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IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

Case No: KS 3/2019

Reportable:	YES/NO
Circulate to Judges:	YES/NO
Circulate to Magistrates:	YES/NO
Circulate to Regional Magistrates:	YES/NO

In the matter between:

THE STATE

And

MORAPEDI RANKALI	Accused 1
MOTLALENTWE QHAUTSE	Accused 2
LIZBETH NDLALA	Accused 3
THEMBA LAWRENCE MAJA	Accused 4
OUPA JEFFREY MAHOMANE	Accused 5
SAMSON SAM MBOKANE	Accused 6
JABULANI WILSON ZUMA	Accused 7

Coram: Lever J

JUDGMENT

Lever J

1. The charges against the accused in this matter arise out of an attack and robbery on the farm of the deceased, Piet Arnold Els, in the early morning hours of the 24 January 2018. The said farm is situated on Carters Ridge and is located a few kilometres outside Kimberley on the Douglas Road.
2. The deceased and his companion Ms A were attacked and severely assaulted. Ms A gave her evidence 'in camera' in this court due to the nature of the assaults on her person. It is for this reason that this judgment does not reveal the full name of the deceased's companion. She was the only witness to the attack and robbery who could give direct evidence on the attack and robbery. Her evidence will be dealt with at the appropriate stage.
3. All seven of the accused were charged with housebreaking with intent to rob and robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of 1977 (the CPA). Then accused one, two and five were charged with rape as defined in the relevant legislation in that one of them was alleged to have thrown Ms A on the bed, pulled down her underwear and inserted his finger in her vagina. Further, accused one, two and five were charged with sexual assault in that Ms A's breasts were grabbed, turned and pressed without her consent. Then all seven of the accused were charged with murder arising from the severe assault on the deceased who was admitted to hospital and who passed away whilst still in hospital some 111 days later. Further, all the accused faced two charges of unlawful possession of a firearm.
4. All the accused pleaded not guilty to all the charges preferred respectively against them individually.

5. The trial started on 19 October 2021 and the evidence of the last witness, Accused seven was concluded on the 27 October 2023. The evidence was heard on forty-three court days, in six separate court sittings. The merits of the matter were finally argued on the 23 October 2024.
6. There were a number of delays that disrupted proceedings in this matter. These delays included: some of the Accused falling ill from time to time; some of the Counsel falling ill from time to time; the withdrawal of Counsel in two (2) instances; conflicts of interest necessitating replacement of Counsel; and in one case the passing of one of the defence Counsel. These events were unforeseen and each had its effect on these proceedings.
7. At the close of the State case, and on the 17 August 2022, all seven accused brought an application for their respective discharge in respect of all the charges against them under the provisions of section 174 of the CPA. These section 174 applications were argued before me on the 17 and 18 of August 2022. I gave my ruling on the section 174 applications on 19 August 2022.
8. I ruled that in respect of count 2 of the indictment, being the charge of rape due to the insertion of a finger into the victim's vagina that accused one, two and five be discharge under the provisions of section 174 of the CPA. In effect this is a finding that accused one, two and five were found not guilty on count 2 of the indictment. On all the other charges I ruled that the applications for a discharge under the provisions of section 174 of the CPA were dismissed. I further indicated to the extent necessary I would give my reasons in this judgment.
9. Briefly, these are my reasons. In respect of the rape charge, count 2 of the indictment, whilst Ms A was a credible and reliable witness in all respects, she quite properly and candidly conceded that she was unable to identify which of the accused violated her by inserting his finger into her vagina. She further testified that one of the other assailants said something in a language that she did not understand, and that particular assault ended. Clearly, in those circumstances, the State could not establish that such rape formed part and

parcel of the plan to commit the robbery. In those circumstances and without being able to establish the identity of the person who committed such rape accused one, two and five were entitled to their discharge in respect of Count 2.

10. I will not deal with the remaining charges in detail as this evidence will be traversed in the required detail in the present judgment save to state that: there was certain physical evidence that implicated some of the accused; there were multiple accused and already at the close of the State case there were indications that there was a realistic chance that they would incriminate some of their co-accused; there was also evidence of cell phone calls which could be geographically located to cell phone towers in proximity to the scene of the crime; this cell phone evidence showed an association between many of the accused, before during and after the crime material to the relevant charges; and many of the accused were found in possession of property that belonged to the deceased or Ms A after the crime was committed. In these circumstances I believed that on the remaining charges all the accused had a case to answer.

11. All-in-all some forty witnesses, including those accused who testified, gave evidence in this matter. A great deal of the evidence adduced before this court is common cause.

12. Dr Nokeri, the head of the casualty section, attended to the deceased when he was admitted to the Gariep Medi – Clinic. He monitored the condition of the deceased throughout his stay at the Gariep Medi – Clinic. Dr Nokeri recorded the details of the injuries suffered by the deceased and detailed in his evidence the deterioration in the deceased's condition until the deceased passed away. Dr Nokeri was also the physician who certified the deceased's death when he passed away.

13. Dr Lemaine Fouche, a pathologist in the employ of the Northern Cape Department of Health, testified. Dr Fouche performed the post – mortem

examination on the deceased. Dr Fouche recorded the cause of death as *“complications from traumatic head injury.”*

14. Both Dr Nokeri and Dr Fouche agree that the cause of the death of the deceased was because of the assault inflicted upon him on the 24 January 2018. The evidence of both Doctors and the conclusions that they reached were not disputed or challenged by any of the accused. Accordingly, the evidence of both Dr Nokeri and Dr Fouche can be seen as common cause.
15. The deceased had a longstanding relationship with Ms A. Ms A did not live on the farm, but on the night of the 23 January 2018, she spent the night because the deceased was not feeling well. The deceased and Ms A had supper, then watched some television and then retired to their bedroom. The deceased locked the front door, the kitchen door as well as several other doors in the house that led to their bedroom.
16. The deceased and Ms A were woken by a noise in the early morning hours, at some stage between 01H00 and 02H00 on the 24 January 2018. Before they could react, the bedroom door was forced open. Four unknown men entered their bedroom at the same time. One of the intruders immediately hit the deceased over the head with a steel pipe.
17. Ms A tried to raise the alarm by reaching for a siren which was used to summon the workers on the farm. One of the intruders prevented her from doing so by grabbing hold of her, throwing her on the bed and sexually assaulting her. The intruders demanded to be taken to the safe and that the deceased open the safe for them. For whatever reason, the deceased was unable to open the safe at that time. This led to a further sustained and brutal assault on the deceased. This included being burnt with a clothes iron. The deceased was eighty-six years old at that time. Despite the brutal assault or perhaps because of it, the deceased was unable to open the safe.
18. Ms A was also subject to a prolonged assault and eventually she was tied to a chair. Ms A in a desperate attempt to stop the ongoing assaults, as the

deceased was unable to open the safe, directed the intruders to a shed outside the house where a grinder was stored which the intruders could use to open the safe.

19. The intruders or some of them, broke into the said shed, got hold of the grinder and used it to open the safe.

20. The intruders eventually left taking items looted from the safe and the house of the deceased with them. The intruders made their escape in a Mercedes motor vehicle belonging to the deceased. This vehicle was later found abandoned some distance away from Carters Ridge.

21. Ms A managed to free herself from where she was tied up and raised the alarm. The police, an ambulance and family members arrived on the scene. The two victims were transported to the Gariep Medi-Clinic and the police took over the scene and started their investigation.

22. Ms A had sustained serious injuries and spent some time in hospital.

23. The attackers entered the house by breaking down the kitchen door and its outside security gate. They also broke down the locked doors leading to the bedroom of the deceased.

24. An Audi motor vehicle with registration number B[...] O[...] F[...] was observed on the road next to Carters Ridge at the time of the attack on the deceased and Ms A. There was a male person next to the vehicle who explained to a policeman who was patrolling in the area that the vehicle ran out of fuel and that he was waiting for his friends to bring fuel.

25. Accused one was arrested on 29 January 2018 at the shanty he rented on premises in Nxumalo Street, Galashewe. He was arrested because the deceased's ring was found in his possession broken into two pieces with the diamond missing on the 26 January 2018. He arrived at his shanty on that day

driving the same Audi motor vehicle that was observed near Carters Ridge at the time of the robbery.

26. The ring and the diamond were valued at approximately R1.5 million. In the condition the ring was found in the possession of accused one without the diamond its value was R31 000.00 according to evidence placed before this court.
27. The investigating officer Warrant Officer (WO) Dibebe arrested accused two on the 31 January 2018 at a shanty in Thumsi Street, Galashewe. WO Dibebe seized two pairs of sneakers (tekkies), being exhibits 4 and 5, during the arrest of accused two, and the tekkies were later compared with the shoeprints lifted by way of plaster cast on the homestead of the deceased on the 24 January 2018.
28. Accused five was initially arrested at his house in the village of Pienaar, Mpumalanga on the 7 July 2019. The police found seven coins in his house when he was arrested. It can be accepted that these coins belonged to the deceased and were taken from the property of the deceased on the 24 January 2018.
29. The cell phone of the deceased was found in possession of one Benito Mashimhe on 6 November 2020. Mashimhe received the said phone from Alice Mkevela, the then girlfriend of accused five. It is common cause that accused five was in possession of the deceased's cell phone from 24 January 2018 and that he brought such cell phone from Kimberley to Mpumalanga. In fact the evidence of Captain Conradie who was the expert who collated and presented the cell phone evidence in her report, being exhibit "BB" established that the SIM card registered to the cell phone number of accused five was inserted into the cell phone handset belonging to the deceased on the 28 January 2018, some four days after the robbery, and that the said handset was used with the said SIM card until September 2019.

