

IN THE DISTRICT COURT OF PEJË/PEĆ
Case Number P. Number 181/12
Date 14 November 2012

IN THE NAME OF THE PEOPLE

The District Court of Pejë/Peć, in the trial panel composed of Judge Malcolm Simmons as Presiding Judge and Judges Franciska Fiser and Lumturije Muhaxheri as Panel members and Court Recorder Joseph Hollerhead in the criminal case against

1. **DK**, son of XX and mother XX, maiden name XX, born on X in X, residing at Street XX, secondary education, driver by profession, single, of average economic status, Kosovo Albanian, in detention on remand since 20 September 2011 and
2. **FG**, son of XX and mother XX, maiden name XX, born on XX in X, currently residing in the village of X, Xmunicipality, secondary education, farmer by profession, Kosovo Albanian, single, of poor economic status, previously convicted by the District Court of Pejë/Peć in Judgment P.no.60/11 dated 6 May 2011 for the criminal offence of Attempted Murder under Article 146 as read with Article 20 of the Criminal Code of Kosovo (hereinafter "the CCK") and sentenced to a term of imprisonment of 26 months, a sentence subsequently increased by the Supreme Court, in detention on remand since 19 September 2011

charged pursuant to the Indictment of the State Prosecution Office PPS. Number 375/11 dated 13 December 2011 confirmed on 20 April 2012, as amended by a Ruling of the Confirmation Judge on 30 May 2012 and as further amended by the Prosecutor on 9 November 2012 with the following counts:

DK was charged with

Count 1 Aggravated Murder under Article 147 (4) and (9) and

Count 2 Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraph 2 of the CCK;

FG was charged with

Count 1 Causing General Danger under Article 291 (1), (3) and (5) of the CCK and

Count 2 Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraph 2 of the CCK

after holding a public trial on 14 June 2012, 19 June 2012, 20 June 2012, 21 June 2012, 26 June 2012, 27 June 2012, 23 July 2012, 05 September 2012, 06 September 2012, 18 September 2012, 11 October 2012, 15 October 2012, 09 November 2012 and 12 November 2012 at which Adam Basny and Peter Korneck appeared for the Prosecution, the Injured Parties EI, AP, MG, DKE and AP were either present or summonsed, Lawyer Haxhi Cekaj appeared for the defendant, FG, Lawyers Enver Nimani and Ramë Dreshaj appeared for the defendant, DK, Lawyer Orhan Basha appeared for the injured party, AP, Lawyer Zeqir Berdynaj appeared for the injured party, EI and at which the defendants were present throughout, after deliberation and voting on 14 November 2012 announced in public the following

J U D G M E N T

DK

Under Count 1

Is

GUILTY

Because at approximately 1255 on 19 September 2011 at Mbretersha Teuta, Peja outside the main PTK building and opposite the Dukagjini Hotel, with the intention of killing the defendant FG who was sitting on the rear passenger seat of a taxi belonging to the Njaci company driven by MG, fired at close range eight (8) bullets from his weapon, a Cervena Zastava M-57 pistol of 7.62 x 25mm caliber with serial number G-79265. One of the bullets fired by DK shattered the rear right-side passenger window of the taxi hitting the deceased KI who was sitting on the rear seat of the said taxi. KI died at approximately 1400 on 19 September 2011 at the Regional Hospital in Peja as a result of haemorrhage due to injury of the aorta and lungs caused by the single gunshot wound. By his actions the defendant DK deprived KI of his life and intentionally endangered the lives of other occupants of the said taxi, namely the defendant, FG, MG, DKE and ARP as well as members of the public in the vicinity at the time who were simply going about their day-to-day activities. The defendant, DK did not know the deceased, KI.

THEREBY, he committed the criminal offence of Aggravated Murder under Article 147 (4) of the CCK, thereby re-qualifying the original charge of Aggravated Murder under Article 147 paragraphs (4) and (9) of the CCK.

Under Count 2

Is

GUILTY

Because at approximately 12:55 on 19 September 2011 in Mbretersha Teuta, Peja near the PTK building opposite the Dukagjini Hotel DK was unlawfully in possession of a Cervena Zastava M-57 pistol of 7.62 x 25mm caliber with serial number G-79265 for which he did not possess a valid Weapon Authorisation Card.

THEREBY he committed the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraph 2 of the CCK.

FG

Under Count 1

Is

GUILTY

Because on 19 September 2011, at approximately 12:55, at Mbretresha Teuta, Peja in a taxi belonging to the Njaci company outside the main PTK building opposite the Dukagjini Hotel, being subjected to an unlawful, real and imminent attack with a firearm by the defendant DK, fired seven (7) bullets from his weapon, a Cervena Zastava M-70 pistol of 7.65 x 17mm caliber (with no serial number) in the direction of the said DK in necessary defence but in a manner that was disproportionate to the degree of danger posed by the attack upon him in that the said FG fired his weapon in the direction of the said DK while holding his head down and firing his weapon in an indiscriminate and uncontrolled manner, thereby exceeding the limits of necessary defence, in a place in which he knew a large number of people were gathered thereby exposing innocent passers-by to an obvious and great danger to human life, whereby one of the bullets he fired hit AP in his left buttock, the bullet passing through his left and right buttocks thereby causing him serious bodily injury.

THEREBY, pursuant to Article 8 (3) of the CCK he exceeded the limits of Necessary Defence and committed the criminal offence of *Causing General Danger* under Article 291 paragraphs (1), (3) and (5) of the CCK.

Under Count 2

Is

GUILTY

Because at approximately 12:55 on 19 September 2011 at Mbretresha Teuta, Peja near the PTK building opposite the Dukagjini Hotel FG was unlawfully in possession of a Cervena Zastava M-70 pistol of 7.65 x 17mm caliber with no

serial number for which he did not possess a valid Weapon Authorisation Card.

THEREBY, he committed the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraph 2 of the CCK.

THEREFORE, pursuant to the provisions of Article 6, Article 11, Article 15, Article 32, Article 33, Article 34 items 1 and 2, Article 36, Article 37, Article 54 paragraph 1 and 2 item 7, Article 64 paragraph 1 and 3, Article 65 paragraph 1, Article 71 paragraph 2, item 1, Article 73 paragraph 1, Article 99 paragraph 1, Article 147 (4), Article 291 (1), (3) and (5), Article 328 paragraph 2 and 5 of the CCK and Articles 99 paragraphs 1 and 2, items 1, 2, 3, 4, 6 and 8, Article 102 paragraph 1, Article 328 paragraphs 1 and 2, Article 385, Article 387, Article 391 and Article 392 of the Kosovo Code of Criminal Procedure (hereinafter "the KCCP"), the court imposes the following sentences:

DK,

- Having been convicted of the said criminal offence under Count 1 is sentenced to Long-Term Imprisonment for a period of 23 (twenty-three) years;
- Having been convicted of the said criminal offence under Count 2 is sentenced to a term of imprisonment of 2 (two) years.

Pursuant to Article 71 paragraphs 1 and 2, item 1 the Court having imposed a sentence of Long-Term Imprisonment under Count 1 it shall impose this punishment only and DK shall serve a sentence of Long-Term imprisonment of 23 (twenty three) years.

FG,

- Having been convicted of the said criminal offence under Count 1, because he exceeded the limits of necessary defence by reason of strong trauma and fear

caused by the unlawful attack by DK, pursuant to Article 68 and Article 8 (4) of the CCK the punishment is waived;

- Having been convicted of the said criminal offence under Count 2 is sentenced to a term of imprisonment of 2 (two) years.

FG shall serve a term of imprisonment of 2 (two) years.

Pursuant to Article 73 (1) of the CCK the time spent in detention on remand by DK from 20 September 2011 until the Judgment becomes final and the time spent in detention on remand by FG from 19 September 2011 until the Judgment becomes final shall be credited against the punishment.

Pursuant to Article 60 (3) and Article 328 (5) of the CCK the Cervena Zastava M-57 pistol of 7.62 x 25mm caliber with serial number G-79265 and the Cervena Zastava M-70 pistol of 7.65 x 17mm caliber with no serial number shall be forthwith confiscated and destroyed.

Pursuant to Article 102 (1) of the KCCP the defendants DK and FG shall pay the costs of the proceedings in an amount to be determined by the court in a separate ruling.

The Injured Parties may pursue any claims for compensation through the civil courts.

The written Judgment will be delivered within 30 days.

The parties have the right to appeal the Judgment.

The Parties have an obligation to announce any appeal within eight days.

Any appeal against the Judgment shall be filed within fifteen days of the date of service of the Judgment.

REASONING

A. Procedural background

i. Indictment

Against **DK**

It was averred in the Indictment against DK that on at approximately 12:40 on 19 September 2011 in the centre of Peja, in front of the PTK Post Office he attempted to murder FG in unscrupulous revenge, because on 1 November 2010 the said FG had attempted to murder his brother VK.

It was averred that on 19 September 2011 FG was sitting in a taxi registration number 03-381-BF driven by MG when DK fired eight shots from a TT revolver of cal. 7.62 mm at FG but missing him and instead hitting KI on the right side of his chest. As a result of the injury he sustained KI died on 19 September 2011 at the Regional Hospital in Peja.

The said motor vehicle driven by MG carried FG, KI, DKE and ARP.

By reason thereof it was averred DK committed the criminal offence of Aggravated Murder under Article 147 (4), (9) and (11) of the CCK.

Further, it was averred that on 19 September 2011 DK was unlawfully in possession of an M-57 revolver of 7.62 mm calibre, serial number G-79265.

Br reason thereof he committed the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 (2) of the CCK.

Against **FG**

It was averred in the Indictment that on 19 September 2011 in the centre of Peja, in front of the PTK Post Office while seated in the rear of a taxi he fired "several" shots from a TK-BK revolver of 7.65mm calibre at DK hitting AP with a single bullet in both buttocks.

It was further averred that other persons present at the scene at the time were endangered because of the fact of

and manner in which FG fired his weapon.

By reason thereof he committed the criminal offence of Attempted Aggravated Murder out of negligence under Article 147 (4) of the CCK.

Further, it was averred that on 19 September 2011 FG was unlawfully in possession of a TK-BK revolver of 7.65 mm calibre, with no serial number.

Br reason thereof he committed the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 (2) of the CCK.

ii. Amendment of the Indictment

The Indictment was confirmed on 20 April 2012 in Ruling KAQ 354/11. On 30 May 2012 the Confirmation Judge issued a Ruling revising the Enacting Clause of the Confirmation Ruling. In that Ruling DK was charged in Count 1 with Aggravated Murder under Article 147 (4) of the CCK and in Count 2 with Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328 paragraph 2 of the CCK. The charges against DK under Article 147 (9) and (11) of the CCK were rejected. FG was charged in Count 1 with Aggravated Attempted Murder under Article 147 (4) of the CCK in conjunction with Article 20 of the CCK and in Count 2 he was charged with Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 (2) of the CCK.

On 9 November 2012 the Prosecutor amended the Indictment further wherein DK was charged in Count 1 with Aggravated Murder under Article 147 (4) and (9) and in Count 2 with Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraph 2 of the CCK and FG was charged in Count 1 Causing General Danger under Article 291 (1), (3) and (5) of the CCK and in Count 2 Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraph 2 of the CCK.

iii. Competence of the Court and Panel Composition

In accordance with Article 23 (1) of KCCP, District Courts have jurisdiction to adjudicate at first-instance criminal offences punishable by imprisonment of at least five years or those offences punishable by Long-Term imprisonment.

In the present case the Defendants were charged with offences that included Aggravated Murder and Attempted Aggravated Murder under Article 147 of the Criminal Code of Kosovo, an offence punishable by imprisonment of at least 10 years.

According to the Indictment the criminal offences were committed in Peja, which is in the territory of the District Court of Peja.

No issue was raised by the parties regarding the jurisdiction of this Court.

On 29 February 2012 the President of the Assembly of Eulex judges pursuant to Article 3 of the Law on Jurisdiction, Case Selection and Case Allocation of Eulex Judges and Prosecutors (Law nr. 03/L053) issued a Ruling to take over this case.

By reason thereof, the Trial Panel of the District Court of Peja/Pec was correctly composed of a mixed panel of two EULEX Judges and one Local Judge in accordance with Article 4.7 of the Law on Jurisdiction.

No issue was raised by the parties regarding the composition of the panel.

B. The main trial

i. Evidence administered during the main trial

During the course of the main trial the following witnesses were heard and the following evidence was administered

i.i Witnesses

The Court heard the following witnesses:

EI
AP
MG
DKE
ES
AG
VA
SK
IK
JK
DF
BS
BK
Dr. MJ
SS
AX
AM
AB
QV
Dr. FB
QT
MH
DRK
LG

i.ii Witness Statements

The following witness statements were put in evidence:

Record of examination of EI before the Prosecutor on 10 October 2011;

Statement of AP to Kosovo police on 20 September 2011

Record of examination of AP before the Prosecutor on 25 October 2011;

Statement of MG to Kosovo police on 19 September 2011;

Record of examination of MG before the Prosecutor on 10 October 2011;

Statement of to DKE Kosovo police on 19 September 2011;

Record of examination of DKE before the Prosecutor on 18 November 2011;

Record of examination of ARP before the prosecutor on 25 October 2011.

Statement of AG to Kosovo police on 19 September 2011;

Record of examination of AG before the Prosecutor on 4 October 2011;

Record of examination of AG before the Prosecutor on 25 October 2011;

Record of examination VA before the Prosecutor on 25 October 2011;

Statement of ES to Kosovo police on 19 September 2011;

Record of examination of ES before the Prosecutor on 10 October 2011;

Statement of IK to Kosovo police on 19 September 2011;

Record of examination of IK before the Prosecutor on 18 November 2011;

Statement of BS to Kosovo police on 19 September 2011;

Record of BS examination of before the Prosecutor on 29 November 2011;

Record of BK examination of before the Prosecutor on 6 December 2011;

i.iii Documentary Evidence

Police Report of Officer SH 2011-DA-1850 dated 19 September 2011;

Police Report of Officer FZ 2011-DA-1850 dated 19 September 2011;

Police Report of Officer HK 2011-DA-1850 dated 19 September 2011;

Police Report of Officers AZ and AQ 2011-DA-1850 dated 19 September 2011;

Crime Scene Inspection Report (Forensic Unit) 2011-DA-1850 dated 19 September 2011 including Measurement Table and plan;

Photo album of the crime scene 2011-DA-1850 compiled on 19 September 2011;

Police Report of Officer NA 2011-DA-1850 dated 20 September 2011;

Police Report of Officer AK 2011-DA-1850 dated 20 September 2011;

Police Report of Officer IF 2011-DA-1850 dated 20 September 2011;

Weapon Confiscation List (FG) dated 19 September 2011;

Weapon Confiscation List (DK) dated 20 September 2011;

Medical Report of the Emergency Ward of Peja Regional Hospital reference number 14759 dated 19 September 2011 issued by Dr. BR;

Autopsy Report MA 11/218 dated 20 September 2011 including photographs;

Statement of DK given to police on 20 September 2011;

Record of examination of DK before the Prosecutor on 6 December 2011;

Statement of FG given to police on 19 September 2011;

Record of examination of FG before the Prosecutor on 29 November 2011;

Vehicle Examination Report of Passat motor vehicle registration number 03-381-BF;

Photo album of the VW Passat motor vehicle registration number 03-381-BF;

Ballistics Report reference number AKF/2012-2367/2012-2048 dated 25 September 2012

Chain of custody records received from Dr. FB pursuant to the order made on 8 October 2012. Those records comprised "Statement of Custody Statement for Victims Personal Things" dated 19 September 2011 and Kosovo Police Report dated 20 September 2011;

Chain of custody documents date various put in evidence by AM.

Report of Dr. FB dated 12 September 2012 regarding the injuries sustained by AP.

List of Evidence dated 19 September 2011 (AB)

Department of Forensic Medicine - Evidence Collection document dated 20 September 2011

Medical Discharge signed by MJ (undated)

Two CDs of images recorded from cameras at the Dukagjini Hotel on 19 September 2011

Enhanced CD and report of AF dated 12 July 2012

Colour copy of photograph of DKE with a firearm;

Aerial plan of Peja [Exhibit "ES 1"]

Aerial plan of Peja [Exhibit "BS 1"]

CDs of colour photographs taken by police at the crime scene on 19 September 2012

Colour photographs taken by police during the reconstruction on 2 October 2012

Photographs and diagrams put in evidence during testimony of Officer QT

Letter dated 16 September 2012 from MH;

CD from Ipko received on 6 November 2012 confirming the name of the registered subscriber of 049 XXX XXX was LG;

CD with Ipko Metering records for the period 1 May - 1 October 2012 for 049 XXX XXX;

CD with list of SMS communications to/from 049 XXX XXX;

Kosovo Correctional Service Disciplinary Actions and Investigations Report dated 20 July 2012;

Kosovo Correctional Service Punishment Sheet dated 27 July 2012;

ii. Undisputed Evidence

There was no dispute that on 19 September 2011 in Mbretresha Teuta, Peja near the PTK building opposite the Dukagjini Hotel there was an exchange of gunfire between DK and FG.

The Court finds that the incident occurred at approximately 12.55pm. The Court has adopted the approximate time of the incident from the police report.

On 14 June 2012 DK entered a guilty plea to the offence of Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328 paragraph 2 of the CCK. There was no dispute that at that time DK was unlawfully in possession of a Cervena Zastava M-57 pistol of 7.62 x 25mm caliber with serial number G-79265.

On 14 June 2012 FG entered a guilty plea to the offence of Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328 paragraph 2 of the CCK. There was no dispute that at that time FG was unlawfully in possession of a Cervena Zastava M-70 pistol of 7.65 x 17mm caliber.

There was no dispute that KI died at approximately 2pm on 19 September 2011 at the Peja Regional Hospital.

iii. Witness testimony before this Court

a. Prosecution Witnesses

Witnesses of Fact

The Prosecution called **EI**. He is the father of the deceased, KI. He was examined by the Prosecutor on 10 October 2010. He gave evidence before this Court on 14 June 2012.

He stated he met his son in Peja shortly before his murder. They had a short conversation but KI did not tell his father where he was going or who he was meeting. EI knew his son would be working from 4pm until 11pm. He had recently started working as a waiter in a local restaurant.

KI was born on XX 1988 in XX. He was 22 years old at the time of his death.

The Prosecution called **AP**. He gave a statement to police on 20 September 2011. He was examined by the Prosecutor on 25 October 2011. He gave evidence before this Court on 19 June 2012.

There was no dispute AP was riding his bicycle from East to West on Mother Teresa Street at the time of the incident.

It was his evidence that at approximately 12:40¹ on 19 September 2011 he was riding his bicycle in the road in a Westerly direction adjacent the North footpath outside the PTK building when a man approximately 1 - 1.5m ahead of him walked from the sidewalk in front of him into the road. On his evidence this man was walking from his right to his left. He said he was approximately 3 or 4 metres before reaching the door of the PTK building. He said the man was carrying a pistol. He was pointing the weapon towards the ground. He did not see this man fire his weapon.

He said he tried to steer his bicycle around behind the man. It was as he did so that he realized he had been

¹ Record of Examination of 25 October 2011

shot. He said he heard gunshots but did not know from which direction they came. He said he felt pain before he heard the shots. It was his evidence that he had not been shot by the person who had walked in front of him².

Having been shot, he got off his bike and staggered a few metres.

During the reconstruction on 2 October 2012 AP described how he cycled along the road adjacent to the pavement³. He said "a person with a weapon in his hand *came out*." Indicating the pavement he stated "*he was standing there*". He went on to say "*I went around him, stopped my bicycle and threw it to the floor...*".

During the reconstruction AP was asked if the shooter stepped into the road. In reply he stated "*Maybe on the sidewalk, maybe on the road*". He qualified this by then stating "*An unknown person walked in my way with a weapon, I said then and I say now he stepped off the sidewalk but I cannot be sure*".

