

IN THE HIGH COURT OF SOUTH AFRICA**(WESTERN CAPE HIGH COURT, CAPE TOWN)****CASE NUMBER:**

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5 **DATE:**

29 NOVEMBER 2010

In the matter between:

THE STATE

and

10 **MOENEDIEN CEASER**

Accused 1

JUNAID MITCHELLS

Accused 2

ISMAIL CEASER

Accused 3

ALLAN ALMON ALBERT

Accused 4

IKARAAM MASARAPA

Accused 5

15 **LUCIAN LACKAY**

Accused 6

MICHAEL SAM

Accused 7

J U D G M E N T

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LE GRANGE, J:

In this matter the seven accused before Court have been
indicted on a total of 45 charges. Counts 1 and 2 relate to a
25 contravention of section 9(1)(a) and section 9(1)(b) of the
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Prevention of Organised Crime Act 121 of 1998, also known as POCA.

The accused are also charged individually or collectively with
5 43 other charges, which include five counts of murder,
attempted murder, various counts of robbery, theft, possession
of stolen property, malicious injury to property, dealing in
drugs, possession of drugs and various counts of possession
of firearms and ammunition and a contravention of the
10 provision of section 4 of POCA, known as money laundering.

Accused 1, Mr Moenedien Ceaser, has been indicted on a total
of 16 counts. Accused 2, Mr Junaid Mitchells, has been
indicted on a total of 19 counts. Accused 3, Mr Ismail Ceaser,
15 has been indicted on a total of 27 counts. Accused 4, Mr Allan
Almon Albert, has been indicted on a total of 28 counts.
Accused 5, Mr Ikaraam Masarapa, has been indicted on a total
of 17 counts. Accused 6, Mr Lucian Lackay, has been indicted
on a total of 16 counts and accused 7, Mr Michael Sam, has
20 been indicted on a total of 10 counts.

All of the accused, except accused 7, have been charged with
counts 1 and 2. The basis of the crimes created by this piece
of legislation, have bearing on criminal gang activities, where
25 the offences make punishable conduct, where any person who

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actively participates in, or is a member of a criminal gang, and who aids and abets criminal activity for the benefit of, or in association with any criminal gang. The State avers in these two counts that prior to and until March 2009, accused 1 to 6
5 actively participated in criminal activities and were members of the American gang whose main aim is the causing, promoting or contributing towards a pattern of criminal gang activity.

Counts 25 to 34 in the indictment relate to the attack by
10 gunmen on the business premises of Moegamat Sadeka Madatt in Woodstock, also known as the Woodstock massacre, where five people were shot and died as a result of multiple gunshot wounds and the consequences thereof, and where a number of taxi vehicles were deliberately set alight and damaged. The
15 10 counts in total that relate to the Woodstock massacre, consists of five counts of murder, one count of attempted murder, one count of robbery with aggravating circumstances, one count of possession of unlicensed firearms, one count of possession of ammunition and one count of malicious injury to
20 property.

The one count of attempted murder is the averment that accused 1 to 7 attempted to kill Vuzumzi Cakume, also known as Justice, by shooting at him. The one count of aggravating
25 robbery relates to the averment that accused robbed Vuzumzi

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Cakume and certain of the deceased before the shooting commenced. The State avers further that cell phones, cigarettes and an unknown amount of cash were appropriated from the scene of the shooting. Counts 32 and 33, relate to
5 the allegation that accused had unlicensed firearms and ammunition in their possession during the attack on Madatt's premises. Count 34 is one of malicious injury to property, in that five taxi vehicles that were owned or in possession of Madatt, were deliberately set alight and damaged. All of the
10 other counts not relating to the Woodstock massacre, are individual or collective charges against the accused and are allegations of criminal conduct in various forms prior to the Woodstock incident and subsequent thereto.

15 The State, in their summary of substantial facts, has set out what they intend to prove beyond a reasonable doubt against the accused. According to this summary, the accused are members of, or associated with the American gang, who engage in violent criminal activity in order to maintain
20 territorial dominance within their membership. The allegation against accused 1, 2 and 3 is that they are the leaders of the American gang in the Bonteheuwel area. It is further alleged that accused 4 and 5 are also members of the American gang and are leaders in the Heinz Park, Mitchells Plain and Athlone
25 areas. It is alleged that accused 6 is also a member of the

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American gang that is operative in the Manenberg area.

The facts that the State allege is that a conflict situation arose amongst the leaders of the American gang with regard to control over certain drug territories. As a result of this conflict, two alleged members of the American gang were killed. Their names were Mark Williams, also known as Markie Mokes and Rashaad Abrahams, also known as Charra. An alleged American gang leader, Mogamat Madatt was suspected of orchestrating the killing of Markie Mokes, with a suspicion that one of Madatt's henchmen by the name of Nathan McGregor had actually shot Markie Mokes. This event would eventually lead to the massacre in Woodstock where five people were gunned down on the premises of Madatt on 5 November 2007.

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It is further alleged by the State that accused 6 had attempted to kill a person called Nathan McGregor, who was believed to be the person responsible for the killing of Markie Mokes on 2 November 2007, which was three days prior to the Woodstock murders referred to earlier. Because of the belief that Madatt and Markie Mokes had clashed with each other of certain deals in the drug trade and the suspicion that Madatt was instrumental in the planning of the death of Markie Mokes, it is alleged that members and leaders of the various territories of the American gang, which include accused 1 to 7, conspired to

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take revenge on Madatt and hence the attack on his premises in Woodstock on 5 November 2007.

As stated earlier, five people were killed in a bloody violent
5 attack at the premises of Madatt in Albert Road, Woodstock in
the early hours of the morning of 5 November 2007. In
addition to the five persons killed, five of Madatt's taxis were
set alight and damaged. It is further alleged that in fear of a
retaliatory attack from Madatt and his associates, the accused
10 decided to acquire firearms to use for their protection. The
State avers that accused 2, 3, 4 and 5 and a State witness
present with them, drove to Paarl on 7 November 2007 to
acquire the firearms.

15 On the way back from Paarl, accused 2, a State witness and a
person by the name of Rashaad Solomons were stopped by
members of the South African Police Service on the N1
Highway. The police conducted a search of the vehicle and
found two firearms and ammunition in the vehicle. It is further
20 alleged that on the same date and in another separate
incident, accused 3, 4 and 5 were travelling in a motor vehicle
on the R300 road, were also stopped by the police and the
motor vehicle was searched. The allegation is that a silver .38
revolver was found alongside the road that had been thrown
25 out the car when the police indicated that the vehicle should

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stop. The police also found a significant amount of ammunition in the motor vehicle they travelled in and a substantial amount of cash was also found. The police also found four cell phones in the vehicle and the three accused
5 were then arrested.

According to the State, they aver that the aforementioned incidents all relate to a pattern of criminal gang activity and, therefore, charged accused 1 to 6 in particular, with the
10 contravention of section 9(1)(a) and section 9(1)(b) of POCA. In terms of the wording of POCA, and particularly referring to these two sections, the following is of relevance. The wording is as follows:

15 *"Any person who actively participates in or is a member of a criminal gang, and who wilfully aids and abets any criminal activity committed for the benefit of, and the direction of, or in association with any criminal gang, shall be guilty of an offence.*

20 "

And further to this Act prescribes:

25 *"Any person who performs any act which is aimed at causing, bringing about, promoting or contributing*

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towards a pattern of criminal gang activity, shall be guilty of an offence."