30. The police also found a bag and cutlery belonging to the deceased in the dwelling of accused five.
31. Accused three and four, a married couple, were also arrested in Pienaar, Mpumalanga on 7 July 2019. When they were arrested a camera, a watch and several coins that were taken from the house of the deceased on the 24 January 2018 were found in the possession of accused three and four.
32. Accused number six was arrested on 10 November 2020. No items linked to the robbery on the 24 January 2018 were found with him when he was arrested.
33. It is common cause that accused one and two had a long-standing relationship and that accused two also knew the brother of accused one, Karabo Rankali.
34. The Audi motor vehicle with registration number B[...] 0[...] F[...] was registered in the name of one Gladys Mojaki, Karabo Rankali's girlfriend. Karabo Rankali is currently serving a prison sentence after being convicted in an unrelated robbery. It is common cause that both accused one and Karabo Rankali used the said Audi Motor vehicle.
35. Accused six and seven had a longstanding relationship prior to the 24 January 2018. Accused seven used accused six as a traditional healer and accused six had treated accused seven in the past.
36. On 21 January 2018 accused seven travelled to Nelspruit where he met with accused three, four, five and six. Accused six had arranged with accused three and four to travel from Pienaar and meet him in Nelspruit. Accused three and four brought accused five with them. Accused three, four, five, six and seven travelled from Nelspruit to Kimberley. They travelled in a vehicle that accused seven had arranged for that purpose. Accused seven was the driver. They arrived in Kimberley early on the morning of the 22 January 2018. The grouping of accused three, four, five, six and seven came to be referred to as

the Mpumalanga accused in the proceedings. Although not completely accurate, but for the sake of convenience I shall continue to refer to such group as the 'Mpumalanga accused' or 'Mpumalanga group' where it is necessary to distinguish them from the other accused.

37. Accused seven was in cell phone contact with one Amos Ralihlare who met with the five accused from Mpumalanga on 22 January 2018. The Mpumalanga accused spent most of the 22 and 23 January 2018 at the house of Ralihlare in Phutanang.

38. At some stage during the night of the 23 January 2018 men arrived at the house of Ralihlare. They were driving an Audi motor vehicle. These men left after speaking to at least Ralihlare. They drove away in the Audi and accused five went with them. These men drove or were driven to Carters Ridge where they and accused five were dropped off. These men broke open the house of the deceased, entered the house and attacked the deceased and Ms A.

39. It is common cause that accused five also entered the house and that he was in the room where the deceased and Ms A were assaulted when they were assaulted. In fact, accused five places himself on the scene although his version of when he entered the house of the deceased differed, on his own version he witnessed assaults on both the deceased and Ms A. In the early hours of the 24 January 2018 accused 5 was picked up and transported back to the house of Ralihlare.

40. Accused three, four, five and six admit that they received R10 000.00 each at the house of Ralihlare on the 24 January 2018. In the context and on the facts before this court this money dished out to such accused was the proceeds of the robbery on the deceased. Accused three, four and five admit that additional items which could only have been taken during the robbery from the homestead of the deceased on Carters Ridge Farm came into their possession after the robbery on the 24 January 2018.

41. Accused seven also admits that he received money from Ralihlare.

42. Accused three, four, five, six and seven left Kimberley very early on the 24 January 2018. They must have left Kimberley within a couple of hours after the relevant robbery ended. Accused seven drove accused three, four, five and six back to Nelspruit where they were dropped off.
43. It is common cause that there were cell phone communications between accused seven and Ralihlare before, during and after the said robbery.
44. It is common cause that there were communications between the cell phones of accused five and accused seven at the time of the robbery or immediately thereafter as well as a definite period after the robbery.
45. It is common cause that there were cell phone communications between accused five and Ralihlare at the time of the relevant robbery.
46. There were cell phone communications between accused six and accused seven before and after the said robbery.
47. There was cell phone communication between accused four and accused seven on the on the 14 April 2018, after the relevant robbery.
48. There was cell phone communication between accused five and accused six on the 22 January 2018 after their arrival in Kimberley from Nelspruit. This was before the relevant robbery.
49. There were cell phone communications between accused four and accused six before and after the robbery.
50. There were cell phone communications between accused three and accused six after the robbery concerned.
51. Cell phone communications between accused three and four on the one hand and accused six on the other came to an end after the arrest of accused three

and four in July 2019. It is common cause that accused three and accused four were not kept in custody after their arrest.

52. There were cell phone communications between accused four and Ralihlare on 14 February 2018 after the relevant robbery.

53. Accused six called Ralihlare on two occasions on the 5 September 2018 after the robbery concerned.

54. There were cell phone communications between accused four and accused five before and during the said robbery.

55. Cell phone communication between accused three and accused five took place after 24 January 2018.

56. It is common cause that the cell phone of accused seven was in the vicinity of the crime scene at the time of the robbery. The towers activated by the cell phone of accused seven were on route to and adjacent to the crime scene.

57. The cell phone of accused five was in the vicinity of the crime scene at the time of the robbery.

58. Ralihlare was interviewed as a person of interest by the police at some stage after the robbery on the 24 January 2018. He was not arrested at that time. Instead, an arrangement was made for him to continue the interview some three days later. Ralihlare did not keep this appointment. The new occupants of the house Ralihlare occupied on the 24 January 2018 reportedly informed the police that Ralihlare had taken his belongings and returned to Lesotho.

59. It is common cause that at the time of the robbery and at all times material to these proceedings the cell phone numbers of each of the accused and Ralihlare were as ascribed to each of them in exhibit "BB".

60. The admissibility of exhibits “N”, “P”, “Q”, “T”, “N” and “U” was specifically agreed to when such statements were presented as evidence.
61. The statement of accused seven, being exhibit “R” was initially accepted as admissible when the evidence of Lt-Colonel Mbingo was led. However, when accused seven gave evidence himself he placed the admissibility of such statement in issue.
62. Paragraphs 12 to 61 above constitute those facts which were either admitted, common cause or which cannot be disputed. Such facts place the events leading up to the robbery in the early hours of the 24 January 2018, the robbery itself as well as the events after the said robbery leading to the arrest and prosecution of the accused in context. This undisputed factual matrix forms the backdrop against which the disputed evidence will be assessed. The undisputed factual matrix plays an important role in assessing the disputed evidence.
63. Further, the accused made formal admissions under section 220 of the CPA. The accused, including accused seven admitted, that the cell phone data was lawfully obtained by the police from the service providers. They also admitted to the correctness and integrity of the call data as provided by the service providers to the police.
64. The relevant legal principles will be raised and discussed as and when they become relevant to particular charges preferred against particular accused. Naturally, when such principles are applicable to multiple accused the discussion will not be repeated but the principle will be applied to the facts relevant to each accused.
65. Turning now to the case against accused one. As pointed out above, accused one was found in possession of two halves of a broken ring some two days after the robbery. At this point the diamond that had been part of the ring was missing.

66. The said broken pieces of the ring were positively identified as that of the deceased by Ms A. Photographs of the deceased wearing this ring at various stages of his life were introduced into evidence. The said photographs corroborated the evidence of Ms A on this aspect. The said broken ring was also positively identified by one of the deceased's sons as that of the deceased. The contention that the said pieces of the ring was what remained of the deceased's ring was not disputed by accused one.

67. When accused one was arrested on the 29 January 2018, and after his rights were explained to him accused one provided a statement in the presence of WO Dibebe, and WO Dibebe testified that accused one stated that his brother Karabo Rankali arrived at his place and handed him the pieces of the ring and asked him to keep the pieces of the ring and that his brother said he would collect the pieces of the ring later.

68. Accused one did not give evidence in the trial. On the face of it there was no evidence to show that he participated in the planning of the robbery. There is also no evidence from which it can safely be concluded that he was one of those who entered the homestead of the deceased to commit the robbery in the early hours of the 24 January 2018.

69. In those circumstances, Mr Cloete, for the State conceded that accused one could not be found guilty of count 1 the robbery with aggravating circumstances charge. Nor could he be found guilty of the sexual assault charge as set out in count 3. Mr Cloete also conceded that accused one could also not be found guilty of the murder as contemplated in count 4.

70. In respect of the unlawful possession of firearm charges as contemplated in counts 5 and 6 Mr Cloete stated in respect of all the accused that the State conceded that when a group of people jointly possess a firearm the State must establish facts from which it can be properly inferred that: The group had the intention to exercise possession of the firearm through the actual

detentor; and The actual *detentor* had the intention to hold the firearm on behalf of the group. Mr Cloete relied on the authority of **S v Mbuli**¹.

71. Mr Cloete, on behalf of the State, conceded that this had not been established. This concession is properly made. Accordingly, all the accused having entered a plea of not guilty on counts 5 and 6 are entitled to verdict of not guilty on counts 5 and 6.

72. Returning specifically to the submissions made in respect of accused one. Mr Cloete argued that whilst this court, on the evidence before the court could not convict accused one on the charge of robbery with aggravating circumstances, the crime of theft is a competent verdict on the robbery charge. The provisions of section 260 of the CPA do establish that theft is a competent verdict on a charge of robbery. Mr Cloete submitted that the case before the court would warrant a conviction on the competent verdict of theft.

73. The facts and circumstances relied upon by the State to support Mr Cloete's contention are as follows: Accused one chose not to testify and in those circumstances, the *prima facie* evidence against him is uncontested; When the police visited his place of residence on the 26 January 2018 accused one was driving the Audi that was observed near the crime scene during the early morning hours of the 24 January 2018; Gloria Vos testified that accused one was a regular driver of the said Audi but that such Audi was also used by Karabo Rankali, the brother of accused one; The remains of the ring belonging to the deceased was found in possession of accused one two days after the robbery on the 26 January 2018; Accused one admitted to the police that he received the ring from his brother Karabo Rankali and that he was keeping the ring for his brother; WO Dibebe testified that accused one reported to him that he knew his brother, Karabo Rankali, and others had committed a robbery on a farm on the Douglas Road, because he overheard them talking about it; Accused one was even able to provide the names of the people involved in the robbery to the police and pointed out where the police

¹ S v Mbuli 2003 (1) SACR 97 (SCA) at para [71].

could find accused two; The ring even broken was obviously a valuable item; The fact that the ring was in two pieces with the diamond removed indicated that the ring was not procured in a lawful manner; Despite this accused one took control of the said ring and kept it on behalf of his brother Karabo Rankali; and in all of these circumstances accused one must have known, and therefore did know that the ring was part of the proceeds of the robbery or at least some other criminal endeavour.

74. Mr Cloete referred me to the work of SNYMAN and in particular where the learned author refers to the effects of theft being a continuing offence. The author refers to two effects that flow from theft being a continuing offence. The first relates to jurisdiction and is not relevant on the facts of the present case. The second effect according to the author is that in the case of theft due to it being a continuing offence there is no distinction between perpetrators and accessories after the fact. When the assistance is rendered the crime (theft) has not been completed. Thus, according to the author, the person who renders assistance cannot be an accessory after the fact but is guilty of theft as well.²

75. Mr Schreuder who appeared for accused one, submitted that the State has two difficulties with its argument that accused one should be convicted of the competent verdict of theft on count 1 being the robbery charge. Firstly, he submits that the State has not established a link between the Kimberley accused and the Mpumalanga Accused. Secondly, he argues that theft is a crime that requires the State to establish the intention of the person so accused to permanently deprive the rightful owner of his rights of ownership.

