondent

AC

Counsel and Public Defender: Attorney MP

II

Appellant

AC

Counsel and Public Defender: Attorney MP

Respondent

Prosecutor General

address as above

THE MATTER

Murder, etc.

RULING APPEALED

Judgment of the Svea Court of Appeal of 07/09/2021 in case B 8398-21

JUDGMENT

The Supreme Court modifies the judgment of the Court of Appeal in that the Supreme Court

- convicts AC of murder,
- imposes a sanction of life imprisonment,
- orders AC to pay damages to
 - DM in the amount of SEK 104,940, plus interest, pursuant to Section 6 of the Interest Act, on the sum of SEK 60,000 (from 2 October 2020) and on the sum of SEK 44,940 (from 3 June 2021),

- SM in the amount of SEK 92,635, plus interest, pursuant to Section 6 of the Interest Act, on the sum of SEK 60,000 (from 2 October 2020) and on the sum of SEK 32,635 (from 3 June 2021), and
- WM in the amount of SEK 60,000, plus interest, pursuant to Section 6 of the Interest Act (from 2 October 2020), and
- annuls the Court of Appeal's decision to award AC compensation in the amount of SEK 10,000 for his own evidence in the District Court.

In its other respects, the Court of Appeal's judgment stands.

The Supreme Court affirms the secrecy order of the Court of Appeal.

The secrecy provision of Chapter 21, Section 1 of the Public Access to Information and Secrecy Act (2009:400) shall continue to apply to the photographs in the District Court's File Annex 88 presented during the main hearing of the Supreme Court behind closed doors.

MP shall receive compensation from public funds for the defence of AC in the Supreme Court in the amount of SEK 59,924, of which SEK 44,342 relates to work, SEK 3,186 to loss of time, SEK 411 to outlays and SEK 11,985 to value added tax. The State shall bear the cost.

CLAIMS IN THE SUPREME COURT

The Prosecutor General has claimed that the Supreme Court shall sentence AC to life imprisonment for murder.

DM, SM and WM have requested that AC be ordered to pay each of them compensation in the amount of SEK 60,000 for personal injury, plus interest, pursuant to Section 6 of the Interest Act from 2 October 2020. In addition,

- DM has claimed compensation for loss of income in the amount of SEK 44,940, plus interest, pursuant to Section 6 of the Interest Act, from 3 June 2021, and
- SM has claimed compensation for medical expenses, funeral expenses (including travel expenses), and loss of income in the amount of SEK 32,635, plus interest, pursuant to Section 6 of the Interest Act, from 3 June 2021.

AC has opposed modification of the judgment of the Court of Appeal but, as regards the damages part, has acknowledged as reasonable in themselves the amounts for personal injury and SM's medical expenses as well as the method of calculating interest.

AC has claimed that he must be acquitted of the weapons offence of 27 March 2020 and that the offence against the Offensive Weapons Act of 30 January 2019 must be classified as a minor offence and thus not give rise to liability. He also claimed that, in any event, the sentence must be mitigated.

The Prosecutor General has opposed modification of the judgment of the Court of Appeal as requested by AC.

REASONS FOR THE JUDGMENT

Background

Prosecution for murder

1. On 2 October 2020, WM was shot dead with multiple shots at the bus stop at the junction of Östra Galaxvägen and Rymdgatan in Märsta.
2. AC was charged with murder. According to the prosecutor, AC deprived WM of his life by shooting him with several shots to the body.
3. AC denied the offence.

4. The District Court found that it was beyond reasonable doubt that AC was the perpetrator and sentenced him to life imprisonment for murder. The Court of Appeal came to the opposite conclusion and acquitted AC.

Prosecution for weapons offences and violations of the Offensive Weapons Act

5. On 30 January 2019, 14 cartridges were found on Buregatan in Märsta. AC admitted that they were his cartridges. During a search of an apartment on Tingvallavägen in Märsta on 27 March 2020, a pistol was found, among other things, in a room used by AC.

6. The prosecutor charged AC with offences against the Offensive Weapons Act (the cartridges) and aggravated weapons offences (the pistol).

7. AC considered that the possession of the cartridges should be considered a minor offence and therefore not give rise to liability. He plead not guilty for the weapons offence on the grounds that the pistol did not belong to him.

8. The District Court convicted AC of the charges but classified the weapons offence as a normal-degree crime. The Court of Appeal upheld the District Court's judgment in these respects.

Proceedings in the Supreme Court

9. The case has been decided after a main hearing. AC did not appear in person at the hearing. The Supreme Court decided that the case could be heard even though AC was not present in person (see appendix).