To these charges all seven accused pleaded not guilty and
5 elected to remain silent and no admissions were forthcoming
during pleading stage. In the presentation of the State's case,
counsel for the State led the evidence of a total of 58
witnesses, two trials-within-trial were held, and Exhibits A to
AAAAA were handed in by the State as documentary evidence.
10 Further to the aforementioned documentary evidence
submitted, the State also tendered Exhibit 1 as evidence.
Exhibit 1 consists of a CD, showing a video recording of a
photographic identification parade that was held at the offices
of Bellville South Police Station on 23 April 2008. The content
15 and material thereof, have not been placed in issue and prior
to the closure of the State's case, a number of admissions
were made by the defence in terms of section 220 of the
Criminal Procedure Act. The admissions recorded were of a
formal nature. These written admissions were handed in and
20 marked as Exhibit GGGG1 in respect of accused 1, Exhibit
GGGG2 in respect of accused 2 and Exhibit HHHH in respect
of accused 3 to 7.

In summary, the following admissions have been tendered.
25 The accused have admitted that the deceased persons, as
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indicated in counts 25 to 29 of the indictment, and who were declared dead at the scene of the crime, situated at Madatt's Transport, number 226 Albert Road, Woodstock on 5 November 2007, have been positively identified as Sivuyile
5 Albert Bobotyana, a male person, Fariz Maggot, a male person, Sinethemba Dedeka, a male person, Tamsyn Tamin Jordaan, a female person, and Reginald Pienaar, a male person. *Post-mortem* examinations conducted by the Forensic Pathologist, Dr Brouwer, on each of the five deceased
10 persons, concluded that the cause of death was as a result of gunshot wounds mainly to the head and the consequences thereof.

Further admissions made with regard to establishing the cause
15 of death and identity of those killed, were that the bodies of the five deceased were removed from the scene and transported to the forensic pathology laboratory and that no further injuries were sustained prior to the *post-mortem* examinations being completed. The report of Inspector Nimb,
20 the dog handler from the Dog Squad and fire inspector was also tendered as evidence and the correctness of the finding was admitted by counsel for all seven accused. Photographic images tendered of the damage caused by the fire, were also admitted as correct.

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At the close of the State's case, counsel for all seven accused brought an application for discharge in terms of section 174 of the Criminal Procedure Act, Act 51 of 1977. The application for discharge was only partially successful. Accused 4 was
5 found not guilty and discharged on counts 4, 8, 9 and 10. Accused 5 was found not guilty and discharged on count 3. Accused 6 was found not guilty and discharged on count 14. The application for discharge on the remaining counts, was refused. All of the accused then elected to testify in their
10 defence. Accused 1, 3 and 6 also called defence witnesses.

The defence cases were all presented with a blanket denial of the charges preferred against them. The essence of the cases presented by all seven accused were that they were not
15 members of the American gang and have no association with this gang, did not have a meeting to discuss any attacks on Madatt and have no knowledge of the five people that were murdered in Woodstock on 5 November 2007. It is further alleged by those four accused arrested on 7 November 2007
20 that they had not been in Paarl together and had not acquired firearms to defend themselves against a possible retaliatory attack from Madatt.

According to their evidence, the two witnesses called by the
25 State in terms of the provisions of section 204 of the Criminal

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Procedure Act, were unreliable, untruthful and that they contradicted themselves, and the only reason for their testimony was to protect themselves from prosecution and gain financial reward. The seven accused have alleged that this evidence had been manufactured against them and should not be accepted by this Court and be rejected in its entirety. The Woodstock massacre is central to the arrest of all the accused in this case. The events and subsequent charges preceding this attack and the charges subsequent to the arrest that were carried out are averred by the State to be a culmination of criminal gang activity in terms of the provisions of POCA.

During the presentation of the State's case, the following was not placed in dispute. That two members of the American gang named Charra and Markie Mokes were shot and killed by unknown persons. That there was an attack on the business premises of Madatt in Woodstock where five people lost their lives hit by gunshots and the consequences thereof. That five motor vehicles used as taxis and owned by Madatt, were set alight and damaged during this attack. That accused 2, the State witness, Shahied Carelse and Rashaad Solomons, were arrested in a motor vehicle on the N1 Highway on 7 November 2007 and that when their vehicle was stopped and searched, the police found two firearms in the vehicle and an amount of ammunition, which was also handed in as exhibits.

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Accused 3, 4 and 5 were stopped by the police in a motor vehicle on the R300 road on 7 November 2007 and after the vehicle was searched, the police found a substantial amount of ammunition on the floor of the front passenger seat, as well as
5 four cellular phone handsets that was seized by the police, as well as an amount of cash. It was all handed in as exhibits. A firearm was also found close to the motor vehicle. The death of Markie Mokes and the subsequent Woodstock killings three days later, appear to be the catalyst for the police to intensify
10 the investigation against all the accused. This resulted in the accused being charged with the offences in the indictment that are not to the Woodstock killings, in particular counts 1 and 2, where it is averred that accused 1 to 6 are members of the American gang and derived benefit from criminal conduct and
15 the proceeds thereof.

The only issue in dispute with regard to the Woodstock killings is the identity of the perpetrators. In respect of the remaining charges, the accused dispute their involvement of these
20 crimes. It is trite that the standard of proof required in our criminal law, is that it is the duty of the State to discharge their burden of proof beyond a reasonable doubt. An accused's version need only be reasonably possibly true. As a result of the magnitude of evidence presented by the State, I
25 will now concentrate on the evidence presented in respect of

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the five murders and related counts at the business premises of Madatt in Woodstock. These crimes refer to counts 25 to 34 as reflected in the indictment.

5 The first witness called by the State in respect of the Woodstock killings, was Vusumzi Cakume, also known as "Justice". His testimony can be summarised as follows. He was employed by Madatt as a taxi cleaner. During the day he operated as a driver and at night he worked as a security
10 guard. He was at the premises during the evening of 4 November 2007 busy cleaning taxis. During the early hours of the morning of 5 November 2007, two other people at the premises started fighting and one of them had to be taken to the hospital. At the gate he saw three male persons, of which
15 one of them pointed a firearm at him and ordered him to open the gate. The two other male persons were with the person pointing the firearm at him. He saw the other two men had two five litre cans of petrol with them and they started to douse him with petrol all over his body. He told them that he just
20 worked there and will take them to the workshop.

In the workshop were five other persons. He was assaulted, doused with petrol again and then taken to the kitchen. According to his testimony, it was in the kitchen at the
25 premises where the three men started assaulting them and the

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shooting started. The witness managed to conceal himself in a little cupboard and after hiding for a period of time, he got out and saw the five deceased persons all lying in a line. The police were called, the fire brigade arrived and the scene was
5 then further managed by the police.

The witness further recounted events of the killings that took place that morning and the only part of his evidence which was of any significant importance, was the evidence led that whilst
10 standing in the Wendy house when the attackers arrived, he heard the person who was standing with, by the name of Fareez, and who was later shot by the attackers, say that he knew one of the three attackers and told the witness that his name was Lucien. The witness did, however, testify that he
15 did not know any of the three men that had entered the premises.

The other aspect of his testimony which bear some closer scrutiny, is when the witness made a statement at the police,
20 he was asked to participate in a photographic identification process. The photographic identification procedure was captured on video and tendered as evidence marked as Exhibit 1. He pointed out three photographs and signed on each one. In response to a question by the Court, clarifying
25 his evidence, he explained that the three photographs he

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pointed out, were just a comparison, the one photograph of the person he identified who had the firearm. Having observed the video evidence of the identification process, the witness immediately pointed out the photographs situated at the bottom right of page 2, which in fact was accused 6, Lucien Lakay. That evidence is also corroborative of the evidence that the person shot on the scene, Fareez Magot, had said that he knew the one attacker as Lucien. This evidence was not questioned by counsel for accused 6 and although it deemed to be hearsay evidence, the probative value thereof must be considered, in particular where it implicates accused 6 and places him on the scene of the crime.