76. Dealing with Mr Schreuder's first argument, I do not think the State needs to establish such connection to find accused one guilty of theft. In any event if I am wrong there are several important connections between the Kimberley accused and the Mpumalanga accused. Firstly, the ring in issue originated from the same robbery that provided accused five with the deceased's cell

² Snyman., Snyman's Criminal Law., Lexis Nexis., 7th Ed., pages 441 to 442.

phone and other property belonging to the deceased. It is the same robbery that provided accused three and four with Ms A's digital camera and other property belonging to the deceased. Secondly, the cell phone records establish links between the Mpumalanga accused and those from Kimberley. Thirdly, Mr Ralihlare is the pivotal link between the Kimberley perpetrators and the Mpumalanga accused. The cell phone records establish this link. Fourthly, accused five was transported to the crime scene together with the Kimberley perpetrators in the very same Audi that featured prominently in this case. All these pieces of evidence establish the link that Mr Schreuder argues is not there.

77. Turning now to the second argument raised by Mr Schreuder on behalf of accused one. The *animus furandi* relevant to permanently deprive the owner of his rights of ownership is that of the original thief, whether or not that original thief was Karabo Rankali the brother of accused one. The assistance of accused one makes it possible to or facilitates the continuation of that original theft. In my view the approach Snyman takes to this position is conceptually sound.

78. In view of all the facts and circumstances relied upon by the State I find that the State has established that accused one ought to have known and therefore did know that the ring was not acquired lawfully, that it was stolen. The piece of evidence most persuasive in this regard is the condition that the ring was delivered to accused one by Karabo Rankali. The other factors relied upon by the State simply reinforce this.

79. Before reaching my conclusion in this regard I need to mention that Karabo Rankali, although he is serving a sentence on an unrelated conviction of robbery and must be assumed to be available for prosecution in this trial, was not prosecuted with the other accused in this matter. This court was not informed why Karabo Rankali was not prosecuted in this matter alongside the other accused. This certainly raises some questions, but it does not change the facts established by the State in relation to accused one.

80. On all the facts I find that accused one is guilty of the competent verdict of theft in relation to the deceased's ring on charge 1 under the provisions of section 260 of the CPA and he is not guilty on the charge of housebreaking with intent to rob and robbery with aggravating circumstances as set out in charge 1.
81. Accused one has already been found NOT GUILTY on charge 2 as a result of the section 174 of the CPA proceedings at the close of the State Case.
82. Accused one is found not guilty on each of charges 3, 4, 5 and 6 (the remaining charges) of the indictment.
83. Turning now to the case against accused two. In his plea explanation accused two raised an alibi defence and indicated that his mother and sister would confirm his whereabouts at the time of the robbery. Accused two did not testify nor did he present any evidence in relation to the alibi or anything else.
84. In building up to the submissions the State makes about accused two, Mr Cloete referred to the following factors and evidence placed before the court: Accused two is a known associate of accused one and Karabo Rankali and that the uncontested evidence of Gloria Vos confirmed this; These are people who were involved or at least connected to the said robbery; The evidence shows that those who invaded the house of the deceased were Sotho males and accused two is also a Sotho male; Accused two mentioned the name of Thuso Ramollo as the owner of the All Star Tekkies; There was communication between the cell phones of Ramollo and Ralihlare before and during the night of the robbery and that it has been established that Ralihlare was involved in the robbery.
85. Mr Cloete submits that the aforementioned are significant aspects against which the rest of the evidence against accused two must be considered. Mr Cloete argues that accused two is not a random person, plucked from the air, but there is independent and reliable evidence that the associates of accused

two were involved in or at least connected to the relevant robbery. Consequently, Mr Cloete submits that this cannot be a coincidence.

86. Mr Cloete argued that accused two was in possession of a pair of tekkies which was worn by someone who was on the crime scene. Not only did accused two claim ownership of the tekkies when he was arrested, he also told WO Dibebe that the police cannot take his tekkies because those were the only tekkies he had. Further, it was argued that when accused two was arrested he was barefoot and that at least one of the pairs of tekkies found on the premises where he was arrested must have belonged to accused two.

87. The State also argued that the fact that the second pair of tekkies was also placed on the crime scene is hugely significant. That this meant that not only the tekkies of accused two were on the crime scene, but also the tekkies of one of his associates, in whose shack he was arrested were also on the crime scene. The tracks were close together and as Sergeant Sehako testified “met up” at some point. Another association that cannot be a coincidence.

88. Mr Cloete submitted that accused two could have explained how his shoe prints came to be found on the crime scene. That one would have expected an innocent person to jump at the opportunity to do so. In the circumstances, there is no innocent explanation for the presence of the prints at the crime scene. In making this argument Mr Cloete referred this court to the case of **S v Letsoko and Others** where Holmes JA set out the position as follows:

“It would not be correct to say that an inference of guilt can be drawn from a failure to testify. The true position is that, in cases resting on circumstantial evidence, if there is a *prima facie* case against the accused which he could answer if innocent, the failure to answer it becomes a factor, to be considered along with the other factors; and from the totality the Court may draw the inference of guilt. The weight

to be given to the factor in question depends upon the circumstances of each case.”³ (references omitted)

89. The expertise and conclusions of Sergeant Sehako, who lifted the prints from the crime scene and gave evidence comparing the tekkies found by WO Dibebe in the presence of accused two could have been contested. This was not done.

90. Mr Cloete emphasised that it is not for this court to speculate in favour of accused two. It was submitted that accused two had ample opportunity to rise to the challenge and he did not do so. Mr Cloete concluded that the inescapable inference was that there is no innocent explanation for presence of his footprints at the crime scene.

91. Mr Cloete proceeds to argue that this is where the evidence of Ms A become important. Her evidence was that there were four intruders and that they acted in unison. This corresponds with the evidence of accused five who testified that there were four persons who were dropped off by the driver of the Audi. On this evidence Mr Cloete submitted that this leaves no room for an ‘innocent bystander’. Those who were dropped off attacked the deceased and Ms A.

92. Mr Cloete submits that the proved facts, seen holistically, justify the inference, with the exclusion of all other reasonable inferences, that accused two was one of the four intruders that carried out the robbery of the deceased and Ms A.

93. Mr Cloete proceeded to argue that the evidence of Ms A showed that the intruders acted as co-perpetrators in the robbery. Furthermore, there was clearly a common intention, goal, or purpose to assault the deceased. Not one of the intruders disassociated themselves from the attack on the deceased.

³ S v Letsoko and Others 1964 (4) 768 (AD) at p.776C-E

94. Mr Cloete pointed out that at least one of the attackers was armed and the deceased was immediately assaulted. That a pipe can be a dangerous weapon, especially when used against the head of the victim.

95. Mr Cloete argued that the assault was brutal and prolonged and continued even after the safe was opened. He pointed out that the deceased was a frail 86-year-old man. The intruders must have known and therefore did know that he could die from such a vicious assault. Nevertheless, they continued assaulting the deceased throughout the robbery.

96. The breasts of Ms A were twisted and turned on several occasions. In terms of Act 32 of 2007 this constitutes sexual assault. The evidence of Ms A shows that the perpetrators worked as a team in assaulting her or guarding her while she was tied up, when some left the room. In this way, the intruders made it possible for Ms A to be tortured. They aided and abetted each other in sexually violating Ms A in this way. In consequence Mr Cloete submits that even though Ms A cannot confirm that all four assailants twisted her breasts, all of them at least furthered this sexual assault.

97. In conclusion in respect of accused two Mr Cloete submitted he should be convicted on the following counts: Count 1 – Housebreaking with intent to rob and robbery with aggravating circumstances. On the basis of being part of a prior agreement or conspiracy to rob and on the basis of being a co-perpetrator; Count 3 – sexual assault. On the basis of at least being an accomplice; and Count 4 – Murder. On the basis of being a co-perpetrator in the robbery which had the foreseeable consequence of Mr Els dying as a result of nature and extent of the assault on his person. With the form of intention on the part of accused two being *dolus eventualis*.

98. Mr Diba, who represented accused two responded: That there is no *onus* on the accused to prove his innocence; That the *onus* is on the State to prove the guilt of the accused beyond a reasonable doubt; That none of the state witnesses gave evidence which directly implicated accused two; That the

State relies heavily on certain shoe prints lifted from the property of the deceased; Coupled to the evidence of WO Dibebe that he found 2 pairs of tekkies where accused two was arrested; That this was not the home of accused two but the residence of Thuso Ramollo; That accused two made an admission to WO Dibebe that the pair of Puma tekkies were his; That this admission was made before accused two was warned of his rights *inter alia* his right to remain silent; That the State cannot rely on what accused two said to WO Dibebe in such admission as it would amount to a grave injustice to accused two. Accordingly, Mr Diba concluded that accused two should be acquitted on all charges.

99. Initially, Mr Diba submitted that the footprints found and lifted on the 24 January 2018 were found near the gate to the homestead and not in the yard of the deceased. Mr Cloete referred the court to the record and Mr Diba withdrew this submission because of what the record revealed.

100. Initially Mr Diba also submitted that the relevant tekkies were not sent for DNA analysis and there was no DNA evidence to link accused two to the tekkies. Mr Cloete referred the court to the relevant exhibit which shows that swabs were taken from the said tekkies and compared to the DNA of accused two but that the results were inconclusive. Quite correctly, Mr Diba withdrew his submission and accepted the evidence disclosed in the record. It is therefore common cause that DNA analysis does not link the tekkies concerned to accused two.

101. Both Mr Cloete and Mr Diba refer the court to the test for circumstantial evidence. They both refer to the case of **R v Blom** where Watermeyer JA sets out the test as follows:

“In reasoning by inference there are two cardinal rules of logic which cannot be ignored:

- (1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.
- (2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn.

If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.”⁴

102. Important aspects of the States case rest on circumstantial evidence. On that aspect there is no dispute, however, before I get to the circumstantial evidence, I want to deal with the submissions made by Mr Diba in respect of the ‘admission’ to WO Dibebe.

103. The record reveals that when WO Dibebe entered the shack where accused one said he would find accused two, he identified himself as a policeman and warned accused two of his rights. The record reveals that it was only after that warning that WO Dibebe searched the shack and came across the two pairs of tekkies. It was only after that, that accused two claimed ownership of the Puma tekkies and wanted to know what WO Dibebe intended to do with his tekkies. This sequence of events was not even challenged in the cross-examination of WO Dibebe by Mr Diba. Accordingly, there is no substance in the submission that the ‘admission’ made by accused two was made in circumstances where he was deprived of his right to silence.