However, the minutes of examination by the Prosecutor on 25 October 2011 are unequivocal. On that occasion, approximately 1 month after the event in issue, AP said "*I was on the bike on my road in front of the main post office when a person with a pistol in his hand, came in front of me, cut off my road*". He later clarified where he was cycling by stating "*...I was moving at the edge of the asphalt road on the right side*." Indeed, when he gave evidence before this Court he was very clear that the man he had seen standing outside the PTK building holding a gun had stepped into the road in front of him walking from his right to his left.

It was as he tried to pass behind this man that he realized that he had been shot. He passed the shooter and then abandoned his bicycle next to a post at the entrance to the PTK building⁴.

He was sure he had not been shot by the person who had walked in front of him. Indeed, given the fact he was cycling towards that person it is, as a matter of simple logic, very unlikely he would have been shot by a bullet

² Examination of 25 October 2011

³ Photograph number 2 annexed to the minutes of 2 October 2012

⁴ Photograph number 3 annexed to the minutes of 2 October 2012.

fired by that man. The Court finds that it was a bullet fired by FG that struck AP.

AP gave evidence that he was told by the doctor who examined him on the day of the incident that the bullet wound he sustained entered from left to right. The doctor who examined AP was Dr. MJ.

AP was examined by Dr. FB on 10 September 2012. Dr. FB noted two scars that are consistent with the description of injuries as recorded in the medical report dated 19 September 2011. These injuries were caused by what he describes as "*the dynamic action of the projectile thrown by a firearm*". The trajectory of the bullet was horizontal "side-penetrating" the soft tissue of the buttocks. However, due to the identical characteristics of the scars, it was not possible for Dr. FB to determine the respective entry and exit wounds.

The Court called **Dr. MJ**. He is an orthopaedic surgeon at the Peja Regional hospital. He testified before this Court on 27 June 2012.

Dr. MJ gave evidence that he treated AP for the injuries he sustained to his buttocks. He confirmed that AP received a single gunshot wound to both buttocks. A single bullet passed through both buttocks. He described the injury as "light bodily injury".

He could not recall if the entry wound and corresponding exit wound was in the left or right buttock.

The Prosecution called **MG**. He gave a statement to police on 19 September 2011. He was examined by the Prosecutor on 10 October 2011. He gave evidence before this Court on 19 June 2012.

When he appeared before this Court he was clearly still traumatised by the events in issue.

He has been employed by the Njaci taxi company for 6 - 7 years.

On 19 September 2011 he was driving a Passat motor vehicle registration number 03 381 BF the property of the Njaci

taxi company.

At approximately 12:50 he parked in the taxi rank in Mbretresha Teute opposite the PTK building with the front of his vehicle facing west in the direction of the pedestrian area or "Corso". He said there was a London taxi in front of his. His was the second taxi in the rank. The London taxi was stationary in the first parking area designated for taxis.

He sat counting the money he had made that morning and cross-referencing it with his records. Two men approached his taxi from the direction of the Municipality building. He said it appeared these men were walking towards the London taxi. However, that taxi was already occupied and the two men then walked towards his vehicle.

He gave evidence before this Court he was not focused on the two men. Both men got into his taxi. One sat in the front passenger seat and the other got into the rear of the taxi through the rear right-hand (passenger side) door. He did not turn around to look at the person who had entered the taxi behind him.

When he was examined by the Prosecutor on 10 October 2011, referring to the two men he said *"The mentioned passengers came very calmly and entered the vehicle..."* He gave the same evidence before this Court.

He gave evidence the London taxi moved off as the men were entering his vehicle.

He gave evidence the windows of his vehicle were closed. He later said he thought the front passenger window might have been "half" open.

He said he heard the front seat passenger screaming "quick, quick..." He heard those words before he heard the gunshots.

When he was examined by the Prosecutor on 10 October 2011 he said *"About 20 seconds after they entered the taxi I heard gunshots..."*

He gave evidence before this court that when he heard the gunshots he *"lost the consciousness and ...bent down"*. He said the gunshots came from his "back side". He was unable

to determine if the shots he heard came from inside or outside his vehicle. He was asked if he heard any other gunshots from outside his vehicle. In reply he said "no because I lost my consciousness because I didn't know what was happening".

He said "I don't know if anyone shot from my vehicle after I started it"⁵. He said he heard the gunshots "coming from very close"⁶. When he gave evidence before this Court he said he meant by these words that the shots came from behind him. He did not hear any other shots.

He said he did not see any other persons get into the rear of his taxi. He gave evidence he was sure the front passenger door was closed when he moved off. He could not be sure about the rear passenger door.

It was his evidence that having heard gunshots he "blacked-out". He described being in a state of such shock that he was momentarily unable to function.

He said the front seat passenger helped him steer the vehicle. He said his foot was on the accelerator. The vehicle moved forward and stopped. He could not recall if the front seat passenger was helping him to push the accelerator.

In his statement to police and when he was examined by the Prosecutor he referred to only two men entering his vehicle. However, he conceded that he was in a state of shock and that he had not looked behind.

He said he subsequently saw blood stains on the headrest of his seat.

He did not see the front seat passenger with a weapon in his hand. He said he did not see the front seat passenger lean out of the window. However, he did say he did not "observe" either man.

He did not hear when the rear passenger window was broken⁷.

The Prosecution called **DKE**. He gave a statement to police

⁵ Examination by the Prosecutor on 10 October 2011.

⁶ Statement of 19 September 2011

⁷ Examination by the Prosecutor on 10 October 2011.

on 19 September 2011. He was examined by the Prosecutor on 18 November 2011. He gave evidence before this Court on 20 June 2012.

It was his evidence that at approximately noon on 19 September 2011 he together with ARP and AG met KI and FG at a cafe in the main pedestrian street in Peja. They sat outside. He sat facing the street.

In his statement of 19 September 2011 he described a person he called "CK" walking past them. There was no dispute that "CK" is VK, the brother of DK. It appears from the record of examination on 18 November 2011 that it was FG who had referred to his having seen VK.

Two other men then walked past the table where they were seated and then stopped some five meters from where they were sitting. He did not know these men. He said FG stated "*this is CK's brother*". These men stared at them and, in particular, stared at FG. DKE said he knew FG had been convicted of the attempted murder of "CK".

He said he saw that one of the men had a gun hidden under his "black t-shirt"⁸. He said this man was wearing "black". He said he was approximately 5 - 6m⁹ from where they were sitting.

He said he told FG they should leave the bar. They got up and left the bar. They walked towards the taxi rank outside the PTK building opposite the Dukagjini Hotel. As they walked toward the taxi rank he described seeing VK and "a tall fat guy with a big stomach, shaved head" who stared at them.

When they reached the taxi rank they got into a taxi. DKE gave evidence that he sat in the front passenger seat while FG sat in the rear seat behind him, KI sat in the middle of the rear seat and ARP sat on the rear seat behind the driver.

DKE told the taxi driver to take them "downtown".

DKE gave evidence¹⁰ his window was half open.

⁸ Examination by the prosecutor on 18 November 2011

⁹ Examination by the prosecutor on 18 November 2011

¹⁰ Examination by the prosecutor on 18 November 2011

He said he looked towards the PTK building and saw DK, BK and VK standing near the pharmacy¹¹.

It was his evidence¹² that DK took out a gun, cocked it and then fired in their direction. When he testified before this court he said the shooter was "*in the road walking towards the taxi*". He described this person as wearing black jeans and a black -shirt¹³. He told this court that this man was one of the men who had past their table as they sat in the Corso.

He said the shooter fired several times in the direction of the taxi.

DKE said he lowered his head towards the taxi driver. The car stalled. He said he pressed the accelerator with his right hand. He heard the rear passenger door window shatter.

DKE pressed the accelerator and the vehicle moved forward. He took hold of the steering wheel and was able to manouvre the vehicle. They immediately left the scene. As they drove off he realized KI and ARP were no longer in the vehicle.

It was his evidence that "*as soon as*"¹⁴ the man starting shooting towards their vehicle FG pulled out his gun and began shooting towards DK.

It was his evidence that the person he now knows as DK fired the first shots.

There was no dispute DKE had been convicted of unlawful possession of a firearm. That offence was unrelated to this incident.

The Prosecution called **ARP**. He gave a statement to the prosecutor on 25 October 2011.

ARP went to France some time after 19 September 2011. He was not available to give evidence before this Court. Defence counsels were present when ARP was examined on 25

¹¹ Examination by the prosecutor on 18 November 2011

¹² Examination by the prosecutor on 18 November 2011

¹³ Statement of 19 September 2011

¹⁴ Statement of 19 September 2011

October 2011. Counsel for both defendants agreed to the evidence given on 25 October 2011 being admitted into evidence.

It was his evidence that on 19 September 2011 he, together with his friends DKE, AG and VA had coffee with KI and FG at a coffee shop near the coffee shop "Galaxy".

He gave evidence that as they sat at a table outside a man walked past their table. He did not recognize this man. He described this man "leering" at them. He described FG taking a gun out of his waistband and holding it between his legs. He described DKE telling FG "*they are my revengers*" and that they should leave. They immediately paid their bill and left, walking towards the taxi rank outside the PTK building. When they got up to leave the bar FG put the gun back into his waistband.

ARP gave evidence that as they walked towards the taxi rank he looked behind him and saw the man who had looked at them as they sat outside the coffee shop following them. He was accompanied by two other men. He said they were following them and walking "faster".

When they reached the taxi rank they got into the first taxi. He said this was "*...in order to get away from there.*" DKE sat in the front passenger seat. FG sat on the rear seat behind the front passenger seat. He sat on the back seat behind the driver. KI sat on the back seat between ARP and FG.

ARP gave evidence he saw the same three men walking towards the taxi.

ARP gave evidence that DKE told the taxi driver to drive fast. He said the taxi driver did not move off. He said DKE "*...lowered his head and started the taxi*". He said DKE pushed the clutch and put the vehicle in gear. It appears the vehicle then stalled. DKE turned the ignition.

In answer to a question put by defence counsel, ARP described the shooter standing on the sidewalk in front of the PTK building and shooting in their direction. He went on to say "the rest of the incident I described above".

It was ARP's evidence that by then the three persons were 4 - 5 metres from the taxi when one of the three men started

shooting towards the taxi. Referring to the man who had leered at them as they sat in the Corso, he said "...based on the body construct, I would say it could have been the same one that shot in direction of the vehicle".

He then realized KI had been shot. He and KI struggled to get out of the taxi. The taxi moved off and he managed to get out of the taxi. He ran from the scene. As he did so he looked behind him and saw KI in the process of falling from the moving taxi.

It was his evidence the window of the rear passenger door where FG was sitting was open. He said he saw FG holding his gun and pointing it in the direction of the PTK building. Presumably FG was shooting because ARP stated that he could not distinguish the gunshots because "KI got hit at that time"¹⁵.

He did not know who fired the first shot.

He described people running away from the scene.

The Prosecution called **AG**. He gave a statement to police on 19 September 2011. He was examined by the prosecutor on 4 and 25 October 2011. He gave evidence before this Court on 20 June 2012.

He is a cousin of FG.

He gave evidence that on 19 September 2011 he was with DKE, ARP and VA in the main pedestrian street in the centre of Peja. As they walked along the street FG called them from a table where he was sitting with KI and suggested they join him. They sat outside. He was sitting facing towards the street. He said they sat at the table next to the door of the café.

AG gave evidence that as they sat at the café FG stated he had earlier seen VK, a person with whom he had previously had trouble.

It was his evidence¹⁶ that DK and SK arrived walked past where they were sitting. The two men stopped a short

¹⁵ Examination by the Prosecutor on 25 October 2011.

¹⁶ Statement of 19 September 2011.

distance further along the road and looked in their direction. He said he looked at FG more than he looked at the others. When he was examined by the Prosecutor on 25 October 2011 he said DK stood opposite the bar where he was sitting. He said he could see a gun under his T-shirt. DK and the other man then walked further along the road.

AG gave evidence that FG suggested they leave and go in the opposite direction¹⁷ whereupon they all got up and left the bar. They walked fast in the direction of the PTK building. He said he was walking at the back of the group with VA. It was his evidence¹⁸ that as they walked towards the taxi rank he looked behind him and saw DK¹⁹ and SK following.

Upon their arrival at the taxi rank in front of the PTK building FG, KI, ARP and DKE got into a taxi. AG continued walking with VA. It appears they had walked approximately 20m when he heard gunshots. He said he turned around and saw one of the men he had seen walk past the cafe holding a gun. It was his impression the shooter had fired all the bullets.

It was his evidence the person with the weapon in front of the PTK building was DK. He said he was standing near the entrance of the PTK building²⁰.

When he gave evidence before this Court he said he said he was 80% sure the shooter was standing on the pavement. When he was examined by the Prosecutor he said the shooter was standing near the staircase of the PTK building. He said that when he saw him on the pavement he did not see him firing his gun.

He gave evidence he heard two different sets of gunshots. He did not know how many shots he had heard. The first were louder than the second²¹.

The man he had seen holding the gun together with two other men ran off in the direction of the NLB bank.

¹⁷ Examination by the Prosecutor on 25 October 2011.

¹⁸ Examination by the Prosecutor on 25 October 2011.

¹⁹ Examination by the Prosecutor on 25 October 2011.

²⁰ Examination by the Prosecutor on 25 October 2011.

²¹ Examination by the Prosecutor on 25 October 2011.

The Prosecution called **VA**. He was examined by the prosecutor on 29 November 2011. He gave evidence before this Court on 21 June 2012.

He said KI was a close friend.

He gave evidence that on 19 September 2011 he was sitting outside "Life" coffee shop in the pedestrian zone in the centre of Peja with AG, DKE, FG, ARP and KI. He was sitting facing the building with his back to the street. He thought DKE, FG and KI were sitting facing the street.

He described DKE or FG suggesting they leave. He said he did not know why. He said he had been playing with his mobile phone. When he was interviewed by the prosecutor he said it was DKE who suggested they leave because FG had seen the persons with whom he had been in a dispute. He said he did not see anyone. They all got up and left, walking in the direction of the PTK building. He said they left the drinks they had ordered. He said they were in a hurry but at that time he did not know why. He said DKE, FG, ARP and KI got into the taxi. He continued walking along the road with AG.

VA gave evidence they had walked approximately 40 - 50m when he heard gunshots. When he was interviewed by the Prosecutor in November 2011 he said that when he looked back he saw two men running in the direction of the NLB bank.

The Prosecution called **ES**. He gave a statement to police on 19 September 2011. He was examined by the Prosecutor on 10 October 2011. He gave evidence before this Court on 20 June 2012.

He had known KI for many years.

ES gave evidence that on 19 September 2011 he was in Peja when he met KI some 10 - 15 metres from the where the ProCredit Bank currently stands²². KI was walking towards the taxi rank in front of the PTK building. He said it was approximately 1pm. He was not sure. It appears they exchanged a few words. He said KI was with some friends

²² Number "1" on exhibit ES1, the aerial photograph of the centre of Peja

including DKE. They did not talk for long because KI said he had to go to work. KI and the other men left, walking in the direction of the PTK building.

Shortly after they had parted ES met another friend GF²³. It was as they were talking he said he heard gunshots. He turned and looked towards the PTK building. He said he saw passers-by running. He said he saw a man standing in the middle of the road in front of the PTK building firing a weapon towards the taxi²⁴. He said he was standing approximately 3 - 4 metres from the kerb outside the Dukagjini. He heard 4 - 5 shots. He said he was 30 - 40 metres from the incident. When he was examined on 10 October 2011 he said he was standing approximately 20 - 30 meters from the barriers at the start of the pedestrian zone near the PTK building. The barriers are at the start of the pedestrian zone. That is consistent with his evidence before this Court when he said he was approximately 30 - 40m from the taxi rank. Two other men were standing behind that man. All three men then ran away from the PTK building in an easterly direction.

He travelled in the vehicle with KI to the hospital. Given that KI was, on all the evidence, taken from the scene quickly, the fact ES was able to travel with him to the hospital suggests he was close to the scene.

He told the police the person he had seen standing in the road in front of the PTK building was "*wearing a black t-shirt. He was skinny with a black, undercut hair*". When interviewed by the prosecutor he added this man was of medium build.

His evidence before this Court was in all material respects consistent with his evidence before the Prosecutor and police.

The Prosecution called **IK**. He gave a statement to police on 19 September 2011. He was examined by the Prosecutor on 18 November 2011. He gave evidence before this Court on 21 June 2012.

When he gave evidence before this court he referred to his

²³ Number 2 of exhibit ES1

²⁴ Statement of 19 September 2011.

having received a telephone call from LK on the morning of 19 September 2011 informing him someone had shot at DK and that this person had tried to kill him. When he gave evidence to the police and to the prosecutor he referred only to their having been an "exchange of gunfire" between DK and the person who had stabbed "CK".

The Prosecution called **BS**. He gave a statement to police on 19 September 2011. He was examined by the Prosecutor on 29 November 2011. He gave evidence before this Court on 21 June 2012.

He gave evidence that on 19 September 2011 he was standing near the Dukagjini Hotel facing the square with the PTK to his right when he heard what he initially thought were fire crackers. He thought he heard 4 shots. He then saw a person lying in the street. There was no dispute this was KI. He then realized the sound he had heard was gunshots.

When he gave evidence before this court he said he had not seen bullets hitting the road.

However, when he was examined by the Prosecutor on 29 November 2011 he described seeing "*bullets falling on the asphalt*" and having seen "*bullets falling on the asphalt and they would burst like firecrackers...*". However, it was his evidence he was approximately 20 meters from the scene of the shooting.

He travelled to the Peja hospital in the taxi with KI and ES.

At the time he heard the gunshots he estimated there were approximately ten pedestrians in the street in front of the PTK building. He described pedestrians "running"²⁵. When he was examined on 29 November 2011 he described seeing "a large number of people" on the road in front of the PTK building.

He said he did not see anyone firing a weapon. He said in his evidence before the court he saw bullets lying on the ground. He said he did not see those bullets hitting the ground. He did not see any vehicles driving away from the scene.

²⁵ Examination on 29 November 2011.

The Prosecution called **BK**. He is a cousin of DK.

He was questioned by the prosecutor on 6 December 2011. He testified before the trial panel on 21 June 2012.

He gave evidence that on 19 September 2011 he was at work at the Kajot Casino on Hospital Road in Peja. He said he took his lunch between 12 and 1pm.

He described walking into town where he had a chance meeting with DK, JK and SK near the pharmacy close to the PTK building.

It was his evidence they walked in an easterly direction on Mbretersha Teute footway past the PTK building opposite the Dukagjini Hotel. He said he walked with DK ahead of JK and SK. He said DK was to his left.

BK gave evidence that as they walked past the entrance to the PTK building a van passed by whereupon he heard a shot. He presumably looked towards the Dukagjini Hotel because he described seeing a taxi opposite the PTK building. He said when he first saw the taxi it had started to move. However, after the first shot, it stopped. He saw two people sitting in the taxi. He said one person was sitting in the front passenger seat while the other was seated on the rear seat immediately behind the front seat passenger. He said the front passenger window was slightly more than half open. He said the rear passenger window on the right-hand side was almost fully open but raised approximately 10cm. He described this as being like the child safety features one occasionally finds on motor cars.

He said both passengers had guns in their hands. He said the front seat passenger was holding a black gun. He said this person pointed the gun towards him but that he did not shoot. The rear seat passenger was holding a gun bronze in colour.

BK said he saw the rear seat passenger pointing his gun away from them and towards the Dukagjini Hotel. He said he heard a shot. He said this person then turned the gun in their direction and fired.

It was his evidence the first shot fired towards them hit a cyclist. He was clearly referring to AP. He said when the bullet struck AP DK was still to his left. He said DK never stepped off the pavement into the road.

BK gave evidence before this Court that FG fired a volley of 4 shots towards him. He said it was only then that DK took out his gun and fired at the road and the tyre of the taxi. He said DK was still standing on the pavement to his left. He said DK never stepped off the pavement into the road.

He said DK fired all of the ammunition in his gun. They then ran towards the parking area around the corner of the NLB bank. From there they drove to the Rugova Valley. BK gave evidence this was in order to wash their faces. He said they were confused. They went to a house in the Rugova where they were later arrested.