The first section 204 witness called by the State was Ashrief Diedericks, who was 28 years old at the time of giving evidence. His version, briefly stated, was the following. He personally knows accused 1, 2, 3, 4 and 5. He knows their names, as well as their nicknames. He testified that he has seen accused 6 at the house of accused 2 in Bonteheuwel before, but does not know him personally. He testified that he is a member of the American gang in Bonteheuwel and has been a member since he was 18 years old. According to him accused 1, 2, 3, 4 and 5 are also members of the American gang, sometimes also referred to as Ugly Americans. He could not say whether accused 6 was a member of the gang, but said

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that he did come to accused 2's house.

He described the tattoos that he had on his body, showing his association with the American gang and the meanings of the various tattoos. He also described signals and grouping within the gang structure. According to him there are different territories where the gang is operative and that each territory has a leader. He testified that accused 2 is the leader of the Bonteheuwel area and that accused 2 is involved in drug dealing. Each accused had a specific role in the gang structure. He explained that if someone is, as he called it, an "ou", then he has more say. He also explained that the meaning of the word *ou* is a prison gang member like a "26" and a "27".

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His testimony regarding gang association was that accused 1 dealt in drugs, accused 3 was a fighting general in the gang etcetera, and that accused 4 was his right-hand man. According to him, a fighting general is the person in the gang who does all the fighting, shooting and gunrunning. He does not know much about accused 5, other than his membership of the gang and could not say much about accused 6 and 7. He provided the Court with information on where accused 1, 2, 3, 4, and 5 live and all he could say about accused 6 was that he comes from Athlone.

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One of his functions in the American gang setup, was that he sold and stored drugs for accused 2 and kept firearms stored for accused 1. He would receive drug from accused 2 to be
5 sold and would also hide firearms for accused 1 and give to him when needed. His further evidence was that he is currently in the witness protection programme after he was found in possession of an unlicensed firearm given to him by another American gang member called Pretty Boy. He was
10 arrested and when released on bail, he realised that his life was on the wrong track and decided to approach the police to provide them with information.

Approximately three months after his release on bail pending
15 the case of the unlicensed firearm, he went to Bellville South Organised Crime, where he spoke to Inspector Swann. He told Inspector Swann that he was in custody for a firearm that did not belong to him and that he had other firearms and drugs in his house and wanted to come clean. He then gave Inspector
20 Swann the firearms and drugs at his house by pretending to be arrested. He says that the firearms and drugs found at his house and seized by the police, came from accused 1. After he had approached Inspector Swann, he then supplied the police with a written statement, providing full details of his
25 activities and describing all the gang related information he

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had, to the police.

He was arrested for the unlawful possession of a firearm. Following his arrest, Diedericks went to see Inspector Swann to state that the gun in his possession did not belong to him, but it belongs to Pretty Boy. Diedericks was asked if he was aware of the incident at the Madatt's premises and whether he knew anything regarding the case. He indicated that he knew most of the accused. Number 1, Moenedien Ceaser as Moeno. Number 2, Junaid Mitchells as Meff. Number 3, Ismail Ceaser as Balie Dice. Number 4, Allan Albert known as Kaya. Number 5, Ikaraam Masarapa as Masarapa. Diedericks stated that he does not know accused 6 personally, but knows his face from Bonteheuwel and stated that he does not know accused 7.

He stated that the accused were members of the American gang, excluding accused 6, who he could not identify as a gang member. He identified accused 2 as the leader of the Ugly Americans in the Bonteheuwel area, who is mostly involved with dealings in drugs, predominantly the drug known as TIK. He identified accused 1 as a TIK dealer and one of the top dealers and that he lived with accused 2. Accused 3, identified as the fighting general, and accused 4 as number 3's *regterhand*. The witness was unsure about accused 5, 6 and

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7. The witness testified that he handled drugs for Meff and also held weapons and drugs for Moeno.

His further evidence is that he took accused 1, also known as
5 Moeno, to Vanguard Day Hospital, because of an injury to his
foot and thereafter to Fiekie, where he overheard a
conversation between the two parties. The witness testified
that during the conversation he heard accused 1 say that Meff
was part of the planning and that Meff planned what to do and
10 how to carry out the act. Moeno said that he had been at the
planning, but did not speak at all. Moeno said that Kaya was
the one who shot the people and that accused 3 and 5 sat
outside in the car. The witness also testified and said that
Moeno mentioned another person's name, but he cannot
15 remember the name.

This witness' evidence in chief was concluded, whereupon he
was extensively cross-examined by counsel for all seven
accused. The essence of the cross-examination of this
20 witness by counsel for the accused, was that he was a section
204 witness, only trying to protect his own interests and that
he was afraid of being convicted on the firearm charge and
that his testimony was loaded with inconsistencies and
contradictions and was untruthful in every respect. Counsel
25 for all the accused also denied the averments made by the

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witness. Counsel for accused 1 and 2 put it to the witness that the conversation with Fiekie never happened and that no firearms or drugs were given to the witness to keep. The State did not call Fiekie as a witness and it appears that he did not
5 want to make a statement or did not want to co-operate with the police and the investigation in this matter.

The second witness called by the State in terms of the provisions of section 204 of the Criminal Procedure Act, was
10 Shahied Carelse, also known as Merchant. He is 48 years old, grew up in Bonteheuwel, was a member of the Scorpion gang and has spent most of his adult life in prison. He is apparently also a member of the "28" prison gang. Upon his release from prison in 2004, he met up with accused 2, got involved with
15 drugs supplied to him by accused 2 and subsequently became a member of the American gang. He testified that he came to know the accused from different sources. He met accused 1 through his dealings with accused 2. He knows accused 3 from his time spent in prison, where they were incarcerated
20 together. Accused 4 is known to him as Kaya and he met him outside of prison. He said that he did not know accused 5 for very long, and that he did not know accused 6 personally, but he only knew him by his name as Lucien, as accused 6 had been at the house of accused 2 with accused 5. He does not
25 know accused 7 at all.

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He also testified that accused 1 to 6 are all members of the American gang and described where they operate from and exactly where one lives. According to this witness, accused 2
5 had given him drugs to make a start, after spending approximately 18 years in prison. The witness admitted that at the time he abused drugs and that this abuse was his downfall. In order to sustain his habit, he became more involved in gang activities for the Americans, where he sold and stored drugs
10 and firearms for them. He also testified that by assisting them with these activities, the gang took care of his needs and he generally did a lot of dirty work for the gang.

His evidence in chief was presented by the State, starting from
15 his arrest and how he ended up in the witness protection programme he is currently still in. He had approached the police for assistance, because he had a suspicion that his gang associates wanted to murder him, as they did not trust him any more. He testified that on 30 October 2007, he was at
20 a restaurant with accused 1 and 2 and whilst accused 2 received a call that one of their friends who was also a member of the American gang, called Charra, had been murdered. They immediately went to the scene of the murder and when they got there, they met accused 3, who told them
25 that he had found Madatt, also a member of the American

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gang, on the scene as well. Accused 3 told them "*ek trust nie daai hond nie*", referring to Madatt.