104. The circumstantial evidence against accused two is as follows: He was a known associate of both accused one and his brother Karabo Rankali; Each of whom was either connected to or involved in the events of the 24 January 2018 on the deceased’s farm; Accused one took WO Dibebe to where accused two was and it is significant that he was not at his own home in the early hours of the 31 January 2018; Accused one on the evidence of WO Dibebe took WO Dibebe to accused two because he overheard his brother talking about the robbery on the farm situated on the Douglas Road and the conversation he overheard also disclosed who was involved; Accused one from the questions put to WO Dibebe on behalf of accused one disputed this, but accused one elected not to give evidence; In these circumstances the evidence of WO Dibebe stands on that aspect; The shoes found by WO Dibebe when accused two was arrested were positively tied to the prints lifted

⁴ R v Blom 1939 AD 188 at p 202 – 203.

from the homestead by the distinguishing feature of identical wear points as pointed out by the expert Sergeant Sehako; Neither the expertise nor the conclusions of Sergeant Sehako were challenged by accused two; Accused two claimed ownership of the Puma tekkies that were found in his presence when he was arrested.

105. The circumstantial evidence set out above enmeshes accused two in the robbery to the extent that an explanation is called for. In all these circumstances, if there was an innocent explanation as to why the shoe print belonging to the shoe of accused two was found on the homestead of the deceased shortly after the robbery concerned it would have been placed before the court. The fact that no such explanation was placed before the court leads to the inescapable conclusion that there was no innocent explanation for the shoe print being found on the deceased's homestead so shortly after the robbery. The logical and inescapable conclusion that flows from this is that accused two was one of the intruders and he participated in the relevant robbery.

106. Finally, there is the issue of the alibi asserted by accused two in his plea explanation. In his plea explanation, his mother and sister were going to testify that he was with them at the time of the relevant robbery. No explanation was tendered to the court as to why these witnesses were not called. In the absence of an explanation as to why the alibi witnesses were not called, the obvious inference to be drawn is that there was a risk that the alibi witnesses may not have given the evidence that accused two required them to give. In the greater scheme of things this may not add much by way of evidential weight to the State's case against accused two, but in the circumstances, it does add something to strengthen the State's case against accused two.

107. This court has considered the evidence against accused two holistically and concluded that he was a participant in the robbery of the deceased at his homestead on the 24 January 2018. This court has already found accused two not guilty on count 2 in the section 174 of the CPA application. Flowing

from the conclusions set out above, the following verdict is delivered against accused two: On count 1 – the housebreaking charge with intent to rob and robbery with aggravating circumstances – GUILTY based on him being a co-perpetrator. On count 3 – the charge of sexual assault – GUILTY based on him being an accomplice. On count 4 – the murder charge – GUILTY on the basis of being a co-perpetrator in the robbery of the deceased and that such robbery was carried out in terms of a prior agreement or conspiracy to rob which had certain foreseeable consequences and that the form of intention accused two had at the relevant time was *dolus eventualis*. In respect of both counts 5 and 6 – the unlawful possession of firearms charges – NOT GUILTY – on the same basis as set out in respect of accused one above.

108. The case against accused three. Accused three is married to accused four. She is a traditional healer from Mpumalanga.

109. Mr Cloete for the State initially actively pursued both the robbery charge and the murder charge against accused three, four, six and seven. This was the position in the main heads of argument he filed on behalf of the State.

110. However, in supplementary heads dated 27 July 2024 and which appear to have been filed on 29 July 2024, he conceded that accused's three, four, six and seven were not present during the execution of the robbery and that subjectively they might not have each foreseen the death of the deceased.

111. My understanding of the concession made by Mr Cloete was not that the State was abandoning the murder charge against accused three, four, six and seven, but that certain important and material facts were brought to the attention of the court which may have a bearing on what the aforementioned accused, subjectively could have foreseen and did in fact foresee. That, in those circumstances, there might be doubt as to what such accused subjectively foresaw in relation to the death of the deceased. This court is grateful to Mr Cloete for being candid and forthright in this regard. The

question of whether accused three did, subjectively, foresee the possibility of the death of the deceased will be considered after considering whether the State has established that accused three was involved in either planning, furthering or facilitating the robbery, participating in the said robbery, and/or associating with the said robbery.

112. On the robbery charge, Mr Cloete referred to the following evidence and factors, which he submitted established the guilt of accused three in respect of the robbery. Accused three was in Kimberley on the 24 January 2018, when the robbery was committed. Accused three left Kimberley after having received R10 000.00 cash. The totality of the evidence showed that such cash was obtained from the robbery of the deceased. A camera and a watch, which the evidence established respectively the property of Ms A and the deceased were found in her house when she was arrested in July 2019. Accused three and accused four arranged for accused five to accompany them to Kimberley. The evidence showed that accused five was one of the intruders who committed the robbery. In cross examination accused three admitted she was present when her husband accused four telephoned accused five during the robbery. Accused three left Kimberley with the other accused. Accused three admitted to the police when she was arrested, that she came to Kimberley for a cleansing ceremony before a robbery. Accused five confirmed in his evidence that he told the Mpumalanga accused about the robbery on their return journey to Mpumalanga. There was a continued association between accused three and some of the other accused after the robbery on the 24 January 2018. The facts show that accused three was part of an agreement to rob and she shared in the spoils after such robbery. Accused three and four used accused five as an instrumentality (agent) to commit the robbery on their behalf.

113. Mr Cloete further argued that the evidence of accused three was dishonest and unreliable. In making this submission Mr Cloete relied on and referred several pieces of evidence given by accused three in her testimony. Firstly, the version of accused three was that they came to Kimberly to dig for coins. That when she was involved in digging for coins in the past that this

had taken place in the veld. Mr Cloete pointed out that nothing like this had happened in Kimberley during her visit in January 2018.

114. Secondly, Mr Cloete pointed out that accused three made a statement (Exhibit "U") to the police wherein she told the police that accused seven gave her the R10 000.00. When she testified, she tried to protect accused seven by saying that she cannot remember who gave them the money. That Ralihlare handed out the money and later that Ralihlare gave the money to accused seven to share amongst the role players.

115. Thirdly, in exhibit "U" she indicated that she, accused four and accused six stayed at the house the whole night of the robbery. However, in her evidence she initially testified that accused five and accused seven were also with them. This was a transparent attempt to protect accused five and accused seven.

116. Fourthly, She also attempted to protect accused one and two by testifying that they were not amongst the unknown men who chased them away. This was something she could not say. Her evidence was that the faces of the men were covered.

117. Fifthly, Accused three could not explain why the alleged unlawful actions of the police were not raised when Constable Frans and her own daughter testified. She was clearly tailoring her evidence to try and discredit the evidence of WO Dibebe.

118. Then, she wanted to create the impression in her evidence that she does not know of a Sargeant Damoensa being present when she was arrested. However, this was the same person she accused of pointing a firearm at her when her legal representative cross-examined WO Dibebe.

119. Further, it is noticeable that accused three did not tell the police, when she made the statement that is exhibit "U", that she and accused four brought accused five with them to Nelspruit. She rather told the police that they met up

with accused five in Nelspruit. This is a clear attempt to distance herself from accused five. The reason is obvious accused five was one of the house intruders during the robbery.

120. Initially accused three tried to create the impression that they were only in Kimberley for one day and one night. Mr Cloete submitted that she did so because it was easier to pretend that nothing happened in such a short time. The Mpumalanga accused, including accused three, spent much more time in Kimberley, making it difficult for accused three to distance herself from what happened.

121. Mr Cloete emphasised that the evidence of accused three on whether accused five left the house on the night of the robbery was unsatisfactory. The importance of this was emphasised because accused three had to distance herself from the fact that accused five left the house to commit the robbery.

122. Initially accused three testified that nothing was discussed on their journey back to Mpumalanga. Later, accused three changed the first version and said they discussed the bag that accused five had with him on the return journey and the topic of discussion was how it came to be in the possession of accused five. Accused three attempted to support the obviously false version that the bag was thrown at accused five.

123. Accused three did not want to admit that she must have known that the money that they were paid and the other items they were given were appropriated during a robbery. Accused three maintained this position even though the unknown men who returned to Ralihlare's house shortly before they were given their share of the money and chased away had firearms with them.

124. Mr Cloete pointed out that accused three could not explain why the Mpumalanga accused were given money and other items when all acknowledged that the work they claimed to have been engaged for was not

performed shortly before they were aggressively chased from the house of Ralihlare.

125. Mr Cloete emphasised that accused three is a traditional healer and that she came to Kimberley to further the success of the robbery. This is indeed what the evidence shows she told the police shortly before her arrest in July 2019. Accused three stated in the presence of WO Dibebe that she was engaged to go to Kimberley to perform a cleansing ceremony before a robbery.

126. Mr Cloete urged this court to reject the evidence of accused three where it was in conflict with the evidence of the State.

127. On the charge related to the robbery Mr Diba, who ultimately represented accused three when the matter was argued, emphasised the version of accused three and the other Mpumalanga accused that they went to Kimberley to dig for coins and that the traditional healers who went along were there to remove '*ghosts*'.

128. I agree with the submissions made by Mr Cloete, accused three is for the reasons argued by Mr Cloete, an unreliable and untruthful witness. Furthermore, the version of the Mpumalanga accused that the only reason they went to Kimberley was to dig for coins and remove ghosts that might prevent the recovery of such coins, is so inherently improbable that it cannot reasonably possibly be true, it stands to be rejected. I reach this conclusion because everyone agrees that no ghosts were removed and there was no digging for coins. Despite this the Mpumalanga accused, except accused seven, agree they were paid R10 000.00 for not doing the work they were engaged to come to Kimberley to perform. Accused seven's position will be dealt with at the appropriate time. Now this is only relevant to accused three.