BK gave evidence that he had returned from Montenegro on 16 September 2011. He said he saw DK the following day. He said he met DK by chance on 19 September 2011. He said he had not arranged to meet him and that he had not spoken to him on the morning of 19 September 2011.

He denied he had walked past the place in the pedestrian street where FG had been sitting with DKE and KI.

Counsel for DK called **SK**. He is a cousin of DK. He gave evidence before this Court on 26 June 2012.

It was his evidence that on 19 September 2011 sometime after 12 noon he was with JK when they met DK and BK at the pharmacy near the Dukagjini Hotel. He said DK and BK had just met each other. However, he could not explain to the Court how he had reached that conclusion. It was his evidence that when he saw DK and BK they were standing near the pharmacy. Indeed, it was his evidence that they simply greeted each other. He later conceded that he did not know whether, in fact, they had just met.

SK stated that, having greeted each other, they then walked in the direction of the PTK building. He said DK and BK were walking 1.5 - 2m ahead of them. He said DK was walking on the left of BK.

SK gave evidence that as they approached the PTK building he heard what sounded like a firework. He said he saw a taxi that was stationary opposite the PTK building. He said the front passenger door window was fully open. He said the rear passenger door window on the right-hand side of the taxi was 3/4 open. He gave evidence the front seat passenger was holding a pistol through the open window. He said the rear seat passenger was also holding a gun that he was pointing to his left. He said the rear seat passenger then pointed the gun in the direction of the PTK building and fired 3 or 4 times. One of those shots hit a cyclist. He could not recall if the cyclist was riding the bicycle when he was shot. He said DK then took out a gun, cocked it and fired several bursts at the road and towards the front tyre of the taxi. He said he was holding the gun pointing down. He said DK continued firing until he had no more bullets. He said DK remained standing on the sidewalk. He could not recall seeing the front seat passenger when DK fired his weapon.

It was his evidence the driver of the taxi had his head on the steering wheel. He said the front seat passenger did not fire his weapon.

Counsel for DK called **JK**. He is the brother of DK. He gave evidence before this Court on 27 June 2012.

It was his evidence that on 19 September 2011 he was working alone at a car park in Peja. At approximately 11am SK arrived at the car park. At approximately 12 noon they both left the car park and went to the "Victoria" restaurant. He thought they stayed in the restaurant until approximately 12.30pm.

JK described their walking in a southerly direction towards the square near the Dukagjini Hotel. He said that near the pharmacy opposite the Dukagjini Hotel they met DK and BK. He said they followed DK and BK as they walked towards the PTK building. They were walking on the footpath next to the PTK building. He described their walking approximately 2m behind DK and BK. He gave evidence DK was walking to the left of BK.

It was his evidence that he was approximately 1m from the entrance of the PTK building when he heard gunshots. He said he looked in the direction of a taxi that was

stationary opposite the PTK building. He said he saw three persons sitting in the taxi. He said the front passenger door window was fully open. He said the rear passenger door window on the right-hand side of the vehicle was raised approximately 8 - 10cms. He said he saw the front seat passenger of the taxi holding a gun outside the vehicle. He said the rear seat passenger also had a gun. He said the rear seat passenger fired two shots towards the PTK building hitting a cyclist who he said was riding a bicycle on the road "next to the pavement". He said the cyclist was approximately 1m ahead of DK when he was shot.

He gave evidence that the rear seat passenger of the taxi fired 4 - 5 shots before DK pulled his gun and fired at the road and front tyre of the taxi. He thought DK was standing approximately 5 - 6m from the taxi. It was his evidence that DK remained on the pavement in front of the PTK building throughout the exchange of fire. He said that throughout the incident BK was standing to the right of DK.

It was his evidence that he last spoke with DK - either in person or by phone - on 18 September 2011.

Counsel for DK called **DF**. He gave evidence before this Court on 27 June 2012. He had not previously given a statement to police or to the Prosecutor.

He gave evidence that he was an eye-witness to the events in issue. He had not previously given a statement to the prosecutor or to police. He said that on the day in question he was walking towards the PTK building along the northerly footway opposite the Dukagjini Hotel. He said that as he approached the zebra crossing outside the PTK building he heard gun shots. He seemed to recall a truck driving past immediately after the first gunshot. He said he did not know where the gunshots came from but he looked to his right where he saw a taxi. He described the taxi moving and then stopping. He estimated the taxi moved approximately 10cm.

It was his evidence the front seat passenger of the taxi was holding a gun outside the vehicle through the open window. He said the rear seat passenger was also holding a gun. He said the rear seat passenger fired two shots.

He said a cyclist was riding his bicycle on the pavement

approximately 6 - 7m ahead of him, cycling towards him and had almost reached the entrance of the PTK building when he was hit by a bullet.

He gave evidence that after the rear seat passenger of the taxi had fired towards the PTK building he saw a man approximately 2 - 3m ahead of him pull out from his clothing a gun. He said this man was between him and the cyclist. He said this man shot 4 -5 times at the road in the direction of the taxi. He said this man remained on the pavement. He could not recall seeing anyone else between him and this man. It was clearly his evidence that the man in the taxi was the first to shoot.

He said he did not go to the police and inform them of what he had seen. He said no one suggested that he should go to police. Indeed, it appears on his evidence that it never occurred to him that he should report to the police what he had seen. However, approximately 1 or 1 ½ weeks after the incident he went to see the family of DK. It appears this meeting was precipitated by a conversation he had had with someone on Facebook. He said he went to the K family home and met the mother and father of DK. He said he described to them what he had seen. He said approximately 1 week after that initial meeting he returned to the K family home and met the lawyer instructed by DK. There was no dispute this was EN. He said he again described what he had seen whereupon EN asked him if he would testify.

Counsel for DK called **SS**. She gave evidence before this Court on 5 September 2012.

She is an employee of the PTK and was working at the PTK office opposite the Dukagjini Hotel on 19 September 2011.

She described hearing gunshots whereupon she fell to the floor. She did not know if the gunshots were from the same weapon. She described how she later saw a body lying on the ground approximately 5m from a taxi that was parked in the taxi rank.

Counsel for DK called **AX**. He gave evidence before this Court on 5 September 2012.

He is an employee of the PTK and was working at the PTK

office opposite the Dukagjini Hotel on 19 September 2011.

His evidence was, in all material respects, the same as that given by his colleague SS. He described the PTK office being busy with customers. He testified that upon hearing gunshots he fell to the ground. From the sound of the gunshots he could not determine if they were from the same gun. He described hearing the sound of glass breaking. It was his assumption the window had been broken by a bullet.

Counsel for DK called **AM**. He gave evidence before this Court on 6 September 2012.

Officer AM is a police officer in the service of Kosovo Police and works as a Supervisor of the Homicide Sector at the Regional Investigation Unit in Peja.

He gave evidence that on 19 September 2011 he was not on duty. He did not attend the crime scene on that date. He did not examine the Njaci taxi.

Officer AM gave evidence a police officer was not present during the autopsy conducted by Dr. FB.

He gave evidence the bullet extracted from the victim during the autopsy and given evidence number 50 was delivered to the Crime Unit in Peja. He described the usual procedure when such evidence is taken and the subsequent chain of custody.

Officer AM confirmed that Officer RB who, it appears, is related to FG was not involved in the investigation. He was, however, present at the arrest of DK.

Counsel for DK called **AB**. Officer AB took photographs of the crime scene on 19 September 2011 that recorded where evidence was found. He was also the author of the Crime Scene Inspection Report dated 20 September 2011. Officer AB also photographed the Njaci taxi on 19 September 2011. He gave evidence before this Court on 6 September 2012.

Measurements taken at the scene record the position of each piece of evidence. Reference points "A" and "B" are located either side of the entrance to the PTK building.

Shell casings of 7.62 x 25mm were found 13.75m from Reference Point "A" and 9.20m from Reference Point "B"²⁶, 10.7m from Reference Point "A" and 6.4m from Reference Point "B"²⁷, 8.40m from Reference Point "A" and 3.80m from Reference Point "B"²⁸, 4.30m from Reference Point "A" and 4.80m from Reference Point "B"²⁹, 1.10m from Reference Point "A" and 3.30m from Reference Point "B"³⁰, 11.40m from Reference Point "A" and 8.80m from Reference Point "B"³¹, 12.20m from Reference Point "A" and 7.70m from Reference Point "B"³² and 14m from Reference Point "A" and 10.10m from Reference Point "B"³³.

Shell casings of 7.65 were found 11.80m from Reference Point "A" and 9.20m from Reference Point "B"³⁴, 10m from Reference Point "A" and 8.90m from Reference Point "B"³⁵, 9.70m from Reference Point "A" and 8.20m from Reference Point "B"³⁶, 10.50m from Reference Point "A" and 8.90m from Reference Point "B"³⁷, 12.60m from Reference Point "A" and 11.80m from Reference Point "B"³⁸ and 14.50m from Reference Point "A" and 12.40m from Reference Point "B"³⁹.

What appeared to be blood stains were recorded on the footway 13.40m from Reference Point "A" and 13.60m from Reference Point "B"⁴⁰, on the kerb stones and in the road 12.50m from Reference Points "A" and "B"⁴¹.

What appeared to be blood stains were also recorded on the footway 3.60m from Reference Point "A" and 6.50m and from Reference Point "B"⁴² and 34.70m from Reference Points "A" and 38.90m from Reference Point "B"⁴³.

²⁶ Exhibit 1
²⁷ Exhibit 2
²⁸ Exhibit 5
²⁹ Exhibit 9
³⁰ Exhibit 10
³¹ Exhibit 20
³² Exhibit 21
³³ Exhibit 22
³⁴ Exhibit 14
³⁵ Exhibit 15
³⁶ Exhibit 16
³⁷ Exhibit 17
³⁸ Exhibit 18
³⁹ Exhibit 19
⁴⁰ Exhibit 12
⁴¹ Exhibit 13
⁴² Exhibit 11
⁴³ Exhibit 24

A bicycle was lying in the road against the North footway 5.20m from Reference Point "A" and 4.50m and from Reference Point "B"⁴⁴

An examination of the crime scene revealed 1 (one) bullet hole in the side of a telephone booth affixed to the wall of the PTK building⁴⁵, 1 (one) hole in a window of the PTK building⁴⁶ and 1 (one) hole in the window framework of the PTK building⁴⁷, 1 (one) bullet was found inside the PTK building having struck the side of the service counter⁴⁸.

A bullet casing was found 21.40m from Reference Point "A" and 18.20m and from Reference Point "B"⁴⁹, a shell was found 14.70m from Reference Point "A" and 10.80m and from Reference Point "B"⁵⁰. A bullet casing and shell were found inside the PTK building⁵¹.

Officer AB did not record in the Crime Scene Report the presence of glass fragments on the road at the crime scene. He was asked about this by counsel for DK. His response was that glass from a shattered window would, in his opinion, normally fall inside the car.

Officer AB examined the taxi on 19 September 2011 at the parking area of the traffic police in Peja.

The photographs taken of the Njaci taxi by Officer AB noted, inter alia, a deflated front right-hand side tyre⁵², a bullet hole to the front passenger door⁵³, corresponding damage to the interior of the door⁵⁴ and door cill⁵⁵, glass fragments on the rear seat⁵⁶, red stains on the rear of the drivers seat⁵⁷, red stains on the cill of the passenger door behind the driver⁵⁸ and a shell casing⁵⁹.

⁴⁴ Exhibit 6

⁴⁵ Exhibit 3

⁴⁶ Exhibit 4

⁴⁷ Exhibit 25

⁴⁸ Exhibit 29

⁴⁹ Exhibit 23

⁵⁰ Exhibit 26

⁵¹ Exhibits 27 and 28

⁵² Photograph 6

⁵³ Photographs 7 and 8

⁵⁴ Photograph 9

⁵⁵ Photograph 10

⁵⁶ Photographs 15 and 16

⁵⁷ Photographs 17 and 18

⁵⁸ Photograph 19

Officer AB gave evidence regarding the damage to the right-hand side front wheel. He confirmed damage to the wheel rim⁶⁰ might have been caused by a bullet hitting the rim. The tyre was deflated when he photographed the car. He was unable to determine if the tyre had been hit by a bullet although he did not exclude that possibility.

Counsel for the Prosecution conceded that the evidence suggested that the wheel had been struck by a bullet. However, given the fact the tyre was itself deflated it is conceivable the tyre was also struck by a bullet. The court finds that at least one bullet hit the front right-hand side wheel.

Officer AB stated that during his examination of the taxi he did not find the bullet that penetrated the front right-side door.

Counsel for DK called **QV**. He gave evidence before this Court on 6 September 2012.

Officer QV was present when Officer AB examined the Njaci taxi on 19 September 2011.

Officer QV gave evidence that she was not present during the autopsy that was conducted by Dr. FB. An issue was raised by counsel for DK regarding her name appearing on the album of photographs taken during the autopsy. In response Officer QV gave evidence that she had simply compiled the album. Indeed, the autopsy report records the photographer being BRE.

The Court called **MH**. He is currently detained at Dubrava, having been convicted, on his evidence, of Aggravated Murder. He gave evidence before this Court on 9 November 2012, after the close of the evidentiary proceedings.

On 29 October 2012 the Court received a copy of a letter signed in the name MH and dated 16 September 2012. That letter raised an issue that the Panel decided required further investigation.

⁵⁹ Photographs 20 and 21

⁶⁰ The court deliberately distinguishes between wheel, wheel rim and tyre.

Article 385 provides that if, in its deliberations, the court finds that there is no need to re-open the main trial so as to (i) supplement the proceedings or (ii) to obtain clarification of a particular issue, the court shall render a judgment.

When making that determination the Court had regard to the potential weight and reliability of the evidence that could be given by Mr. MH; the potential value of this evidence in the context of the case as a whole; the circumstances in which it appeared the statement was made and to be and to what extent his evidence might assist the court having regard to the other evidence in the case.

By analogy with Article 385 of the KCCP the Court chose to hear his evidence and that of MK⁶¹ , the mother of DK and LG.

MH was asked by the court about the letter purportedly written by him addressed to the Presiding Judge and dated 16 September 2012. The original of that letter was never received by the Presiding Judge or the court. Instead, the Court received a copy of that letter from the mother of DK.

The content of the letter was important because it referred to a telephone conversation between FG and another person that MH said he had overheard during the time he had shared a cell with FG. It was his evidence that, during that telephone conversation, FG had made an admission to the effect that he had killed KI.

So-called "cell admissions" raise various issues for the court in its assessment of such evidence - not least of which is the credibility of the witness. Prisoners may have a variety of reasons for giving false testimony and the court must proceed with caution. The credibility of witnesses in such cases is paramount.

The court therefore put questions to MH in order to test his reliability. The following extract from the minutes of 9 November 2012 addressed this issue.

Presiding Judge: Did you post it on this date?

⁶¹ In the minutes she gave her name as MR.

MH: Yes.

Presiding Judge: Did you speak to anyone prior to writing this letter?

MH: No.

Presiding Judge: Did you have any contact with anyone prior to writing this letter?

MH: I had contact with prison inmates, but nothing in relation to this.

Presiding Judge: Did anybody you show a document relating to this case?

MH: I knew about this case because both Defendants were in my cell.

Presiding Judge: But was any document shown to you? Which documents have you seen relating to this case?

MH: The indictment, which was found by the Public Prosecutor, EULEX prosecution office. I have read all of the indictment. I have seen the documents from both of the Defendants because they were in my cell.

Presiding Judge: So which documents you have seen?

MH: I have also seen the picture of the person which is now the deceased person.

...

Presiding Judge: What other documents?

MH: Nothing else.

Presiding Judge: Who showed you these documents?

MH: I have read the documents by both of them, by FG and DK.

Presiding Judge: So what you are saying is that you were shown documents by both of the Defendants and a photograph of the deceased person and the indictment?

MH: Yes.

Presiding Judge: And you spoke to nobody before writing this letter?

MH: Nobody pushed me to write this letter, I am not a child. There was only one thing that pushed me to write it and I have fully moral responsibility when I say this. I am the father of 8 children; it is a terrible thing to lose a child all of a sudden. And for the sake of god and the victim that is why I wrote this letter.

Presiding Judge: Where did you get my name from?

MH: I have read your name form the documents you have sent.

Presiding Judge: Which documents?

MH: The documents you have sent, the summons I received for the court.

Presiding Judge: But that was after you wrote this letter. Who told you that I am presiding in this case?

MH: It was the documents of the case file you sent to the parties and it was written there.

Presiding Judge: But you said you only saw the indictment and a photograph of the deceased person.

MH: Yes.

Presiding Judge: So what else did you see?

...

MH: Every document that is sent to the accused contains the name of the panel members.

Presiding Judge: So what you said was not correct, you saw also other documents.

MH: All the documents contained your name.

Presiding Judge: So you saw other documents too. Who showed them to you?

MH: I read these documents, the indictment and everything else from both parties because we shared a cell.

Presiding Judge: My name is not shown in the indictment.

MH: But in the other documents.

Presiding Judge: Before you told me you have only seen the indictment, but now you have seen also other documents.

MH: I have read all documents related to the case, beginning with the indictment and all the other documents.

Presiding Judge: It seems perfectly clear to me what you told us in the beginning was not correct, you also saw other documents.

MH: I saw all of them.

...

Presiding Judge: Having written the letter what did you do? You gave it to a prison officer or what happened?

MH: I left it with a social worker because he is the responsible person.

Presiding Judge: So you wrote the letter while in your cell?

MH: Yes.

Presiding Judge: So you wrote it in your cell and then gave it to the social worker?

MH: Yes.

Presiding Judge: Did you go to him or did he come to

you to get the letter?

MH: I called him to come to my cell.

Presiding Judge: So he came to your cell. Did you put it in an envelope; was he able to read the letter?

MH: The issue is regulated, the letter is addressed to a state institution, and it was sealed in an envelope and then passed to the social worker.

Presiding Judge: So he came to you with an envelope?

MH: No, I had the envelope, I bought it with my money, and this is the regular procedure.

Presiding Judge: I just want to follow exactly the procedure. So you wrote the letter in your cell, you put the letter in an envelope, sealed it and the social worker collected it from you?

MH: Yes. Everything that has to do with justice is sealed in an envelope, other private correspondence they will read.

Presiding Judge: So at the time the letter left your cell it was in a sealed envelope and given to the social worker?

MH: Yes. I have sent other letters also, to the prosecution, everything in a sealed envelope.

Presiding Judge: Do you have a photocopier in your cell?

MH: No.

Presiding Judge: So how come on 29.10. I received a photocopy of the letter when you said you posted on 16.9. and had left your cell in a sealed envelope?

Presiding Judge: **You did not keep a copy of this letter?**

MH: **No.**

...

Presiding Judge: You say you wrote on 16.9. a letter personally addressed to me. I never received the letter, the court never received it. You tell us today you wrote it in your cell, you sealed it in an envelope and gave it to the social worker. And on 29.10.2012 **Mrs. MK appears in my office with a copy of this letter. And you can't explain that?**

MH: **No.**

...

(Referring to the conversation MH said he overheard)

Presiding Judge: You refer to a conversation which you said that Mr. FG had with one of his family member in relation of the death of KI. Do you recall this conversation you heard?

MH: Yes. I cannot say I heard only this conversation, I heard all the conversations.

...

Presiding Judge: And do you remember the whole conversation?

MH: The majority of it, yes.

Presiding Judge: Do you know who FG was talking to?

MH: Yes, to his mother.

...

Presiding Judge: Do you remember the precise words he used?

MH: Yes. This is what I am saying. He said that even if it is proven he did commit the murder it will not be a long sentence because the murder was not intentional.

Presiding Judge: So he said even if it is proven he committed the murder?

MH: Yes, from carelessness.

Presiding Judge: Did he say murder or attempted murder?

MH: Murder, because a person was murdered; we have to be correct.

...

Public Prosecutor: I understand you had a copy of this letter, correct?

MH: Yes. I have and I signed the original.

Presiding Judge: How did you get a copy of the letter? We are talking about your letter to me of 16 September?