They left the scene of the murder and went to the deceased's house to wait for the body. At this house he was with accused 2 and another American gang member called Mark Williams, also known as Markie Mokes. Markie Mokes then told them they should be careful and that they should watch their backs. He was with accused 2 again on 2 November 2007 and accused 2 received another phone call that Markie Mokes had been killed. They went to Manenberg to another American member's house, called Wynand, also known as Charlie Hangkas. There were approximately 30 people there, so they all congregated on a school field opposite his house. They gathered to establish who had been responsible for the death of Charra and Markie Mokes and tried to contact Madatt, but could not reach him.

When they could not get hold of Madatt, accused 3 told them to leave this business and his words were "*ek sal weet wat om te dala*", which meant that he would know what to do. He left Manenberg with accused 1, 2, 3 and 4, where they drove to accused 5 in Kewtown. They waited for accused 5 to arrive and when he got there, accused 3 told him that they planned to attack Madatt, they need guns. Accused 5 then asked who

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they were going to take out and accused 5 then said if they go, then they must do a better job. Accused 5 then said that he could not supply all of them with firearms. Accused 5 then sent another person inside and he came out with two firearms
5 and as he called it, 'n *pomp*, which is a shotgun. They took the three firearms and then left.

He testified further that acquisition of the firearms, they dropped him back at the street corner in Bonteheuwel, where
10 he then took the firearms home and hid them away. On Saturday, 3 November 2007, he was asked by accused 2 to bring the three firearms. He collected them and handed them over to accused 2, who in turn gave them to accused 3. Accused 3 and a person called Faizel, who drives for accused
15 3, then left with the firearms.

On Sunday, 4 November 2007, he went about his business as normal with accused 2. At approximately five o'clock the afternoon they were at the house of accused 2 when accused 3
20 arrived there with accused 6, his driver, Faizel, and a person called Bloues, who has subsequently also passed away. Accused 3 and his driver then left again, but left accused 6 there. Accused 2 told the witness to take accused 6 to another place to go and smoke some drugs. Accused 3 then arrived
25 back at the house of accused 2 with some other people and

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accused 5 also arrived with two other persons. They then asked where accused 4 and 6 were.

Carelse was told to go and find accused 6 at the place he had left him, but it appears that accused 6 had left. Accused 3 phoned him on his cell phone and accused 6 told him that he was in Manenberg. Accused 3 then said he was going to fetch him in Manenberg, because he must also collect another firearm in Manenberg. Whilst waiting for everyone to return, accused 4 arrived with a white Ford Bantam *bakkie*. Accused 1, 2, 3, 4, and 5 were all present and they went into accused 1's room where he slept. According to Carelse, when he wanted to go in, they stopped him and told him they should not all go in and he was still to go and keep watch outside. He could not say what the content and nature of the discussion was held in the bedroom of accused 1.

After the meeting they all left in their different vehicles. Accused 1 and 2 left with accused 3 and accused 4 and 5 left with their own vehicles. Carelse then took accused 6 back to one of the drug houses in the area, where they collected money and then returned to accused 2's house later on the Sunday. Accused 1, 2 and Carelse then watched football at accused 2's house. Accused 3 then arrived and received a call on his cell phone. He then told them he was going back to

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Manenberg to collect two firearms. A few hours later they all got together again at the house of accused 2. Accused 1, 2, 3 and 5 were there with Carelse. Accused 5 then called accused 4 and asked him where he was. Accused 4 also then arrived a while later. Accused 3 had also arrived there with Bloues, Faizel in a white Tazz motor vehicle. The vehicle, according to the witness, belonged to accused 5.

At approximately 10 o'clock that Sunday evening, 4 November 2007, accused 2, 3, 6, Faizel and Bloues left in the white Tazz and accused 4 was in the white Bantam *bakkie*. Accused 5 left in a Quantum van with three other persons who were with him. Carelse stayed with accused 1 at the house. When accused 2 arrived back, Carelse told him it was late and that he was going home.

On Monday morning, 5 November 2007, Carelse went about his business and then went to the house of accused 2 again. Accused 2 asked him to go buy two newspapers and he saw that Madatt was on the front page of the paper. He gave the papers to accused 2 and he heard accused 2 say to accused 1, who was in the shower, "*my broer die ouens se nommer raak vol*", which according to the witness meant that the guys had done a good job. Accused 3 then also arrived there again and accused 1 said that he wanted to talk to accused 4. They

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agreed to go and find him and they all drove to Heinz Park to look for accused 4.

They stopped outside his girlfriend's house and accused 4
5 came out and accused 3 said to him that "*die hele nommer lê in die koerant in, jy moet die bakkie uitbring, miskien is daar mense wat die bakkie gesien het*". Accused 4 then said that he was going to sell the *bakkie* to a black man and continued by saying that he should not worry about the *bakkie*, because he
10 was still sleeping with the murder weapon under his pillow. Accused 3 then told him to swop the firearm with another one, because one of their associates could not be found with a firearm. They then left and returned to accused 2's house where he heard accused 3 say to accused 1 that they needed
15 guns, because he did not trust Madatt. Accused 2 then made a few phone calls.

On 7 November 2007, accused 1, 2 and 3 were again present at the house of accused 2. Accused 3 then phoned accused 5
20 again and told him that they were leaving and would come and fetch him from his home. They left and Rashaad Solomons drove the white Tazz, accused 2 sat next to him and sitting behind were accused 3 and the witness Carelse. Rashaad Solomons took out a firearm and gave it to Carelse to keep,
25 because he said it hurt him when he drove. They stopped at

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the Promenade Mall in Mitchells Plain to wait for accused 5. Accused 5 then phoned accused 3 and told him that he would meet them at the corner. They then left and picked up accused 5 on the corner. There were now five persons in the white Tazz. It was Carelse, accused 2, 3, 5 and Rashaad Solomons. They phoned accused 4 whilst driving and asked him where he was. He told them that he would meet them on the road.

When they arrived in Paarl, they went to a house and purchased two firearms in exchange for drugs. When they got outside again, they saw that accused 4 had just arrived in a gold coloured Toyota Corolla. When asked where he got this particular motor vehicle, he said that he had been given the motor vehicle by a foreigner who had owed him money for drugs. Accused 3 and 5 then decided to drive with accused 4 in the Toyota Corolla and accused 2, Carelse and Rashaad Solomons drove in the white Tazz they had originally driven to Paarl.

With regard to the firearms they had acquired in Paarl, Rashaad Solomons took one, accused 3 took the .38 and Carelse still had the firearm that Rashaad Solomons had given him to keep. The evidence then presented by the State was with regard to the circumstances of the arrest of Carelse, accused 2, 3, 4 and 5 after they had left Paarl as indicated

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above. Carelse was in the white Tazz with accused 2 and Rashaad Solomons. They were pulled over by the police on the N1 Highway where the firearms were found and consequently arrested. Accused 3, 4 and 5 had driven past them also on their way back to Bonteheuwel, and they were also arrested by the police on the R300 road towards Bonteheuwel. This is one of the issues not in dispute.

He testified that they appeared in court in Paarl for possession of unlicensed firearm charges, but that these charges against him were withdrawn a few months later. He then testified of the circumstances under which he became a section 204 witness and how he entered the witness protection programme. A few months later he began supplying the police with information and then a year after the Paarl arrest, he felt as though the other members of the gang had become aware and suspicious of him. There was also an unsuccessful attempt to kill him by a person called Slim Shady, who had received instructions, according to him, from accused 3 to discipline him. The attempt on his life failed and it was then that he entered the witness protection programme.