129. Accused three was unable to explain why the Mpumalanga accused were paid at all.

130. Accused three admitted when she was arrested, she was engaged to perform a cleansing ceremony before a robbery. This fits in with the established facts. Furthermore, accused three and her husband brought accused five with them and accused five went with the other perpetrators in the Audi and were dropped off adjacent to the homestead of the deceased. They were the intruders. In effect accused five was the agent of accused three in carrying out the robbery.
131. In respect of the murder charge Mr Cloete conceded that accused three, accused four, accused six and accused seven were not present when the deceased was assaulted.
132. The position of accused three, accused four, accused six and accused seven is different from the position of the intruders accused two and accused five. Accused two and accused five witnessed and/or participated in the assault of the deceased. They saw that the deceased was frail and aged. They also at least witnessed the severity and duration of the assault on the deceased. They could associate or disassociate themselves from the assault. More significantly, from their direct observations and/or involvement in the assault of the deceased, and in the circumstances set out herein accused two and accused five must have foreseen and therefore did foresee the possibility of his death.
133. Accused three in the presence of accused four admitted her knowledge of the robbery. She also admitted that people could get hurt and even killed during a robbery.
134. Mr Cloete correctly pointed out that all people know this as a robbery implies violence. Further that a person who embarks on a robbery embarks on a road full of foreseeable consequences.
135. However, there is no evidence to show that accused three, accused four, accused six and accused seven foresaw the length, extent and brutality and the effect of such assault on their elderly victim.

136. Ms A was also brutally assaulted to the extent that she was hospitalised for some time, but she was not injured in a way where she was at risk of losing her life.

137. All these factors must be considered in trying to assess the subjective mindset of accused three, accused four, accused six and accused seven. If there is any doubt as to the subjective mindset of the accused in these circumstances, they are entitled to the benefit of such doubt.

138. After considering these factors I conclude that there is sufficient doubt as to the subjective mindset of accused three, accused four, accused six and accused seven, in the sense that I cannot find that they foresaw the possibility of the death of the deceased having regard to the severity of the assault, the duration of the assault and its effect on the elderly victim. They did not have the opportunity to associate or disassociate from the robbery with the benefit of such knowledge as accused two and accused five had.

139. In all these circumstances, the following verdict is passed on accused three: Count 1 – the housebreaking with intent to rob and robbery with aggravating circumstances – GUILTY. Count 4 – The murder charge – NOT GUILTY. On Counts 5 and 6 – the unlawful possession of firearm charges – NOT GUILTY.

140. Turning now to accused four. As set out above accused four is the husband of accused three. Accused four made a statement to the police when he was arrested in 2019 on charges of robbery and murder (exhibit “P”).

141. Mr Cloete highlighted certain admissions made by accused four in the said statement. The admissibility of exhibit “P” was never put in issue. The following admissions were highlighted by Mr Cloete: Accused four admitted that he and accused three took accused five with them to Kimberley; Accused four admitted that they were in Kimberley for something to be done on a farm; This is in line with the fact that the robbery was committed on a farm; Accused

four admitted that the owner of the farm did not agree with what they wanted to do on the farm; Accused four admitted that they had to go to the farm for “*Kruger coins*”; The evidence showed that the owner of the farm had “*Kruger coins*”; Accused four admitted that accused five left with Ralihlare. It was common cause that Ralihlare was involved in the robbery; Accused four admitted that he called accused five in the early hours of 24 January 2018. Mr Cloete submitted that the explanation for the call that he wanted cigarettes is clearly false; Accused four confirmed that the three guys who returned to Ralihlare’s house just before accused five in the early morning of 24 January 2018, carried a handgun and a big gun. Mr Cloete pointed out that this corresponded with what was taken from the deceased; Accused four confirmed he received the amount of R10 000.00 cash, “*Kruger coins*”, a watch, and a camera; and Accused four told the police in his statement that he received the cash from accused seven.

142. Mr Cloete also referred to the evidence of WO Dibebe that accused three told the late Sargeant Damoensa that they visited Kimberley to perform a cleansing ceremony before a robbery. The evidence of WO Dibebe was that both he (Dibebe) and accused four were present when accused three made such statement to Damoensa. Mr Cloete pointed out that accused four never challenged this evidence when his legal representative cross-examined WO Dibebe. In any event accused number four chose not to testify and was thus content to allow this evidence of what his wife said in the presence of WO Dibebe to stand unchallenged in any way.

143. Mr Cloete further submitted that the fact that accused four communicated with accused five is highly significant. Mr Cloete submitted that the only reasonable inference that can be drawn is that accused four wanted feedback on the progress of the robbery.

144. Mr Cloete argued that it was equally significant that accused four contacted Ralihlare on the 14 February 2018. Mr Cloete also argue that this was irreconcilable with the explanation that they were aggressively chased away on the 24 January 2018.

145. Mr Cloete also referred to the fact that accused four also contacted accused seven on the 14 April 2018. Mr Cloete argued that this shows a continued association between accused four and the other accused.

146. Accused four also made several calls to accused five in the two days just before they departed for Kimberley. Mr Cloete argued that it can be inferred that they were discussing the trip to Kimberley.

147. Mr Cloete also argued that there is no indication that accused four disassociated himself in any way from what happened in Kimberley. Mr Cloete asserted that accused five would have told accused four of what happened during the attack on the deceased and Ms A.

148. Mr Cloete submitted that not only did accused four know of the robbery, but that he and accused three contributed to the success of the criminal enterprise by arranging and providing accused five as one of the attackers. In other words, accused four committed the robbery through the instrumentality of accused five.

149. Mr Schreuder, for accused four, accepted that accused four had the same knowledge as his wife, accused three, relating to their trip to Kimberley and what transpired in Kimberley.

150. Mr Schreuder relies on the statement accused four made after his arrest, exhibit "P" to argue that accused four knew nothing of the robbery, when he and his wife accused three accepted a request by accused six and accused seven to perform a cleansing ceremony.

151. Mr Schreuder argues that the State did not prove the prior agreement to be involved in the relevant robbery.

152. Mr Schreuder argues that this court must take cognisance of the evidence of both accused three and accused five that there was no plan to

rob or kill anyone. That this court cannot ignore the role of the cleansing ceremony that they intended to play as traditional healers.

153. Mr Schreuder placed great emphasis on the evidence of accused five and he emphasised the following aspects of accused five's evidence: Accused five withdrew from the crime scene once he realised that the people he went with were busy with a crime; and Mr Schreuder then argued if robbery was part of the plan between himself and accused three and four, accused five would not have withdrawn from the crime scene.

154. Mr Schreuder then argued that the telephone contacts between accused four and the other accused as well as with Amos Ralihlare could be explained by accused four wanting to find out what happened when the intended cleansing ceremony went wrong.

155. Mr Schreuder argues that the robbery and its consequences must be placed at the feet of accused seven and Ralihlare and not his client accused four.

156. Finally, Mr Schreuder submitted that accused four should be found guilty only of the competent verdict on the robbery charge of receiving stolen property knowing it to be stolen and by implication, not guilty on all the remaining charges.

157. Mr Schreuder's submissions need to be assessed within the context of all the evidence placed before this court. Accused four chose not to give evidence. In and of itself this is not determinative of his guilt, but it does have certain important consequences. The most significant consequence of accused four's decision not to give evidence is that his version of the events is not before the court. The only versions or evidence before the court is that of the State and his co-accused. Accused four must accept the consequences of his decision not to testify.

158. Mr Schreuder's reference to the cleansing ceremony set out in the statement of accused four only refers to the cleansing ceremony without

giving it any context. The evidence of his co-accused, including his wife accused three, was that the cleansing ceremony was to remove “*Ghosts*” so that they could dig for “*Kruger coins*”. It is common cause that no cleansing ceremony to remove “*Ghosts*” was performed by any of the traditional healers associated with the Mpumalanga group. It is also common cause that during the whole period of their stay in Kimberley from the 22 January 2018 until 24 January 2018 there was no digging for “*Kruger coins*” in fact there was no digging of any kind during this period.

159. His wife, accused three, was asked having regard to the fact that no cleansing ceremony took place and that there was no digging, why then after the robbers returned to the house of Ralihlare, bearing large sums of money, two firearms and various other articles taken from the house of the deceased, were members of the Mpumalanga group each paid R10 000.00 and given certain things such as a cell phone, a camera and a watch if no one in such group performed the work which they claimed was the sole reason for them to be taken to Kimberley. Accused number three could not answer this question at all.

160. Accused six was asked this same question. His attempts to answer such question will be dealt with in greater detail when I deal with his evidence. Suffice it to say at this point that such answers are so far fetched that they cannot be given any serious consideration.

161. In dealing with the evidence of accused three on this aspect I have concluded that this version of why the Mpumalanga group came to Kimberley is inherently improbable to the extent that it cannot reasonably possibly be true and must be disregarded. The same reasoning applies in respect of accused four.

162. Mr Schreuder’s reliance on the evidence of accused five is misplaced. It is true that accused five walked away from the crime scene, but the evidence shows that he did not disassociate himself from the crime. Accused five’s evidence will be dealt with in detail presently. In the end the evidence

shows that accused five took his share of the loot and appropriated it to his own benefit. Accused four also took his share of the loot from the said robbery. His share included the R10 000.00 cash a camera and a watch. Indeed, it was the evidence of accused five that he explained to accused three, four, six and seven about the robbery. In the light of this explanation and after witnessing the three intruders return with firearms and the loot as testified to by accused three, accused four took his share of the loot and appropriated it to his own use.

163. This evidence of accused four being offered and accepting his share of the loot cannot be explained unless accused four was part of the agreement to participate in the robbery as a traditional healer at least. The evidence went further than that accused three and four sent accused five along with the other intruders. No explanation was given as to why it was necessary for accused five to inspect the alleged digging site before those who needed to remove the ghosts were taken there. The explanation that accused six did not work at night takes the matter no further. There is no explanation why a preliminary inspection was required. If the version of the Mpumalanga accused were true, the whole exercise would have been put off until the next morning. The presence of accused five only makes sense if he was there to participate in the robbery and protect the interests of accused three and four.

164. Mr Schreuder's submissions about the possible reasons for continued association between accused four and Ralihlare as well as other accused is not supported by any evidence. Accordingly, it is mere speculation which has no evidential weight.

165. Also, accused four in exhibit "P", his statement, said he made several calls to accused five in the early hours of the 24 January 2018 asking for cigarettes, does not correspond with what the cell phone records (Exhibit "BB") reveal actually happened in the early hours of the morning on 24 January 2018. At 02H15 accused four made a call to accused five which lasted 37 seconds. Then in the next 15 minutes accused five made 3 calls to accused four. Not only does this not correspond with the statement of

accused four in all the circumstances it is inherently improbable that any of these phone calls had anything to do with cigarettes. I reach this conclusion having regard to the time of the calls; The circumstances in which accused five left the company of the other Mpumalanga accused; the lapse of time from when accused five left until the first call; and the evidence accused five testified to in this court relating to such telephone calls was completely different to what accused four set out in his statement, being exhibit "P".