MH: **Yes. I have handwritten two copies, one I sent to the court and one I kept.**

Presiding Judge: **So you wrote two identical letters, is that what you are saying?**

MH: **Yes.**

Presiding Judge: How many other copies of this letter do you have?

MH: I wanted to keep one for me, to be as much as objective as I can to the court.

Presiding Judge: **First you told us you did not keep a copy now you are telling us something quite different.**

...

Presiding Judge: **And you have never shown the copy you wrote to anyone?**

MH: **No.**

Presiding Judge: **Then how do you explain how Mrs. MK came by a copy?**

MH: **I don't know.**

MH gave evidence that the telephone number of the SIM card used by FG was 049 xxx xxx.

The Court called **MR.** She is the mother of DK. She gave evidence before this Court on 9 November 2012, after the close of the evidentiary proceedings. Her evidence was relevant to the Court assessment of the evidence of MH.

MR confirmed that she gave a copy of the letter to Eulex on 29 October 2012. She stated a friend had helped her to obtain it but she did not know the name of her friend. She stated her son informed her of its existence during a prison visit.

The Court made enquiries of the Correctional Service and found that on 27 July 2012 Prison Officers had found a mobile telephone in the cell occupied by FG and MH. They did not seize a SIM card.

The Court called **LG.** She is the mother of FG. She gave evidence before this Court on 9 November 2012, after the close of the evidentiary proceedings. Her evidence was admitted because it was directly relevant to the evidence of MH.

LG confirmed the telephone number 049 xxx xxx is registered in her name and was used by her son to contact her. She testified she had a number of telephone conversations with him while he was in detention but they never spoke specifically about the shooting of KI.

Expert Evidence

Counsel for DK called **Dr. FB.** He was the pathologist who performed the post mortem examination on the body of KI on 20 September 2011.

The Autopsy report of Dr. FB is dated 20 September 2011.

KI died as a result of haemorrhage due to injury of the aorta and lungs caused by a single gunshot wound that penetrated his right arm before passing through the third

intercostal space to the right side of the rib cage, through the right lung touching the esophagus and the aorta, continuing through the left lung, through the sixth intercostal space to the right side of the rib cage to end up at the level of the left shoulder region and under the cutaneous tissue. The bullet was found in the left part of the rib cage.

The bullet trajectory was from right to the left and from up to down.

The 'Description of Recent Injuries' as recorded in the Autopsy Report states

"On the outer face of the right arm, around 10 cm under the humeral neck and around 25 cm from the right elbow, and 158 cm up from the heel, is found a hole in a form of an egg-shaped, with regular edges, slightly entering inside the hole, with minus tissue, around it is found a ring of intensive red color which corresponds to the edge of the affected area, 1-2mm thick. Size of the hole is 7-8mm, and represents the entry hole caused by a dynamic action of a bullet fired from a firearm. Around this hole there are fine stipples dark brown to black in color, which are proved to be as a result of actions of unburned particles of powder, furthermore there is no doubt that they are also combined with the sings left during exposure of the needle while suturing, where during the autopsy two sewing (sutures) were noted. Starting from the middle external face of the right arm, going along the right forearm, almost to its middle, the skin appears to be spotted with slight injuries of thread hole size, with intensive red color, spread out in the form of a tattoo, which are both scientifically and professionally proved as a result of powder particles action.

The above-mentioned entrance hole continues with its canal through tissues of the arm region, through the third intercostal space to the right side of the rib cage, through the right lung touching the esophagus and the aorta, continuing through the left lung, through the sixth intercostal space to the right side of the rib cage to end up at the level of the left shoulder region, under the cutaneous tissue, where the

bullet is actually found, around 140cm far from the heel and around 15 cm far from the back midline.

The bullet trajectory is the following: from right to the left and from up to down."

Dr. FB referred in his evidence to the presence of what appeared to be unburned gun powder on the skin. He said some of these injuries might have been caused by glass but he was unable to offer a definitive opinion.

Referring to the powder particles, Dr. FB gave evidence that in his opinion the gun used was between 0 - 1 metre from the victim when it was fired. However, during the reconstruction on 2 October 2012 Dr. FB clarified his earlier evidence in two important respects. Firstly, he stated no powder particles were in fact found on the skin of KI. Secondly, given that fact, he was unable to determine the distance of the shooter from the victim. A distinctive 'tattoo' that he observed on the victims skin could indicate a distance of less than one metre. Counsel for DK relied upon this in support of its averment it was FG had fired the fatal shot. However, Dr. FB could not give any reliable indication of the distance of the shooter. Further, he stated that, given the angle of trajectory of the bullet, the shooter could have been 1 or even 50 meters away.

At the time of his death the victim was wearing a red t-shirt. When examined, the pathologist noted two holes on the right sleeve. The first hole was 10 x 9mm and the second was 2 x 2mm. Both holes had regular edges.

Dr. FB said the larger hole in the victim's T-shirt was consistent with the position of the entry wound in the victims' right shoulder. Referring to the smaller hole in the T-shirt, Dr. FB could not determine what caused this hole but gave evidence there was no corresponding injury to the victim's skin.

Referring to the photographs taken during the post mortem examination Dr. FB gave evidence that photograph number 33 depicts the bullet *in situ*, while photographs numbered 50 and 51 depict the same bullet. That bullet had distinctive marks at its tip.

Dr. FB gave evidence the injuries suffered by KI were such that his chances of survival were, in his words, "very low".

There was no dispute that AP sustained a single gunshot wound to both buttocks⁶².

Dr. FB examined AP on 10 September 2012. His report of that examination is dated 12 September 2012. The bullet passed horizontally through both buttocks. Dr. FB was unable to determine which was the entry wound and which was the exit wound.

Counsel for DK called QT. He is a Ballistics expert in the employ of Kosovo Police. He gave evidence before this court on 11 October 2012. His report dated 25 September 2012 was put in evidence.

There was no dispute that at that time DK was unlawfully in possession of a Cervena Zastava M-57 pistol of 7.62 x 25mm caliber with serial number G-79265.

There was no dispute that at that time FG was unlawfully in possession of a Cervena Zastava M-70 pistol of 7.65 x 17mm caliber.

Pursuant to an order of this Court dated 19 September 2012 Officer QT was ordered by the Court to conduct a re-examination of ballistics evidence recovered at the scene and during the autopsy and, *inter alia*, to compare those bullets, shell casings and other ballistics fragments with the firearms used by each of the defendants.

Officer QT received evidence EV number 1, 2, 5, 9, 10, 20, 21 and 22 comprising eight shells part of bullets caliber 7.62x25mm, all with imprinted base "11-65"; evidence EV number 14, 15, 16, 17, 18, 19 and 37 comprising seven shells part of bullets caliber 7.65x17mm, all with imprinted base "S&B-7.65 Br.-11"; evidence EV number 23 and EV number 27 comprising two (2) damaged jackets, part of bullet projectiles caliber 7.65x17mm; evidence EV number 26 and EV number 28 comprising two (2) damaged projectiles, part of bullets caliber 7.65x17mm; evidence EV number 38 comprising one pistol "CRVENA ZASTAVA" M-70 caliber

⁶² A single bullet passing through both buttocks.

7.65x17mm, without a serial number; one (1) cartridge with capacity of eight (8) bullets caliber 7.65x17mm, designed for "CRVENA ZASTAVA" M-70 pistols; evidence EV number 42 comprising one pistol "CRVENA ZASTAVA" M-57 caliber 7.62x25mm, with a serial number "G-79265"; one (1) cartridge with capacity of nine (9) bullets caliber 7.62x25mm, designed for "CRVENA ZASTAVA" M-57 pistols; four (4) bullets caliber 7.62x25mm, with imprinted base: "11-65" three (3) bullets and "*44*47" one (1) bullet and evidence EV number 50 comprising one (1) damaged projectile, part of bullet caliber 7.62x25mm.

Microscopic comparisons carried out between eight (8) shells caliber 7.62x25mm, from evidence EV number 1, 2, 5, 9, 10, 20, 21 and 22, determined that these eight (8) shells have the same individual ballistic characteristics amongst them, meaning they were fired from the same weapon.

Microscopic comparisons carried out between seven (7) shells caliber 7.65x17mm, from evidence EV number 14, 15, 16, 17, 18, 19 and 37, determined that these seven (7) shells have the same individual ballistic characteristics amongst them, meaning they were fired from the same weapon.

Microscopic comparisons carried out between two (2) projectile jackets and two (2) projectiles caliber 7.65x17mm, from evidence EV number 23, 26, 27 and 28 determined that those have the same individual ballistic characteristics amongst them, meaning they were fired from the same weapon.

Microscopic comparisons carried out on eight (8) shells caliber 7.62x25mm, from evidence EV number 1, 2, 5, 9, 10, 20, 21 and 22, and also one (1) projectile of the same caliber from evidence EV number 50, with shells and projectiles fired in test shootings with weapon from evidence EV number 42, determined that those have the same individual ballistic characteristics, meaning that eight (8) shells and one (1) projectile caliber 7.62x25mm from evidence EV number 1, 2, 5, 9, 10, 20, 21, 22 and 50, were fired from the pistol "CRVENA ZASTAVA" M-57 with a serial number "G-79265", of evidence EV number 42.

Microscopic comparisons carried out between seven (7) shells caliber 7.65x17mm, from evidence EV number 14, 15, 16, 17, 18, 19 and 37, and also two (2) jackets and two (2) projectiles of the same caliber from evidence EV number 23,

26, 27 and 28, with shells and projectiles fired at test shootings with the weapon from evidence EV number 38 determined that those have the same individual ballistic characteristics, meaning that seven (7) shells and two (2) projectile jackets and two (2) projectiles caliber 7.65x17mm from evidence EV number 14, 15, 16, 17, 18, 19, 37,23,26,27 and 28, were fired from the pistol "CRVENA ZASTAVA" M-70 caliber 7.65x17mm, without a serial number from evidence EV number 38.

An issue was raised by counsel for DK regarding the chain of custody of the bullet recovered during the autopsy. It was put to the court that the bullet examined by Officer QT was not the bullet recovered by Dr. FB during the autopsy. It was submitted on behalf of DK that the bullet had been planted by police for the obvious purpose of incriminating DK.

During the examination of Officer QT the Court informed the parties that the bullet could be brought into court for physical examination. None of the parties requested at that time that the bullet be produced in court.

Officer QT photographed the bullet extracted from the corpse of KI and exhibited that as exhibit number 50⁶³. The bullet has distinctive damage at its' tip. Officer QT gave evidence that the bullet he examined was the bullet photographed during the autopsy.

In response to a question put by Counsel for DK Officer QT gave evidence that a bullet striking tempered glass, having been fired from an angle of 90 degrees would, in his opinion, cause a hole in the glass but would not shatter the glass. He gave evidence that a bullet striking tempered glass having been fired from an angle less acute than 90 degree was more likely to cause the glass to shatter.

Officer QT also gave evidence about damage caused to bullet heads that were fired through tempered glass of the type used in motor cars. Officer QT stated that he had attended training in Switzerland and had personally conducted experiments or had been present when experiments had been conducted for the purpose of determining the damage caused to bullet heads fired through tempered glass. The court

⁶³ "QT1"

was satisfied that Officer QT was suitably qualified to give evidence in this regard as an expert witness.

Officer QT put in evidence two pictorial images of bullets fired through tempered glass⁶⁴.

The angle at which a bullet is fired through tempered glass determines the type and extent of damage⁶⁵. A bullet fired through tempered glass at an angle of 90 degrees was likely to result in a flat tip⁶⁶. A bullet fired through tempered glass at an angle less acute than 90 degrees was more likely to result in damage to the outer edge of the tip.

When referring to an angle at which a bullet strikes tempered glass Officer QT's evidence was that the same conclusions would be drawn if the angle was less than 90 degrees to the horizontal or vertical.

Officer QT also gave evidence regarding the angle and distance a shell case is ejected from the type of gun used by each of the defendants. Officer QT conducted various experiments and the court put in evidence the results of those experiments in computer-generated diagrammatic format⁶⁷.

When conducting those experiments Officer QT did not use the actual firearms seized from each of the defendants. Instead, he used guns of the same model produced by the same manufacturer.

In their various submissions counsel for DK referred to the bullet that punctured the front right-side door of the taxi. They postulated what had become of the bullet. The Court asked counsel if it was the averment of counsel that this was the bullet DK said had been planted by police and was the bullet evidenced at number 50. Counsel for DK replied that that was not their case.

DK was in possession of a Cervena Zastava M-57. FG was in possession of a Cervena Zastava M-70. Both firearms eject spent cartridge cases from the right-side of the weapon.

When conducting the experiments Officer QT fired each of

⁶⁴ "QT2" and "QT5"

⁶⁵ "QT5"

⁶⁶ "QT5"

⁶⁷ "QT3" and "QT4"

the weapons at an angle of 90 degrees to his body and from approximately the same point. He said a 'margin of error' of a few centimeters should be allowed when assessing his calculations.

Officer QT gave evidence that the Zastava M-57 used by DK ejected cartridges at an angle of approximately 160 degrees behind the shooter and at a distance of between 6m and 12m. The majority of cartridges fell between 7 and 10m⁶⁸.

The ejection characteristics of the Officer QT gave evidence that the Zastava M-70 used by FG were quite different. Cartridges ejected from this weapon fell at an angle of approximately 85 - 100 degrees behind the shooter and at a distance of between 40cm and 110cm⁶⁹.

The significance of the angle and distance of ejection is important when one considers the evidence relating to where the shell cases were found at the scene.

Other Evidence

The Court watched two Cd's that recorded images taken by cameras at the Dukagjini Hotel on 19 September 2011. One CD⁷⁰ recorded the street immediately in front of the Hotel.

The second CD⁷¹ recorded the events in issue. The recording depicts numerous bystanders at the scene at the time of the shooting. It records the fact the event in issue lasted a matter of seconds. It also records the fact the rear left-hand side passenger door of the taxi was not closed when the vehicle moved-off. What appears to be a body can be seen falling from the taxi. Persons can then be seen picking-up the body. It is impossible to determine whether DK is depicted in the video.

Pursuant to a request from the Presiding Judge, AF, Eulex Border and Boundary Liaison Intelligence Officer reviewed the CDs and he was able to enhance the quality of the second CD. Regrettably when the images on the Cd's were enlarged the quality of the images was compromised by the pixellation. Even having enhanced the CD the Court found

⁶⁸ "QT4"

⁶⁹ "QT3"

⁷⁰ Camera 16

⁷¹ Camera 4

that the quality of the images depicted thereon was such that the video was of very limited probative value. In this regard the forensic evidence, crime scene evidence and the evidence of the witnesses is the more reliable.

For example, it is impossible on the face of the video evidence to determine the place where DK was standing when he fired his weapon. However, in that regard the Court is assisted by the forensic evidence - particularly the evidence relating to the place where the shell cases ejected from DK's weapon were found - as well as the witness testimony to which reference is made herein.

iv. Defendants

DK gave evidence before this court on 15 October 2012. He was interviewed by police on 20 September 2011. He was examined by the prosecutor on 6 December 2011.

It was his evidence before this court that at shortly after midday on 19 September 2011 he was alone walking along the Korso in the centre of Peja when, by chance, he happened upon his brother VK. VK told him he had seen FG in the centre of town. DK gave evidence that he told VK to go home and they parted. He said he then continued walking down the "Corso" towards the PTK building.

DK gave evidence that when he reached the Pharmacy on the corner opposite the Dukagjini Hotel he met BK, SK and JK. Again, this appears to have been a chance meeting.

DK said he and BK walked along the pavement in the direction of the PTK building. He said he was walking parallel with BK who was on his right.

Walking towards the PTK building they were walking from, approximately, West to East.

When they reached a point approximately 5 - 6 metres from the entrance⁷² of the PTK building he heard a "cracking" sound. He said it sounded like a firework. He saw opposite the PTK building a taxi. It had stopped. Sitting in the

⁷² 5 - 6 meters west of the entrance of the PTK building.

front passenger seat he saw a man holding a gun. He said the window was open and the man was holding the gun outside the window. Seated behind the front seat passenger DK saw FG. He too was holding a gun. He described the rear passenger window being open approximately 5 cm's. He said he did not see anyone else in the taxi apart from the driver.

DK gave evidence that FG fired a number of shots at him. In response, DK fired eight times from where he was standing, aiming at the front right-hand side tyre of the taxi.

It was DK's evidence that he fired from a position approximately 5 metres before the entrance of the PTK building. This was the evidence he gave during the reconstruction and the place where he was standing is that depicted in photograph 4 taken during the reconstruction on 2 October 2012.

DK described seeing a cyclist being hit by a bullet. He said the cyclist was approximately 2 - 2.5 metres in front of him when he was shot. It was clearly his evidence the bullet that hit the cyclist was fired by FG.

DK stated that after the incident he went to the Rugova Valley.

DK gave evidence he knew FG by sight, having seen him at court during the trial at which FG was charged with the attempted murder of his brother VK.

He gave evidence that the gun he used he had purchased from a Bosnian in Rozaje approximately 5 - 6 months before the incident in which his brother VK was stabbed.

During his evidence before this court DK and his counsel raised issues concerning his interviews by police and the prosecutor. Three primary issues were raised. Firstly, prior to the police interview he had been given insufficient time to consult with counsel. Secondly, during both the police interview and the examination by the prosecutor the concerns raised regarding the accuracy of the minutes were not properly noted. Thirdly, He was not permitted to read the statement or record of interview before he signed each. There was no dispute that during the police interview and when examined by the prosecutor DK was

represented by experienced counsel. In fact the same counsel who appeared during the trial.

The police statement contains the warnings that "I understand that I can read the written record of my interview and make corrections to my statement if it is not recorded accurately" **and** "I certify that the record of my interview or my statement attached and signed on each page is true and accurate to the best of my knowledge". The statement was also signed by DK's lawyer, Enver Nimani.

The Minutes of Examination before the Prosecutor on 6 December 2011 record DK stating "When I have given my statement to the investigating officers, my defence counsel was present with me, but they did not let me consult my defence counsel. I have consulted only 1 minute with him". At the end of the Minutes is recorded the statement of DK "I don't have to add anything else".

No complaint is made on the face of the police statement regarding insufficient time being given to DK to consult with his counsel. Instead, this complaint is not made until much later when he was examined by the prosecutor. It would be very easy for a defendant, subsequently dissatisfied with answers he had given during an earlier interview, to attempt to vitiate the validity of that evidence by, in a later statement, averring he had been given insufficient time to consult with his counsel. It would not be in the interests of justice for a court to exclude evidence on that basis.

DK signed both the police statement and the record of examination before the prosecutor.

Had DK been denied the opportunity to read the statement prior to his signing it his counsel should have intervened. Had comments made either by DK or his counsel regarding the accuracy of the minutes not been properly recorded, his counsel was under a duty to intervene. Save for the comment in the minutes of his examination by the prosecutor relating to his consultation with counsel during the police interview, there is no written record of any concern being raised by DK and/or his counsel during either interview or indeed at any time thereafter.

In the circumstances, the court chose to admit both the statement DK gave to police on 20 September 2011 and the

record of examination before the prosecutor on 6 December 2011 as an accurate record of what he told the police and prosecutor respectively on those earlier occasions. The court was satisfied DK's complaint about not having been permitted enough time to consult with his lawyer before making his statement to police was raised *ex post facto* and in a deliberate attempt to have comments he wished to resile from declared inadmissible.

DK gave his first statement in this case to police on 20 September 2011. His defence counsel was present.

There were certain material contradictions between what DK said in his statement of 20 September 2011 and the evidence he gave before this Court. For that reason the Court refers herein to the evidence he gave on both occasions.

In his statement of 20 September 2011 DK said he woke at 0800 on 19 September 2011. He dressed in blue jeans and a black t-shirt.

He said he had the keys to his Toyota vehicle in his pocket but he could not remember if he took anything else with him. He said that he worked as a driver for his uncle A so he went to his uncle's house and collected his uncle and his cousin. He dropped his uncle at the "Skyscraper" building⁷³. From there he took his cousin to collect her teacher and dropped them at a school. He took them back home and went there himself at around 1000 or 1100.