He testified that he had received an amount of R7 000,00 from the police for information that he furnished them with. Accused 3 had also phoned him one day and made him a cash

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offer not to testify in this trial. According to the witness, accused 3 was prepared to give him R30 000,00 in cash in exchange for his silence, but he elected not to take the cash and rather to co-operate with the police. The rest of his
5 evidence presented, related to the other charges, as well as a description of how the American gangs operate and the various signals and tattoos that is associated with the American gangs.

At the conclusion of his evidence in chief, the witness was
10 extensively cross-examined and in great detail about the evidence that he presented in court by counsel for all seven accused. He was in the witness box under cross-examination for a week. In a nutshell, the evidence of the cross-examination dealt with his decision to become a State witness,
15 his knowledge of the events he described in great detail and his honesty and trustworthiness and reliability. The general slant taken was that his motive to implicate the accused was driven by greed, and the offer of money for information and his desire to avoid returning to prison at all costs when he was
20 arrested for being in possession of the unlicensed firearm in the Paarl case.

Counsel had put it to him that he was only trying to protect his own skin by attempting to falsely and with malicious intent
25 incriminate the other accused. It was also put to him that his

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memory had been affected by the abuse of drugs and at one stage it was even put to him that he was under the influence of a dependence producing substance whilst testifying. The fact that he had received money from the police for the information
5 supplied and the fact that he was testifying to avoid returning to prison, and the motives he had for falsely accusing the accused, was in summary the challenges put to the witness by counsel for the accused.

10 The third witness called by the State in terms of the provision of section 204 of the Criminal Procedure Act was Nathan McGregor. The relevance of a summation of his evidence is that it has bearing on the Woodstock killings. He spontaneously and directly, without being led, confirmed in
15 open court that he is an active member of the American gang and was part of the American gang setup in Manenberg. He has been in prison several times and he also confirmed and admitted that he committed a murder. The leader of the American gang in Manenberg, according to him, was Madatt.
20 He confirmed that he knew Markie Mokes and that he had also been a member of the American gang. He also said that accused 6 had previously been a member of the Dixie Boys gang, but that he later switched his allegians and became part of the American gang.

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He had heard that Markie Mokes had been killed on 2 November 2007 and testified all the people suspected that he had been responsible for the death of Markie Mokes. He then testified, as he called it, "the boys then came for him".

5 When asked who the boys were, he testified that accused 6 was the first person who had fired shots at him that particular morning. He admitted that he also had a firearm and shot back at him and then chased accused 6 to the main road and, therefore, not hiding from the Court that he was also in

10 possession of an unlicensed firearm. He then saw a car driven by a lady with the brother of Markie Mokes as the passenger. When they saw him, Joey, who is the brother of Markie Mokes, jumped out with a firearm. He retaliated and shot at the car and then ran away. When he saw them again, they had

15 regrouped. This time accused 6 was with Joey and the lady driving the car. He was in the backyard of a house and they drove past him and they saw him again.

Upon a Court's question as to why the people would think that

20 he was responsible for the shooting of Markie Mokes, he provided a detailed description of how things had changed in the setup of the American gang. During his period of incarceration, he understood that all the old Americans must die, because Markie Mokes had made new Americans. The

25 younger members wanted to do away with the old guard,

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because Markie Mokes had built up the younger group. The witness became quite tearful and emotional when he spoke about the vision between the old Americans and the new Americans built up by Markie Mokes. He recalled giving the
5 younger members money and said that he was heartbroken that he would have to kill or shoot people that had grown up before him. He said all of this is about money and power. He explained that as a result of these divisions and the lust for the money, there was division between Madatt and Markie
10 Mokes, which was to cause all the problems within the gang.

With regard to the downloading of information data from certain cell phone handsets and the detailed billing of some of these phones, the State presented the evidence of Constable
15 Lungile Mfiki, who is stationed in Cape Town and trained to download information from cell phones. Hilda du Plessis, a specialist data analyst from MTN, Jaco Prinsloo, who is a technical manager at the Law Agency Support Department at Vodacom and Johanna Reyneke, manager at Vodacom,
20 working in the same department as Prinsloo, and Marthinus Otto, a forensic computer crime analyst, were called by the State.

Mfiki's evidence essentially relates to the four cell phones that
25 were found in a motor vehicle wherein accused 3, 4 and 5 were

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arrested on 7 November 2007, whilst travelling on the R300 road. The phones that he received for testing were Nokia 5140, Samsung SGHD 820 and two Motorola phones. The one was a L7 SLR and the other a V3. According Mfiki, he
5 could only download data from the Samsung and the two Motorola phones, as the Nokia phone was damaged. The information downloaded from the three phones was handed in and marked as Exhibits YY and BBB.

10 In cross-examination, Mfiki was attacked for the different IMEI numbers, which is a cell phone ID number, that was contained in his report. In reply he was adamant that he might have made a mistake, but the information downloaded from the phones used in the specific software developed specifically for
15 this purposes, is correct and cannot in any way be tampered with or altered. It must be stated, Mfiki did not impress as a good witness.

The witness, Marthinus Otto, from Risk Diversion Digital, who
20 is a forensic computer crime analyst, confirmed in his evidence that the data collected from these phones by Mfiki, cannot be manipulated or fabricated. Otto was adamant during cross-examination that the cell phone data downloaded by Mfiki from these handsets he had received, could not be altered, as the
25 programme used memory blocks to prevent interference with

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the data contained in these handsets.

The evidence tendered by the two witnesses representing MTN and Vodacom, relate essentially to the detailed billing of the cell phones of accused 5 and 6 and the whereabouts of these handsets prior to the attack on the business premises of Madatt and immediately thereafter. Du Plessis provided detailed billing with regard to the following numbers being 0838606340, 0731374271 and 0733883916. The latter two numbers both belong to accused 6, the first being his old number and the second being his new number. The first is the number that appeared on the screen of a phone that belongs to Gail Marcus, the mother of deceased, Tamsyn Jordaan, just prior to and during the shooting of the deceased.

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Reyneke provided detailed billing in respect of the following three cell phone numbers 0825501734, 0826649865 and 0798096003. It is not in dispute that the 0825501743 number is that of accused 5. Du Plessis, Prinsloo and Reyneke also presented testimony with regard to the operation and technical aspects of the base stations that are used by mobile cellular service networks. They provided information on detailed billing areas, where cell phone users find themselves and in particular the movement of cell phone usage between the various base stations.

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Much cross-examination centred around the base station and the effectiveness of picking up the cell phone signals within a particular area of radius. Much of the cross-examination of these witnesses was, with all due respect, speculation in nature. This Court can find no plausible reason to reject the evidence relating to the downloading of information and data and is, therefore, accepted as reliable and truthful in every respect.

10

In evaluating the evidence of Diedericks, Carelse and McGregor, it is trite that where a person has been warned in terms of the provisions of section 204 of the Criminal Procedure Act and has given evidence as an accomplice, such evidence must be treated with caution. This is aimed at overcoming the danger of an accused person being wrongly convicted on the evidence of an accomplice, who not only has a motive for telling lies, but is, by his insight knowledge of the crime or crimes, peculiarly equipped to convince the unsuspecting that his lies are true. Corroboration would normally provide a safeguard for an accomplice witness' evidence implicating an accused. In this regard see S v Mnyamana & Another 1990 (1) SACR 137 (A) at 140f.