166. Viewing the totality of the evidence the only reasonable inference to be drawn is that accused four was part of the plan to rob the deceased and he furthered the robbery by using accused five to represent him and his wife, accused three, in the robbery.

167. The murder charge against accused four cannot be sustained for the same reasons as set out in relation to accused three.

168. In the circumstances the following verdict is delivered in respect of accused four: Charge 1 – GUILTY; Charge 4 – NOT GUILTY; Charges 5 and 6 – NOT GUILTY.

169. Turning now to the case against accused five. Mr Cloete pointed out that the evidence showed conclusively that accused five was one of the four attackers that attacked the deceased and Ms A. This is supported by the undisputed fact that the cell phone of accused five was recorded by cell phone towers in the vicinity of the crime scene. Accused five also made a statement to the police, being exhibit "T" in which he admitted that he was on the scene and inside the house of the deceased during the robbery.

170. Mr Cloete pointed out that accused five made several other important admissions in exhibit "T". These include: Accused five admitted before he came to Kimberley that they were looking for "*Kruger money*"; That the money was to be found on a "*white man's farm*"; Three men arrived at the house of Ralihlare in an Audi motor vehicle; Accused believed these three men spoke Sotho; Ralihlare informed them that they would work with these three men;

Reading exhibit "T" in context accused five was saying in his police statement that accused seven was the driver of the Audi who took them to and dropped them off at the farm; Accused five set out in his statement that he saw that the deceased was assaulted; Accused seven came to pick him up after he left the house of the deceased; Accused five admitted that he shared in the loot of the robbery accused five admitted to receiving R10 000.00 cash, a cell phone, a bag and coins he gave to accused three; and accused seven handed out the money and other loot.

171. Mr Cloete submitted that the evidence of Ms A disproves the exculpatory part of accused five's statement to the police. The evidence of Ms A was in complete contrast to accused five's attempt to minimise his role in the robbery.

172. Mr Cloete submitted that accused five was a weak and unconvincing witness. That his evidence was riddled with inconsistencies, contradictions, improbabilities and obvious lies. Accused five could not explain why the evidence of Ms A as to how the attack happened was never disputed.

173. Mr Cloete argued that accused five attempted to protect accused one and accused two by saying that they could not have been part of the attackers, whilst on his own version this is not something he could have known.

174. Mr Cloete also argued that accused five was a security officer, trained to protect persons and property, if accused five was mislead into being included in the group of intruders and was innocent, it would be expected that he would have phoned the police when he left the crime scene as accused five had his cell phone with him. Accused five never did so and subsequently took his share of the loot.

175. Accused five confirmed that he informed accused three, accused four, accused six and accused seven of the robbery.

176. Mr Cloete pointed out that the lies of accused five were different from those of accused four and accused six as to what was communicated during the robbery.
177. Accused five admitted that he “*ran*” from the police for months.
178. Mr Cloete argued that the evidence of accused five that the bag was forced upon him after the robbery was patently false. That accused five clearly claimed ownership of the bag and the cell phone of the deceased.
179. Mr Cloete further pointed out that accused five could not explain why the evidence of WO Dibebe as to the explanation accused five gave to WO Dibebe for the possession of the said coins and the further evidence that WO Dibebe gave that accused five pointed out to police the house of accused three and four, was not challenged or disputed.
180. Mr Cloete submitted that taken in context accused five was referring to accused seven as the person who dropped them off near deceased’s farm in his statement to the police, being exhibit “T”. Mr Cloete then argued that accused five tried to change his version in his oral evidence before court and that this was an attempt to protect accused seven.
181. Mr Cloete also pointed out that accused five could not explain the other differences between his evidence in court and his statement to the police, being exhibit “T”. That it must be remembered that the legal representative of accused five put it to Colonel Moselane, who took down exhibit “T”, that every word of such statement is correct.
182. Accused five confirmed that accused seven shared in the loot from the robbery of the deceased.
183. Mr Cloete argued that on accused five’s own version there was no reason to enter the house of the deceased and accused five was unable to

explain why he did so. Further, Mr Cloete pointed out that this was at odds with and irreconcilable with the undisputed evidence of Ms A.

184. Mr Cloete argued that accused five gave different versions on how he assisted Ms “A” and that the evidence of accused five was such that he placed himself in the position where he was either the person who raped Ms A or he was one of the 3 who immediately assaulted the deceased on entering the bedroom where the deceased and Ms A had been sleeping.

185. Mr Cloete pointed out that accused five came up with the preposterous explanation that he did not spend the R10 000.00 for a long time, waiting for the police to turn up so that he could give the money back through the police.

186. Mr Cloete submitted that this court should reject the evidence of accused five insofar as it conflicts with the evidence of the State.

187. Mr Cloete also pointed out that it is significant that accused five was in communication with Ralihlare at the time of the robbery. It shows that accused five was associated with the man who played a pivotal role in the robbery. Ralihlare is clearly the person that arranged the three men who were with accused five when the robbery was committed. Further, accused five also communicated with accused seven after their visit to Kimberley showing a continued association between accused five and accused seven.

188. Mr Cloete argued that accused five is criminally liable for his actions on the same basis as accused two being a member of the group of house intruders.

189. Mr Pretorius, who represent accused five, argued that the coins and bag were irregularly obtained as there was no search warrant and accused five did not give permission for the search which was conducted in the absence of accused five. Mr Pretorius acknowledged that in the light of the totality of the evidence against accused five the issues he raised took the matter no further.

190. Mr Pretorius also acknowledged, quite correctly in the circumstances, that accused five did not have an answer to the evidence of Ms A. He acknowledged that when accused five's then legal representative cross-examined Ms A, Ms A's version of events was not challenged.
191. Accused five did leave the robbery whilst it was still in progress. This cannot be a disassociation from the robbery because when the loot was dished out accused five took his share along with the other accused. That in itself is conclusive that there was no disassociation. However, when he left the robbery and was alone and in possession of his own cell phone, he did not phone the police. Further, four days after the robbery, accused 5 took the cell phone handset of the deceased and inserted the SIM card registered to his own cell phone number and used it in that way for a considerable period.
192. The version of accused three, accused four, accused five and accused six that they came to Kimberley to dig for coins and perform a ceremony to remove "*ghosts*", and were paid a share of the proceeds of the robbery in cash and in goods stolen in the course of the robbery, when all agree that there was no such ceremony and no digging for coins, is so inherently improbable that it cannot reasonably possibly be true.
193. Accused five was an inconsistent and unreliable witness. His evidence of his involvement in the robbery cannot be reconciled with the undisputed evidence of Ms A. His evidence as to what he alleges transpired on the farm of the deceased is rejected. On all the available evidence the only reasonable inference that can be drawn is that accused five was one of the intruders into the deceased's house. He participated in the robbery and must have foreseen and therefore did foresee the consequences of the assault on the deceased.
194. The sexual assault on Ms A was facilitated by the conduct of all the persons involved in such robbery, including accused five.

195. As with the other accused, accused five is entitled to a verdict of NOT GUILTY on counts 5 and 6, the charges involving the unlawful possession of a firearm.
196. Turning now to the case of accused six. Mr Cloete argued that accused six finds himself in the same position as accused three and accused four. He submitted that accused six also presented himself as an innocent victim of circumstances. However, Mr Cloete argued that as with accused three accused six could also not explain the fact that on their version they came to Kimberley for a specific purpose, being to remove *ghosts* and dig for *Kruger money*, yet it was common cause that the traditional healers from Mpumalanga did not perform these functions yet they still received their share of the loot of a brutal crime.
197. Mr Cloete pointed out that the best accused six had to offer was that he did not see or hear anything untoward during his stay in Kimberley. Mr Cloete argued that this was so improbable that it can be rejected out of hand.
198. Mr Cloete referred this court to the statement accused six made when he was arrested, Exhibit “Q”. In that statement accused six admitted that somebody in Kimberley was in possession of “*Paul Kruger’s money*”. Mr Cloete argued that this admission is important because it has nothing to do with digging for money.
199. Mr Cloete points out that accused six confirms that Ralihlare played a role in sending the three men and accused five out.
200. Mr Cloete points out that in the statement of accused six, exhibit “Q”, accused six states that he is not sure of the first name of accused seven. Mr Cloete argues that this is a lie, given the long-standing relationship between accused six and accused seven revealed by the evidence. Mr Cloete submits that this shows that accused six wanted to downplay his relationship with accused seven. The motivation for doing so could only have been to distance himself from their unlawful enterprise in Kimberley.

201. Accused six admitted that he received R10 000.00 cash immediately before leaving Kimberley. Accused six told the police in the said statement that accused seven gave him and the others R10 000.00 each and that he did so after "*counting the money*". Mr Cloete pointed out that in his evidence before court accused six confirmed accused seven handed out the bundles of R10 000.00 and that each of accused three, accused four, accused five and accused seven each received R10 000.00.
202. Mr Cloete points out that accused five testified that he spoke with accused six and accused four at the time of the robbery. Mr Cloete submits that this makes sense because accused six also had an interest in how the robbery progressed.
203. Mr Cloete also points out that accused five in his evidence confirmed that accused six was informed of the robbery and what transpired in the house of the deceased. Mr Cloete submits that this contradicts the claim of accused six that he was not aware of the robbery. Mr Cloete also argued that there is no evidence that accused six distanced himself from the other accused because of the robbery. On the contrary, after the robbery accused six continued his association with accused seven as well as accused three and four.
204. Mr Cloete pointed out that accused six contacted Ralihlare on the 5 September 2018 after the robbery which he argued would be inexplicable considering the version of accused six that Ralihlare aggressively chased them away.
205. Mr Cloete submitted that the evidence of accused six was riddled with inconsistencies, improbabilities, contradictions and lies. By way of example, Mr Cloete pointed to the evidence of accused six that his reason for the phone call between himself and Ralihlare was to recover the cell phone of accused four and a jersey belonging to accused three that were left behind in Kimberley.

