

**IN THE HIGH COURT OF SOUTH AFRICA
(Circuit Local Division of the Northern, Eastern, Western, Delmas Circuit
District)
(North Gauteng, Pretoria)**

Case No: CC40/2020

In the matter between:

The State

and

MFUNELENI LANGA	Accused 1
THULANI MKHUBA SITHOLE	Accused 2
MUZIKHONA MATHEBULA	Accused 3
SANELE PHILANE SITHOLE	Accused 4
SENZO MZIWAMANDLA ZULU	Accused 5
NKOSENHLE NXUMALO	Accused 6
KHANYISANI SIMO KHANYILE	Accused 7
NJABULO NCANANA	Accused 8
BONGUMUSA MENGAMELI MBATHA	Accused 9

JUDGMENT

VAN WYK, AJ:

CHARGES AND PLEA PROCEEDINGS:

[1.1] The charges are as follows:

Incident on 12 July 2018 against accused 1, 3, 4 and 6:

1. Robbery with aggravating circumstances;
2. The unlawful possession of a firearm;

An alternative count of possession of a firearm(s) and/or ammunition with the intent to commit robbery.

Incident on 20 July 2018 against accused 1, 2, 3, 4, 5, 6, 7 and 8:

3. Robbery with aggravating circumstances;
4. The unlawful possession of a firearm;

An alternative count of possession of a firearm(s) and/or ammunition with the intent to commit robbery;

5. The unlawful possession of ammunition;
6. Murder;
7. Attempted murder;
8. Malicious injury to property.

Incident on 27 September 2018 against accused 2, 3, 4, 6 and 9:

9. Robbery with aggravating circumstances;

10. The unlawful possession of a firearm;

An alternative count of possession of a firearm(s) and/or ammunition with the intent to commit robbery;

11. Theft of a BMW.

The State alleged that all of the accused acted with a common purpose to commit these crimes, and that the firearms and ammunition were jointly possessed.

[1.2] The accused pleaded not guilty to all counts. No plea explanations were offered. On behalf of accused 2 however, Advocate Qwabe raised an *alibi* defence in respect of counts 9 to 11. On behalf of accused 8, Mr Kgagara also raised an *alibi* defence.

[2] EVIDENCE FOR THE STATE:

The prosecution called a number of 37 witnesses. The Court will summarize the evidence, not in the order that the State witnesses had testified, but in the sequence of the events as they unfolded.

[3] SECTION 174 APPLICATION:

Before dealing with the evidence, applications in terms of *section 174* were brought by all of the accused in respect of all of the charges. Some applications were successful in respect of certain accused, and for others in respect of certain charges. Those parts of the evidence will not be revisited. The Court will only deal with the evidence in respect of the remaining accused, and deal with the evidence which relates to them.

[4] IDENTIFICATION PARADE:

The Court has already ruled that no weight can be attached to the identification parades, and those parts of the evidence will also not be revisited.

[5] FACIAL COMPARISON:

Warrant Officer van Eeden, who had compiled the Facial Image Analysis Report, in which he was requested to compare photos derived from CCTV footage, against control photos, stated that there are four main facial comparison methodologies used in such comparisons. The method which he used was a morphological assessment of persons; image-to-image. Due to the images being of poor quality and poor camera angles, no sufficient morphological facial landmarks were identified. As a result, no facial comparison was done. W/O van Eeden did not have the benefit of observing the accused in court, and to conduct an image-to-person analysis.

SUMMARY OF THE EVIDENCE:

[6] **Ms Mametse** testified in respect of **Exhibits A1, A2 and A3**, which are photos of suspects derived from the CCTV video footage that were recorded on the day of the robberies. After she had viewed the video recordings, she compiled a summary of the footage, which is captured in **Exhibits A4, A5 and A6**. Three USB sticks were submitted into evidence as **Exhibits 1, 2 and 3** containing the CCTV video footage. She was not requested to identify any of the suspects in the video recordings in court. She merely testified about her observations of the actions of suspects, after having viewed the footage, which included clothing descriptions of the suspects. Her evidence, as to the actions of each suspect, is found to be objective, and corresponded with what was seen in the recordings when played in Court. There was no evidence to suggest that there was any tampering with the recordings. Ms Mametse did not know whether the manager or employees had viewed the recorded videos. The Court finds it in any event highly improbable that the witnesses had viewed the recordings, reason being that one would then expect better and more detailed statements and descriptions of the suspects, and not expect to find that

certain witnesses were no longer able to point out the suspects in court. Her witness statement was submitted as **Exhibit D**.

What is abundantly clear from viewing the footage, is that in each robbery, the suspects acted as a unit in achieving a common goal; that is to rob the shops. From the video footage it can be seen that some of the suspects played specific rolls, and which the Court will refer to later.

The following was observed by the Court, summarized and confirmed by all counsel with regards to the video footage of the security guard: A male security guard was struggling with another male, wearing a white hat, brown jacket and $\frac{3}{4}$ pants, at the entrance of the shop. An item is observed in the hand of this male struggling with the security guard. The radio of the security guard falls on the floor. The struggle continues outside the shop towards the trolleys. The security guard falls on the floor. A male dressed in a red top arrives and points an object in his hand in the direction of the security guard. This male proceeds into the shop, still holding this item in his hand. The male who had struggled with the security guard touched the face of the security guard and tramples on him, and kicks him above the waist line.

When the video recordings were viewed for a second time at the request of accused 6, the following observation was added: A male wearing white push in shoes with an object in his hand, arrives in between the male in the brown jacket and the male in the red top, and points an object in the direction of the security guard who was already on the floor. All counsel agreed.

INCIDENT ON 12 JULY 2018 – RATANDA CAS 42/07/2018

[7] **Ms Mashinini** was an employee at Shoprite, Ratanda, and was a victim in the robberies on 12 and 20 July 2018. During her evidence she confused which of the suspects were involved in each of the robberies. She did however identify accused 1 as being present during both robberies. She made a dock identification of accused 1, and pointed him out in Exhibit A1 photo 1949 as well as Exhibit A2 photo 1970.

In her statement, Exhibit P1 regarding the first robbery, she described one of the suspects as having a dark complexion, carrying a firearm, and having a limp. He was an older person. During the first robbery accused 1 had entered the cash office and demanded money. During the second robbery, he remained near the tills in the front of the shop.

She testified that a second robber had entered the cash office with accused 1 during the first robbery. She initially pointed out accused 5, but during cross-examination testified that she was referring to accused 6, who she identified in the dock. Ms Mashinini testified that accused 6 is depicted in Exhibit A1 photo 1947, while Sergeant Sithole identified accused 6 depicted in Exhibit A1 photo 1950. Even to the Court it was clear that the wrong photo was referred to by Ms Mashinini, as accused 6 is clearly identifiable in Exhibit A1 photo 1950.