What is at issue in the Supreme Court

10. The case before the Supreme Court concerns in particular whether it is established beyond reasonable doubt that AC has committed murder as alleged

by the prosecution in the statement of the criminal act as charged. The case raises general questions about the consideration of evidence in criminal cases.

General principles for the consideration of evidence in criminal proceedings

Burden of proof and evidentiary requirements

11. In a criminal case, the court adopts a position with regard to the prosecutor's statement of the criminal act as charged. This basically consists of a series of factual statements (dispositive facts), often a sequence of events, which must correspond to the description of the offence contained in the penal provision(s) that the prosecutor considers applicable. It is, in principle without exception, the prosecutor who has the burden of proving that the alleged dispositive facts exist, and that events thus proceeded in the way the prosecutor claims in the statement of the criminal act as charged.

12. For the prosecutor to fulfil his or her burden of proof, he or she must present an investigation that meets the requirement(s) of evidentiary strength applicable in criminal proceedings. Neither the Code of Judicial Procedure nor any other legislation specifies the requirements placed on evidence to convict a defendant in a criminal case. However, the requirement is generally expressed in terms of substantiating the charge.

13. In several cases, the Supreme Court has held this to mean that a conviction requires the court to find that the investigation presented in the case establishes beyond reasonable doubt that the defendant committed the offence alleged by the prosecution. It is required that the investigation be so complete as to leave no reason to assume that further investigation would change the judgment; the court must be able to conclude, on the basis of the investigation presented, that no other possible explanations for the course of events exist. If uncertainty remains in any respect after the investigation has been presented,

e.g., with regard to other possible perpetrators, this may entail that the evidentiary requirement is not met. (Cf. "*Balkongmålet*" NJA 2015 p. 702 paras. 28 and 29, and "*Målsägandens ålder*" NJA 2019 p. 347 para. 16)

14. As to whether any alternative explanations exist, the court should consider them in the context of what the investigation suggests and what otherwise seems worth considering. The starting point is that all reasonable alternative explanations must be ruled out in order to convict. However, an alternative explanation to what the prosecution claims must appear practically possible and there must be reason to consider it in the particular case under consideration. The significance of any alternative explanation may depend in each case on the strength of the other evidence in support of the prosecution.

15. When it is alleged that an act has been carried out by several persons together and in collusion, evidence is required at the individual level such that it can be established with regard to each of the persons involved - with the evidentiary requirements applicable in criminal cases - that they have participated in the commission of the offence in such a way that they are to be regarded as co-perpetrators (see, e.g., "*Akallarånet*" NJA 2006 p. 535).

16. The substantial evidentiary requirement for a person to be convicted of an offence is based on the presumption of innocence, which is part of the provisions on a fair trial in Chapter 2, Section 11, second paragraph of the Instrument of Government and Article 6 of the European Convention on Human Rights. The evidentiary requirement is essential to prevent innocent people from being convicted. The requirement also aims to avoid that convictions that have become legally binding are later overturned due to new facts or evidence.

17. Difficulties encountered by the prosecutor in obtaining evidence do not normally entail a less demanding evidentiary requirement. In case law, however, a reduced and differently worded requirement has been accepted in

certain specific circumstances, in particular the defendant's objections to discharge from liability on the grounds of self-defence or similar circumstances, in which case it is considered sufficient for the prosecution to present enough evidence to make the objection appear unfounded. The main reason for the reduction of the burden of proof is that in these situations the prosecutor must prove that something did not happen. (See, e.g., "*Målsägandens ålder*" para. 18)

Free consideration of evidence

18. According to Chapter 35, Section 1, first paragraph, of the Code of Judicial Procedure, the court shall decide what has been proven in the case after a conscientious examination of all the evidence.

19. This provision entails a freedom with regards to the production and consideration of the evidence. However, this does not mean that evaluation of the evidence referred to is left entirely to the court's discretion. Some principles of assessment have been developed in case law. At the same time, the Supreme Court has clearly emphasised that principles and guidelines for the assessment of evidence must be treated with caution and discretion and that it is not possible to provide a model for the assessment of evidence that can be applied to all different types of cases. Of essence is that the assessment be based on rational grounds and involve an objective, structured analysis of the evidence. (See "*Balkongmålet*" paras. 20 and 21 and NJA 2017 p. 316 I para. 7.)