At 1130 his cousin BK phoned him and they arranged to meet at the "Ura e Zallit/Bridge of Sand"⁷⁴. Their plan was to walk along the pedestrian street ("Korso") and then to go to a parking lot to collect a bronze Mercedes belonging to DK's cousin, L. DK said that on Korso they met his brother, VK who was with a friend from Peja but he could not remember this person's name. DK said VK told him that FG from XX (who had stabbed him the previous year) was "at Corso" and to be careful. DK said he would send his brother away so he would not meet FG. He said he left in the direction of his house. DK said they continued walking on the Corso towards the parking lot behind the Social Welfare Office. He said at another location on the Korso "we" met

⁷³ Tall, Yugoslav-era apartment building opposite Peja courthouse.

⁷⁴ Bridge beside Qebaptore "LaLa" at the end of the pedestrian street furthest from Hotel Dukajini.

his brother, JK and his cousin, SK. He said JK and SK joined the group and they all continued walking down the Korso.

DK said when they reached the taxi rank in front of the PTK building he noticed FG sitting in a taxi. He said the taxi was facing Korso and FG was sitting in the "rear seat at the right side". He said FG had the window rolled down and was holding a "white short gun" in his right hand and aiming at DK's group.

DK said he walked another metre while keeping his eye on FG who then fired three or four shots at him. He said there was a blue truck passing at this point and he pulled out his black TT gun, loaded some bullets and when the truck had departed he fired all the ammunition in his magazine at FG who continued firing at him. DK said that when he realized he was running out of ammunition he ran in the direction of the parking lot. He said BK went with him but he could not see where JK and SK went.

When they reached the parking lot they took the aforementioned bronze Mercedes and drove towards Rugova. DK said that on the way he telephoned his uncle A and told him that FG had shot at him, he had fired back but he did not know what had happened and could A find out. He said A advised him to report to the police. DK said he continued driving to his cousin's hut in XX village. He was arrested there at about midnight that night. He said his pistol was seized. He said it contained three or four rounds which he had put in it while in the hut. He said while in the hut he called A who told him a boy from XX had been killed and another person injured. He said when he heard this he raised the pistol to his head to shoot himself but BK took it from him.

The police then asked a series of questions to which DK replied he did not see FG while walking with BK on the Korso.

He said that when he met JK and SK he did not tell them VK had already told him FG was in the vicinity. He said he saw a young male he did not know sitting in the front passenger seat of the taxi but it seemed like he had a short black pistol and he was resting it on the door with the window down. However, DK said he did not know if this man fired any shots. He said he did not notice anybody cycling a bike

at the time. He said he recognized FG because he had seen him at the courthouse in Peja at his trial for stabbing VK. He said he did not see any of the other occupants in the car with a weapon and he could only be sure he and FG had fired. He remembered the fact that he had taken the pistol with him when he left his house that morning. He said he purchased it from a Bosnian from Rozaje. He said he bought it for pleasure and did not have a weapons authorization card. He said he did not know the outcome of the exchange of fire but he had fired in self-defence. He said he did not know KI. He said he believed the motive or reason for the shooting was the stabbing and subsequent trial of FG.

In response to a question from his defence counsel, DK said when FG started shooting the taxi had moved a bit and then stopped. There is a direct contradiction between this and FG's version of events. FG said the taxi was stationary when he boarded it and only moved after the shooting had stopped and on the instructions of himself and DKE who was sitting in the front seat.

DK was examined by the Prosecutor on 6 December 2011. He referred to the meeting with BK at the "Bridge of Sand" but in contrast to his statement of 20 September 2011 he stated BK never turned up so he continued onto the Corso where he met with his brother, VK at the Qebaptore "LaLa" which is right beside the bridge itself. He did not repeat his earlier claim that VK was with another person but he did repeat that VK told him he had seen FG. He said he told VK to go home.

He said he continued on his own to the pharmacy underneath the Municipality offices⁷⁵ where he met his cousin BK who was coming from restaurant "Victoria"⁷⁶. He said at this point JK and SK approached, coming from the direction of the parking lot behind the Social Welfare Office.⁷⁷

DK stated he informed JK and SK they could come with him and BK to the parking lot and they did, walking behind him. He stated that they reached the steps of the PTK building when a taxi "...came from the lower part of town and stopped right opposite the post office it applied the brakes promptly..." at which point he noticed FG and another guy "in front" both of whom had their windows wound

⁷⁵ Beside the PTK offices opposite Hotel Dukajini.

⁷⁶ Near the old UNMIK headquarters.

⁷⁷ Further down the street past the premises of NLB bank.

down. He said the rear passenger window was raised approximately "five fingers from the bottom". He said "the first one" was "holding the gun in his hand whereas FG in our direction at that moment (FG) has fired in my direction and BK's direction". He denied that he had seen FG prior to that moment.

DK stated at that moment he pulled out his weapon and fired all eight of his bullets and "shot close to the car on the ground to frighten them". Later, in response to a question put by his counsel DK stated "I have shot with firearm on the ground and on the lower part of the front of the vehicle". He said that when he fired his weapon he "stayed in one place and did not move." He said FG continued to fire in his direction "again" and he started to run in the direction of the car-park on his own. He said BK arrived there from where they took the afore-mentioned bronze Mercedes and drove to Rugova.

He stated "from there" he called his uncle, A who informed him that one person had been killed and another wounded. He said he thought he had killed somebody "in the street". He realized this was an innocent person and he said he had not killed this person and the prosecution must confirm this.

He repeated that it was his brother, VK who told him he had seen FG at the Korso but he was adamant he did not say where and he did not see him anywhere on the Korso.

In his interview of 20 September DK stated the taxi came from the lower part of Peja and stopped just across from the post office. He said the brakes were applied quickly and it stopped in the taxi rank.

In his statement of 20 September he stated it was when the taxi was "parked up" he noticed FG in the rear passenger seat. It was only in response to a question from his own defence counsel he said the car was moving (and then stopped) when he noticed FG with the gun in his hand.

He said he noticed the person in the front passenger seat with the black revolver before he noticed FG. In his interview of 20 September he said he noticed FG first. He said he did not notice any other person in the vehicle. He said the exchange of fire took place from a distance of 5-6 metres. He said FG only fired when the taxi stopped but again on 20 September he only said this when prompted by

his defence counsel.

In response to questions from his own defence counsel he said when he met BK, SK and JK he did not tell them VK had informed him about FG. He said he fired at the ground as well as in the front part of the vehicle. He repeated he heard about the fatality first from his uncle. He said the taxi "came from below" which again implies it was in motion.

FG gave evidence before this court on 15 October 2012. He was interviewed by police on 19 September 2011. He was examined by the prosecutor on 29 November 2011.

The evidence FG gave when interviewed by the police and the prosecutor was, in all material respects, consistent with the evidence he gave before this Court.

It was his evidence that on 19 September 2011 he was together with KI, DKE, ARP, VA and AG at "Life" café on the Korso in the centre of Peja. He described the group sitting at a table outside the cafe. He said he was sitting with his back to the bar facing the street.

He said he saw VK standing near the bar talking on a mobile telephone. He said VK looked in their direction. There was no dispute that VK was the man he had been convicted of stabbing. FG knew VK by his nickname "CK".

In his statement of 19 September 2011 FG stated a short time later he saw SK and the brother of VK walking along the Corso from the direction of the Dukagjini Hotel. He knew DK by sight having seen him during his trial for the attempted murder of VK⁷⁸. He said DK was wearing "dark clothes"⁷⁹. The Court finds that the brother of VK to whom FG referred was DK. DK walked past their table and then stopped⁸⁰. DK was looking in their direction.

FG suggested to the group that they leave the café. They did so, leaving their unfinished drinks.

FG described their group walking from the café towards the taxi rank opposite the PTK building. He said they were

⁷⁸ Statement to police on 19 September 2011.

⁷⁹ Record of Examination of 29 November 2011.

⁸⁰ In his statement of 19 September 2011 he said approximately 10 meters from where they were sitting.

walking fast⁸¹, "almost running". He said he did not look behind him but one of their group had and said they were being followed by DK and SK. He said he looked around and saw BK and VK⁸².

When they reached the taxi rank he looked towards the PTK building and saw the four men standing to the left of the entrance of the PTK building, between the PTK building and the Municipality⁸³. He said he got into a taxi and sat on the rear seat behind the front passenger seat. He said DKE got into the front passenger seat. ARP and KI sat on the rear seat. He thought ARP sat in the middle of the rear seat.

He said both the front and rear passenger windows were closed.

FG gave evidence that he and DKE shouted to the taxi driver to leave immediately. The driver started the engine. As the taxi started to move he heard DKE shouting. He described seeing DK standing to the right of the entrance to the PTK building. He said DK was holding a gun and pointing it towards the taxi, shooting.

FG described his window being shattered by a bullet. He said he leant forward in the seat. He said he raised his head slightly and looked out of the window opening. He said he saw a person "approaching" the vehicle⁸⁴. He was shooting from a distance that reduced to approximately 2 meters⁸⁵.

He said he then saw KI bleeding from the mouth⁸⁶. He said he pulled out his gun, cocked it between his knees and fired out of the taxi through the broken window. He said he kept his head down, facing towards the floor of the taxi and fired his weapon in the direction of DK. He said he did not look where he was shooting but, on his evidence, fired in the direction of the gunshots. In his Statement of 19 September 2011 he said he fired in an "uncontrollable direction thinking of repelling the attack."

⁸¹ Record of Examination of 29 November 2011.

⁸² Record of Examination of 29 November 2011.

⁸³ Statement of 19 September 2011.

⁸⁴ Statement of 19 September 2011.

⁸⁵ Statement of 19 September 2011.

⁸⁶ Statement of 19 September 2011.

FG gave evidence that DKE helped steer the taxi away from the scene.

After the taxi had moved off he realized KI and ARP were no longer in the taxi.

FG described how, after the shooting had stopped he saw DK standing in the middle of the road.

C. Evaluation of the evidence

There was no dispute that at approximately 12:55 on 19 September 2011 in Mbreteresha Teuta, Peja near the PTK building opposite the Dukagjini Hotel there was an exchange of gunfire between DK and FG.

Both defendants claimed that at all material times they were acting in self defence.

Further, at trial, DK averred he had not fired the bullet that killed KI. He did not dispute the fact the bullet analysed by the ballistics expert and to which reference is made in the ballistics report was fired from his gun. However, he averred that bullet had been planted by police.

There was no dispute that at that time DK was unlawfully in possession of a Cervena Zastava M-57 pistol of 7.62 x 25mm caliber with serial number G-79265.

There was no dispute that at that time FG was unlawfully in possession of a Cervena Zastava M-70 pistol of 7.65 x 17mm caliber.

Both defendants pleaded guilty to the respective counts of Unauthorized Ownership, Control, Possession or Use of Weapons.

There was no dispute that KI died at approximately 2pm on 19 September 2011 at the Peja Regional Hospital. He was born on XX 1988 in XX. He was 22 years old at the time of his death.

There was no dispute that on 6 May 2011 FG had been convicted of the Attempted Murder of VK, brother of DK.

EI met his son in Peja shortly before his murder. He did not tell him where he was going or who he was meeting. He had recently started working as a waiter in a local restaurant.

Dr. FB performed the post mortem examination on the body of KI on 20 September 2011.

In his opinion KI died as a result of haemorrhage due to injury of the aorta and lungs caused by a single gunshot wound that penetrated his right arm before passing through the third intercostal space to the right side of the rib cage, through the right lung touching the esophagus and the aorta, continuing through the left lung, through the sixth intercostal space to the right side of the rib cage to end up at the level of the left shoulder region and under the cutaneous tissue. The bullet was found in the left part of the rib cage.

The bullet trajectory was from right to the left and from up to down.

During his examination of the body of the deceased Dr. FB found no gun powder particles on the skin of KI. Further, he was unable to determine the distance of the shooter from the victim. A distinctive 'tattoo' that he observed on the victim's skin could indicate a distance of less than one metre. However, Dr. FB could not give any reliable indication of the distance of the shooter.

Counsel for DK referred several times to the t-shirt worn by KI and the fact two holes can be seen. Dr. FB gave evidence the larger hole was consistent with the position of the entry wound in the victim's right shoulder. Dr. FB could not determine what caused the second hole but gave evidence there was no corresponding injury to the victim's skin.

Referring to the photographs taken during the post mortem examination Dr. FB gave evidence that photograph number 33 depicts the bullet *in situ*, while photographs numbered 50 and 51 depict the same bullet. That bullet had distinctive marks at its tip. The ballistics expert, QT, gave evidence about how that damage might have been caused.

Dr. FB gave evidence the injuries suffered by KI were such that his chances of survival were, in his opinion, "very low".

Prusuant to an order of this Court **QT** performed a ballistics analysis of the weapons seized from both defendants and the latent evidence taken from the victim during the autopsy and recovered at the scene.

Microscopic comparisons carried out between eight (8) shells caliber 7.62x25mm, from evidence EV number 1, 2, 5, 9, 10, 20, 21 and 22, determined that these eight (8) shells have the same individual ballistic characteristics amongst them, meaning they were fired from the same weapon.

Microscopic comparisons carried out between seven (7) shells caliber 7.65x17mm, from evidence EV number 14, 15, 16, 17, 18, 19 and 37, determined that these seven (7) shells have the same individual ballistic characteristics amongst them, meaning they were fired from the same weapon.

Microscopic comparisons carried out between two (2) projectile jackets and two (2) projectiles of caliber 7.65x17mm, from evidence EV number 23, 26, 27 and 28 determined that those have the same individual ballistic characteristics amongst them, meaning they were fired from the same weapon.

Microscopic comparisons carried out on eight (8) shells caliber 7.62x25mm, from evidence EV number 1, 2, 5, 9, 10, 20, 21 and 22, and also one (1) projectile of the same caliber from evidence EV number 50, with shells and projectiles fired in test shootings with weapon from evidence EV number 42, determined that those have the same individual ballistic characteristics, meaning that eight (8) shells and one (1) projectile caliber 7.62x25mm from evidence EV number 1, 2, 5, 9, 10, 20, 21, 22 and 50, were fired from the pistol "CRVENA ZASTAVA" M-57 with a serial number "G-79265", of evidence EV number 42.

Microscopic comparisons carried out between seven (7) shells caliber 7.65x17mm, from evidence EV number 14, 15, 16, 17, 18, 19 and 37, and also two (2) jackets and two (2) projectiles of the same caliber from evidence EV number 23, 26, 27 and 28, with shells and projectiles fired at test shootings with the weapon from evidence EV number 38 determined that those have the same individual ballistic

characteristics, meaning that seven (7) shells and two (2) projectile jackets and two (2) projectiles caliber 7.65x17mm from evidence EV number 14, 15, 16, 17, 18, 19, 37, 23, 26, 27 and 28, were fired from the pistol "CRVENA ZASTAVA" M-70 caliber 7.65x17mm, without a serial number from evidence EV number 38.

An issue was raised by counsel for DK regarding the chain of custody of the bullet recovered during the autopsy. It was averred by counsel for DK that the bullet examined by Officer QT was not the bullet recovered by Dr. FB during the autopsy. It was submitted on behalf of DK that the bullet had been planted by police for the obvious purpose of incriminating DK.

Officer QT photographed the bullet extracted from the corpse of KI and exhibited as number 50⁸⁷. The bullet has distinctive damage to its tip. The bullet is cylindrical in shape and a regular photograph is, of course, two-dimensional. Officer QT gave evidence before this court that the bullet he examined was the bullet taken from the victim and photographed during the autopsy.

Having examined the evidence regarding 'chain of custody' and having heard the evidence of Officer QT, the court finds that the bullet examined by Officer QT was the bullet taken from the body of KI during the autopsy.

In any event, 'chain of custody' has little relevance to the assertion made by counsel for DK that the evidence was deliberately 'planted'. Of course chain of custody records are particularly relevant in cases of so-called 'innocent contamination'. However, this is not such a case. Instead, it was averred on behalf of DK, that this evidence was deliberately planted. If the evidence had, indeed, been planted chain of custody records would not in and of themselves disclose that fact.

No evidence was called on behalf of DK in support of the assertion the evidence had been deliberately planted. This was a mere allegation unsupported by any evidence.

Officer QT was asked to give evidence about the effect of a bullet hitting a car window. It was his evidence that a bullet striking tempered glass at an angle less acute than

⁸⁷ "QT1"

90 degree was more likely to cause the window to shatter.

Officer QT also gave evidence about damage caused to bullet heads that were fired through tempered glass of the type used in motor cars. The court put in evidence two pictorial images presented by Officer QT of bullets fired through tempered glass⁸⁸.

The angle at which a bullet is fired through tempered glass determines the type and extent of damage⁸⁹. A bullet fired through tempered glass at an angle of 90 degrees was likely to result in a flat tip⁹⁰. A bullet fired through tempered glass at a more acute angle was more likely to result in damage to the top outer edge of the tip.

The court finds that the damage to the bullet taken from the body of KI during the autopsy is consistent with the type of damage one might expect to see to a bullet fired through tempered glass at an angle less than 90 degrees.

Officer QT also gave evidence regarding the angle and distance a shell case is ejected from the type and model of gun used by each of the defendants.

DK was in possession of a Cervena Zastava M-57. FG was in possession of a Cervena Zastava M-70. Both firearms eject spent cartridge cases from the right-side of the weapon. This is important for two reasons.

Firstly, it undermines the suggestion of counsel for DK that it was FG who shot KI.

There was no dispute that KI was sitting to the left of FG. If FG had been pointing his weapon to his left a cartridge case ejected from his weapon upon discharge would have been propelled to the right and would have been found in the front of the taxi or if it had hit the headrest or rear of the front passenger seat it would in all likelihood have been found on the rear floor of the vehicle. Instead, the only spent cartridge case found in the vehicle ejected from the weapon used by FG was found in the rear of the vehicle. The evidence therefore suggests FG was firing to his right and out of the window.

⁸⁸ "QT2" and "QT5"

⁸⁹ "QT5"

⁹⁰ "QT5"

Secondly, it assists the court in determining the approximate position of each of the defendants when they fired their respective weapons.

A Zastava M-57 of the type used by DK ejects cartridges at an angle of approximately 160 degrees behind the shooter and at a distance of between 6m and 12m. The majority of cartridges fell between 7 and 10m⁹¹.

A Zastava M-70 of the type used by FG displayed quite different characteristics. Cartridges ejected from this weapon fell at an angle of approximately 85 - 100 degrees behind the shooter and at a distance of between 40cm and 110cm⁹².

The significance of the angle and distance of ejection will be discussed below.

AM gave evidence the bullet extracted from the victim during the autopsy and given evidence number 50 was delivered to the Crime Unit in Peja. He described the usual procedure when such evidence is taken and the subsequent chain of custody.

AB took photographs of the crime scene on 19 September 2011 that recorded where evidence was found. He was also the author of the Crime Scene Inspection Report dated 20 September 2011. Officer AB also photographed the Njaci taxi on 19 September 2011.

Measurements taken at the scene record the position of each piece of evidence. Reference points "A" and "B" are located either side of the entrance to the PTK building.

Shell casings of 7.62 x 25mm were found 13.75m from Reference Point "A" and 9.20m from Reference Point "B"⁹³, 10.7m from Reference Point "A" and 6.4m from Reference Point "B"⁹⁴, 8.40m from Reference Point "A" and 3.80m from Reference Point "B"⁹⁵, 4.30m from Reference Point "A" and 4.80m from Reference Point "B"⁹⁶, 1.10m from Reference Point

⁹¹ "QT4"

⁹² "QT3"

⁹³ Exhibit 1

⁹⁴ Exhibit 2

⁹⁵ Exhibit 5

⁹⁶ Exhibit 9

"A" and 3.30m from Reference Point "B"⁹⁷, 11.40m from Reference Point "A" and 8.80m from Reference Point "B"⁹⁸, 12.20m from Reference Point "A" and 7.70m from Reference Point "B"⁹⁹ and 14m from Reference Point "A" and 10.10m from Reference Point "B"¹⁰⁰.