Ms Mashinini testified that during the first robbery the one suspect who entered the cash office, demanded money. This suspect was in possession of a firearm. She pointed accused 1 towards the safe. He left the cash office to fetch Shoprite shopping bags in which to place the money. Upon his return, accused 1 was accompanied by accused 6. Accused 6 told her that he kills, that he does not play, and that he wants money. After the bags were filled, Ms Mashinini remained in the cash office.

Ms Mashinini was the only eye witness called in respect of the first robbery. Her evidence ought to be carefully evaluated in respect of identification, and some corroboration for her say-so is called for.

[8] When photo 1949 from Exhibit A1 and photo 1970 from Exhibit A2 are viewed next to each other, it is clearly the same suspect in both photos. When the video footage was played, accused 1 was clearly identifiable in the CCTV footage relating to these two robberies. Ms Mashinini described that accused 1 was wearing a floral T-shirt, a hat and a black leather jacket during the one robbery, while he was wearing a blue T-shirt, a hat and a black leather jacket during the other robbery. The clothing description fits with what can be observed in the photos as well as the video footage.

[9] **Ms Mametse** summarized the actions of the two suspects who entered the cash office during the first robbery as follow: In respect of photo 1949, she testified that a male dressed in a powder blue garment, black leather jacket and grey sun hat came holding a Shoprite female staff member. This male was carrying a gun, and he entered the cash office with another male depicted in photo 1950, who was wearing a big grey sun hat with a blue camouflage top. This male opened the safe and placed money under his hat, while other money was placed in a black Shoprite

money bag. The suspect in photo 1949 went out of the cash office and collected a big red Shoprite bag, and returned to the cash office. He also placed money under his hat.

[10] Considering the evidence of Ms Mametse with regards to the video footage and photos derived therefrom, it is the view of the Court that Ms Mashinini is no longer a single witness when considering what was held in *S v Gentle* 2005(1) SACR 420 (SCA), referred to in the judgment in the section 174 application. The evidence of Ms Mashinini with regards to the identification of accused 1 and 6 as being the two suspects who had entered the cash office is therefore found to be reliable. Accused 1 and 6 were targeting the cash office, while other suspects targeted the tills.

INCIDENT ON 20 JULY 2018 – RATANDA CAS 85/07/2018

[11] **Ms Mashinini**, testified that accused 1 and 5 in the dock, were present during the second robbery. Accused 1 was roaming near the tills in the front of the store.

[12] **Ms Mametse** described the actions of the male suspect depicted in photo 1970, as follow: A male wearing black pants, black jacket, grey sun hat and white shoes went towards the cash office. It seemed like he was carrying a gun in his possession. He passed in front of the Money Market. The male went to a female cashier at the till who was struggling to open the till, and he then removed what seemed to be money from the cash drawer and concealed it in his pants. Ms Mashinini had testified that it is accused 1 depicted in photo 1970.

[13] **Ms Mkhwanazi** testified that she is employed at Shoprite Ratanda. In 2018 she was a supervisor and front-end controller. On 20 July 2018 she noticed that there was a commotion at the door between a security guard and an unknown male. This male was wearing a green Bermuda short, and a brown jacket. Accused 5 was identified in the dock. They were wrestling and the wrestling continued out the entrance of the shop where she could no longer see what was happening. She overheard customers saying that this male was wielding something. At the time, Ms Mkhwanazi was at the money market, which is close to the entrance of the shop.

She heard shots fired and many young men entered the shop. Some went to the cash office and all were armed with firearms.

She identified several of the accused in the dock. The Court was however not convinced of the reliability of the identification of some of the accused, and discharged them in terms of *section 174*. She made a dock identification of accused 1, and described the clothing that he was wearing; a leather jacket with a floral T-shirt. This clothing description can be seen in Exhibit A2 photo 1970, which she identified as accused 1.

The witness identified accused 5 as the person in Exhibit A2 photo 1966. Counsel on behalf of accused 5 vehemently denied that it is accused 5 depicted in photo 1966. Accused 5 was however not only identified by the witnesses, but accused 5 is clearly identifiable in the video footage, as well as photo 1966.

[14] Ms Mkhwanazi's evidence regarding the actions of accused 5 is corroborated by the video footage and which was summarized by **Ms Mametse**. In Exhibit A5 at 18:18:57 (camera 5), she notes the following:

"Male wearing black shoes, white socks, blue short pants, brown jacket and a black and white cap went out of the store. He was talking to the male security guard and they seemed to be arguing and were fighting and both went out of the store."

At 18:18:57 (camera 13) she notes the following:

"Male wearing black shoes, white socks, blue short pants, brown jacket and a black and white cap went out of the store. He was talking to the male security guard and they seemed to be arguing and were fighting and the male wearing the black shoes, white socks, blue short pants, and brown jacket seemed to be holding a firearm in his hand. He was fighting with the male security guard and both of them went out of the store. The male security guard fell on the ground. Male seemed to be searching and kicking the male security guard whilst still lying on the ground outside the store. He remained standing at the door giving some signals. He left at 18:23:16 whilst the male security guard was lying on the ground."

She notes at 18:21:21 (camera 5) the following:

“Male wearing black shoes, white socks, blue short pants, brown jacket kept on standing at the entrance of the store and giving some signals.”

Accused 5 was clearly the lookout, as he remained at the entrance of the shop while the other suspects went either to the cash office, the tills or the money market. Accused 5 could be seen in the video footage giving signals and tapping his wrist.

[15] **Constable Mokagane** testified that on 20 July 2018 he was on duty and driving a Police BMW. He was in the company of Constable Mahlaba, and Constable Erasmus doing crime prevention. They were patrolling in Ratanda when they received a report from a member of the public of a robbery in progress at Shoprite. They proceeded to Shoprite and parked at gate number 1.

When they alighted their motor vehicle, they saw a group of unknown men dressed in black with firearms in their hands running in different directions. They were coming from Shoprite and approaching them, while firing shots at them. Constable Mokagane and his crew took cover. The men ran in different directions and some of the men got into a silver Tazz and drove off. They found that their vehicle had been damaged when fired at. They heard that there were other shootings in the field outside the mall.

[16] **Sergeant Chauke** attended the scene on 20 July 2018. Himself, Sergeant Mabota and Sergeant Matumane proceeded towards Shoprite in a Nissan NP300 double cab bakkie. A community member stopped them and reported that the suspects are running in the soccer field which is opposite Shoprite. A report was made that people was hiding themselves behind a small shack that is situated just as you leave the soccer field. Upon their approach to this shack, a suspicious looking man crossed the road from the soccer field to the direction of Shoprite. He crossed the road behind their vehicle as they passed the shack. Sergeant Chauke, who was the driver, made a U-turn, and chased after this man. The man started to shoot at them. Sergeant Matumane was shot in the left arm, through the left passenger door.