20. Evidence is usually divided into direct (causal) and indirect (structural) evidence. Indirect evidence is also often referred to as circumstantial evidence. Direct evidence refers to evidence that is directly linked to what is alleged in the statement of the criminal act as charged. A witness who states that he or she saw the defendant shoot the victim is an example of direct evidence. In the case of indirect evidence, there is no corresponding direct link between the

evidence and what is alleged in the statement of the criminal act as charged; this means that what is shown by the evidence may be true without it having happened in the way alleged in the statement of the criminal act as charged. This applies, for example, to DNA traces of the defendant on bullet casings found at the place where the victim was shot.

21. There is no requirement for the prosecution to present direct evidence in order for a prosecution to lead to conviction. Even in situations where the evidence is purely circumstantial, the overall value of the evidence may be so strong as to prove beyond reasonable doubt that the defendant has committed the offence alleged by the prosecution.

Regarding consideration of evidence

22. The court should first evaluate the significance of each piece of evidence (e.g., information provided by a witness). It should take into account all circumstances relevant to this evaluation. The evaluation of a witness's testimony should therefore take into account, *inter alia*, whether or not the witness had a clear view and any explanations or objections made by the defendant regarding the evidence in question.

23. As the state of the evidence varies greatly between different types of cases, it is not possible to specify one method that can be applied in all situations. The method by which the court is to examine the evidence referred to by the parties must always be determined in the light of the circumstances of each case. For example, in some cases, the evidence referred to by the prosecution and the defendant is the same or relates to the same circumstances. This may involve the prosecution and the defendant calling different witnesses on the same issue, such as whether the defendant was present in a certain place. In these cases, it is often appropriate to evaluate the evidence of the prosecution and that of the defendant together.

24. In some cases, however, it is more suitable to evaluate the evidence for and against the charge in a more separate way. In "*Balkongmålet*", the Supreme Court, in line with this approach, began by evaluating the evidence that the prosecutor has referred to in substantiating the statement of the criminal act as charged, then took a position on the defendant's evidence (see paragraphs 22 and 23 of the case). This approach can often be used when two alternative - and often incompatible - concrete courses of events are in conflict. However, even when the court proceeds in this way, the evaluation of various pieces of evidence should take into account all the circumstances that are relevant to that evaluation (see para. 22 above, cf., also the Supreme Court's assessment in, e.g., paras. 44 and 62 of "*Balkongmålet*").

25. The assessment of a single piece of evidence often requires several steps. First, the certainty of the evidence as such is examined, e.g., how likely it is that DNA found at a crime scene comes from the defendant, then the court examines the strength of its support - direct or indirect - for the allegations in the statement of the criminal act as charged.

26. Once the court has assessed the strength of each piece of evidence in this way, it is possible to weigh up all the evidence that has been referred to. This can be done in different ways (see paras. 23 and 24).

27. The overall strength of the evidence depends on the strength of each individual piece of evidence, the number of pieces of evidence and how the pieces of evidence relate, e.g., whether they are independent and interacting or form a chain of several links. The combined evidentiary value of two independent and interacting pieces of evidence is in principle greater than the value of each individual piece of evidence. In a chain of evidence, the relationship is often the opposite: the more links in the chain, the weaker the evidence for the final link in the chain.

28. It is only by weighing all the evidence referred to by the parties that the court can decide whether the prosecution has presented evidence strong enough to prove beyond a reasonable doubt that the defendant committed the offence charged. The court must then also examine the relevance of alternative explanations (see para. 14).

Assessment of the evidence relating to the charge of murder

The investigation into the events

29. The prosecution has referred to evidence in the form of a surveillance film from the bus at the bus stop at the time of the shooting, witness testimonies from three people who were at the scene, a crime-scene investigation and a forensic autopsy report.

30. To summarise, the surveillance film shows the following. WM stands at the bus stop and waits for the bus doors to open. A person in dark trousers and a green jacket with a furry hood pulled over his head comes up from behind and moves towards WM. The person appears to be shooting at WM with a pistol-like object. WM turns around and makes his way to the back of the bus with the attacker following him. The bus then leaves the scene and the attacker and WM disappear from view.

31. The time stamp on the surveillance footage shows that the offence was committed at 11:43–11:44 on 2 October 2020.

32. When the police arrived, WM was lying lifeless on Östra Galaxvägen just behind where the bus had been parked. Eight cartridge cases were found at the scene.

33. The autopsy report shows that WM was hit by five bullets from a firearm and that he died as a result of the injuries.

34. In particular, two of the witnesses, LV and HA, have provided information relevant to the investigation.

35. LV had a clear view and has estimated that she witnessed the incident from about six metres away. HA also had a clear view and, according to his estimate, he saw the incident from about ten metres away. According to the witness testimony, the shooter arrived and left on an electric scooter. LV has stated that the shooter was wearing an olive green jacket with a large hood with a fur collar pulled up over his head.