Shell casings of 7.65 were found 11.80m from Reference Point "A" and 9.20m from Reference Point "B"¹⁰¹, 10m from Reference Point "A" and 8.90m from Reference Point "B"¹⁰², 9.70m from Reference Point "A" and 8.20m from Reference Point "B"¹⁰³, 10.50m from Reference Point "A" and 8.90m from Reference Point "B"¹⁰⁴, 12.60m from Reference Point "A" and 11.80m from Reference Point "B"¹⁰⁵ and 14.50m from Reference Point "A" and 12.40m from Reference Point "B"¹⁰⁶.

What appeared to be blood stains were recorded on the footway 13.40m from Reference Point "A" and 13.60m from Reference Point "B"¹⁰⁷, on the kerb stones and in the road 12.50m from Reference Points "A" and "B"¹⁰⁸.

What appeared to be blood stains were also recorded on the footway 3.60m from Reference Point "A" and 6.50m and from Reference Point "B"¹⁰⁹ and 34.70m from Reference Points "A" and 38.90m from Reference Point "B"¹¹⁰.

A bicycle was lying in the road against the north footway 5.20m from Reference Point "A" and 4.50m and from Reference Point "B"¹¹¹

An examination of the crime scene revealed 1 (one) bullet hole in the side of a telephone booth affixed to the wall of the PTK building¹¹², 1 (one) hole in a window of the PTK

⁹⁷ Exhibit 10

⁹⁸ Exhibit 20

⁹⁹ Exhibit 21

¹⁰⁰ Exhibit 22

¹⁰¹ Exhibit 14

¹⁰² Exhibit 15

¹⁰³ Exhibit 16

¹⁰⁴ Exhibit 17

¹⁰⁵ Exhibit 18

¹⁰⁶ Exhibit 19

¹⁰⁷ Exhibit 12

¹⁰⁸ Exhibit 13

¹⁰⁹ Exhibit 11

¹¹⁰ Exhibit 24

¹¹¹ Exhibit 6

¹¹² Exhibit 3

building¹¹³ and 1 (one) hole in the window framework of the PTK building¹¹⁴, 1 (one) bullet was found inside the PTK building having struck the side of the service counter¹¹⁵.

A bullet casing was found 21.40m from Reference Point "A" and 18.20m and from Reference Point "B"¹¹⁶, a shell was found 14.70m from Reference Point "A" and 10.80m and from Reference Point "B"¹¹⁷. A bullet casing and shell were found inside the PTK building¹¹⁸.

Officer AB did not record in the Crime Scene Report the presence of glass fragments on the road at the crime scene. He was asked about this by counsel for DK. His response was that glass from a shattered window would, in his opinion, normally fall inside the car.

The Court finds it surprising that, apparently, not a single fragment of glass from the shattered window was found on the road at the point where the taxi was stationary. However, the Crime Scene Inspection Report records evidence found at the scene. It does not record evidence not found. It is possible any glass fragments were simply missed by the crime scene investigators.

Officer AB examined the taxi on 19 September 2011 at the parking area of the traffic police in Peja.

The photographs taken of the Njaci taxi by Officer AB noted, *inter alia*, a deflated front right-hand side tyre¹¹⁹, a bullet hole to the front passenger door¹²⁰, corresponding damage to the interior of the door¹²¹ and door sill¹²², glass fragments on the rear seat¹²³, red stains on the rear of the drivers seat¹²⁴, red stains on the sill of the passenger door behind the driver¹²⁵ and a shell casing¹²⁶.

¹¹³ Exhibit 4

¹¹⁴ Exhibit 25

¹¹⁵ Exhibit 29

¹¹⁶ Exhibit 23

¹¹⁷ Exhibit 26

¹¹⁸ Exhibits 27 and 28

¹¹⁹ Photograph 6

¹²⁰ Photographs 7 and 8

¹²¹ Photograph 9

¹²² Photograph 10

¹²³ Photographs 15 and 16

¹²⁴ Photographs 17 and 18

¹²⁵ Photograph 19

¹²⁶ Photographs 20 and 21

Officer AB gave evidence regarding the damage to the right-hand side front wheel. He confirmed damage to the wheel rim¹²⁷ might have been caused by a bullet hitting the rim. The tyre was deflated when he photographed the car. He was unable to determine if the tyre had been hit by a bullet although he did not exclude that possibility.

Counsel for the Prosecution conceded that the evidence suggested that the wheel had been struck by a single bullet. However, given the fact the tyre was itself deflated it is conceivable the tyre was also struck by a bullet. The court finds that at least one bullet hit the front right-hand side wheel and tyre.

Officer AB stated that during his examination of the taxi he did not find the bullet that penetrated the front right-side door¹²⁸.

QV was present when Officer AB examined the Njaci taxi on 19 September 2011.

The **security cameras** at the Dukagjini Hotel recorded part of the events in issue. Regrettably, the quality of the images depicted on the enhanced¹²⁹ CDs was such that the video was of very limited probative value. In this regard the forensic evidence and the evidence of the witnesses is the more reliable.

DK gave evidence before this court that on 19 September 2011 he was alone walking along the Korso in the centre of Peja when, by chance, he happened upon his brother VK. VK told him he had seen FG in the centre of town. DK gave evidence that he told VK to go home and they parted. They continued walking in the direction of the PTK building.

DK gave evidence that when he reached the Pharmacy on the corner of Mother Teresa Street near the PTK building opposite the Dukagjini Hotel he met BK, SK and JK. Again, he said this was a chance meeting. However, that was a lie and contradicted the evidence he gave on 20 September 2011.

DK said he and BK walked along the pavement in Mother

¹²⁷ The court deliberately distinguishes between wheel, wheel-rim and tyre.

¹²⁸ Photographs 7 and 8

¹²⁹ The image was enlarged by Eulex.

Teresa Street in the direction of the PTK building. He said he was walking parallel with BK who was on his right.

Walking towards the PTK building they were walking from West to East.

When they reached a point approximately 5 - 6 metres west of the entrance¹³⁰ of the PTK building he said he heard a "cracking" sound. He saw a taxi opposite the PTK building. It had stopped. The front right-side window of the taxi was open and a man was sitting in the front passenger seat holding a gun outside the vehicle through the open window. Seated behind the front seat passenger DK saw FG. He too was holding a gun. He described the rear passenger window being open approximately 5 cms. He said he did not see anyone else in the taxi apart from the driver.

DK described seeing AP hit by a bullet. He said AP was approximately 2 - 2.5 metres in front of him when he was shot. That was a lie. He said he was 5 - 6 metres west of the entrance of the PTK building. AP said he was approximately 3 - 4 metres east of the entrance of the PTK building. In the circumstances, on DK's evidence they were approximately 8 - 10 metres apart when AP was shot. That is entirely contradicted by the evidence of AP.

He said that, in response, he fired eight shots from where he was standing, aiming at the road and at the front right-hand side tyre of the taxi. He said he never stepped off the pavement into the road.

DK gave his first statement in this case to police on 20 September 2011. His defence counsel was present.

There were certain material contradictions between what DK said in his statement of 20 September 2011 and the evidence he gave before this Court.

In his statement of 20 September 2011 DK said he woke at 0800 on 19 September 2011. He dressed in blue jeans and a black t-shirt. That evidence is important because it is consistent with the evidence of several Prosecution witnesses who described the man seen in the Corso and the man who fired shots at the taxi wearing a black t-shirt.

¹³⁰ This was the evidence he gave during the reconstruction and the place where he was standing is that depicted in photograph 4 taken during the reconstruction on 2 October 2012.

In his statement in September 2011 he said that at 1130 his cousin BK phoned him and they arranged to meet at the "Bridge of Sand"¹³¹ However, when he gave evidence before this Court he denied he had arranged to meet anyone.

He said their plan was to walk along the Corso and then go to a parking lot to collect a vehicle belonging to DK's cousin, L. DK said that on the Corso they met his brother, VK. DK said VK told him that he had seen FG in the Corso.

DK said he told his brother to go home and that VK left in the direction of his house. However, this too is contradicted by evidence in his same statement when, near the PTK building, he said "*I turned my head back to look if my brother VK is somewhere around...*"

He said they continued walking towards the parking lot behind the Social Welfare Office. He said at another location on the Corso "we" met his brother, JK and his cousin, SK. He said JK and SK joined the group and they all continued walking down the Corso. However, when he gave evidence before this Court he said he did not meet BK, SK and JK until the pharmacy on the corner of Mother Teresa Street near the PTK building.

In his statement of 20 September 2011 DK said when they reached the taxi rank in front of the PTK building he noticed FG sitting in a taxi. He said the taxi was facing the Corso and FG was sitting in the "*rear seat at the right side*". He knew FG by sight, having seen him at the District Court in Peja during his trial for the attempted murder of VK. He said FG had the window rolled down and was holding a "*white short gun*" in his right hand and aiming at DK's group. DK said he turned to look for his brother, VK but saw JK and SK some two metres behind him. If, as DK averred, he had sent VK home, it is illogical that he should expect to see VK.

DK said he walked another metre while keeping an eye on FG who then fired three or four shots at him. He pulled out his gun, loaded it and fired all the ammunition in his magazine at FG who continued firing at him.

¹³¹ Bridge beside Qebaptore "LaLa" at the end of the pedestrian street furthest from Hotel Dukajini.

DK was examined by the Prosecutor on 6 December 2011. He referred to the meeting with BK at the "Bridge of Sand" but in contrast to his statement of 20 September 2011 he stated BK never turned-up so he continued onto the Corso where he met his brother, VK at the Qebaptore "LaLa". He said he told VK to go home.

He said he continued on his own to the pharmacy underneath the Municipality offices¹³² where he had a chance meeting with BK, SK and JK.

When examined by the Prosecutor on 6 December 2011 DK stated that at that moment he pulled out his weapon and fired all eight of his bullets and *"shot close to the car on the ground to frighten them"*. Later, in response to a question put by his counsel DK stated *"I have shot with firearm on the ground and on the lower part of the front of the vehicle"*. He said that when he fired his weapon he *"stayed in one place and did not move."* He said FG continued to fire in his direction *"again"* and he started to run in the direction of the car-park.

It is noteworthy that when interviewed on 20 September and 6 December 2011 DK made no mention of having intentionally aimed his shots at the front wheel of the taxi in order to stop it.

In his interview of 20 September he stated the taxi came from the lower part of Peja and stopped just across from the PTK building. He said the brakes were applied quickly and it stopped in the taxi rank.

In his statement of 20 September he stated it was when the taxi was "parked up" he noticed FG in the rear passenger seat. It was only in response to a question from his own defence counsel he said the car was moving (and then stopped) when he noticed FG with the gun in his hand.

He said he noticed the person in the front passenger seat with the black revolver before he noticed FG. In his interview of 20 September he said he noticed FG first. He said he did not notice any other person in the vehicle. He said the exchange of fire took place from a distance of 5-6 metres. He said FG only fired when the taxi stopped but

¹³² Beside the PTK offices opposite Hotel Dukajini.

again on 20 September he only said this when prompted by his defence counsel.

In response to questions from his own defence counsel he said that when he met BK, SK and JK he did not tell them VK had informed him about FG. He said he fired at the ground as well as in the front part of the vehicle. He said the taxi "came from below" which again implies it was in motion.

IK gave evidence before this court that on the morning of 19 September 2011 he received a telephone call from LK informing him someone had shot at DK and that this person had tried to kill him. However, when he gave evidence to the police and to the prosecutor he referred only to their having been an "exchange of gunfire" between DK and the person who had stabbed "CK".

When **BS** was examined by the Prosecutor on 29 November 2011 he described seeing "*bullets falling on the asphalt*" and having seen "*bullets falling on the asphalt and they would burst like firecrackers...*"

The evidence BS gave on 29 November is different to the evidence he gave on 19 September when interviewed by the police. When he was interviewed by the police he made no reference to having seen bullets hitting the ground.

When he gave evidence before this court he said he did not see bullets hitting the road. In fact, he describes having only heard the sound of gunshots that he initially thought was the sound of firecrackers. His evidence regarding seeing bullets hitting the road is clearly equivocal.

However, the Court finds that some bullets might well have hit the road.

Photographs of the taxi put in evidence by the Prosecution depict damage to the rim of the wheel. The tyre is also deflated. It is possible this damage was caused by bullets fired by DK.

Those photographs also show a bullet hole to the front right-side passenger door. The rear right-side passenger door window is also shattered.

The case put by and on behalf of DK was that he fired at

the road and at the front wheel of the taxi. In his closing statement counsel for DK said the shots fired by DK were designed to "scare off" the person shooting at him. DK also averred that he shot at the front wheel in order to stop the vehicle. Those averments are inconsistent and illogical. Why try and "scare off" the shooter while at the same time attempt to stop him?

BK described walking into town where he had a chance meeting with DK, JK and SK near the pharmacy close to the PTK building.

He said he had not arranged to meet DK and that he had not spoken to him on the morning of 19 September 2011. However, that is contradicted by the evidence of DK. That was a lie.

In his statement of 20 September 2011, referring to 19 September 2011, DK said that at 1130 his cousin BK phoned him and they arranged to meet at the "Ura e Zallit/Bridge of Sand"¹³³. He said their plan was to walk along the pedestrian street ("Korso") and then to go to a parking lot to collect a bronze Mercedes belonging to DK's cousin, L. DK said that on Korso they met his brother, VK who was with a friend from Peja but he could not remember this person's name. Clearly it was DK's evidence that he had, in fact, met BK at the Bridge and that they had walked along the Corso.

However, when DK was examined by the Prosecutor on 6 December 2011 he referred to the meeting with BK at "Bridge of Sand" but in contrast to his statement of 20 September 2011 he stated BK never turned-up.

It is clear that by 6 December 2011 DK was attempting to minimize the involvement of BK in the events in issue.

BK described walking side by side with DK in an easterly direction on the northerly footway in Mbretersha Teute in an easterly direction past the PTK building opposite the Dukagjini Hotel. JK and SK were walking behind them. He said DK was to his left.

¹³³ Bridge beside Qebaptore "LaLa" at the end of the pedestrian street furthest from Hotel Dukajini.

BK gave evidence that as the entrance of the PTK building a van passed by whereupon he heard a shot. That contradicted the evidence of DK who said he had stopped and fired his weapon approximately 5 meters before reaching the entrance of the PTK building. DK was clear and specific on this point during the reconstruction of the incident on 2 October 2012.

He said when he first saw the taxi it had started to move. However, after the first shot, it stopped. He saw two people sitting in the taxi. He said one person was sitting in the front passenger seat while the other was seated on the rear seat immediately behind the front seat passenger.

He said the front passenger window was slightly more than half open. He said the rear passenger window on the right-hand side was almost fully open but raised approximately 10cm. He described this as being like the child safety features one occasionally finds on motor cars.

He said both passengers had guns in their hands. He said the front seat passenger was holding a black gun. He said this person pointed the gun towards him but that he did not shoot. The rear seat passenger was holding a bronze-cloured gun.

BK said he saw the rear seat passenger pointing his gun away from them and towards the Dukagjini Hotel. He said he heard a shot. He said this person then turned the gun in their direction and fired. This assertion was repeated by other members of the K family who testified before this Court.

There was no dispute FG was sitting in the rear of the taxi. It appeared this witness was alleging FG had fired a shot to his left - presumably the bullet that killed KI. Why would FG have shot KI while sitting in the rear of a taxi at precisely the moment DK was walking past the PTK building to his right and then turn the gun and fire in the direction of DK? This was an absurd and somewhat bizarre attempt to assert that it was FG who had shot KI. However, any such assertion is wholly contradicted by the overwhelming weight of evidence that it was a bullet fired by DK that killed KI.

It was BK's evidence the first shot fired towards them hit a cyclist. He was clearly referring to AP. He said when

the bullet struck AP DK was still to his left. DK gave evidence AP was approximately 2.5 meters ahead of them when he was shot. He said it was only then that DK took out his gun and fired at the road and the tyre of the taxi. He said DK never stepped off the pavement into the road. That was a lie and contradicted by the evidence of AP and other witnesses to which reference is made herein.

AP gave evidence he was some 3 - 4 metres east of the entrance of the PTK building when DK stepped into the road in front of him holding a gun. He said it was as he tried to cycle around behind DK that he was shot. Indeed, the evidence of the position of the cartridge cases ejected from the weapon used by DK put him to the east of the entrance of the PTK building and in the road. That evidence is entirely consistent with the evidence of AP and other witnesses to whom reference is made herein.

SK gave evidence that on 19 September 2011 he was with JK when they met DK and BK by chance at the pharmacy near the Dukagjini Hotel. He said DK and BK had just met each other. However, he could not explain to the Court how he had reached that conclusion. It was his evidence that when he saw DK and BK they were standing near the pharmacy. Indeed, it was his evidence that they simply greeted each other. He later conceded that he did not know whether, in fact, they had just met. That was a lie. In his statement to police on 20 September 2011 DK stated that he was walking along the Corso with BK when they met JK and SK "*somewhere in the middle of the Corso*". In that statement DK said they spoke and that they "*kept going down the Corso*".

Clearly DK together with BK, SK and JK were attempting to minimize their respective involvement in the events in issue.

SK stated that, having greeted each other, they then walked in the direction of the PTK building. He said DK and BK were walking 1.5 - 2m ahead of them. He said DK was walking on the left of BK.

His evidence was, in all material respects, similar to that of BK. He described one of the bullets fired by FG hitting AP. He said DK then took out a gun, cocked it and fired several bursts at the road and towards the front tyre of the taxi. He said he was holding the gun pointing down. He

said DK continued firing until he had no more bullets. He said DK remained standing on the sidewalk.

For the reasons stated herein that evidence was a pure fabrication concocted on behalf of DK.

JK gave remarkably similar evidence to that of BK and SK. He described being with SK and their meeting by chance DK and BK near the pharmacy at the corner of Mother Teresa Street and their walking in an easterly direction towards the PTK building. That was a lie. In his statement to police on 20 September 2011 DK stated that he was walking along the Corso with BK when they met JK and SK "somewhere in the middle of the Corso". In that statement DK said they spoke and that they "kept going down the Corso".

Clearly DK together with BK, SK and JK were attempting to minimize their respective involvement in the events in issue.

JK said that he and SK were walking behind DK and BK and were approximately 1m from the entrance of the PTK building when he heard gunshots. He said the rear seat passenger in a taxi fired two shots towards the PTK building hitting a cyclist who he said was riding a bicycle on the road "next to the pavement". He said the cyclist was approximately 1m ahead of DK when he was shot.

He gave evidence that the rear seat passenger of the taxi fired 4 - 5 shots before DK pulled his gun and fired at the road and front tyre of the taxi. He thought DK was standing approximately 5 - 6m from the taxi. It was his evidence that DK remained on the pavement in front of the PTK building throughout the exchange of fire. He said that throughout the incident BK was standing to the right of DK.

For the reasons already stated herein that evidence was a pure fabrication concocted on behalf of DK.

DF gave evidence that he was an eye-witness to the events in issue. However, he had never previously been interviewed by police or the prosecutor. It seems it never occurred to him that police might want to speak to him about the incident. He described how he was subsequently contacted by someone on Facebook and, it appears, that it was only at that stage he realised he might have useful evidence. However, instead of going to the police he went to see the

family of DK.

His evidence before the Court was remarkably similar to the evidence given by family members of DK who testified.

The evidence given by DF was simply untenable. The explanation he gave of events leading to his coming forward as a witness was suspicious. His decision to contact the family of DK rather than going to the police significantly undermined his credibility. In any event, his evidence was contradicted by other, more credible, evidence to which reference is made herein.

SS and **AX** are employees of the PTK and were working at the PTK office opposite the Dukagjini Hotel on 19 September 2011. They were called by counsel for DK. They were unable to provide the Court with any evidence that might assist it in its determination of the factual issues.

MH gave evidence of a conversation he said he overheard between FG and a member of FG's family.

The Court finds that FG was in possession of a mobile telephone and SIM card during the period in issue. The Court finds that the subscriber of the SIM card issued by the operator IPKO and used by FG was LG, mother of FG.