Thereafter, the man who had fired shots at them disappeared. The vehicle in which they had travelled were damaged during the shooting.

Further shots were fired at them from other shooters and from different directions. During cross examination Sergeant Chauke testified that the first shooter was wearing a floral T-shirt. He testified that the other shots were indeed fired at them as they could see in the light of the vehicle that the bullets hit the gravel near them and it created dust where it hit the gravel.

[17] **Sergeant Matumane** corroborated Sergeant Chauke, that they had received a report from a community member that a person was running in the field. They gave chase. When this man realised that they were closing in on him, he changed direction and passed their vehicle at the back crossing the road from the soccer field towards Shoprite. As they turned their vehicle around, and was chasing after him, the man started shooting at them. Sergeant Matumane was shot in the left arm. As a result, he was unable to lift the R5 rifle in his possession.

They had earlier passed other males in the soccer field who were in possession of Shoprite shopping bags. They started to fire shots at their vehicle. Further down Protea road at the T-junction with Vaaldam road were more people who were shooting at them. Their vehicle was struck twice. An electric pole near their vehicle, about 10 to 12 meters from their vehicle, was struck several times by bullets. The male that was initially shooting at them, ran towards Vaaldam road.

Sergeant Matumane indicated on the sketch plan Exhibit E1, that ZZ1 is where they stopped their vehicle in relation to the vehicle of the Crime Prevention. ZZ2 is where the 4 men were standing who was in possession of the shopping bags. ZZ3 is where the two motor vehicles were stationary and four men were standing at the Vaaldam road T-junction with Protea road. ZZ4 is where their vehicle was when shot at from the directions at ZZ2 and ZZ3. ZZ2 to ZZ4 forms a triangle. R indicates the position of the runner when he was first pointed out to them while in the soccer field.

[18] **Warrant Officer Mabotha** corroborated the evidence of Sergeant Chauke and that of Sergeant Matumane. They attended the robbery scene at Ratanda Shoprite. After receiving the initial report about the shooting at Shoprite, they proceeded to the direction of the ground next to Shoprite.

Himself and his colleagues chased after a man that was pointed out by members of the public. This man was running towards the soccer field. He was wearing a black jacket and carried a bag. When this man realised that they were close to him, he turned around and started firing shots at them. Constable Matumane was shot. Matumane was unable to return fire as he was injured. The three of them alighted the vehicle while further shots were fired at them by a group from the direction of Vaaldam road. After the ambulance left, he proceeded to Shoprite.

He indicated with a letter 'G' on the sketch plan where the group was that was also shooting at them in the field. 'G' is located on the sketch plan at the same spot as ZZ3. This spot was approximately 50 meters from their vehicle. He further marked 'G1' as being their vehicle stationary in the field in the same spot as ZZ4. The van was stationary at an angle and facing in the direction of the North sign at the top right corner of the sketch plan. He had observed another group when they first drove towards this single male person. This group were just standing and there were bags on the ground.

[19] **Mr Matiwane** testified that on 20 July 2018 at around 18h50 he was leading a prayer session at the Explosion Ministries in Ratanda Heidelberg. Shoprite is approximately 250 meters from the church. He heard shots being fired and Police sirens. He went outside and observed vehicles at Vaaldam road. He went back inside the church. After 5 minutes a male entered the church and sat down. Mr Matiwane approached this male and informed him that he was too late for the prayer session. The male requested that Mr Matiwane pray for him. The male was wearing a light grey hat, a black leather jacket, a jean and a brightly colored T-shirt. All the church goers left the church. The male was however reluctant to leave the church.

Mr Matiwane pointed out accused 1 in the dock as the male who had entered the church. Accused 1 informed Mr Matiwane that he was from KZN, and that he had lost the person whom he was with. At the time, the Police was passing in the street. Accused 1 rushed to the vehicle of Mr Matiwane and attempted to open the door. He asked accused 1 why he was running from the Police, to which accused 1 responded that the Police are always picking on people. Accused 1 took off his jacket and threw it on the floor. At that stage Mr Matiwane noticed that accused 1

was carrying a firearm on his waste. He told accused 1 to relax, and did not alert him to the fact that he had noticed the firearm. Accused 1 then put back on his jacket.

Mr Matiwane and another church member left in his vehicle. He noticed that accused 1 had gone to a nearby tuckshop. In the next street Mr Matiwane came across a Police Officer named Maluleke, and made a report to him. Maluleke got into the vehicle of Mr Matiwane, and they managed to stop the Flying Squad around the corner. Maluleke went with the Flying Squad. The Flying Squad and Maluleke made a U-turn and returned to the tuckshop. Mr Matiwane followed suit, and observed that they managed to apprehend accused 1. Mr Matiwane identified accused 1 as the person depicted in Exhibit A2 photo number 1970. Accused 1 was wearing the same clothing as he had in church.

During cross examination Mr Matiwane testified that when accused 1 was pinned down, he was still wearing a jean and the floral T-shirt. The statement of this witness was handed in as **Exhibit N**. It was pointed out to the witness that he did not mention in his statement the conversation that he allegedly had had with accused 1.

[20] **Constable Maluleka** testified that he is a Police Officer. On 20 July 2018 he was off duty, when he was approached by Mr Matiwane, who made a report to him about a suspicious person who was at the time at the tuck shop. Mr Matiwane had reported to him that this suspicious person was in possession of a firearm. Cst Maluleka boarded the motor vehicle of Mr Matiwane. He pointed out this suspicious person to Cst Maluleka when they drove past the tuck shop.

Soon after passing the tuck shop, they came across the Flying Squad. The Police from the Flying Squad were stopped, and Cst Maluleka made a report to them. He boarded the vehicle of the Flying Squad and they drove back towards the tuck shop. When they arrived at the tuck shop, Cst Maluleka remained at the gate of the tuck shop and was standing guard, while two members of the Flying Squad went inside the tuck shop. They exited after the suspect was already arrested. During cross examination it was put on behalf of accused 1 that he denied that he was found in possession of a firearm. Cst Maluleka responded that he did not see the arrest or where the firearm was found. He was informed by the Flying Squad that a firearm was found in possession of the suspect.

[21] **Constable Rampearie** testified that on 20 July 2018 he was patrolling the N3 Highway. He received a report over the radio of a business robbery at Ratanda U-save. He was in the company of 3 crew members to wit Constable Muthimunya, Constable Mazibuko and female Constable Tenga. They proceeded to U-save, where they gathered information on the scene.

While searching for suspects, they came across Constable Maluleka who was at the time dressed in civilian clothes. He reported to them that one of the suspects were last seen on the street named Oupa Qhinebe. It was not far from the crime scene. They proceeded towards the last known spot, and split into 3 groups. Him and Constable Mthimunya was paired and found a person who matched the description that they had received earlier.

