

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**



CASE NO: CC65/19

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

13 January 2026

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In the matter between:

THE STATE

v

KGAUGELO GODFREY MOKOANE

Accused 1

SELLO BRADLEY SENYATSI

Accused 2

BOITUMELO DANIEL APHANE

Accused 3

LUCAS MUDAU

Accused 4

KABELO MASEMOLA

Accused 5

JUDGMENT

LUKHAIMANE AJ

A. INTRODUCTION

1. The accused were arraigned before this court on the following summarised counts: two counts of conspiracy to commit robbery, five counts of robbery with aggravating circumstances, murder, ten counts of attempted murder, seven counts of kidnapping, four counts of malicious injury to property, possession of explosives, unlawful possession of firearms and ammunition and money laundering.
2. The accused enjoyed legal representation throughout the trial proceedings. According to the indictment, in the event of a conviction, the Director of Public Prosecutions, therefore the State would pray for sentences which accord with the law, with specific reference to sections 51(1) and 51(2) of the General Law Amendment Act 105 of 1997.

B. BRIEF SUMMARY

3. It is proper to set out once more, having done so in the ruling on the section 174 application and the trial within a trial, a summary of what the State factually alleges to establish the case against the accused.
4. The accused, acting in common purpose, committed armed robberies in Eersterust on 20 December 2017 and KwaMhlanga on 6 November 2017. During these robberies, policemen came under fire, one was killed, others were robbed of their firearms, police were assaulted or

injured, explosives were used, firearms were discharged, money was stolen and members of the public were assaulted.

5. In the end, this judgment is in respect of accused 1 and 3. Accused 2 (hereinafter referred to as 'the witness') was presented as a section 204 witness, accused 4 passed away on 6 March 2023, accused 5 was granted his section 174 of the Criminal Procedure Act (Act 51 of 1977)(hereinafter referred to as the CPA) application whilst accused 6 had absconded before the start of the trial and was separated from this matter from the start. The matter proceeded in respect of accused 1 and 3.
6. On 11 April 2023, the court was informed that accused 4 died on 6 March 2023. Mr Madira, counsel for accused 1 indicated his intention to withdraw as legal representative. Adv Matshego for accused 3 was amenable to proceed subject to Legal Aid confirmation. The transcript was requested for him to familiarise himself with the proceedings as they pertained to accused 1. The state legal representatives changed three times during the prosecution of this matter, a situation that did not assist with the finalisation of the matter.

C. Plea

7. When the charges were presented to the accused, they both pleaded not guilty thereto. Accused 1 and 3 elected to exercise their right enshrined in the Constitution, to remain silent and not to give any plea explanation.

D. Section 220 Admissions

8. With the concurrence of the defence, the following admissions in summary, were entered into evidence in terms of section 220 of the CPA;

- Exhibit X1; Affidavit in terms of section 212 of the CPA by W/O Pariksha Govender on 3 May 2018 - discharged cartridges and bullet jackets from KwaMhlanga scene
- Exhibit X2; Affidavit in terms of section 212 of the CPA by Mashudu Randitsheni on 18 January 2018 - ballistics analysis for firearms recovered at a house in Soshanguve
- Exhibit X3; Affidavit in terms of section 212 of the CPA by Hendriena Johanna Blignaut on 2 February 2018 - ballistics analysis of cartridges from Eersterust scene
- Exhibit X4; Affidavit in terms of section 212 of the CPA by Akanyang Zakaria Nthaudi on 24 August 2018 - comparative analysis of KwaMhlanga and Eersterust
- Exhibit Z; Affidavit in terms of section 213 of the CPA by Sam Magwaza Sithole on 23 January 2018 regarding blasting cartridges containing commercial explosives, shock tube assemblies and shock tube initiators
- Exhibit AA; forensic affidavit by Thierry Werner Beheydt on 5 May 2018 on a bullet cartridge case from Eersterust

9. The following statements were admitted by agreement between the State and the defense:

- Exhibit E; Medicolegal report by Dr Sydney Mdelwa Shingange
- Exhibit E1; Declaration of death, police officer KA Moropa
- Exhibit E2; Police report accompanying body to mortuary SAP180
- Exhibit F1; Statement by passenger of Quantum at KwaMhlanga Total Garage who was robbed of R800
- Exhibit F2; Statement by petrol attendant that two police officers were shot and one killed
- Exhibit F3; Statement by petrol attendant who saw one of the robbers with a shotgun approach police vehicle and come back with two rifles or big firearm

- Exhibit F4; Statement by cashier that the robbers took money, cell phones and bombed the safe in the garage building
- Exhibit F5; Statement by cashier that the robbers wanted money from the safe
- Exhibit F6; Statement by a customer that had a puncture and drove in the garage that he observed police being shot at
- Exhibit F7; Statement by garage employee that police were shot at by the robbers
- Exhibit F8; Statement by garage employee that they were forced into guardroom and saw police being shot at
- Exhibit F9; Statement by garage employee that he heard gunshots and explosion
- Exhibit F10; Statement from employee in garage shop that two people approached the shop with firearms, took their phones and money from the till. She heard an explosion go off.
- Exhibit F11; Statement by police that responded to the robbery at the garage, that they shot at robbers and one of the police's firearms was stolen
- Exhibit F12; Statement that police officer Letsoko was robbed of firearm, that Constable Chego was shot, lying on his side and that there were CCTV cameras at the garage
- Exhibit F13; Statement from fuel station employee that they were forced into the guardroom by the robbers
- Exhibit L; Statement by Rosemary Masemola that her house sustained damage from the explosion at the Eersterust robbery scene and she heard rapid gunfire