The Court finds the mobile telephone was used by FG, MH and probably other persons detained at the Detention Centre in Peja.

So-called "cell admissions" raise various issues for the court in its assessment of such evidence - not least of which is the credibility of the witness. Prisoners may have a variety of reasons for giving false testimony and the court must proceed with caution. The credibility of the witness in such cases is a factor the Court must have regard to when considering the weight to attach to the evidence.

MH is serving a sentence of Long Term imprisonment having been convicted of an aggravated double murder.

The letter written by MH was a late fabrication designed to delay the conclusion of the case and in a desperate attempt to divert blame for the death of KI.

MH was unable to provide any plausible explanation regarding the circumstances in which he retained a copy of the said letter or how it found its way into the possession of the mother of DK.

This was an absurd and naïve attempt by MH, no doubt at the instigation of DK or those acting on his behalf, to implicate FG in the death of KI and absolve DK of responsibility.

The Court found MH was not a credible witness.

Indeed, the suggestion that it was FG who fired the fatal shot is contradicted by other credible evidence to which reference is made herein.

MR gave evidence regarding the circumstances through which she said she came into possession of a copy of the letter written by MH and purportedly sent to the Presiding Judge on 16 September 2012. She said she had received a copy of the letter from a friend. However, she did not know the name of the friend. MH did not know how she had received a copy of a letter he said he had not given to anyone.

LG gave evidence she had spoken with her son by telephone but that they had never spoke specifically about the shooting of KI.

FG gave evidence that on 19 September 2011 he was together with KI, DKE, ARP, VA and AG at "Life" café on the Korso in the centre of Peja. He described their sitting at a table outside the cafe. He said he was sitting facing the street.

He said he saw VK standing near the bar talking on a mobile telephone. He said VK looked in their direction.

In his statement of 19 September 2011 FG said that a short time later he saw SK and DK walking along the Corso from the direction of the Dukagjini Hotel. He said DK was wearing "dark clothes"¹³⁴. DK walked past their table and then stopped¹³⁵. DK was looking in their direction. In his statement to police of 20 September 2011 DK said he met SK and JK in the Corso. Of course, that was something he

¹³⁴ Record of Examination of 29 November 2011.

¹³⁵ In his statement of 19 September 2011 he said approximately 10 meters from where they were sitting.

later denied.

FG suggested to the group that they leave the café. They did so, leaving their unfinished drinks.

FG described walking from the café towards the taxi rank opposite the PTK building. He said he did not look behind him but one of their group had done so and had said they were being followed by DK and SK. He said he looked around and saw BK and VK¹³⁶. That again is consistent with the statement of DK given on 20 September 2011 when he said he had met BK at the Bridge of Sand and that they had walked along the Corso, something he later denied.

When they reached the taxi rank he looked towards the PTK building and saw the four men standing to the left of the entrance of the PTK building, between the PTK building and the Municipality building¹³⁷. He said he got into a taxi and sat on the rear seat behind the front passenger seat. He said DKE sat on the front passenger seat. ARP and KI sat on the rear seat. He thought ARP sat in the middle of the rear seat.

He said both the front and rear passenger windows were closed. In fact, his evidence regarding the front passenger window is contradicted by the evidence of MG.

FG gave evidence that he and DKE shouted to the taxi driver to leave immediately. The driver started the engine. As the taxi started to move he heard DKE shouting. He described seeing DK standing to the east of the entrance to the PTK building. He said DK was holding a gun and pointing it towards the taxi, shooting. The evidence of where he said DK was standing when he fired is contradicted by the evidence of DK but is confirmed by the evidence of AP and the forensic evidence of where cartridge cases were found.

FG described his window being shattered by a bullet. He said he leant forward in his seat. He said he raised his head slightly and looked out of the window opening. He said he saw DK approaching the vehicle¹³⁸. He was shooting. He said DK continued walking towards the taxi, shooting from a distance that reduced to approximately 2 meters¹³⁹.

¹³⁶ Record of Examination of 29 November 2011.

¹³⁷ Statement of 19 September 2011.

¹³⁸ Statement of 19 September 2011.

¹³⁹ Statement of 19 September 2011.

He said he then saw KI bleeding from the mouth¹⁴⁰. He said he pulled out his gun, cocked it between his knees and fired out of the taxi through the broken window. He said he kept his head down, facing towards the floor of the taxi and fired his weapon in the direction of DK. He said he did not look where he was shooting but, on his evidence, fired in the direction of the gunshots. In his Statement of 19 September 2011 he said he fired in an *"uncontrollable direction thinking of repelling the attack."*

FG gave evidence that DKE helped steer the taxi away from the scene.

After the taxi had moved off he realized KI and ARP were no longer in the taxi.

FG described how, after the shooting had stopped he saw DK standing in the middle of the road.

The evidence FG gave before the court was in all material respects consistent with his prior evidence and consistent with the evidence of other credible witnesses.

Indeed, the statements given to police on 19 September 2011 by those witnesses who were present with him at the time were consistent in all material respects even though there was little if any opportunity for these witnesses to collude in order to concoct a story in support of the version of events given by FG.

On 19 September 2011 **AP** was riding his bicycle in the road in Mother Teresa Street in a Westerly direction adjacent the North footway outside the PTK building when a man approximately 1 - 1.5m ahead of him walked from the sidewalk on his right in front of him and into the road. He said the man was carrying a pistol. He was pointing the weapon towards the ground. He did not see this man fire his weapon. The Court finds this man was DK.

Two issues arise here. Firstly, where in front of the PTK building was DK when AP first saw him with the gun? The position of the shooter is important because Dr. FB was of the opinion the shooter was at an angle of approximately 90 degrees to the victim. Of course, this evidence also

¹⁴⁰ Statement of 19 September 2011.

potentially undermines the evidence of DK whose case was he fired from a position west of the entrance of the PTK building and therefore at an angle of approximately 45 degrees to the taxi. Secondly, did DK walk into the road and advance towards the taxi?

Firstly, it was AP's evidence that DK was walking from his right to his left approximately 3 or 4 metres **east** of the door of the PTK building. That contradicts the evidence of DK who gave evidence he fired his weapon from a position approximately 5 - 6 meters **west** of the entrance of the PTK building.

AP gave evidence that as he tried to pass behind DK he realized he had been shot. That contradicts the evidence of DK that he drew his weapon only after AP had been shot. Further, it contradicts the evidence of DK that AP was 8 - 10 metres ahead of him when he was shot.

AP abandoned his bicycle near a post **east** of the entrance of the PTK building¹⁴¹.

If DK was, as he averred, standing 5 - 6 meters **west** of the entrance of the PTK building the Court would have to draw the conclusion that AP was mistaken about where he was when DK stepped into the road. It would also lead to the conclusion that, having been shot, AP cycled several meters in an easterly direction before leaving his bicycle facing in a westerly direction and then staggering back in a westerly direction. That is simply illogical and, in any event, contradicted by other evidence. Indeed, the crime scene photographs of the place where the bicycle was abandoned is entirely consistent with AP's account.

The recorded position of the majority of the cartridge cases fired by the weapon in the possession of DK were found to the **east** of the entrance of the PTK building, in approximately the place where AP gave evidence he was when he tried to pass behind the shooter. Two shell cases were found at the entrance of the PTK building.

The evidence of AP and the evidence of the location of the majority of the cartridge cases are entirely consistent. Indeed, that evidence is corroborated by other witness

¹⁴¹ See minutes of the Reconstruction on 2 October 2012 and annexed photographs.

testimony. That evidence contradicts the evidence of DK.

Secondly, AP was clear in his evidence DK stepped into the road and advanced towards the taxi.

During the reconstruction AP was asked if DK had stepped into the road. In reply he stated "*Maybe on the sidewalk, maybe on the road*". He qualified this by stating "*An unknown person walked in my way with a weapon, I said then and I say now he stepped off the sidewalk but I cannot be sure.*"

However, the minutes of examination by the Prosecutor on 25 October 2011 are unequivocal. On that occasion, approximately 1 month after the event in issue when the events of that day were still fresh in his mind, he said "*I was on the bike on my road in front of the main post office when a person with a pistol in his hand, came in front of me, cut off my road*". He later clarified where he was cycling by stating "*...I was moving at the edge of the asphalt road on the right side.*" Indeed, when he gave evidence before this Court he was clear that the man he had seen outside the PTK building holding a gun had stepped into the road in front of him, walking from his right to his left.

The evidence that DK stepped into the road and advanced towards the taxi is supported by other witnesses to whom reference is made herein.

Indeed, that evidence is supported by the evidence of Officer QT who testified about the distance a cartridge case is ejected from the type of weapon used by DK. It is worth re-stating that evidence here. It was his evidence that a Zastava M-57 of the type used by DK ejects cartridges at an angle of approximately 160 degrees behind the shooter and at a distance of between 6m and 12m. During the tests conducted by Officer QT the majority of cartridges fell between 7 and 10m¹⁴². As a matter of simple logic the shooter would have been standing ahead of where the cartridges fell.

The Court considered the fact Officer QT did not use the actual weapons seized from the defendants but instead used weapons of the same type and model used by the defendants.

¹⁴² "QT4"

However, that would not have changed the fact that cartridges were ejected from both weapons to the right. It might have had a marginal difference on the distance the cartridge was ejected however, the angle of ejection would, in all probability, have remained the same.

Indeed, even taking into account a margin of error, given that three of the cartridge cases found to the east of the entrance of the PTK building were found in the road, the shooter must have been standing in front of the cartridge case found furthest from the kerb¹⁴³.

In his evidence **ES** said he saw a man standing "*in the middle of the road*" in front of the PTK building firing a weapon towards the taxi¹⁴⁴. He said he was standing approximately 3 - 4 metres from the kerb outside the Dukagjini. That is consistent with the position of the cartridge cases as recorded in the Crime Scene Report.

By reference to the position of the cartridge cases recorded by police¹⁴⁵ it is possible to determine approximately where DK was standing or walking when he fired his weapon.

The Court finds that DK walked from the pavement **east** of the entrance of the PTK building and, walking in a southerly direction, stepped into the road in front of AP. As he advanced towards the taxi he fired his weapon at least six times in the direction of the taxi.

AP said he tried to steer his bicycle around behind DK. It was as he did so that he realized he had been shot in the buttocks. He said he heard gunshots but did not know from which direction they came. He said he felt pain before he heard the shots. It was his evidence that he had not been shot by the person who had walked in front of him¹⁴⁶.

Having been shot, he abandoned his bike and staggered a few metres.

He was sure he had not been shot by DK. Indeed, given the fact he was cycling towards DK who was walking from his

¹⁴³ Cartridge cases numbered "20", "21" and "22" on the sketch attached to the Crime Scene Inspection Report dated 20 September 2011.

¹⁴⁴ Statement of 19 September 2011.

¹⁴⁵ Crime Scene Inspection Report dated 20 September 2011 (and diagram)

¹⁴⁶ Examination of 25 October 2011

right to his left in front of him it is, as a matter of simple logic, very unlikely he would have been hit in the buttocks by a bullet fired from his weapon.

The Court found AP to be an honest reliable witness.

AP gave evidence that he was told by the doctor who examined him on the day of the incident that the bullet wound he sustained entered from left to right. The doctor who examined AP was Dr. MJ.

Dr. MJ gave evidence he could not recall telling AP which was the entry and which was the exit wound. There was no reference in the clinical records which was the entry wound and which was the exit wound.

AP was examined by Dr. FB on 10 September 2012. Dr. FB noted two scars that were consistent with the description of injuries as recorded in the medical report dated 19 September 2011.

Dr. FB was unable to determine which was the entry wound and which was the exit wound. However, in his opinion the trajectory was horizontal.

On his own evidence, FG was sitting in the rear of the taxi and firing his weapon in an "uncontrolled" manner in the direction of DK. Given the trajectory of the bullet was horizontal, the bullet that struck AP is more likely to have been fired by someone in a sitting position rather than someone standing. In the case of someone standing, the bullet is more likely to have entered and exited with a trajectory from up to down.

The Court finds that it was a bullet fired by FG that struck AP. The Court finds the bullet entered the left side of AP's left buttock before exiting through the right side of the left buttock and entering the left side of the right buttock and exiting through the right side of the right buttock.

Dr. MJ gave evidence that he treated AP for the injuries he sustained to his buttocks. He described the injury as "light bodily injury".

The Court finds that the classification of this injury as "light bodily injury" was simply a medical assessment based

upon the fact that no vital organs had been damaged or impaired. However, to categorize any gunshot wound to the human body as "light bodily injury" offends commonsense.

Therefore, this Court finds that the bullet fired by FG hit AP and passed through both buttocks thereby causing him serious bodily injury.

MG gave evidence that on 19 September 2011 he was driving a Passat motor vehicle registration number 03 381 BF the property of the Njaci taxi company.

At approximately 12:50 he parked in the taxi rank in Mbretresha Teute opposite the PTK building with the front of his vehicle facing west in the direction of the pedestrian area or "Corso" when two men approached his taxi from the direction of the Municipality building. The court finds these two men were FG and DKE.

The Court finds that DKE sat in the front passenger seat and FG sat on the rear seat behind the front seat passenger.

MG did not turn around to look at the person who had entered the taxi behind him. He said he did not see any other persons get into the rear of his taxi.

The Court finds that in addition to DKE and FG ARP and KI also entered the taxi and sat on the rear seat.

MG gave evidence the front passenger window might have been "half" open. The other windows were closed. In any event, DKE gave evidence the front passenger window was half-open.

MG said he would have noticed if the rear right-side passenger seat was broken prior to his driving the car that morning.

He said he heard the front seat passenger screaming "*quick, quick...*" He heard those words before he heard gunshots whereupon he said he "*lost the consciousness and...bent down*". He said the gunshots came from his "*back side*". He was unable to determine if the shots he heard came from inside or outside his vehicle. He was asked if he heard any other gunshots from outside his vehicle. In reply he said "*no because I lost my consciousness because I didn't know what was happening*".

He said "I don't know if anyone shot from my vehicle after I started it"¹⁴⁷. He said he heard the gunshots "coming from very close"¹⁴⁸. When he gave evidence before this Court he said he meant by these words that the shots came from behind him. He did not hear any other shots.

It was his evidence that having heard gunshots he "blacked-out". He described being in a state of such shock that he was momentarily unable to function.

He said the front seat passenger helped him steer the vehicle. He said his foot was on the accelerator. The vehicle moved forward and stopped. He could not recall if the front seat passenger was helping him to push the accelerator.

He did not know if the rear passenger doors were closed when the taxi moved off.

He said he subsequently saw blood stains on the headrest of his seat.

He did not see the front seat passenger with a weapon in his hand. He said he did not see the front seat passenger lean out of the window.

The court found MG to be an honest, reliable witness.

DKE gave evidence that on 19 September 2011 he was together with ARP and AG when they met KI and FG at a cafe in the main pedestrian street in Peja. They sat outside. He sat facing the street.

He described VK and, later, DK and another man walking past the table at which they sat. He described seeing the shape of a gun under the black t-shirt worn by DK.

They got up and left the bar. When they reached the taxi rank opposite the PTK building they got into a taxi. DKE gave evidence that he sat in the front passenger seat while FG sat in the rear seat behind him. KI and ARP sat on the rear seat.

¹⁴⁷ Examination by the Prosecutor on 10 October 2011.

¹⁴⁸ Statement of 19 September 2011

DKE gave evidence¹⁴⁹ his window was half open. That is consistent with the evidence of MG.

DKE denied he was holding a gun as averred by DK and other members of the K family who gave evidence before this Court. MG said he did not see anything in DKE's hand.

He said he looked towards the PTK building and saw DK, BK and VK standing near the pharmacy¹⁵⁰.

He said DK pulled out a gun and advanced towards them firing from a distance of approximately 5 meters.

He said DK fired several times in the direction of the taxi. Two cartridge cases of 7.62mm calibre were found near the entrance of the PTK building.

DKE said he lowered his head towards the taxi driver. The car stalled. He said he pressed the accelerator with his right hand. He heard the rear passenger door window shatter.

DKE pressed the accelerator and the vehicle moved forward. He took hold of the steering wheel and was able to manouvre the vehicle. They immediately left the scene. As they drove off he realized KI and ARP were no longer in the vehicle.

It was DKE's evidence that DK fired the first shots.

There was no dispute DKE had previously been convicted of unlawful possession of a firearm. That offence was unrelated to this incident. However, the Court finds there is no evidence that on the day in issue DKE was in possession of a firearm. Firstly, had DKE been in possession of a firearm that he brandished in the manner described by DK it is almost inconceivable that he would not have fired that weapon at some point during the exchange of gunfire between DK and FG. Kosovo police found no evidence of a third weapon having been fired. Secondly, MG did not see a weapon in the hands of DKE. Given that DKE was sitting in the front passenger seat, had he displayed the gun in the manner described it is unlikely MG would not have seen it. Thirdly, DKE used both hands to

¹⁴⁹ Examination by the prosecutor on 18 November 2011

¹⁵⁰ Examination by the prosecutor on 18 November 2011

press the accelerator and steer the vehicle. Unless he dropped the gun it seems improbable he could have done this while holding a gun in his right hand.

The Court found DKE to be an honest witness. His evidence was in all material respects consistent with the evidence of other credible witnesses and consistent with the crime scene evidence.

AG gave evidence that on 19 September 2011 he was with DKE, ARP and VA in the main pedestrian street in the centre of Peja. As they walked along the street FG called them from a table where he was sitting with KI and suggested they join him. They sat outside. FG stated he had earlier seen VK, a person with whom he had previously had trouble.

It was his evidence¹⁵¹ that the brother of VK together with another man walked past where they were sitting. The two men stopped a short distance further along the road and looked in their direction. When he was examined by the Prosecutor on 25 October 2011 he referred to the "brother" as DK and said he was accompanied by "S". He said they stood opposite the bar. He said he could see a gun under the black T-shirt worn by DK. DK and SK then walked further along the road.

AG gave evidence that FG suggested they leave and go in the opposite direction¹⁵² whereupon they all got up and left the bar. They walked fast in the direction of the PTK building. He said he was walking at the back of the group with VA. It was his evidence¹⁵³ that as they walked towards the taxi rank he looked behind him and saw DK and SK following.

Upon their arrival at the taxi rank in front of the PTK building FG, KI, ARP and DKE got into a taxi. AG continued walking with VA. He then heard gunshots. He said he turned around and saw DK standing in front of the PTK building holding a gun.

He said he was 80% sure the shooter was standing on the pavement. However, for the reasons stated herein he was clearly mistaken. Certainly at one point during the incident DK was on the pavement at or near the entrance of

¹⁵¹ Statement of 19 September 2011.

¹⁵² Examination by the Prosecutor on 25 October 2011

¹⁵³ Examination by the Prosecutor on 25 October 2011.

the PTK building. However, the testimony of other witnesses and the position of cartridge cases prove that DK was not stationary but that he fired his weapon from at least two places and that he fired his weapon while standing in the road to the east of the entrance of the PTK building.

The Court found AG to be an honest witness. His evidence was in all material respects consistent with the evidence of other credible witnesses and consistent with the crime scene evidence.

VA gave evidence that on 19 September 2011 he was sitting outside "Life" coffee shop in the pedestrian zone in the centre of Peja with AG, DKE, FG, ARP and KI when DKE or FG suggested they leave. He said he did not know why. He said FG had seen the persons with whom he had been in a dispute. He said he did not see anyone. They all got up and left, walking in the direction of the PTK building. He said they left the drinks they had ordered. He said they were in a hurry but at that time he did not know why. He said DKE, FG, ARP and KI got into the taxi. He continued walking along the road with AG.

VA gave evidence they had walked approximately 40 - 50m when he heard gunshots. He saw two men running in the direction of the NLB bank.

The Court found VA to be an honest witness. His evidence was in all material respects consistent with the evidence of other credible witnesses and consistent with the crime scene evidence.