Initially the suspect did not notice them approaching. When he did, he started to act suspicious. At the time the suspect was standing close to a residential house that was used as a tuckshop. The suspect, upon noticing the Police, reached for his pants and pulled a black firearm from behind his belt buckle and quickly threw it to the side where it landed inside the tuckshop. Constable Rampearie took hold of the suspect while Constable Mthimunya took up position next to the firearm. Although the suspect did not give Constable Rampearie permission to search him, he proceeded to do so. Nothing illegal was found in the possession of the suspect.

Constable Rampearie inquired from the suspect whether the firearm was his property and why he had thrown it away. The suspect did not respond. As Constable Rampearie could see that the serial number of the firearm was filed off, he arrested the suspect for possession of an unlicensed firearm and explained his rights to him. The relevant roll players were called to the scene. He pointed out accused number 1 in the dock as the suspect whom he had arrested.

During cross examination Constable Rampearie testified that at the time of the arrest of accused 1, he was not wearing the black jacket. The black jacket was found in the tuckshop. His statement was handed in as **Exhibit M**. On behalf of accused 1 it was denied that he was found in possession of a firearm.

[22] **Sgt Sithole** identified accused 1 in photo 1970 Exhibit A2. Accused 1 was wearing the same clothing when she saw him at the tuck shop on 20 July 2018 that he had been wearing in photo 1970. The evidence of all of these witnesses corroborate the identification by Ms Mashinini and that of Ms Mkhwanazi of accused

1. Sgt Sithole identified accused 5 as depicted in photo 1966 Exhibit A2. It is the view of the Court that this photo is of sufficient quality to make an identification.

[23] **Mr Maphala** attended the crime scene at Shoprite, and declared the deceased dead on arrival.

[24] **Captain Thanwane** is a crime scene investigator from LCRC. He attended the crime scene and collected evidence and took photos. **Exhibits E1, E2, and E3**, were submitted into evidence. On scene 1, he collected cartridges. Exhibit E1, depicts motor vehicles that were damaged during the shooting; a Police bakkie (photo 35), a BMW (photos 39 and 40) as well as a Fidelity Security bakkie (photos 41 and 42).

The second scene was outside Shoprite in a street next to the shop and is depicted in photos 95 to 102 in Exhibit E1. He collected cartridges from scene 2. The third crime scene was located at a tuck shop depicted in photos 105 to 109 in Exhibit E1. Photo 109 depicts what looks like a firearm. Photo 110 depicts various items that were collected as evidence. This includes the firearm (photos 109 and 111), a magazine (photo 111), a black jacket (photo 112), cell phones (photo 113), and touch DNA from the firearm (photos 114 and 115).

All cartridges and bullets collected were placed in a bag and sealed with number PA6002785118. The black pistol and empty magazine, found at the tuckshop, were sealed with seal number PA4000461941L. Captain Thanwane took gunshot residue kits on the scene from a Police Officer (photo 121 and 124) as well as from a suspect (photo 119 and 120). Both of the GSR kits were sealed separately and thereafter placed in the same evidence bag.

[25] **Warrant Officer Gumede** testified that he delivered exhibits to Forensic Science Laboratory in Pretoria.

[26] **Warrant Officer van Rooyen** is stationed at the Forensic Science Laboratory in Silverton in the ballistic section. Her *section 212* statement was read into the record in respect of LAB281839/2018; Ratanda CAS85/07/2018, and was handed in by agreement as **Exhibit F**. She established that the firearm, sealed with

PA4000461941L, was a 9 mm Parabellum FN Browning semi-automatic pistol able to discharge ammunition, although the magazine safety had been removed.

She further found that some of the cartridges, to wit A1, A2, A4 to A6, A8, C4 to C8, that was sealed in bag PA6002785118, was fired from this firearm. Capt Thanwane had collected these exhibits, as marked on the sketch plan, and marked with the letter 'A', from the entrance of Shoprite where the body of the security officer was found. Letter 'C' on the sketch plan is located outside the entrance to Shoprite where vehicles were parked.

Warrant Officer van Rooyen testified that D1 to D4 were fired from a second firearm (Exhibit F par 8.2 and 3.4 refer). B1 to B5 and C1 to C3 were fired from a third firearm (Exhibit F par 8.3 and 3.5 refer). The only inference that the Court can draw from this evidence, is that there were at least three firearms used during the commission of the robbery.

[27] **Captain van Ham** is employed at the Forensic Science Laboratory in Silverton in the scientific analysis department. She testified in respect of the results obtained from a GSR analysis. Her *section 212* statement was handed in by agreement as **Exhibit G**. No weight can be attached to her evidence as the prosecution did not prove whether the positive finding of GSR was from accused 1 or the Police Officer.

[28] **Mr Rakguale** collected the deceased and transported him to the mortuary.

[29] **Mr Mochadibane** is a Forensic Officer at Forensic Pathology Heidelberg. He testified that he had received the deceased on 23 July 2018 from officer Rakguale, where after he handed body number 137/2018 to Dr Steyn for a post mortem.

[30] **Exhibit C** was handed in by agreement. This is a photo album compiled by Warrant Officer Antoinette Tupper compiled from CCTV footage data received from Sergeant Sithole marked Ratanda CAS 85/07/2018; seal number PA5001120237.

[31] **Exhibit B:** Post mortem examination in respect of the deceased with death register no 137/2018. The cause of death was noted as "*Multiple Gunshot wounds*". The following external appearances were noted:

1. *Entrance gunshot wound 2cm above and 3cm medial to left nipple;*
2. *Exit gunshot wound mid axillary line 2cm above nipple line;*
3. *Entrance gunshot wound posterior axillary line 5cm and 7cm below the nipple line;*
4. *Entrance gunshot wound posterior iliac crest posterior axillary line;*
5. *Entrance gunshot wound 3cm below and 5cm posterior to left ear;*
6. *Exit gunshot wound 2cm below and 1cm posterior of right ear;*
7. *Exit gunshot wound inferior from gunshot wound nr 4 and superior exit gunshot wound right upper arm from nr 3;*
8. *Entrance wound on right wrist with bullet found on the posterior wrist;*
9. *Old scar on the right side of body.”*

INCIDENT ON 27 SEPTEMBER 2018 – HEIDELBERG CAS180/09/2018

[32] **Mr Jane** testified that he was a victim of a motor vehicle robbery in September 2018. He identified his motor vehicle that is depicted on photos 1 and 2 in Exhibit J.

Exhibit J was handed in by agreement. It is a photo album that was compiled by Warrant Officer Malan and contains photos taken on 27 September 2018 from the robbery scene across the street from U-Save Rensburg, Heidelberg.