36. LV saw the person coming on the scooter run towards WM and start shooting at him. WM turned around and tried to escape behind the bus. The shooter followed and continued shooting. LV has estimated the distance between the shooter and WM at about one metre for the first shot, but that subsequent shots were fired at a closer distance, about half a metre.

37. HA has reported that the shooter and WM were close together, right next to each other, and that WM was waving or flailing his arms. HA has estimated the distance between the shooter and WM at roughly one metre or less, but is unsure whether any physical contact occurred between the shooter and WM.

The Prosecutor General's allegations regarding the perpetrator

38. According to the Prosecutor General, the perpetrator was AC. To support this allegation, oral and documentary evidence has been referred to which, according to the prosecution, links AC to the offence, including technical evidence in the form of DNA.

The cartridge cases found at the scene of the crime

39. Eight cartridge cases were found at the scene. DNA has been secured on four of them and analysed by the National Forensic Centre (NFC).

According to the NFC, the results indicate with an extremely high degree of likelihood (Grade +4) that the DNA on three of these cartridges comes from AC. As for the DNA found on the fourth shell casing, the results indicate with an equal strength that it comes from CL, who was WM's girlfriend.

40. The analysis reveals that AC's DNA is present on three of the cartridges. The question is therefore how strongly this indicates that he is the perpetrator.

41. The investigation shows that, at the time of the incident in question, AC was active in criminal circles and that he had access to and knowledge of weapons and ammunition. It is therefore possible that his DNA ended up on the cartridge cases as a result of his contact with them in a completely different context. That this explanation is possible is also illustrated by the fact that another person's DNA was also found on one of the cartridges.

42. It is therefore not possible to determine when or how AC's DNA ended up on three of the cartridge cases, and there may be other explanations than that he is the perpetrator. However, regardless of the possibility of alternative explanations, this evidence must be considered to have a not insignificant evidentiary value.

The jacket found in AC's home

43. On 3 February 2021, the police conducted a search of the premises at AC's home, on Lyckostigen in Märsta. In the hallway, immediately to the left upon entering the front door, a jacket similar to the one worn by the perpetrator in the surveillance footage was found. The jacket has been examined by the NFC.

44. The examination revealed two one-millimetre bloodstains on the lower-front portion of the jacket. Four particles of primer residue were also found, three on the sleeves and one on the pockets. The composition of these particles

has been compared to the composition of the primer-residue particles in one of the empty cartridge casings found at the crime scene, which contained traces of AC's DNA. Two of the particles of primer residue on the sleeves, and the particle on the pockets, were found to have the same composition as the primer residue particles in the empty cartridge. According to the NFC, this composition only occurs in about five per cent of cases. Finally, DNA was found on the jacket. It was partly on the right side of the collar, partly on the neck and partly on the cuff of the right sleeve.

45. According to the NFC

- the results indicate with an extremely high degree of likelihood that the blood comes from WM (Grade +4),
- the results for the primer-residue particles indicate to some extent that the jacket was in close proximity to a firearm when it was fired or was in contact with a firearm or a weapon-related item (Grade +1),
- the results indicate with an extremely high degree of likelihood that the majority of the DNA on the right side of the collar comes from AC (Grade +4) and
- due to complexity, the DNA on the neck and right sleeve cuff cannot be evaluated for comparison with the person.

46. The surveillance footage shows the perpetrator wearing a green jacket with a furry hood pulled up over his head. AC's attorneys have argued that the jacket on the film, unlike the one found in the home, appears to lack a brightly-coloured drawstring, pockets and a label on one sleeve. Further, the defence has argued that the cuffs of the jacket found in the apartment appear to be of a different colour than those of the jacket on the film.

47. The image quality of the surveillance film has some shortcomings. However, there is no doubt that the jacket the perpetrator is seen wearing in

the film is remarkably similar to the one found in AC's home. However, it is not possible, from the film, to assess the details of the jacket as done by the defence.

48. Through the NFC's analysis, it is clear that the blood on the jacket is WM's. The defence has argued that it is not possible that the blood got on the jacket during the shooting. In support of this, reference was made to testimony from witness SB, stating that backward spray from an entry hole only occurs when someone is shot in the head.

49. However, the photos taken of WM at the crime scene show that he had blood on his clothes and hands. Furthermore, both LV and HA said that the shooter and WM were close to each other and, according to HA, WM was waving or flailing his arms. The evidence in this respect strongly suggests that the blood from WM ended up on the jacket during the shooting.