206. Mr Cloete then referred to the evidence of accused six that everyone would have been paid R10 000.00, whether there was any digging for money or not. That this was arranged before they came to Kimberley. Mr Cloete submitted that this was a clear lie designed to explain why everyone received a large sum of money for doing nothing.
207. Mr Cloete submitted that the evidence of accused six asking why the accused would all tell the same story given that they were arrested at different times, was clearly rehearsed answer and that it should not be given any credence.
208. Mr Cloete also submitted that the evidence of accused six that the R10 000.00 paid to each of them was a "*fine*" was startling. That it should also not be given any credence, that it was a further example of accused six tailoring his evidence to the prevailing winds.
209. Accused six was unable to explain why Ralihlare would go to the trouble of getting them to Kimberley if he did not need them for the success of his criminal enterprise.
210. Accused six could not explain why the Mpumalanga accused were chased away.
211. Accused six admitted that he and accused three and accused four had come to Kimberley for the same reason.
212. Mr Cloete pointed out that accused six unexpectedly testified that the bag and the coins were sold to accused five at a filling station on the way back to Nelspruit.
213. Mr Cloete submitted that the evidence of accused six that he phoned Ralihlare in September 2018 to retrieve a jersey and a cell phone on behalf of accused three and accused four is clearly a lie. Mr Cloete argued that

accused six could not give a satisfactory answer for having the telephone number of Ralihlare.

214. Mr Cloete pointed out that accused six admitted that he spent the R10 000.00 for his own benefit.

215. Mr Cloete argued that accused six could not explain the differences between what he told the police in his statement exhibit “Q” and his oral evidence in court.

216. Mr Cloete pointed out that in his statement exhibit “Q”, accused six never informed the police that he came to Kimberley to dig for coins. Mr Cloete argued that this was an integral part of his evidence that was later fabricated to align with the version of the other accused.

217. Mr Cloete also pointed out that where accused six could not explain the discrepancies and improbabilities in his evidence, he blamed his former legal representative. Mr Cloete submitted that this court should reject the testimony of accused six where it conflicts with the evidence adduced by the State.

218. Mr Diba, who represented accused six when the matter was argued, submitted that accused six was not linked to the robbery by the State’s evidence and similarly accused six could not be linked to the murder.

219. What Mr Diba overlooks in making this submission is the long-standing relationship between accused six and accused seven on the one hand and the long-standing relationship between accused six and accused three and accused four on the other.

220. Then we have the version of the Mpumalanga accused that they were summonsed to Kimberley to remove ghosts and dig for Kruger coins. This version of the accused is so inherently improbable that there is no possibility that it could reasonably possibly be true.

221. I reach this conclusion for the following reasons: Everybody acknowledges that Ralihlare played a central role in organising and executing the robbery; Ralihlare organised the three men who together with accused five were the intruders; Ralihlare arranged that they intruders go to the deceased's farm; In the two days that the Mpumalanga accused spent at Ralihlare's house nobody mentioned or discussed any form of digging for coins; In that context as Mr Cloete asks, why would Ralihlare arrange for accused three, four, five, six and seven to travel from Nelspruit to Kimberley if they were not required for the success of the criminal enterprise in which Ralihlare played an undisputed central role.

222. More significant is why would the Mpumalanga accused be paid a large sum of cash for not doing anything to further the criminal scheme in which Ralihlare played a central role. Accused six testified that it was a pre-arranged term of the agreement that they would be paid R10 000.00 regardless of whether they did any digging for coins or not. Accused six then changed this to the R10 000.00 being a fine for wasting their time before he in his evidence reverted to the version that it was a pre-arranged term of the contract. Clearly, this was a transparent attempt to answer the question he could not answer. Accused six was not even consistent in his story. No other evidence was placed before the court that could explain or provide a reason for the Kimberley perpetrators paying the Mpumalanga accused in circumstances where they did not advance the criminal enterprise.

223. The only explanation for paying the Mpumalanga accused that fits all the established facts is that they in fact advanced the criminal enterprise of the Kimberley perpetrators.

224. Accused six was in contact with accused five during the robbery.

225. Accused six was not consistent in his evidence and my observation was that he did indeed tailor his evidence to suit his perception of the prevailing winds.

226. The evidence of accused five was that he did indeed inform accused three, four, six and seven as to what happened during the robbery at the deceased's house. After that accused five had no reasonable basis to believe anything but that the money he received was the proceeds of the robbery. Yet, after that accused six admitted he appropriated the R10 000.00 received to his own use and benefit. There was clearly no disassociation.

227. In these circumstances, the State has established beyond a reasonable doubt that accused six was involved in the robbery.

228. I cannot find common purpose on the part of accused six in the murder charge for the same reasons as set out in respect of accused three and four.

229. As with all the other accused having pleaded to the unlawful possession of firearms charges, counts five and six, accused six is entitled to a finding of NOT GUILTY on charges five and six.

230. Turning now to the case of accused seven. Mr Cloete argued that the evidence showed that accused seven played a leading part in the robbery that took place just outside Kimberley on the 24 January 2018. This argument is based on the following submissions, accused seven: is the person who communicated with Ralihlare before the robbery; is the person who arranged for the accused from Mpumalange, he picked them up in Nelspruit and brought them to Kimberley; is deeply incriminated by the cell phone evidence, which shows his movements, communication, and location at times before, during and after the robbery; is the person who handed out the bundles of R10 000.00 after the robbery; is the person who returned the Mpumalanga accused from Kimberley to Nelspruit; except for accused three, was in contact with all the accused from Mpumalanga, and Ralihlare after the 24 January 2018.

231. Mr Cloete pointed out that accused seven's version boiled down to the following: He brought the Mpumalanga group to Kimberley; he did nothing of note in Kimberley; he then took his passengers back to Mpumalanga; and he saw and heard nothing untoward before, during and after the relevant robbery.

232. Mr Cloete submitted that if one has regard to the totality of the evidence, the probabilities and the very unsatisfactory evidence of accused seven, his version borders on the absurd and it is obviously false.

233. Mr Cloete pointed out that accused five confirmed in his evidence that he informed accused seven of the assault on the elderly couple. Mr Cloete also referred to the evidence of accused six, which was to some extent corroborated by the evidence of accused three, that accused seven is the person who distributed the money. Mr Cloete submits that this makes sense, after all accused seven is the person who arranged for the others in the Mpumalanga group to come to Kimberly.

234. Mr Cloete pointed to the evidence of Lt-Col Magugu in regard to what accused seven told Col Magugu about the Els Brothers, being the sons of the deceased, and Mr Cloete submitted that this showed that accused seven had inside knowledge about the victim of the robbery. Mr Cloete also referred to the further evidence of Col Magugu that during the bail application of accused seven, that accused seven told him (Magugu) about the '*mastermind*'. Mr Cloete submitted that this evidence showed that accused seven was aware of the integral role Ralihlare played in the robbery.

235. Mr Cloete pointed out that accused seven had an interview with Lt-Col Mbingo on the 17 March 2021. That a statement was made by accused seven as a result of this interview, exhibit "R". When Col Mbingo gave evidence proving this statement, the admissibility of this statement was not challenged. Subsequently, when accused seven gave evidence, he challenged the admissibility of exhibit "R". More on that later.

236. Mr Cloete pointed out that in exhibit "R" accused seven made several claims aimed at placing the blame on some of the other accused, especially accused five. Mr Cloete submitted that accused seven wanted to distance himself as far as possible from the incident concerned. Mr Cloete pointed out that at the time accused seven made his statement the other Mpumalanga

accused had already been arrested. Accused seven, in his own evidence contradicted a great deal of what he told Col Mbingo.

237. In summary, the statement taken down by Col Mbingo, sets out that: Accused seven told Col Mbingo that accused six asked accused seven to transport him to Kimberley; Accused five was introduced to accused seven as someone working in Kimberley; Accused five knew Kimberley and gave directions when they arrived in Kimberley; Accused seven told the police that Ralihlare was unknown to him; In Kimberley accused five was moving around a lot and was communicating with accused three and accused four, the couple; Accused five was gone for a long time and came back with several items and money; When he returned accused five was in the company of three black males; One of them was armed with a firearm; Accused five gave the money to accused seven to distribute amongst the people in the house; Accused seven distributed the money; Accused seven also gave money to the three black males; Everyone including accused seven received R10 000.00 cash; Accused seven then took a nap; Accused seven was woken from his sleep by the owner of the house who demanded that the Mpumalanga group leave his house; Accused seven did not want accused five to return with them to Mpumalanga; Accused five had three bags with him and eventually did drive back to Nelspruit with accused seven and the others in the Mpumalanga group.

238. Mr Cloete emphasised that the version given by accused seven to Col Mbingo which was taken down in exhibit "R" was materially different from the evidence accused seven gave in court. Mr Cloete also established that the version in the said statement differed from the version put to Col Magugu when Col Magugu was cross-examined by the then legal representative of accused seven.

239. Mr Cloete submitted that it is obvious that accused seven had to change his version to be in alignment with the versions of his co-accused. Accused five testified that he confronted accused seven about what was contained in his statement, exhibit "R".

240. Mr Cloete argued that in giving evidence accused seven was extremely evasive and obviously lied. Mr Cloete submitted that the evidence of accused seven was replete with improbabilities, contradictions and inconsistencies.

241. In order to substantiate his submission that accused seven was evasive, Mr Cloete referred the court to several passages in the record where it was clear that accused seven simply refused to be cross-examined on certain aspects of the evidence placed on record and it is also evident that accused seven resorted to insults and veiled threats in an attempt to evade answering these questions.

242. Mr Cloete submitted that accused seven was unable to provide the court with any credible explanation for the evidence incriminating him.

243. The version of accused seven was that accused six requested him to transport them to Kimberley. Yet the then advocate of accused seven put to Col Magugu on behalf of accused seven that Rahlihlare requested accused seven to visit Kimberley. It was also put to Col Magugu by Counsel for accused seven that accused seven arranged accused six to visit Kimberley. This is a glaring contradiction which goes to the heart of the version that accused seven has currently placed before this court.

244. Accused seven testified that accused three and accused four were introduced to him as apprentices. Yet his then Counsel put to Col Magugu that accused three was recruited for her specific expertise. A further example of accused seven tailoring his evidence to the prevailing circumstances.

245. Mr Cloete argued that accused seven wanted to create the impression that his sole task was to drive the Mpumalanga group from Nelspruit to Kimberley and two days later back to Nelspruit. That he was not party to any of the discussions as to what would happen in Kimberley. Mr Cloete pointed out that this was completely at odds with the evidence of the other accused from Mpumalanga.