Mr Jane and his child's mother was in a drive through when they were accosted by males with firearms. They were ultimately kidnapped in his motor vehicle, made a stop in a field and ended up at the hostel across from the Police Station in Vosloorus. His motor vehicle was driven away, and the hijacker who was with them in his motor vehicle got into a Toyota Conquest/Tazz with Mr Jane and his companion.

About a week after this incident, he was called by Captain Selemene. He explained to Captain Selemene what had happened to them. Captain Selemene requested him to go to the SAP13 at Benoni and identify his motor vehicle which he did. Mr Jane testified that he did not attend an identification parade, and proceeded to point out accused 9 as one of the perpetrators who had robbed him of his motor vehicle.

During cross examination, his witness statement was handed in by the defence as **Exhibit K**. Mr Jane testified that he did explain to the Police taking his statement that he would be able to point out the robbers. He was not asked to give a description of

the robbers. He was under the impression that it would take place at an identification parade. He was however never asked to attend an identification parade. A week later accused 9 was arrested near the robbery scene at U-Save where the BMW was recovered. Accused 9 was in any event not part of the identification parade.

[33] **Ms Ngobeni** was on duty at U-save Heidelberg on 27 September 2018 as a security guard, at the entrance to the shop. She observed two males approaching the shop. One of the men stopped at the entrance while the other man proceeded to the turn still. This man approached Sonto and inquired where the Pampers was kept. She heard the sound of a firearm and looked in the direction of the man at the door. She saw a firearm and the man instructed her to kneel down. He then instructed her to stand up again. This man pointed the firearm to her hip, and instructed the branch manager to place money, held at the Money Market, in a plastic bag.

The man then took out his cell phone and made a call. She heard this man say: *"We have started the robbery. Where are the others?"*. Thereafter 3 more males entered the shop and went straight to the tills. At the time there was only one cashier named Ruben Hadebe at the tills. The robbers managed to open his till. They attempted to open the other tills as well, but they did not have the password. Thereafter they all left the shop floor except for one robber. She saw 5 robbers on that day. The robber left behind in the shop, approached the entrance in possession of 2 crates filled with milk and Pampers. U-save does not sell their crates and it is kept in the storeroom. At that time, the Police was already on the scene. This last robber left the crates on the floor and exited the shop.

The first two robbers who had entered the shop, arrived in a black BMW 1 series, which they had parked in front of the store. The robber who had inquired about the Pampers came with the BMW. He was dressed in a traditional headband. When this man left the shop, he did not follow the direction of the others, but went to the corner of the building. The others took off towards the direction of the prison. She recalled that one robber wore a short blue trouser and a white vest. Another was wearing Adidas flops. She was unable to point out any of the robbers.

During cross examination she testified that the male who asked for the Pampers did not take any money, but that he was in the company of the male who had pointed them with a firearm. During re-examination she re-iterated that the male asking for the Pampers arrived in the black BMW that was parked in front of the shop.

[34] **Ms Lukhele** was employed at U-save Heidelberg on 27 September 2018. While she was talking to a clerk at the Money Market, a male entered the shop and inquired where the Pampers were. She pointed him towards the pampers. She then went and stood next to the security guard at the door. Another male entered the shop and stood at the baskets which is close to the Money Market. He stood there for 2 to 5 minutes, took out his phone and made a call. She overheard him saying that *'they had already moved and where are you'*. At this point she and the security guard started focusing on this man.

The male lifted his T-shirt and they saw a firearm. He instructed them to kneel down and then instructed them to stand up again, as there were still customers in the shop. He instructed them to take the money from the tills at the Money Market. She asked where she should put the money. The male said to fetch a plastic bag and put it in the plastic bag. The men left after taking the money. The male shouted to others that they should leave. The robber who was in possession of a firearm was wearing a tracksuit. She was not sure about the color and testified that it featured blue. She did not look at the male who inquired about the Pampers.

[35] **Mr Hadebe** was a cashier at U-save Heidelberg on 27 September 2018. While working, a male person appeared by his side. The male had marks and some incisions on his face. He repeatedly hit Mr Hadebe on the chest demanding money. He threatened and insulted Mr Hadebe, while demanding money. He gave him a plastic U-save bag and instructed him to take the money tray and put it in the bag. Another man entered, wearing a brown hat. This man attempted to open the last till. They were unable to unlock the other tills. The men exited the shop. While the workers were standing at the door, one male appeared, wearing some form of a crown on his head that is traditional headgear. He had a crate in his possession filled with milk and nappies. The witness pointed out accused 9 in the dock as the robber who came to him with the plastic bag. Accused 6 was the robber who had taken him to open the last till.

[36] **Sergeant Nonyana** testified that on 27 September 2018 he was on patrol with his crew Constable Mngomezulu in Rensburg Heidelberg when a community member stopped them. This member reported to them that there is a robbery being

committed at U-save. They were pointed towards the suspects crossing the R23 road.

They proceeded to drive in their direction, stopped the vehicle and alighted. The suspects started to run and disperse. It was 4 to 5 suspects. Sergeant Nonyane gave chase on foot. He chased after the suspect the closest to him, which led him towards the Correctional Services premises. When inside the premises, the suspect started to climb up the palisade fence (this was later clarified as a cement slab wall). The suspect failed to climb over the wall. Sergeant Nonyana was at that time right at that spot. He realised that the suspect was in possession of a firearm. The suspect pointed the firearm at him, where after a struggle ensued for possession of the firearm. The firearm fell on the ground and while Sergeant Nonyane picked up the firearm, the suspect managed to jump over the wall.

After that, Sergeant Nonyana met with Correctional Officers whom he explained to what had occurred. They were running out of the premises while Sergeant Nonyane followed. When he caught up with them, he found that they had already apprehended the suspect. He found the suspect, Constable Mathebula, community members as well as the Correctional Officers. He pointed out that accused 3 in the dock was the suspect. When he saw that the suspect was apprehended, he proceeded to U-save and found the abandoned BMW. Allegedly the BMW was also hi-jacked. He gave the firearm, a 9 mm to LCRC photographer Mathibe.

When he found that accused 3 was already apprehended, he looked at accused 3 to confirm that it was the suspect that he had wrestled with, and after confirming, he walked back to U-save. At U-save it was reported to him that the robbers were driving in the BMW. He then called to check the status of the BMW. He confirmed that the firearm was in his possession in his vehicle. This witness made a sketch of the scene which was handed in as **Exhibit U**. He was unable to provide a clothing description of accused 3, and did not confirm with the victims whether accused 3 was one of the suspects. The Court needs at this point to refer to the identification parade, in which accused 3 was not pointed out by Mr Hadebe or Ms Lukhele.