50. The presence of three particles of primer residue on the jacket – with the same, relatively uncommon composition as the particles in one of the cartridge cases found at the crime scene – also suggests that this is the jacket worn by the perpetrator.

51. In an overall assessment of the jacket's appearance and the presence of WM's blood and the particles of primer residue on the jacket, the Supreme Court, following the Court of Appeal, concludes that it has been established that the perpetrator was wearing the jacket found in AC's home.

52. The NFC's analysis makes it clear that AC's DNA was present on the right side of the collar. Forensic scientist JB has explained that this is one of the places where it is known from experience that a person wearing a jacket often deposits DNA. It is for that reason that such a site is regularly examined. Other such places include the cuffs of the sleeves and the inside of the neck.

53. AC has stated that he has never seen or used the jacket. His defence counsel has pointed out that another jacket was hanging next to the jacket. The defence counsel has further argued that, according to the pictures from the search of the premises, the second jacket appears to be touching the right side of the collar of the seized jacket, which according to him means that DNA may have been transferred between the jackets.

54. The defence has also argued that, even if AC has worn and deposited DNA on the jacket, it may have been worn by someone else at the time of the crime. In that connection, the defence has submitted the following. The jacket was not seized until four months after the offence, and police surveillance of the apartment has not been continuous. Several people may therefore have been in the flat unbeknownst to the police. Also, the jacket may have been left in the apartment by the perpetrator sometime between the offence and the search of the premises. Further, there is DNA on the neck and cuffs, but it has not been possible to analyse the origin of this DNA. It is also established that several other people were present in the apartment. For example, documents and a passport belonging to a person previously convicted of, inter alia, armed robbery, have been found, showing that this person may also have lived in the apartment.

55. As the defence has indicated, it is possible that AC's DNA ended up on the jacket without him wearing it. However, this must be set against the fact that DNA has been deposited in a place where experience shows that traces of a person wearing a jacket are found. What was found on the jacket could in itself be explained by the fact that AC has actually worn it, but on one or more occasions that have nothing to do with the offence for which he is charged. As the defence has also indicated, other people may have worn the jacket; the finding of DNA at the neck and on the cuffs suggests as much.

56. A number of alternative explanations for the traces on the jacket are possible. Of key importance, however, is that the jacket was found in AC's

home with his DNA present where a wearer of the jacket regularly leaves traces. Even taking into account possible alternative explanations, this evidence as a whole speaks relatively strongly in favour of AC being the perpetrator.

Other evidence found in AC's home

57. A search of AC's home on 3 February 2021 revealed the packaging (a cardboard box) from an electric scooter. Upon searching AC's mobile phone, the police found an email conversation indicating that he bought an electric scooter on 21 September 2020. Considering that the perpetrator arrived and left the crime scene on an electric scooter, the information that AC had access to an electric scooter must be considered to have some, albeit limited, evidentiary value.

58. During another search of the home on 5 March 2021, a pair of dark jeans was found in a wardrobe in AC's bedroom. On the jeans was a particle of primer residue that had the same unusual composition as the particles in one of the cartridge cases carrying traces of AC's DNA. According to the NFC's analysis, the results neither support nor contradict the idea that the jeans were in close proximity to firearms when they were fired or in contact with firearms or other weapon-related items such as cartridge cases.

59. Surveillance footage shows that the shooter was wearing dark trousers. Whilst no firm conclusions can be drawn from the presence of a single primer-residue particle on a piece of clothing, the fact that a particle of primer residue of this type was found on a pair of dark-coloured jeans belonging to AC has a certain limited evidentiary value.

Witness testimonies about the perpetrator and observations from the surveillance film

60. None of the three people who witnessed the incident have seen the perpetrator's face. LV has stated that she perceived the shooter as tall and thin, and has estimated his height at between 180 and just over 185 cm.

61. According to his passport, AC is 171 cm tall. However, as both the District Court and the Court of Appeal have stated, it is easy to misjudge a person's height, especially during a rapid course of events where a comparison cannot be made. Further, the shooter had a furry hood over his head, which can be assumed to have complicated the height assessment. The Supreme Court shares the opinion of the District Court and the Court of Appeal that LV's testimony does not exclude AC as a perpetrator.

62. What can be observed on the surveillance footage about the perpetrator's physique is not inconsistent with the Prosecutor General's claim that AC is the perpetrator.

AC has no alibi and had the opportunity to commit the offence

63. It is clear from AC's statements that, at the time in question, he was living in the apartment where the jacket was found. The apartment is located approximately 2.5 kilometres from the crime scene and it takes between 9 and 11 minutes to get from the apartment to the crime scene by bike, depending on the route chosen.