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The evidence of Diedericks, Carelse and McGregor that prior to the events in Woodstock on 5 November 2007, conflict between the various leaders of the American gang in certain areas of the Cape Flats occurred, which resulted in some gang members being killed, was not essentially challenged by the accused. The evidence that gang lead, Madatt, was suspected of being involved in the killing of a fellow gang member, Markie Mokes, who was shot and killed three days before the Woodstock killings, was also not attacked in cross-examination.

Accused 6 does not dispute that he and McGregor were involved in a shooting incident on 2 November 2007, the same day that Markie Mokes was killed. Accused 6 alleges that McGregor shot at him first. He then retaliated by shooting back. McGregor was rather frank and open when he testified about this incident. He did not try to hide who he was. He spontaneously, without being led, revealed that he has spent many years in prison. He has committed a murder already and had a firearm which he used to shoot at accused 6. It is clear there was no attempt on his part to be evasive and deceptive about his criminal background and activities. He was unapologetic for the fact that he was a gangster and with a sense of loyalty to the cause of the gang ideals, could not understand why the accused would deny their membership of

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the gang. His loyalty towards his gang became noticeable when he, with emotion and near to tears, could not believe that there was a division between what he termed the old Americans and the new Americans under Mokes' control.

5

He identified the accused by their names and/or nicknames. He could, for example, say that accused 3 grew up in Manenberg, which was confirmed during cross-examination. He was prepared to make certain concessions, for example in the case of accused 4, he readily indicated that he did not know him that well. His evidence to an extent, provides strong corroboration for Carelse and Diedericks regarding the accused being Americans. His evidence also lent support for the fact that Madatt was suspected of being involved. It is, therefore, not improbable that a meeting was held in Manenberg to discuss an attack on Madatt. McGregor was also adamant that the problem between Madatt and Mokes was as a result of drug monies that were handed to Mokes. McGregor impressed this Court with his frank and open disclosure of his criminal activities and involvement in the crime. His evidence is, therefore, factually accepted by this Court.

Diedericks' evidence, in essence, relates to his involvement as a member of the American gangs. His role within the gang

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structure and knowledge about the Woodstock killings and his decision to leave the gang and to go into the witness protection programme. The State argued that although this person appeared nervous, he made a good overall impression
5 and that the defence was unable to unravel his testimony. The defence contended that Diedericks was a poor and unreliable witness and that his evidence should be rejected.

It appears from Diedericks' evidence that he became more
10 involved in gangsterism when he was retrenched. He admitted to having a previous conviction for the possession of a firearm. The fact that he went to the police on a Sunday and was advised to come back the next day when the offices were open, could not be disputed by the accused. Warrant Officer
15 Swann explained that he was not involved in the investigation of gang offences and the witness arrived in his office on the Monday. Swann lends credence to Diedericks' statement that he wanted to come clean and was asked to prove himself, whereupon he showed the police the firearms and drugs he
20 stored. Diedericks was not approached by the police for information and according to Swann, never requested any favours in return for his co-operation.

The defence argued that the witness was motivated by the
25 possibility of a lengthy jail term, should he be convicted on the

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second firearm charge and that fact was his principal reason and motivation to falsely implicate the accused. If this was his motivation, then certainly he had ample opportunity to do so. He did not amplify his evidence at any stage by adding facts, which may have implicated the accused any further. His version amounted to what he knew and the minimum knowledge he had of the Woodstock matter. In essence his testimony amounts to a conversation he heard between accused 1 and Fiekie. This evidence, in a manner, supports the evidence of Carelse regarding a meeting that took place and that the discussion was about a revenge attack on Madatt.

With regard to Carelse, his evidence, in summation, is that he spent most of his adult life in prison. He admitted that he was a member of a gang in prison and became an American due to circumstances. He primarily became involved with accused 2 and met accused 1 through him. He also knew accused 3 from prison. He identified accused 1 to 6 as gang members. He was upfront that he did know accused 7. He admitted that he became a police informant after he was arrested on 7 November 2007 and received remuneration for his information. His evidence that he only received R7 000,00 was, however, contradicted by Warrant Officer Titus from Crime Intelligence, who indicated the witness received approximately R30 000,00. This Court will accept that the

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police place great reliance on informants to solve crime in this country and on occasions must rely on paid performance for information.

5 There is, however, no evidence that Carelse was remunerated for his testimony in this court, or that the amounts actually paid to him, was so significant that it enticed him to deliberately fabricate his evidence in this court. The evidence of Carelse was that the killing of Markie Mokes instilled the
10 feeling of distrust in Madatt, had invoked a sense of anger and ill feelings amongst members of the American gang and division within the ranks of the gangs was supported by the evidence of McGregor. His evidence that Madatt was fingered, was also confirmed by McGregor.

15

Carelse's evidence is supported by Diedericks' version in respect of the meeting that was held on 4 November and those who were present. The detailed billing of accused 5 and 6's cell phones, gives credence to Carelse's evidence that a
20 meeting took place in Bonteheuwel. As the records reflect, whoever was in possession thereof, was in the area of Bonteheuwel for a considerable period of time. The fact that Carelse was arrested twice with some of the accused in a vehicle with firearms, must certainly be proof that he was
25 closely operating with some of the accused.

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Another piece of evidence that suggests that Carelse operated closely with some of them, is his knowledge regarding the stolen Toyota vehicle. He testified that accused 4 admitted to
5 accused 5 that he received the Toyota from a foreign man who took the vehicle from his mother and gave it to accused 4 in lieu of drug monies owed to him. He told the man to take the car from his mother when she was away for the weekend. If accused 4 and 5, as alleged, had never met Carelse in Paarl or
10 Wellington, then how could it have been possible that he knows about the details of this vehicle that they were arrested in?

Carelse also testified that accused 4 arrived with a white
15 Bantam *bakkie* and left with it. His evidence was further that on the 5th, after the incident in Woodstock, accused 4 mentioned why are they worried about the *bakkie*, since he still has the murder weapon under his pillow. From this, it is evident that there were some concern about the *bakkie*, that
20 they may have been seen on the crime scene. The text message that was sent to accused 5 from the Motorola V3 phone, confiscated during the arrest of accused 3, 4 and 5, illustrates that Carelse's evidence is not without credence. The message which reads as follows: "*Hosh, hoe het jy geweet*
25 *net twee wit bene en die twee Quantum's is al, en hoe weet*
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hulle van die bakkie?" shows that there were concerns for the possibility that either the police or others know that the *bakkie* was at the murder scene. It is not in dispute that firearms and ammunition was found in the car that accused 2 and Carelse was arrested in on the N1. It is also not in dispute that a large amount of live ammunition was found in the car that accused 3, 4 and 5 were arrested in on the R300 road. There were 43 x 9 mm rounds and 41x .38 Special rounds found on the floor of the front passenger seat where accused 3 was seated. An amount of R11 880 was also confiscated, which accused claims belongs to him as he is a business man.

The evidence of both Diedericks and Carelse is not without criticism. Karelse was subject to vigorous cross-examination and at one stage was clearly confused as to the dates when Mokes was killed and at what time of the day the meeting took place at accused 2's house. It is well accepted that where a witness has shown to have lied in some aspects of his testimony, it does not automatically lead to the rejection of the other aspects of his evidence, nor does proof that a witness has contradicted himself or was contradicted by other witnesses, lead to a complete rejection of the witness' entire testimony. On a conspectus of all the evidence, and taking into account the well established evidentiary rules regarding single witnesses and that of accomplices, this Court is

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satisfied that there is sufficient corroboration and safeguards for accepting the evidence of Diedericks and Carelse.