[37] **Mr Tshabalala** testified that on 27 September 2018 he was on his way to work at Correctional Services. He was of the intention to buy airtime at U-save. Upon his approach, he saw a lady attempting to draw the attention of a nearby Police motor vehicle. He observed four males in front of him crossing the road. They were

followed by a Police motor vehicle. The Police fired shots at them and they started to flee into the property of Corrections. After 5 minutes they exited the premises of Corrections by jumping over the fence.

Mr Tshabalala proceeded to U-Save where people were exiting and screaming that one was still inside U-Save. Police were aiming a firearm at the door of U-Save. It was alleged that there was a robbery committed. He left the scene and proceeded to Corrections.

As he was about to enter the premises of Corrections, he saw one of the males who formed part of the initial four who ran from the Police, exiting the premises of Corrections. The other three males had jumped over the wall of Corrections. Behind this male was a motor vehicle in which the occupants were colleagues of Mr Tshabalala. He stopped them and made a report to them about the incident at U-Save, and that the male exiting the premises was one of the robbers.

They followed and ultimately apprehended the suspect. He was searched and money was found in his possession in a U-Save plastic bag. The suspect was asked where he is from to which he responded Soweto. Mr Tshabalala told him that he only comes to Heidelberg to commit crimes. The suspect did not respond to his comment. Community members wanted to assault this suspect and place him in the boot of a motor vehicle, but Mr Tshabalala and his colleagues prevented them from doing so and escorted him to U-Save where he was handed over to the Police.

Accused 3 was then pointed out in court as the suspect whom he had apprehended. He had handed accused 3 over to Constable Tshabalala. He testified that Corrections is approximately 300 meters from U-Save. At the time, accused 3 was wearing a black 2-piece track suit and blue and white Adidas sandals. The top of the track suit had a hoody.

[38] **Constable Mathebula** testified that on 27 September 2018 he received a report of a business robbery in progress at the U-Save in Heidelberg. Himself and his crew, Constable Masuku, proceeded to U-Save. The call was received from Sergeant Nonyane. Upon their arrival at U-Save, people pointed them towards the premises of Correctional Services, saying that the suspect ran towards Correctional Services, and provided a clothing description.

On their way towards the pointed-out direction, they met a Correctional Officer who had apprehended a male wearing a white and black jersey. He took over the suspect

approximately 60 meters from U-save. Correctional Services is approximately 100 meters from U-save. Constable Mathebula inquired from the suspect where the money was that he had taken from U-save. He responded that he had handed it to the Correctional Officer. Sergeant Nonyane arrived, and reported that this suspect had fired shots at him. Accused 3 was pointed out in court.

[39] **Constable Masuku** testified that on the scene, they were given information and descriptions of the suspects who had fled on foot. At the time, Constable Mathebula had already apprehended a suspect named Muzikhona Mathebula. They interviewed the suspect who told them that one of the suspects had called him from the taxi rank towards Johannesburg. They went in search of this suspect.

Upon their arrival at the taxi rank, they boarded a taxi destined for Johannesburg and found an African male fitting the description that they had received. He was wearing a T-shirt with greenish leaves and some reddish things on a white background, a jean, Zulu head gear and Isiphandla on his wrists. This suspect introduced himself as Thulani Sithole. The witness pointed out accused 4 in the dock. The witness confirmed that accused 4 is depicted in Exhibit A3 photo number 4039. At the time of his arrest, accused 4 attempted to give an explanation with regards to a firearm. Mr Masuku told him that they were not interested in his story.

[40] **Sergeant Mngomezulu** were patrolling in the vicinity of U-Save. When they received the report, the perpetrators were pointed out to them where they were fleeing, crossing the R23 road. They made a U-turn back to U-Save. Sergeant Nonyana disembarked and chased after the perpetrators. As he alighted their vehicle, the community pointed a black BMW to him and reported that it was the vehicle of the robbers. Sergeant Mngomezulu took the keys from the BMW that was still in the ignition. He then drove in the direction which Sergeant Nonyana took in pursuit of the robbers.

He was pointed in the direction of Correctional Services and eventually gave chase on foot after a suspect. The suspect fell down and he was able to arrest the suspect with the assistance of the community. He handcuffed the suspect, placed him in his vehicle and drove back to U-save. At U-save, community members and U-save workers confirmed that the man that he had arrested is one of the robbers. The suspect informed Sergeant Mngomezulu that his name is Bongumusa Mbatha.

[41] **Constable Siyash Rampearie** testified about assistance which he had rendered to Constable Masuku on 27 September 2018. He was informed that he had to assist in tracing a suspect who was involved in a robbery. He viewed video footage at Shoprite U-Save where he observed a suspect wearing traditional headgear holding baby Pampers. Constable Masuku had received information of the whereabouts of this suspect.

They proceeded to a taxi rank where the suspect was found inside a taxi. The suspect was still wearing the traditional headgear, a colorful shirt and had a dark complexion. He was unable to recall the name of the suspect, but testified that he would be able to point him out. Accused 4 was pointed out in the dock. Accused 4 was taken to Shoprite. When they arrived at Shoprite a certain lady started to cry asking why accused 4 was brought there. Workers seemed to be shocked. Constable Rampearie identified accused 4 as the person in Exhibit A3 photo number 4039.

[42] **Sergeant Mathibe** testified that he is employed at LCRC Vereeniging. On 27 September 2018 he attended a crime scene at U-Save, Heidelberg. The scene was pointed out to him by Constable Nonyana. He proceeded to take photographs and to collect evidence.

[43] **Captain Mthembu** testified that she is employed at Ballistics, Port Elizabeth. She testified that the firearm that was collected on the U-Save scene is a 9mm Norinco semi-automatic pistol of which the serial number was erased. She examined the firearm, and found that the safety pin was missing, but still capable of firing ammunition. She conducted an electromagnetic process on the firearm and found a serial number on the frame to wit 1[...].

[44] **Warrant Officer Malan** is a fingerprint expert in the Police at LCRC Vereeniging. On 27 September 2018 he attended a crime scene at U-Save where he investigated a black BMW with registration number H[...]. He lifted several fingerprints from the BMW. A fingerprint lifter from inside the BMW from the rear-view mirror was matched with the left thumb print of Sanele Pulani Sithole. He marked 9 points of similarity between the print lifted from the rear-view mirror, and a

set of fingerprints on a SAP192 form, which he had received on 24 January 2025. The left thumb print of Sanele Pulani Sithole was taken in court and corresponded with the two prints already examined. The print belongs to accused 4. **Exhibits DD1, DD2, DD3 and DD4** were submitted into evidence.

[45] **Captain Mdingi** testified that he is stationed at Alexandra Police station, and that Sergeant Sithole falls under his command. His evidence was to the effect that fingerprints were lifted twice from all of the accused, and was misplaced by LCRC both times. It was only in respect of accused 4 that a set of fingerprints were found in the docket on a SAP192 form. This was taken to W/O Malan for comparison.