64. AC has stated that he was in the apartment on the day in question until he and a friend, BO, went to Burger King for lunch.

65. Both the District Court and the Court of Appeal have, on the basis of what has emerged from the analysis of AC's telephone, statements by witness BO and statements showing the latter's payment transactions, found it

established that AC has no alibi for the time when the shooting was carried out and that he had the opportunity to carry out the offence. The Supreme Court shares this assessment.

Weighing of the evidence in the case

66. As shown in the report, all the evidence relied upon is indirect, meaning that there may be alternative explanations for what each of the pieces of evidence shows. When weighing the evidence, it is important to assess how the different pieces of evidence relate (see para. 27).

67. The Prosecutor General has presented two pieces of evidence that, independently of each other, indicate that AC is the perpetrator. First, the jacket worn by the perpetrator was found in AC's home with his DNA on the right side of the collar, a place where the wearer of a jacket often deposits DNA. Second, his DNA was found on three of the eight cartridge cases ejected from the weapon used by the perpetrator. Each piece of evidence, which is independent and interrelated, points to AC as the perpetrator.

68. The prosecution's investigation has also revealed other circumstances that strengthen the suspicions against AC. The perpetrator used an electric scooter and AC bought such a scooter just two weeks before the incident in question. The surveillance footage shows that the perpetrator was wearing dark trousers and, on a pair of dark jeans belonging to AC, a particle of primer residue was found that had the same unusual composition as the particles in one of the cartridge cases that contained traces of his DNA.

69. The overall value of the evidence in this case is higher than the sum value of the individual pieces of evidence: it seems very unlikely that all the circumstances established by the prosecution's evidence would exist even if the perpetrator was someone other than AC. Weighing the evidence referred to by the prosecution therefore provides very strong support for the charges.

70. It can also be concluded that AC has no alibi and that he had the opportunity to commit the offence. In addition, what can be observed on the surveillance film regarding the perpetrator's physique does not refute that AC could be the perpetrator. Nor does the witness testimony exclude this possibility.

71. It must also be examined whether there is reason to consider the possibility of a different perpetrator.

72. The defence has stated that at least two other people could be suspected as the perpetrator.

73. Regarding the one person mentioned by the defence – a person who has left documents at AC's home (see para. 54) – it can be stated that there is nothing to indicate that he is the perpetrator beyond him having committed a serious crime and that he has stayed at AC's home. These circumstances therefore do not affect the evidence in the case.

74. With regard to the second person, the defence has pointed out that an anonymous tip was received by the police on 20 October 2020, stating that this person was the one "who rode away on the *Voi* in connection with the murder...". The defence counsel has stated that it is a deficiency in the investigation that this lead was not followed up, especially since, according to him, the police received several different reports that WM had shot at an apartment on the street where the identified person lived approximately one month before he was murdered, and it later also emerged that the person was an acquaintance of AC. The defence counsel has also pointed to information in the investigation showing that the person and AC had a text message conversation on 3 October 2020, i.e., the day after the murder, and that this conversation shows, among other things, that the person had access to an electric scooter and seemed to be on his way to AC's home.

75. The Supreme Court notes that the hypothesis that the murder was committed by the latter person is mainly based on an anonymous and very brief tip. The case has indeed shown that the person and AC were in contact with each other at the time of WM's murder. However, neither this, nor the fact that there are indications that the person had access to an electric scooter, gives reason to assume that this person committed the murder. In this context, it may be pointed out that the link to a previous shooting that the defence counsel has raised appears to be so indeterminate that it cannot be given any real significance. According to the prosecution, there was also an interview with the person later in the investigation which did not lead to further investigation. In view of the other evidence in the case, what has emerged in this part does not significantly affect the assessment of the state of evidence in the case.

76. Nor is there any other reason to assume that the offence was committed by someone other than AC.

77. On balance, the evidence against AC is so strong that it is beyond reasonable doubt that he is the perpetrator. He is therefore convicted of the offence as charged, which is found to be murder.

Assessment of the charges for weapons offences and violations of the Offensive Weapons Act

78. As regards the weapons offence, it relates to the possession of a firearm found in the room of an apartment where AC was living at the time. The weapon was found in a plastic bag in a wardrobe. AC has admitted that it was his bag. In addition to the weapon, the bag contained cannabis plant parts and several documents belonging to AC, including an identity card from Hermods, a training certificate for truck drivers and letters addressed to him.