Firearms and ammunition were also found at the premises
5 where accused 4 resides, including a police uniform, handcuffs
and a bullet proof vest, that was suspected as being stolen
property. Constable Laduka testified how he found the
firearms and ammunition in the presence of accused 4 when
they conducted the search at the premises. The firearms and
10 ammunition were handed in at the police station. Warrant
Officer January testified that he took the exhibits that Laduka
handed in to the forensic laboratory.

With regard to the robbery at Cape Wood Centre in
15 Kraaifontein, the complainants, Shaun Crosby and Jan van der
Merwe testified how four unknown men with a firearm robbed
him of R20 000 in cash, a laptop and two cell phones. The
robbers fled the scene in a silver Toyota Corolla.
Van der Merwe gave chase and on the R300 road, he managed
20 to push the Toyota off the road with his vehicle. The robbers
fled and accused 4 was arrested soon thereafter in the bush
swamp where he was hiding according to the police. His
clothes were also wet as a result of the swamp. Accused 4's
fingerprint was also lifted from the Toyota vehicle that was
25 later established to have been a rented car from the Tempest

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and reported stolen. A driver's licence was also found in his possession, which he denies knowledge of.

The evidence of the seven accused can briefly be stated as follows. Accused 1 in his evidence admits that he was a member of the Young Americans many years ago, but denies that he is a member of the American gang. He also denied he had a phone during the relevant periods in 2007. In cross-examination he was confronted with a matter in 2005 when he was arrested and a cell phone number written next to his name. He conceded he had a phone, but cannot remember the number. He at first also testified that he knew Carelse since 2007. He soon changed his version when the prosecutor pointed out to him that he and Karelse were arrested together in 2006. He then intimated that he knew Carelse since his arrival in Bonteheuwel. Accused 1 denied that he ever gave Carelse drugs to sell. He testified that he does not know of turf wars relating to drugs. When he was questioned about the American gang in Bonteheuwel and the gang related drug territory and disputes, his reply was rather surprising as he stated the following, "ons het nie 'n *turf* nie".

Accused 2 testified that he makes a living from selling clothes and shoes. He denies knowing accused 4, 6 and 7. He knows accused 1, 3 and 5. He denies being a member of the

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- American gang. He denies being at the funeral of Markie Mokes and there was never a meeting at his house on the Sunday as alleged by Carelse. He admits that he was with Carelse and Rashaad Solomons when he went to Paarl.
- 5 According to him he went to Paarl to deliver clothes and money to a friend of his known as Neville Jansen, who is also known as Neville Witvlag. He did not know the person was still in prison, and arranged with his girlfriend to drop off the goods. He then met the girlfriend on the corner of a road in Paarl and
- 10 gave her the goods and returned immediately to his house. He denies knowing anything about the firearms found in the Tazz and that he said to Captain Hendricks that he is an American gang member.
- 15 In cross-examination, he was adamant that he is known as Mefaking and not as Mef or King. When confronted that accused 1 said he is known as Mef or King, the accused was rather vague in answering the question. The accused could also not give an explanation why his house was attacked by
- 20 unknown gunmen when it was his birthday. He also changed his version as to how he gave the goods to Witvlag's girlfriend when it was pointed out to him that his counsel put it to Carelse that he was at the house of Witvlag.

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Accused 3 confirmed that he was in prison for 15 years. That he is a member of the 26 prison gang, but denies he is a member of the American gang. He knows accused 1, 2 and 5 and accused 4 he knows from prison. He does not know
5 accused 6 and 7. He testified that he does not know Diedericks. He knows Carelse, whom he met at Ballie Nonge's house. He testified that on 7 November 2007 he was in Wellington and denies that he knew about the firearm and ammunition. He also denied the robbery and drug charges
10 against him. He also called a witness, Natasha Nolan, to confirm that he was not involved with the robbery as alleged in count 18 of the indictment.

As to the trip to Wellington, his version was that he wanted to go and visit a girlfriend he met at a dance. Accused 4 and 5
15 accompanied him. She was not at her house and they then met up with a person, Neville Jansen, also known as Witvlag in Wellington. He denied that he saw Carelse that evening. In cross-examination he could not give a reasonable explanation
20 as to how he could not find the house of his girlfriend. He also denied that any of the cell phones found in the car, belonged to him.

Accused 4 admits that he belongs to the 26 prison gang, but
25 does not belong to any gang outside of prison. He knows

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accused 1, 2 and 3. According to him, he does not know
accused 5, 6 and 7 at all. He denied all the drug related
charges against him, but admits that he saw the guns at his
mother's house. He denied that it belonged to him. He also
5 admits that he was arrested on the day of the Kraaifontein
robbery, but stated that the police found him on the other side
of the R300 road where he was on his way to the train station.
According to him, the police arrested him and took him to the
swamp where they then let the dogs out. He was assaulted
10 and taken to a place where lots of motor vehicles were
standing.

In cross-examination he denied that the police found a driver's
licence in his possession as he does not possess a driver's
15 licence. Accused 4, however, admitted that the signature of
the false licence is his. Despite the photo of the licence being
a marked resemblance of the accused, he was adamant that
the licence did not belong to him.

20 Accused 5 testified that he is single, and the father of two
minor children. He stays with his mother in Surrey Estate.
The mother of his children stays in Kewtown, her name is
Zulfa. He denied his involvement in any gang activities and he
denied he was involved in the attack on Madatt's premises. He
25 denied that he was in possession of a cell phone when

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arrested in the car on the R300 road. He also testified that Igshaan Abrahams was one of his taxi drivers. According to accused 5, he forgot his cell phone in the vehicle when Igshaan came to fetch it to do taxi work the evening of 5 4 November 2007. Igshaan brought the phone to his house at about three o'clock the Monday afternoon.

In cross-examination the accused could not explain the reason why he and accused 6 had several telephone conversations 10 with each other in the early hours of 3 November 2007, whilst both phones picked up the base stations in the vicinity of the crime scene in Woodstock. He also could not give a reasonable explanation why, that after moving from Woodstock to the CBD in Cape Town, his cell phone signal picked up the 15 Bishop Lavis base station and then later the Surrey Estate base station where he resides. He could also not give a reasonable explanation why Igshaan would have made contact with accused 6 and a person called Klong. He had difficulty to explain why Igshaan would send his girlfriend a SMS from his 20 phone.

The accused then tendered new evidence that he phoned his own cell phone from his girlfriend's to check where it was. This apparent call is nowhere to be found on the detailed 25 billing of the records. The cell phone evidence against

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accused 5, in this particular case, is damning against him. The accused placed in issue the evidence of Captain Hendricks, when he was first called to attend a meeting with Hendricks. Hendricks testified that the accused was brought
5 to his office by members of the Crime Intelligence and may have possible information. A trial-within-a-trial was held as to the admissibility of the evidence, as it was argued by counsel for the accused that his rights to legal representation were not explained to the accused when Hendricks questioned him.

10

The evidence tendered by Hendricks was provisionally allowed. Hendricks testified that he did explain the accused's rights to him, although it was not in writing as the accused was not detained. The accused was asked about his whereabouts
15 at the time the attack on Madatt's premises took place. According to Hendricks, the accused gave an explanation that he was at Century City Shopping Complex and thereafter with his girlfriend. He also moved in the vicinity of Camps Bay and it appears thereafter he moved home. At the time, and before
20 the accused's cell phone detailed billing records, it was a reasonable explanation and according to Hendricks, he was not detained. Having regard to the totality of the evidence presented in this case, this Court can find no justifiable reason to exclude the evidence, and the evidence of Hendricks in this
25 case is accepted.