[46] **Sergeant Sithole** testified that she is the investigating officer in the case. She first became the investigating officer in the robbery that was committed on 20 July 2018. On the night of this robbery, she had attended to a scene at a tuckshop, where she saw accused 1 who was already arrested for possession of an unlicensed firearm. It was only after she had viewed the video footage of the robbery at Shoprite, that she realized that accused 1 was involved in the robbery. Accused 1 was still wearing the same clothing at the tuckshop, that he had been wearing during the robbery. During her interviews with the witnesses, she was informed that the suspects were the same suspects who had committed another robbery at Shoprite the previous week. She later became the investigating officer in CAS42/07/2018. She identified accused 1 in Exhibit A1 photo 1949 and photo 1970 in Exhibit A2.

Sgt Sithole attended the robbery scene at U-Save, Rensburg. Some suspects were arrested, and she was informed of a black BMW that was used in the robbery. She obtained photos from U-Save of the suspects and found that photos 4037 in Exhibit A3 was that of accused 3, photo 4038 that of accused 9, photo 4039 that of accused 4 and photo 4040 that of accused 6. Sgt Sithole testified that accused 6 is also depicted in photo 1950 Exhibit A1. She summarized that in Exhibit A1, accused 1 is depicted in photo 1949, and accused 6 in photo 1950. In Exhibit A2 accused 3 in photo 1968, and accused 5 in photo 1966. In Exhibit A3 accused 3 is depicted in photo 4037, accused 4 in photo 4039, accused 6 in photo 4040, and accused 9 in photo 4038.

EVIDENCE BY THE ACCUSED:

[47] Accused 1 elected not to testify, and no witnesses were called to testify on his behalf. Accused 1 closed his case.

[48] Accused 3 testified that he was arrested on 27 September 2018 at U-Save, Heidelberg. He came from Orange Farm and was on his way to Balfour to buy vaccinations for goats. He was apprehended by some civilians, placed in the boot of a vehicle and taken to U-Save, where he was accused of committing robbery. He denied that he was the male depicted in photo 4037 in Exhibit A3. He testified that he was wearing a T-shirt/jersey with blue jeans. No witnesses were called to testify on his behalf, where after he closed his case.

[49] Accused 4 testified that he was arrested at a taxi rank. He testified that he was arrested based on the traditional headgear that he was wearing. He denied that he was depicted in photo 4039 Exhibit A3. He explained that he has many friends who has motor vehicles, and his fingerprint may have been placed in the vehicle when he sat with a friend in the vehicle. He was at the taxi rank conducting business and delivering money to his partner. During cross examination he however testified that he does not have a friend that owns a black BMW. No witnesses were called to testify on his behalf, and his case was closed.

[50] Accused 5 testified that he was arrested for a different matter, and was not arrested on the scene at Ratanda on 20 July 2018. He denied having been involved in the robbery, and denied that it is him in photo 1966 Exhibit A2. He testified that he was at his father's house for some celebrations.

[51] Accused 6 denied having been involved in the robberies on 12 July 2018 and 27 September 2018. He testified that on both days he was at home with his elders, busy cooking. He vehemently declared that Ms Mashinini is a female being who is a habitual liar, and that her eye sight is defective. He testified that sergeant Sithole is the type of woman who lies, and lacks a sense for justice. He denied that he is depicted in photos 1950 and 4040. No witnesses were called to testify on his behalf and he closed his case.

[52] Accused 9 testified in his own defence. He denied that he had robbed Mr Jane of his motor vehicle. He testified that Mr Hadebe made a mistake to point him out in court. He was dissatisfied that he was not taken to the identification parade. He testified that he was at the taxi rank to see the viability of starting a carwash business. He was walking along the river when he was arrested for no reason. He heard gunshots and saw people running. He also ran and fell, where after he was arrested. He denied that any U-Save property was found in his possession at his arrest. He denied that he was the person depicted in photo 4038 Exhibit A3.

On questions from Court, accused 9 denied that he has ever been in U-Save. He was unable to explain how Mr Jane had identified him as the robber of his vehicle, and a couple of days later he was arrested near the robbery scene, where this stolen vehicle was used in the commission of a robbery. The Court was unable to see any scars in the face of accused 9 from 4 to 5 meters. The interpreter who was standing less than a meter from accused 9, placed on record that at that close distance he could see scars on the cheeks of accused 9.

The prosecutor put to accused 9 that the scars were only visible when in close proximity to the accused. Accused 9 testified that Mr Hadebe had seen him in court and that's how he knew about the scars. The Court pointed out to accused 9 that his counsel had submitted the statement of Mr Hadebe as evidence, and in this statement that was taken on the same day as the robbery, Mr Hadebe referred to one of the robbers having had scars or cultural marks in his face, to which accused 9 responded that he was not the only person with marks in his face.

EVALUATION OF THE EVIDENCE:

[53] **Accused 1** did not testify and called no witnesses. This does not mean that he must as a matter of course be found guilty. The *onus* remains on the prosecution to prove its case beyond a reasonable doubt. Ms Mashinini's evidence was criticized as she had made wrong identifications, and pointed out several accused while she declared in her statements that she would be able to point out only one suspect.

Photo 1949 Exhibit A1 and photo 1970 Exhibit A2 clearly depicts the same suspect. Ms Mkhwanazi pointed out accused 1 in photo 1970, and Sergeant Sithole pointed out accused 1 in photos 1949 and 1970. During the second robbery several witnesses identified accused 1, either by his photo, or his limp or clothing description.

Their evidence forms a mosaic of evidence linking accused 1 to both the first and second robberies. The Court is of the view that there is no doubt that accused 1 is depicted in these photos.

When the Court considers the evidence of Mashinini, Mametse, Chauke, Mabotha, Matiwane, Maluleka, Rampearie, Thanwane, Van Rooyen, and Sithole, the actions by accused 1, his clothing description, him limping, the firearm found in the tuckshop being linked to the scene where the security officer's body was found, and the evidence that he was indeed in possession of a firearm, runs like a golden thread throughout their evidence. All of the evidence fits like puzzle pieces. All of the evidence is accounted for, and the Court can only draw one inference; that the identification of accused 1 is reliable.

Considering all of the evidence, accused 1 was one of the robbers during the first and second robberies. He was found in possession of a firearm that was linked back to the scene where the body of the security officer was found. Cartridges were found around the body of the security officer as well as at the parking area outside the entrance to Shoprite, that was fired from the firearm that was found in his possession at the tuckshop.

Several vehicles were damaged as a result of these gunshots. Several Police Officers were shot at and one was wounded during the shooting. The prosecution has proved that the firearm found in possession of accused 1 is a firearm in terms of Act 60 of 2000. Considering that the group of robbers acted with a common purpose, it does not matter whose bullet killed the security officer or had injured the Police Officer, or damaged the vehicles. The actions of each one in the group, is imputed on the rest of the group.