79. The Supreme Court shares the assessment of the District Court and the Court of Appeal that these circumstances cannot lead to any other conclusion than that it is AC's weapon. It has thus been established beyond a reasonable doubt that AC possessed the weapon and he must therefore be convicted of weapons offences in accordance with the Court of Appeal's findings.

80. With regard to the charge of violating the Offensive Weapons Act, consisting of possession of 14 cartridges of 9 mm calibre, the Supreme Court shares the assessment of the District Court and the Court of Appeal that this constitutes an offence of the normal degree.

Sanction

81. The sanction for murder is imprisonment for a fixed term, not less than ten and not more than eighteen years, or for life (Chapter 3, Section 1 of the Criminal Code).

82. Following a legislative amendment that entered into force on 1 January 2020, the starting point, according to the Supreme Court's practice, is that murder carries a penal value of sixteen years' imprisonment. This starting point applies if there are no aggravating or mitigating circumstances. (See "*Mordet med hanteln*" NJA 2021 p. 583, para. 9.)

83. If there are aggravating circumstances, this may justify a longer fixed term of imprisonment than 16 years, preferably 18 years, or life imprisonment. As a reason for life imprisonment, particular consideration shall be given to whether the offence was preceded by careful planning, was characterised by particular ingenuity, was intended to promote or conceal other crime, caused severe suffering to the victim or was otherwise particularly ruthless. The court must always make an overall assessment taking into account all the circumstances. (See "*Mordet med hanteln*" paras. 12–17.)

84. In this case, the murder was obviously planned. It has been carried out in cold blood. The modus operandi – firing several shots in a public place where several other people were present – entailed a significant risk that several people would be hit by the shots. Against this background, in an overall assessment, the offence must be considered to be characterised by particular ruthlessness. There are no mitigating circumstances. All in all, the circumstances appear so qualifiedly serious that a life sentence is justified.

Damages

85. Given the finding of guilt, AC shall pay damages. In this respect, the Supreme Court makes the same assessment as the District Court. AC must therefore pay damages to DM, SM and WM in accordance with their claims.

Compensation for litigation costs

86. On the basis of Chapter 31, Section 2 of the Code of Judicial Procedure, the Court of Appeal awarded AC compensation of SEK 10,000 for the cost of an expert.

87. Pursuant to Chapter 31, Section 9 of the Code of Judicial Procedure, the court shall, on its own initiative, examine whether a cost which, according to the court's decision, is to be paid from public funds, is to be compensated by the defendant or another party, or whether it is to remain with the State. Further, Chapter 31, Section 10 provides that, in the case of an appeal from a lower court, the liability for litigation costs in the higher court shall be determined with regard to the outcome there. This also applies in situations where a lower court, pursuant to Chapter 31, Section 2, has awarded the defendant compensation from public funds (see NJA 1994 p. 515).

88. In view of the fact that AC was convicted as charged in the Supreme Court, the Court of Appeal's decision on the compensation of litigation costs must therefore be set aside.

Justices of the Supreme Court Anders Eka, Sten Andersson, Stefan Johansson (reporting Justice), Petter Asp (dissenting) and Christine Lager participated in the ruling.

Judge referee: Elisabeth von Salomé

DISSENTING OPINION

Supreme Court Justice Petter Asp, with regard to the charge of murder, dissented and stated:

As regards the assessment of the evidence relating to the charge of murder, i.e., as regards the assessment in the individual case, I dissent as follows.

In this case, a conviction requires that it is proven – beyond a reasonable doubt – that AC is the shooter at the bus stop on Östra Galaxvägen. Thus, it is not sufficient to prove that AC had something to do with the murder, e.g., by providing weapons and ammunition or by otherwise assisting the shooter.

The evidence in favour of the shooter being AC (see paras. 39–56) is, in particular, that his DNA was found on three of the cartridge cases found at the crime scene and that the jacket that can be linked to the crime was found in the apartment on Lyckostigen in which AC lived with his DNA on the collar. As shown in paragraphs 57-59¹, there is also other evidence that fits the prosecution's description of the events, but it has considerably less evidentiary value.

The evidentiary value of the fact that AC's DNA was found on three of the cartridge cases is – in relation to the evidential theme of AC being the shooter at the bus stop – relatively limited.

DNA from another identified person and at least one other person has been found on another cartridge case. It is already clear from this fact that DNA can

¹ The fact that AC had the opportunity to commit the offence, and that neither the witnesses testimony about the shooter nor the surveillance film excludes him as the perpetrator, cannot be considered to have any positive evidentiary value, even if it is a prerequisite for a conviction (cf. paragraphs 63–65).

be present on the cartridge cases found without this meaning that the person who left the trace also is the shooter.