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Accused 6 admits that he is a member of the 26 prison gang. He denies he is a member of the American gang. He denied he was involved in the attack on Madatt's premises. He also
5 denies that he knows people in Bonteheuwel and he was not in Bonteheuwel between 3 November and 8 November 2007. He confirmed that his cell phone was in his possession from 2 November to 8 November 2007. He rejected the evidence of Captain Hendricks that he voluntarily made a statement,
10 detailing the events and persons involved in the attack. The accused persisted with his claim that the police assaulted him and that Hendricks fabricated all the information in the statement.

15 Accused 6 was undeniably a poor witness. He dismally failed to give a reasonable explanation why his cell phone signal would pick up the base station in Bonteheuwel area if he was in possession of his cell phone during that period. He could also not explain how he has accused 1 to 4's nicknames on his
20 list of contacts. He had great difficulty in explaining why he frequently made contact with accused 5 a day before the attack. He was at one stage lost for words to explain how his cell phone picked up the base stations in the vicinity of Madatt's premises during the attack. The cell phone evidence
25 with regard to accused, is also damning in this case.

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With regard to the trial-within-a-trial, the accused had clearly fabricated his evidence when he testified that the police assaulted him and that Hendricks was the author of the statement. The statement contained so much detail and names of people that the accused knew. It is highly improbable that Hendricks could have fabricated the detailed information contained in the statement. It is also noteworthy that accused 6's counsel initially put it to Hendricks that the accused was under the impression he confessed to the incident between him and Nathan McGregor. There is no plausible reason to reject the statement made by accused 6. It clearly amounts to a confession. The statement by accused is finally admitted.

15

Accused 6 also elected to call a witness, Cameron Reitz. He testified that he was arrested as a suspect in a case and was assaulted by the police. Despite the police brutality and injuries the witness claimed he incurred, he failed to mention the assault to the magistrate on his first appearance. He claims that he mentioned his injuries to his attorney as well, but that his attorney did not mention it to the magistrate. But more surprising, is that this witness does not know accused 6 and only knows accused 3. This witness also admitted that he was a member of the 26 prison gang.

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Accused 7 testified that he only knows accused 6. He denies that he was involved in the charges he faced. Prior to this incident, he did not know the other accused. It is also not in
5 dispute that accused 5 paid his bail monies in this matter of R30 000,00. He testified that prior to the arrest, he did not speak to accused 6 at all. He had great difficulty explaining how it came to be that accused 6 had phoned his house phone number on 4 November 2007, a few hours before the
10 Woodstock attack. He also did not advance to Captain Hendricks his whereabouts during the time of the attack on Madatt's premises.

Hendricks testified that accused 7 informed him that he was at
15 the premises, but only set the taxis alight. According to Hendricks, the accused was too scared to make a statement to this effect, and only signed his warning statement. This evidence was vehemently denied by the accused. Hendricks impressed this Court as a good, reliable and honest witness.
20 He did not try to amplify the evidence against the accused. Hendricks' version of events regarding this incident, is accepted.

As far as this Court is concerned, all the accused failed to
25 make a favourable impression. They contradicted themselves,

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and their versions of events are highly improbable. This Court is satisfied that the evidence tendered by the State in respect of the Woodstock killings should be accepted and the versions of the accused can safely be rejected as not being reasonably
5 possibly true.

On the State's evidence, however, accused 1 and 2 did not go with the other accused to launch the attack on Madatt's premises. Insofar as accused 1 is concerned, this Court is
10 satisfied that he was present at the first meeting on the school grounds in Manenberg opposite the residence of Wynand, also known as Charlie Hangkas, where it was discussed "*wie beplan moorde op Americans*". It was also at this meeting where accused 3 said that he would know what to do with Madatt.

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Accused 1 was also present in Kewtown when firearms were procured for the attack on Madatt. The firearms were stored in a vehicle in which he travelled to Bonteheuwel with accused 2, 3 and Carelse. He was present when the firearms were
20 handed to Carelse for safekeeping at his mother's place. There is no doubt that he was present at the meeting held at the house of accused 2 on Sunday 4 November 2007, where the attack on Madatt was planned and final arrangements were made. His presence at the meeting provided him with the
25 knowledge of the fact that a revenge attack was going to take

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place.

Although there is no evidence to place him on the scene of the attack in Woodstock, he was told the following morning that the work was properly done. A few weeks later he admitted to Fickie, in the presence of Diedericks, that discussions took place regarding the attack on Madatt. Having regard to the totality of the evidence in this case, this Court has no doubt that the evidence presented by the State, proved beyond a reasonable doubt, the guilt of accused 1 in respect of the five murders, one attempted murder, the possession of an unlicensed firearm and ammunition and the malicious injury to property counts, i.e counts 25 to 30 and counts 32 to 34. In respect of count 31, the robbery with aggravating circumstances, there is no evidence that accused actively associates himself with this charge and as a result cannot be found guilty.

Insofar as accused 2 is concerned, this Court is satisfied he was one of the persons who masterminded the planning, acquisition of weapons and the execution of the planned attack, despite the evidence that he was not at the premises during the attack on Madatt. He went with to meet accused 4 the morning after the attack on the premises of Madatt and he was present when discussions took place surrounding the

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disposal of the murder weapon and the *bakkie*. Having regard to the totality of the evidence in this case, this Court has no doubt that the evidence presented by the State proved beyond a reasonable doubt, the guilt of accused 2 in respect of the
5 five murders, one attempted murder, the possession of an unlicensed firearm and ammunition and the malicious injury to property counts, i.e counts 25 to 30 and counts 32 to 34. In respect of count 31, the robbery with aggravating
10 circumstances, there is no evidence that the accused actively associates himself with this charge and as a result he should be found not guilty.

Insofar as accused 3 to 7 are concerned, this Court is satisfied that the State proved beyond a reasonable doubt that they
15 were indeed present on the scene and are guilty of their involvement in the gruesome massacre of the five persons. Accused 3 to 7 are, therefore, guilty in respect of counts 25 to 34 as reflected in the indictment.

20 This Court is also satisfied that the evidence against accused 3, 4 and 5 in terms of counts 35 and 36 regarding the firearm and the vast amount of ammunition found by the police in the car, proved beyond a reasonable doubt that they had the intention to possess this firearm and ammunition as a group to
25 protect themselves.

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In respect of accused 4, this Court is satisfied that the State proved beyond a reasonable doubt the accused's guilt in respect of counts 5 to 7, those are the counts relating to the firearms, ammunition and the suspected stolen property found at the premises where he resided, as well as counts 16 and 17, that is regarding the robbery at Kraaifontein.

As far as the remaining counts are concerned, inasmuch as there is a strong suspicion that accused 1 to 6 are involved in gang activities of some sorts, the evidence presented in this case does not prove beyond a reasonable doubt that they engage in a pattern of criminal gang activity. It follows that accused 1 to 6 cannot be found guilty on the remaining charges. In conclusion, the accused are found guilty as follows:

1. Accused 1 and 2 are FOUND GUILTY on counts 25 to 30, as well as counts 32 to 34.
2. Accused 3 to 7 are FOUND GUILTY of counts 25 to 34.
3. Accused 3, 4 and 5 are FOUND GUILTY on counts 35 and 36.

4. Accused 4 is FOUND GUILTY on counts 5, 6, 7, 16 and 17.

5. With regard to the remaining counts as charged, the
5 accused are FOUND NOT GUILTY and DISCHARGED.

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LE GRANGE, J