[54] Accused 3 was identified by several witnesses as running away from the robbery scene. The money that was handed over to the Police that was found in possession of accused 3 had however disappeared. Accused 3 denied that he is depicted in photo 4037 Exhibit A3. None of the victims in this robbery pointed him out during the identification parade, nor pointed him out in the dock. He was further not pointed out by any of the victims in the photo album in respect of the third robbery. The clothing description of accused 3 is not consistent. Some witnesses

referred to a tracksuit featuring blue, others to a black and white jersey with a hoody, or a black two-piece tracksuit.

Constable Mathebula did not receive accused 3 with money being handed over to him. Sergeant Nonyane had lost sight of the suspect that was in possession of the firearm, and did not confirm with the witnesses whether he had in fact arrested the correct suspect. Mr Tshabalala and Sergeant Nonyane had communicated both with officers from Correctional Services. It is however unknown whether they communicated with the same Correctional Officers. Nonyane referred to them running, while Tshabala testified they were in a vehicle.

Sergeant Sithole identified accused 3 in photo 4037 Exhibit A3, as well as photo 1968 Exhibit A2. When the Court viewed these two photos next to each other, the Court is not convinced that they are of the same suspect. They merely look similar. Photo 1968 Exhibit A2 in respect of the second robbery is probably accused 3, while photo 4037 Exhibit A3 only resembles accused 3. The Court viewed the CCTV footage again in respect of accused 3, and is not convinced that it is accused 3 depicted in photo 4037. When a Court is in doubt, an accused must get the benefit of that doubt.

[55] Accused 4 did not deny having been arrested in the taxi while wearing the traditional headgear. He was seen arriving in the Black BMW. His fingerprint was lifted from the rear-view mirror. The keys were left in the ignition of the unlocked BMW. He arrived in the company of the male who entered U-Save and pointed the security officer with a firearm. Accused 4 took crates, which are not for sale to the public, filled them with pampers, and was carrying a camping chair. Before he could leave the shop, Police arrived and he went back into the shop, placed the goods on the floor and exited the store. He was clearly part of the group of robbers who had each a roll to play. There was a lookout at the entrance, who also took money from the money market. Two suspects went to empty the tills, while accused 4 went to take Pampers and milk, and had arrived in a stolen vehicle. Cst Rampearie watched the CCTV footage, and based on his observation, he had arrested accused 4.

The version of accused 4 that he was wrongly identified when he went to meet his cousin at the taxi rank, is rejected as false, given the totality of evidence against him. The most significant piece of evidence is his fingerprint that was found on the rear-view mirror of the BMW. He testified that he may have been in a vehicle that belongs

to a friend and had touched the vehicle. He however, during cross-examination, testified that he did not have a friend with a BMW.

Regarding the count of theft of the BMW, the Court cannot find that he was one of the robbers who had robbed the BMW from Mr Jane. The evidence however is that accused 4 arrived in the BMW as the driver thereof. He left the keys in the ignition of the open BMW. It is highly improbable that the owner of a BMW will leave his vehicle unlocked in a public place, and leave the keys in the ignition, and then after a robbery occurred, leave the BMW behind to take a taxi home. Based on the evidence and the actions of accused 4 with regards to the BMW, the only inference that the Court can draw is that accused 4 knew that the BMW was a stolen vehicle. Theft is a continuing crime, and therefore it is irrelevant whether accused 4 was part of the robbers who had initially stolen the vehicle.

[56] Accused 5 was identified by Ms Mashinini, Ms Mkwanazi and Sergeant Sithole.

He is clearly depicted in photo 1966 Exhibit A2. He is also clearly identifiable in the video footage. During the robbery it is clear that he was the lookout. He remained mostly in the entrance of Shoprite, while giving signals and pointing to his wrist. He is also the suspect who had started the fight with the security officer. He was further clearly in possession of a firearm. The defence was adamant that he was in possession of an object, but it is clear that he was in possession of a firearm. The Court however cannot convict him of possession of any firearm, as the prosecution did not recover the firearm that was in his possession and consequently could not obtain a ballistic report as proof.

The version of accused 5 is that he was at home on the day in question. It is so that an accused does not need to convince a court of his innocence. If it is reasonably possibly true, his version must be accepted. However, the evidence of these witnesses, as corroborated by the video footage, makes for a reliable identification, and the Court finds that the prosecution has proved its case against accused 5 beyond a reasonable doubt. The version of accused 5 that he was at home is rejected as false.

[57] Accused 6 was identified by Ms Mashnini in the first robbery, and by Mr Hadebe and Ms Lukhele in the third robbery. When his two photos from the two

robberies are placed next to each other, it is clear that the same suspect is depicted in both photos. It is clear that Accused 6 is depicted in photo 1950 Exhibit A1 and photo 4040 Exhibit A3.

He denied that he was in the video footage as he did not see the footage. The Court however had the videos played for a second time at his request because he refused to watch them when first viewed in Court. His version that he was at home with his elders is rejected as false. The prosecution has proved its case against accused 6 beyond a reasonable doubt.

[58] Mr Jane identified accused 9 in the dock as the suspect who had robbed his vehicle. He had ample opportunity to observe accused 9 whilst being held captive in a vehicle by accused 9. A week after the robbery of his vehicle, it was recovered on the robbery scene at U-Save, Heidelberg. Accused 9 was arrested near the scene, and he was identified in court by two victims.

Accused 9 conceded that he has traditional marks in his face. These marks can only be seen when in close proximity of accused 9. Mr Hadebe testified that the suspect who had first instructed him to open his till, had these cultural marks in his face. He had also on the same day declared this in his witness statement. Given the totality of evidence in respect of identification against accused 9, his version that he was at the nearby taxi-rank to determine the viability of starting a carwash there, is rejected as false. The Court finds that the prosecution has proved its case against accused 9 beyond a reasonable doubt.

[59] The Court makes the following order:

1. Accused 1 is convicted on counts 1, 3, 4, 5, 6, 7, and 8.
2. Accused 3 is found not guilty on counts 9 and 10.
3. Accused 4 is found guilty on counts 9 and 11.
4. Accused 5 is convicted on counts 3, 6, 7, and 8.
5. Accused 6 is found guilty on counts 1 and 9.

6. Accused 9 is found guilty on counts 9 and 11.

VAN WYK, AJ

Acting Judge of the High Court of South Africa

Gauteng Division, Pretoria

Appearances:

For accused 1 and 3: Adv Bosiki

For accused 4, 5, & 6: Adv Mogale

For accused 9: Adv Mtsjali

For the State: Adv L More, DPP Pretoria

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