ES gave evidence that on 19 September 2011 he was in Peja when he met KI who was walking towards the taxi rank in front of the PTK building. They exchanged a few words. He said KI was with some friends including DKE. They did not talk for long because KI said he had to go to work. KI and the other men left, walking in the direction of the PTK building. Shortly after they parted he heard gunshots. He turned and looked towards the PTK building. He said he saw passers-by running. He said he saw a man standing *in the middle of the road* in front of the PTK building firing a weapon towards the taxi¹⁵⁴. He said he was standing approximately 3 - 4 metres from the kerb outside the

¹⁵⁴ Statement of 19 September 2011.

Dukagjini. He heard 4 - 5 shots. He said he was 30 - 40 metres from the incident.

He told the police the person he had seen standing in the road in front of the PTK building was "*wearing a black t-shirt. He was skinny with a black, undercut hair*". When interviewed by the prosecutor he added this man was of medium build.

The Court found ES to be an honest witness. His evidence was in all material respects consistent with the evidence of other credible witnesses and consistent with the crime scene evidence.

ARP was examined by the prosecutor on 25 October 2011. Counsel for both defendants agreed to the evidence given on 25 October 2011 being admitted into evidence. He did not testify before this court.

It was his evidence that on 19 September 2011 he, together with his friends DKE, AG and VA had coffee with KI and FG at a cafe.

He gave evidence that as they sat at a table outside a man walked past their table. He did not recognize this man. He described this man "*leering*" at them. He described FG taking a gun out of his waistband and holding it between his legs. He described DKE telling FG "*they are my revengers*" and that they should leave.

In fact, it appears he was mistaken in this part of his evidence. No evidence was put before the Court there was any dispute or disagreement between DKE and DK or other members of his family. Clearly he was referring to the dispute between FG and the K family.

He said they immediately paid their bill and left, walking towards the taxi rank outside the PTK building. When they got up to leave the bar FG put the gun back into his waistband.

ARP gave evidence that as they walked towards the taxi rank he looked behind him and saw the man who had looked at them as they sat outside the café following them. He was accompanied by two other men. He said they were following them and walking "*faster*".

When they reached the taxi rank they got into the first taxi. He said this was "...in order to get away from there."

DKE sat in the front passenger seat. FG sat on the rear seat behind the front passenger seat.

ARP was sure he sat on the rear seat behind the driver and KI sat between him and FG. Given his dramatic account of KI attempting to exit the vehicle across him after he had been shot the court finds that his evidence of where KI was seated is reliable.

ARP gave evidence he saw the same three men he had seen in the Corso walking towards the taxi. That evidence is consistent with the evidence of other witnesses.

ARP gave evidence that DKE told the taxi driver to drive fast. He said the taxi driver did not move off. He said DKE "...lowered his head and started the taxi." He said DKE pushed the clutch and put the vehicle in gear. It appears the vehicle then stalled. DKE turned the ignition. That evidence is in all material respects consistent with the evidence of ARP and MG.

In answer to a question put by defence counsel, ARP described the shooter standing on the sidewalk in front of the PTK building and shooting in their direction. He went on to say "*the rest of the incident I described above*".

It was ARP's evidence the three men were 4 - 5 metres from the taxi when one of the three men started shooting towards the taxi.

He then realized KI had been shot. The taxi moved off and he managed to get out of the taxi. He ran from the scene. As he did so he looked behind him and saw KI falling from the moving taxi.

DK and other members of the K family who testified before this Court described the rear passenger window being open and FG holding a gun outside of the vehicle through the open window.

DK gave evidence the rear right-side passenger window was open approximately 5cms. The questions the Court must address include, firstly, how the rear passenger window

came to be broken and, secondly, who shot KI. These issues are related.

MG gave evidence that apart from the front passenger side window the other windows were closed. However, later in his evidence before the court he conceded the front passenger window might have been half open. In any event, it was DKE's evidence the front passenger window was half open. FG averred the rear passenger window was closed. DKE said he heard the rear window shatter.

The question then arises how the rear right-side window was broken. It was the evidence of FG that the window was closed and subsequently shattered by a bullet fired by DK. DK advanced no positive case as to how the window came to be broken.

In his evidence ARP described the rear passenger window being open. He said he saw FG holding his gun and pointing it in the direction of the PTK building. Presumably FG was shooting because ARP stated that he could not distinguish the gunshots because "KI got hit **at that time**"¹⁵⁵

When ARP refers in his evidence to KI having been hit "at that time" is unclear whether he is referring to KI having been hit before or after he observed FG shooting out of the window.

Unfortunately the absence of this witness deprived the parties of the opportunity of testing his evidence by cross-examination. Therefore, clearly the evidence of this witness carries significantly less weight.

The Court finds it improbable FG would have fired his weapon through a closed window. Had he been the aggressor, as averred by DK, and had he fired his weapon first, the court finds it probable that he would have lowered the window before shooting.

Indeed, it was the evidence of DK and those members of his family who gave evidence that the rear right-side passenger window was almost fully lowered. DK thought the rear right-side passenger window where FG sat was raised approximately 5 cms.

¹⁵⁵ Examination by the Prosecutor on 25 October 2011.

If the window was only raised 5cms as averred by DK, it is improbable it was shattered by FG shooting out of the window. Indeed, on DK's evidence FG's arm was outside the window pointing the gun in his direction.

If the window was raised only 5cms it seems unlikely - although not impossible - a bullet fired by DK would have shattered it.

If the window was only raised approximately 5cm when shattered it is obvious that, as a matter of simple logic, the majority of the shattered glass would have fallen or remained inside the door cavity. It would not have fallen onto the rear seat of the vehicle.

The photographs¹⁵⁶ of the interior of the taxi taken by police depict a significant amount of glass on the rear seat of the taxi. The amount of glass found on the rear seat would suggest the window was raised more than 5cms.

Given the quantity of glass found on the rear seat of the taxi it is probable the window was closed.

The next question to be determined by the Court is how the window came to be shattered.

If the window was, as the Court has found, closed it is unlikely FG was holding a gun out of the window firing as averred by DK and other members of the K family.

Officer QT gave evidence that tempered glass is the type commonly used in motor vehicles.

The bullet examined by Officer QT¹⁵⁷ has distinctive damage at its tip.

Officer QT gave evidence that a bullet striking tempered glass at an angle of 90 degrees would, in his opinion, cause a hole in the glass but would not shatter the glass. He gave evidence that a bullet striking tempered glass at an angle less acute than 90 degree was more likely to cause the glass to shatter.

Officer QT also gave evidence about the damage caused to

¹⁵⁶ Officer AB's album dated 19 September 2011.

¹⁵⁷ Exhibit number "50"

bullet heads that were fired through tempered glass. It was his evidence that the angle at which a bullet is fired through tempered glass determines the type and extent of damage¹⁵⁸. A bullet fired through tempered glass at an angle of 90 degrees was likely to result in a flat tip¹⁵⁹. A bullet fired through tempered glass at a less acute angle was more likely to result in damage to the outer edge of the tip.

When determining the damage caused to bullets fired through tempered glass Officer QT conducted experiments using bullets of 9mm caliber. The bullet used by DK was 7.62mm caliber. Officer QT was asked if, given that fact, his conclusions would be different. In reply he said "*Not completely the same but approximately the same, very similar*".

The court finds that the damage to the tip of the bullet that killed KI is consistent with the type of damage described by Officer QT as likely to be caused when a bullet is fired through tempered glass at an angle less than 90 degrees.

Officer QT confirmed the bullet he examined was the bullet photographed during the autopsy. The Court finds the bullet Officer QT examined was the bullet that killed KI and the bullet extracted from the body of KI during the autopsy.

Based upon the evidence to which reference is made herein the Court finds that the window was shattered by a bullet of 7.62mm caliber fired by DK at an angle less acute than 90 degrees to the window.

Having shattered the glass the bullet struck KI in his right arm before passing through the third intercostal space to the right side of the rib cage, through the right lung touching the esophagus and the aorta, continuing through the left lung, through the sixth intercostal space to the right side of the rib cage to end up at the level of the left shoulder region and under the cutaneous tissue. The bullet trajectory was from right to the left and from up to down.

¹⁵⁸ "QT5"

¹⁵⁹ "QT5"

The angle of the bullet trajectory from up to down is consistent with the angle of a bullet fired from a gun held by someone in a standing position.

The court further finds that the bullet that killed KI was fired by DK.

D. Conclusions

D. i Law

Article 147 of the CCK provides that a person who deprives another person of his or her life and in doing so intentionally endangers the life of one or more persons (paragraph 4) and/or a person who deprives another person of his or her life because of unscrupulous revenge or other base motives (paragraph 9) shall be sentenced to a term of imprisonment of at least ten years or Long-Term imprisonment.

Article 291 of the CCK provides that whoever by, *inter alia*, using weapons, causes great danger to human life or to property of substantial value, shall be punished by imprisonment of three months to three years (paragraph 1).

When the offence provided for in paragraph 1 or 2 of the present article is committed in a place where a large number of people are gathered, the perpetrator shall be punished by imprisonment of six months to five years (paragraph 3).

When the offence provided for in paragraph 1 or 2 of the present article results in serious bodily injury or substantial material damage, the perpetrator shall be punished by imprisonment of one to eight years and when such offence results in the death of one or more persons, the perpetrator shall be punished by imprisonment of one to twelve years (paragraph 5).

The court found that reference in subparagraph 9 to depriving another person of his life "because of unscrupulous revenge or other base motives" more appropriately referred to those circumstances in which the victim was the intended target.

Where the defendant sets-out to commit an offence in relation to a particular person but his conduct miscarries and the harm falls upon a different person the defendant's intent is transferred and the offence committed against that other individual. Therefore, the Court finds that in this case the intent of DK to kill FG was transferred to his actual victim KI.

Article 8 of the CCK provides that an act committed in necessary defence is not a criminal offence (paragraph 1). An act is committed in necessary defence when a person commits the act to avert an unlawful, real and imminent attack upon himself, herself or another person and the nature of the act is proportionate to the degree of danger posed by the attack (paragraph 2). An act which is disproportionate to the degree of danger posed by an attack exceeds the limits of necessary defence (paragraph 3). When the perpetrator exceeds the limits of necessary defence, the punishment may be reduced. When the perpetrator exceeds the limits by reason of strong trauma or fear caused by the attack, the punishment may be waived (paragraph 4).

Article 328 (2) of the CCK provides that whoever owns, controls, possesses or uses a weapon without a valid Weapon Authorisation Card for that weapon shall be punished by a fine of up to 7.500 EUR or by imprisonment of one to eight years.

D. ii The Defendants

In conclusion, and having regard to all the evidence in this case as against each of the defendants the Court finds as follows:

DK

On 19 September 2011 at Mbretresha Teuta, Peja outside the main PTK building and opposite the Dukagjini Hotel, with the intention of killing the defendant FG who was sitting on the rear passenger seat of a taxi belonging to the Njaci company driven by MG, fired at close range eight (8) bullets from his weapon, a Cervena Zastava M-57 pistol of 7.62 x 25mm caliber with serial number G-79265. One of the bullets fired by DK shattered the rear right-side passenger

window of the taxi hitting the deceased KI who was sitting on the rear seat of the said taxi. KI died at approximately 1400 on 19 September 2011 at the Regional Hospital in Peja as a result of haemorrhage due to injury of the aorta and lungs caused by the single gunshot wound. By his actions the defendant DK deprived KI of his life and intentionally endangered the lives of other occupants of the said taxi, namely the defendant, FG, MG, DKE and ARP as well as members of the public in the vicinity at the time who were simply going about their day-to-day activities. The defendant, DK did not know the deceased, KI.

THEREBY, he committed the criminal offence of Aggravated Murder under Article 147 (4) of the CCK.

Further, at approximately 12:55 on 19 September 2011 in Mbretresha Teuta, Peja near the PTK building opposite the Dukagjini Hotel DK was unlawfully in possession of a Cervena Zastava M-57 pistol of 7.62 x 25mm caliber with serial number G-79265 for which he did not possess a valid Weapon Authorisation Card.

At the commencement of the main hearing DK pleaded guilty to the offence of unlawful ownership, control, possession or use of a weapon under Article 328 (2) of the CCK and was convicted of the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraph 2 of the CCK.

FG

On 19 September 2011, at approximately 12:55, at Mbretresha Teuta, Peja in a taxi belonging to the Njaci company outside the main PTK building opposite the Dukagjini Hotel, being subjected to an unlawful, real and imminent attack with a firearm by the defendant DK, fired seven (7) bullets from his weapon, a Cervena Zastava M-70 pistol of 7.65 x 17mm caliber (with no serial number) in the direction of the said DK in necessary defence but in a manner that was disproportionate to the degree of danger posed by the attack upon him in that the said FG fired his weapon in the direction of the said DK while holding his head down and firing his weapon in an indiscriminate and uncontrolled manner, thereby exceeding the limits of necessary defence, in a place in which he knew a large number of people were gathered thereby exposing innocent

passers-by to an obvious and great danger to human life, whereby one of the bullets he fired hit AP in his left buttock, the bullet passing through his left and right buttocks thereby causing him serious bodily injury.

THEREBY, pursuant to Article 8 (3) of the CCK he exceeded the limits of Necessary Defence and committed the criminal offence of *Causing General Danger* under Article 291 paragraphs (1), (3) and (5) of the CCK.

FG averred that at all relevant times he was acting in lawful necessary defence.

When deciding this issue the Court must have regard to the fact that (i) a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action and (ii) evidence of a person having only done what that person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose. The Court may take into account other matters when determining whether the force used was, in the circumstances, reasonable.

The Court is required to exercise a judgement whether the force used was reasonable in the circumstances - including the nature of the danger he faced - as the defendant understood it to be. In other words, what would the average person do in the situation in which the defendant found himself.

Had the circumstances been different and had FG fired shots aimed at DK in a controlled manner the Court would have had little difficulty finding that he acted reasonably. However, FG fired 7 shots in a crowded place. He did not look to see where he was firing. Instead he put the hand in which he was holding the gun through the window opening and fired in the direction from which he thought the shots aimed at him were emanating while keeping his head down, facing towards the floor of the taxi. By his own admission he fired "uncontrollably". The Court finds that one of the bullets fired by FG struck AP. That bullet passed through both buttocks.

The place where the shooting occurred was crowded with persons going about their day-to-day activities.

Police who examined the scene found one bullet hole in the

side of a telephone booth affixed to the wall of the PTK building¹⁶⁰, one hole in a window of the PTK building¹⁶¹ one hole in the window framework of the PTK building¹⁶² and one bullet was found inside the PTK building having struck the side of the service counter¹⁶³. When he fired his weapon, DK had his back to the PTK building. In the circumstances, the court finds it probable that damage was caused by bullets fired by FG.

Whether the degree of force used by FG was reasonable in the circumstances is to be decided by reference to the circumstances as he believed them to be. The reasonableness or otherwise of that belief is relevant to the question whether he genuinely held it.

The Court finds that DK was the aggressor. He followed FG to the taxi rank and fired 8 bullets at FG as he sat in the rear of the said taxi. In those circumstances, it was not unreasonable for FG to return fire in necessary defence.

However, the degree of force used by FG is not to be regarded as having been reasonable in the circumstances as he believed them to be if the force used was disproportionate in those circumstances.

Article 8 (3) of the CCK provides that an act which is disproportionate to the degree of danger posed by an attack exceeds the limits of necessary defence.

The court finds that, given the evidence as aforesaid, FG exceeded the limits of necessary defence.

Article 8 (4) of the CCK provides that when the perpetrator exceeds the limits of necessary defence, the punishment may be reduced. When the perpetrator exceeds the limits by reason of strong trauma or fear caused by the attack, the punishment may be waived.

The Court finds that reference to "strong trauma or fear" while written disjunctively may be applied and interpreted conjunctively.

Further, at approximately 12:55 on 19 September 2011 at

¹⁶⁰ Exhibit 3

¹⁶¹ Exhibit 4

¹⁶² Exhibit 25

¹⁶³ Exhibit 29

Mbreteresha Teuta, Peja near the PTK building opposite the Dukagjini Hotel FG was unlawfully in possession of a Cervena Zastava M-70 pistol of 7.65 x 17mm caliber with no serial number for which he did not possess a valid Weapon Authorisation Card.

At the commencement of the main hearing FG pleaded guilty to the offence of unlawful ownership, control, possession or use of a weapon under Article 328 (2) of the CCK and was convicted of the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraph 2 of the CCK.

F. Determination of punishment

When imposing the criminal sanction, the court has considered the general purposes of punishment, including deterrence, prevention and the protection of society.

The time already spent in detention on remand is to be credited in the calculation of the sentence.

Mitigation/aggravation of Punishment

DK

DK has been convicted under Count 1 of the offence of Aggravated Murder under Article 147 (4) of the Criminal Code of Kosovo.

FG did everything he could to avoid a confrontation with DK. When FG left the café where he had been sitting with friends DK followed him to the taxi rank. FG having got into the taxi in an attempt to leave the scene DK approached the taxi and fired 8 bullets at FG at close range. One of his bullets hit and killed KI.

KI was a young man with a bright future who stood little chance in the face of DK's murderous assault. Further, this was a deadly assault which took place in a crowded area in the centre of Peja. It was extremely fortunate nobody else was injured or killed by one of DK's bullets.

DK has singularly refused to accept any responsibility for his actions on that day.

Indeed, DK averred it was in fact FG who was to blame for the death of KI.

Further, it was his case the bullet examined by the ballistics expert and relied-upon by the prosecution to prove its case against him had been planted by police although he called no evidence in support of this allegation.

This type of offence and the ruthless manner in which it was executed fall at the upper end of the sentencing bracket. The court has a duty to protect the public from those convicted of such crimes. In handing down this sentence this court is satisfied that the sentence is both reasonable and proportionate.

DK has not been punished for pleading not guilty in this case. However, as he did not offer a plea of guilty to the charge of Aggravated Murder he could not benefit from any mitigation in this regard.

Under Count 2 DK was convicted of the offence of Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328 paragraph 2 of the CCK. That conviction followed a guilty plea.

Regrettably, the use of firearms to resolve disputes has become all too common. Judges have a duty to protect the public. Those convicted of unlawful possession and use of loaded firearms in public places must expect custodial sentences.

DK has been given credit for his early guilty plea in relation to the count of Unlawful Ownership, Control, Possession or Use of a Weapon under Article 328 (2) of the CCK.

DK is a young man. He has no relevant previous convictions. He is single, has completed secondary education and was employed as a driver.

FG

The Court found under Count 1 that FG exceeded the limits of Necessary Defence and committed the criminal offence of Causing General Danger.

The Court finds that on the day in issue FG did everything he could to avoid a confrontation. He attempted to leave the scene as quickly as possible and was sitting in a taxi in the process of departing when attacked by DK.

Under Count 2 FG was convicted of the offence of Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328 paragraph 2 of the CCK. That conviction followed a guilty plea.

Regrettably, the use of firearms to resolve disputes has become all too common. Judges have a duty to protect the public. Those convicted of unlawful possession and use of loaded firearms in public places must expect custodial sentences.

FG is a young man. He is single, has completed secondary education but is unemployed. He has a previous relevant conviction. He was convicted by the District Court of Pejë in Judgment P. number 60/11 dated 6 May 2011 for the criminal offence of Attempted Murder under Article 146 under Article 20 of CCK and sentenced to a term of imprisonment.

Although convicted of Causing General Danger under Article 291 (1), (3) and (5) the Court has waived punishment because the defendant exceeded the limits of necessary defence by reason of strong trauma and fear caused by the unlawful attack by DK.

He has been given credit for his early guilty plea in relation to the count of unlawful ownership, control, possession or use of a weapon under Article 328 (2) of the CCK.

For the reasons stated herein we hereby render this Judgment.

Dated this 14th day of November 2012.

Judge Malcolm Simmons
Presiding Judge

Judge Franciska Fiser

Judge Lumturie Muhaxheri

Joseph Hollerhead
Court Recorder

LEGAL REMEDY: Pursuant to Article 398 (1) of the Criminal Procedure Code of Kosovo, the authorized persons may file an appeal against this Judgment within fifteen (15) days of the day the copy of the judgment has been served. The appeal must be filed in written form through the District Court of Peja/Pec to the Supreme Court of Kosovo.