246. Mr Cloete pointed out that the cell phone evidence clearly showed that accused seven and Ralihlare communicated before 22 January 2018. Accused seven simply states that he does not remember if they communicated or not.
247. Mr Cloete pointed out that accused seven gave the interesting evidence that accused six told him that *“if all goes well, we will be rich”*.
248. The evidence of accused seven was that he did not know of any arrangement that all of them would be paid R10 000.00 regardless of what happens in Kimberley. In this regard accused seven contradicts the evidence of accused six.
249. Accused seven testified before this court that he did not see the three males everyone else testified about. However, the then Counsel of accused seven put to Col Magugu that three unknown men entered Ralihlare’s property. It was further put to Col Magugu that one of these unknown men borrowed the cell phone of accused seven.
250. Mr Cloete contended that accused seven eventually gave three different versions as to why he was not in possession of his cell phone at the time of the robbery. The first version was one of these unknown men borrowed his cell phone. The second version was that Ralihlare borrowed the phone. The third version was that the phone simply went missing.
251. It is important to note at this stage that Mr Cloete took accused seven through the cell phone data records applicable to the phone accused seven had presented these three different versions of how such phone was alleged to be beyond his control and showed beyond any reasonable doubt that not one of the three different versions relied upon at different times by accused seven could be true. Accused seven was unable to counter this demonstration with any credible explanation.

252. Mr Cloete submitted that this false and contradictory evidence by accused seven in relation to such cell phone was nothing more than a transparent attempt by accused seven to distance himself from the cell phone evidence that clearly incriminated him.

253. Mr Cloete further submitted that logic dictates that accused seven had his cell phone with him during the night of 23/24 January 2018. The cell phone data shows that accused seven moved to the crime scene just before the robbery took place. The cell phone data further showed that accused seven moved around at the time of the robbery, then moved back to the crime scene after the robbery.

254. Mr Cloete argued that this evidence showed conclusively that accused seven dropped the attackers off before the robbery and picked up accused five after the robbery. Accused five confirmed that in his evidence. The evidence of accused five is corroborated by the reliable evidence of the cell phone data. The cell phone data also shows that accused seven communicated with both accused five and Ralihlare at times relevant to the robbery.

255. All of this is destructive of the version presented by accused seven that he simply drove from Nelspruit to Kimberley and back, that he saw and heard nothing untoward whilst he was in Kimberley.

256. Accused seven admitted to a continued association with some of the other accused after the robbery. This is also confirmed by the cell phone data.

257. Mr Cloete pointed out that eventually accused seven just refused to answer any questions about his statement to Col Mbingo, exhibit "R". However, Mr Cloete demonstrated to accused seven during cross-examination in that statement that there was information that could only have come from accused seven.

258. Mr Cloete argued that in his cross-examination of accused seven it was pointed out that his former legal representative did not raise certain issues with Col Mbingo when she cross-examined the Colonel. These issues form part of accused seven's evidence before court in relation to the said statement and include: the evidence of accused seven that he did not sign exhibit "R"; the evidence that the relevant interview was continued on the subsequent day being the 18 March 2021; the evidence that during the interview Col Mbingo was accompanied by two traditional healers; and the evidence that Col Mbingo had information about the case.

259. Mr Cloete submitted that accused seven had no difficulty in blaming his former legal representative when he ran into difficulties whilst he was under cross-examination by the representative of the State. Mr Cloete pointed out that initially accused seven described Ms Booysen as an "*honest lawyer*" in his testimony, then when the shoe started to pinch in cross-examination, he started blaming Ms Booysen for his predicament and ultimately, accused seven called Ms Booysen a "*thug*".

260. Mr Cloete submitted that accused seven was indeed a party to a prior agreement to rob, that this was the only reasonable inference that could be drawn from all the facts established before this court. Mr Cloete went further and pointed out on the established facts before this court it is clear that accused seven was one of the conspirators that played a more active role. From the cell phone data Mr Cloete contends that it has been established and corroborated by accused five that accused seven transported the intruders to and at least in the case of accused five from the crime scene. Also, from the cell phone data that accused seven was indeed involved in co-ordinating and arranging the robbery.

261. Mr Mogwera appeared for accused seven from before accused seven took the witness stand to testify until the present. Mr Mogwera focused the defence of accused number seven on attacking the search of the residence of accused seven at the time accused seven was arrested. This attack was based on the fact that the search was done without a search warrant and

without the permission of accused seven and on Mr Mogwera's argument before accused seven was warned of his rights. On Mr Mogwera's argument it was as a result of the unlawful search that the police obtained the cell phone of accused seven and his cell phone numbers.

262. The line of argument of Mr Mogwera was that if the cell phone numbers of accused seven were obtained as a result of an unlawful search, then the cell phone data was the fruit of the poisoned tree and could not be used against accused seven.

263. If Mr Mogwera is correct, then this would be very useful to the defence of accused seven. The cell phone data is a central pillar of the State's case against accused seven.

264. However, what Mr Mogwera overlooks in making this argument on accused seven's behalf is that the cell number that ties accused seven to the geographic location of the crime scene in this matter is the number 0733351030. Col Conradie is the officer that collected and collated the cell phone data, she testified that from the data provided to her by the service providers, she noticed this number had communicated with other accused over the period of time relevant to this robbery. She then decided to profile this number through the police CAS system. The police CAS database revealed that the person who is linked to this cell number was the complainant in a complaint of fraud lodged at the Point Police Station in Kwa-Zulu Natal, which was registered in July 2018 and the complainant in this case was indeed accused seven. Accused seven was thereby positively linked to this cell phone number. The other number linked to accused seven in the report on the cell phone data, being exhibit "BB" was obtained from the telephone of one of accused seven's co-accused listed under the name of accused seven. This was admitted into evidence as exhibit "L".

265. In these circumstances there can be no question of the cell phone numbers linked to accused seven being obtained from an unlawful search of accused seven's residence. The relevant cell phone numbers of accused

seven were obtained legitimately. They link accused seven to the events leading up to, during and after the robbery concerned. Mr Cloete has demonstrated conclusively that from the cell phone data itself none of the three versions in which accused seven claims he did not have control of his cell phone at the material time could be true that in fact they were demonstrably false.

266. My impression of accused seven is that he is an intelligent and articulate man. He was opportunistic in tailoring his evidence to his perception of where the prevailing winds were blowing. He tried to avoid answering questions in several different ways. At times he even resorted to veiled threats. When it comes to exhibit "R" he eventually just refused to deal with the questions put in cross-examination. Accused seven blamed his legal representative when it suited him, or he had no other option.

267. My conclusion is that accused seven was an unreliable and untruthful witness. Insofar as the evidence of accused seven is at odds with the evidence adduced by the State, the evidence of accused seven is rejected.

268. On the evidence viewed in its entirety there is no other reasonable conclusion other than that accused seven was involved in the planning of the said robbery. Ralihlare was a central figure in the robbery concerned. From the 15 January 2018, up until accused seven arrived in Kimberley on the 22 January 2018 there were several calls between accused seven and Ralihlare the only reasonable inference to be drawn from these communications is that the details of the planned robbery were being discussed. Indeed, no other possible and plausible explanation was even suggested. Accused seven claimed that he had no recollection of these calls.

269. Indeed, the telephone data negate the version of accused seven that he merely did accused six a favour by driving the Mpumalanga accused to Kimberley and back.

270. The cell phone data geolocates accused seven to the area of the robbery at the material time. This is supported by the evidence of accused five. To that extent of transporting the intruders and at least fetching accused five, accused seven participated in the robbery. Accused seven stands to be convicted on the robbery charge.

271. On the murder charge, the position of accused seven is the same as accused three, accused four and accused six. He is entitled to be found NOT GUILTY on that charge.

272. On charges 5 and 6 the unlawful possession of firearm charges accused seven is entitled to be found NOT GUILTY.

Accordingly, the verdict of this court is:

ACCUSED ONE:

1. On the robbery charge, count 1 NOT GUILTY on the competent verdict of theft in relation to count 1 – GUILTY.
2. Count 2 as determined in the section 174 application – NOT GUILTY.
3. Count 3 – NOT GUILTY.
4. Count 4 – NOT GUILTY.
5. Count 5 – NOT GUILTY.
6. Count 6 – NOT GUILTY.

ACCUSED TWO:

1. Count 1 – GUILTY.
2. Count 2 – As determined in the section 174 application - NOT GUILTY.
3. Count 3 – GUILTY.
4. Count 4 – GUILTY.
5. Count 5 – NOT GUILTY.
6. Count 6 – NOT GUILTY.

ACCUSED THREE:

1. Count 1 – GUILTY.
2. Count 4 – NOT GUILTY.

3. Count 5 – NOT GUILTY.
4. Count 6 - NOT GUILTY.

ACCUSED FOUR:

1. Count 1 – GUILTY.
2. Count 4 – NOT GUILTY.
3. Count 5 – NOT GUILTY.
4. Count 6 - NOT GUILTY.

ACCUSED FIVE:

1. Count 1 – GUILTY.
2. Count 2 – As determined in the section 174 application - NOT GUILTY.
3. Count 3 – GUILTY.
4. Count 4 – GUILTY.
5. Count 5 – NOT GUILTY.
6. Count 6 – NOT GUILTY.

ACCUSED SIX:

1. Count 1 – GUILTY.
2. Count 4 – NOT GUILTY.
3. Count 5 – NOT GUILTY.
4. Count 6 - NOT GUILTY.

ACCUSED SEVEN:

1. Count 1 – GUILTY.
2. Count 4 – NOT GUILTY.
3. Count 5 – NOT GUILTY.
4. Count 6 - NOT GUILTY.

L.G. Lever
Judge
Northern Cape Division,
Kimberley

Representation:

<i>For The Applicant:</i>	<i>ADV H CLOETE</i>
<i>Instructed by:</i>	<i>DIRECTORS PUBLIC PROSECUTIONS</i>
<i>For The Accused 1&4:</i>	<i>ADV J SCHREUDER</i>
<i>Instructed by:</i>	<i>LEGAL AID SA (JUDICARE)</i>
<i>For The Accused 2, 3 & 6:</i>	<i>ADV T DIBA</i>
<i>Instructed by:</i>	<i>LEGAL AID SA (JUDICARE)</i>
<i>For The Accused 5:</i>	<i>ADV K PRETORIUS</i>
<i>Instructed by:</i>	<i>LEGAL AID SA (JUDICARE)</i>
<i>For The Accused 7:</i>	<i>MR T MOGWERA</i>
<i>Instructed by:</i>	<i>LEGAL AID SA (JUDICARE)</i>
<i>Date of Judgment:</i>	<i>28 January 2025</i>