The evidentiary value of the presence of AC's DNA on the cartridge cases is also affected by the fact that, as the investigation shows, he has possessed ammunition and has supplied weapons to at least one person. The investigation also revealed that he had socialised in circles where weapons and ammunition were present. Thus, other relatively similar explanations exist for the presence of his DNA on the three cartridge cases than that he is the shooter at the bus stop. For example, his DNA may have ended up on the cartridge cases when he provided the weapon and its ammunition, or only the ammunition.

However, the fact that the jacket used in the offence was found in the apartment in which AC lived with his brother is a circumstance of more substantial evidentiary value. This is especially true as AC's DNA has been found on the jacket in such a location (on the upper collar in the front) where a wearer can typically be expected to deposit DNA.

However, DNA from other people has also been found on the jacket, although they have not been identified. Considering that the jacket was found in the apartment where AC lived, it is possible that he deposited DNA on the jacket by wearing it at some point, without having done so at the time of the murder, or by touching it (the fact that DNA is found in a place where so-called wearer DNA is typically found does not, of course, prevent DNA from being deposited in this place in another way).

Nonetheless, the fact that the jacket was found in the apartment where AC lived is a relatively strong indication that AC is the shooter at the bus stop (and an even stronger indication that he was somehow involved in the

murder). To this must be added the evidentiary value of the other circumstantial evidence. The overall value of evidence will then be great.

However, in order for it to be considered proven, solely on the basis of circumstantial evidence of the kind invoked in the case, that AC is the shooter at the bus stop on Östra Galaxvägen, it must be assumed that the circumstances are such that they do not leave any possibility that the shooter may be someone other than AC. The assessment of the existence of such a possibility is essentially nothing more than a – not infrequently useful – means of testing whether the evidence referred to is such as to fulfil the evidentiary requirement for criminal proceedings.

In this regard, it can be stated that the jacket was not found in the apartment on Lyckostigen until four months after the murder. There is no evidence to show how the jacket got there or where it was during the period between the murder and the time the jacket was seized. It can also be mentioned that two people have lived in the apartment and that AC has stated that others have also slept there from time to time.

It can also be noted that the police have received an anonymous handwritten tip identifying another person, living in Märsta, as the person who left on an electric scooter after the murder. This tip was received on 20 October 2020, i.e., before AC was included in the investigation. A text-message conversation referred to in the case shows that the person in question communicated with AC the day after the incident, and that they seem to have agreed that the person would come to the apartment on Lyckostigen. In the same text-message conversation, the identified person said that the battery of his electric scooter was dead. In addition, there is material in the investigation that could link WM to a shooting at an apartment on Sleipnergatan in Märsta – a street where the identified person allegedly lived – about a month before the murder.

This means that the investigation includes a person with links to AC, who had an electric scooter with a discharged battery in close proximity to the murder, who can be assumed to have been in the apartment on Lyckostigen the day after the murder and who has been identified as the person who left the murder scene on an electric scooter. In addition, the person may possibly have had a motive to commit the offence.

The combination of these circumstances raises questions as to whether the person identified could be the shooter. However, in the case of the identified person, only very limited investigative measures have been taken. For example, no account has been given of his doings on the morning in question or of his appearance in relation to observations made of the perpetrator. Nor has any investigation been presented to show whether the shooting that took place about a month before the murder was aimed at the identified person's apartment.

Further, the witness who provided the most detailed information from the murder scene – which has been shown to be almost entirely consistent with the rest of the investigation – has stated that the shooter was about ten to fifteen centimetres taller than AC. It cannot, of course, be excluded that the witness is mistaken in this respect (see para. 61), but she saw much of the course of events at close quarters. Her information is therefore such that – although it does not have a particularly high evidentiary value as regards the height of the shooter – it indicates that the shooter was taller than AC, which raises further doubts as to whether he is the shooter at the bus stop.

Although the evidence presented in the case is, on the whole,² highly incriminating of AC, it shows that it is quite possible that the shooter is someone other than AC, and that his involvement is limited to other actions.

Thus, the prosecution has not established beyond a reasonable doubt that AC is the shooter at the bus stop on Östra Galaxvägen. AC should therefore be acquitted.

In the minority on this point, I am otherwise in agreement with the majority.

² In this context, there is reason to emphasise that the pieces of evidence in the case can only to a limited extent be considered to reinforce each other (cf. para. 69 of the majority's reasoning); both the jacket in AC's apartment and the DNA matches on the cartridge casings – as well as the other circumstances indicating that he is the shooter – can, for example, be explained by the fact that he was involved in the murder in a way other than as a perpetrator.