THE STATE'S CASE

The Witness

10. The witness testified that he was employed as a teacher. On 8 December 2017, he received a call from accused 3, who invited him to

Soshanguve GG to hang out, together with accused 1. He was sent a location using a cellphone he later ascertained to be accused 1's whom accused 3 said he stayed with. Accused 3 told him accused 1's street name was "Matsatsela". That day they picked up three other people and went drinking at accused 1's until late.

11. The witness returned the following day and found two ladies, Mathema and Mapula, (the latter said to be a police officer). Mapula was accused 3's girlfriend. Accused 1 and 3 got into an argument, leading to the witness offering accused 3 accommodation. Accused 3 collected his black sports bag and left with him. They followed accused 1 who was driving a black Range Rover SUV to some place to drink alcohol. Then the witness, accused 3 and the two ladies retired at the witnesses's place. His customary law wife had gone to Limpopo, however, she also rented a separate place in Gauteng.
12. The next day, the witness and accused 3 went to church in Springs. His wife called him to come home. When he arrived, she enquired about the contents of the bag, which were blue Nike takkies, balaclavas, blue workers suit, a small pistol, a rifle, two pairs of gloves, white cap and two pairs of jeans. His wife told him to ask accused 3 to leave and he took accused 3 to Hammanskraal. He informed accused 3 that he was being expelled because of the contents in the bag, which accused 3 indicated he got from some gangsters in Mpumalanga. They met again on Tuesday. On Wednesday, accused 3 said he must take him to Atteridgeville where they were going to commit a robbery, specifically a cash in transit (CIT) heist. He had the sports bag with him.
13. He dropped him off at a tavern in Lotus Gardens, directed by one Thabiso. He took two men to a safe house. Then drove back to Laudium to buy tiles, then Olivenhoutbosch. Accused 3 called and asked that he should come and fetch him at Lotus Gardens. Along the route, he encountered the aftermath of a CIT heist. Accused 3 called him to Mamelodi. He approached him and they put guns in his car door

speakers. The rifle had a magazine fitted to it. He was warned not to handle firearms with his bare hands for fear of leaving fingerprints. Accused 3 gave him R10 500 on their way to Soshanguve. He had two plastic bags and another that he kept R35 000 in.

14. On 19 December 2017, accused 3 slept at the witness's house. On 20 December 2017, he was supposed to take his vehicle for repairs. Accused 1 was supposed to fetch accused 3 for a robbery that was to take place in Mamelodi. They went to accused 1's place and collected the two firearms – put them in the speakers. Whilst on the R80 Mabopane highway, accused 1 and 3 were talking on the phone. They collected someone at Garankuwa Mall, who had a school bag with him. They met accused 1 at Engen on the N4, He was in the Range Rover SUV and accused 3 got upset as the car had been hired specifically to commit robberies. Accused 1 put the firearms under the Range Rover SUV's seat.
15. They drove to Silverton where he found that the car repair places were closed. He was then sent a location to a yard divided into two from accused 1's phone. There were lots of vehicles there, including marked police vehicles. Accused 1 gave him R100 to buy food. He came back and ate with accused 3 in the car. He also saw one Masinga there. He observed a white Audi S3. That was when he was introduced to accused 4.
16. Around 13h00, he left with accused 4 to Danlyn Mall around Eersterust. They did some window shopping with some lady and received a call on a CIT van location. At first, they could not find it, however, later located it. It was a Fidelity CIT van. Accused 4 referred to an S3 and Ford ST vehicle as "ours". That was around 17h30. The CIT van left the mall in the same direction as the S3 and Ford ST. Accused 3 called to say they exchanged fire with the police and the safehouse was discovered, therefore they must steer clear of it.

17. As they were driving, they came upon a scene and the community informed them that a CIT heist had just taken place. They drove to Nellmapius where they met the lady from Danlyn Mall. Different cars kept arriving including the black Range Rover SUV, a police vehicle and a Caravelle with four occupants who came inside the yard. Another police vehicle arrived. Accused 3 gave him money and put the bag in the boot of his vehicle. He did not see its contents. Accused 3 took some of the money and gave it to the police. Although it was late at night, around 22h00, there was a moon, therefore visibility was good.
18. Accused 1 complained that those that had guns during the heist were being paid the same as everyone else. He left with accused 3 whilst accused 1 left in the Range Rover SUV. They drove to Pretoria. Accused 3 deposited money at Capitec. The one occupant in a Golf gave accused 3 a blue bag, saying he does not want to be arrested for possession.
19. Accused 3 told him that the CIT van was robbed on the wrong day (with only receipts). He left for Limpopo on 21 December 2017 for a tombstone unveiling. On 24 December 2017, accused 3 told him he got R450 000 for a robbery job in Rustenburg. He returned on 27 December 2017 and had a date with Mathema on 28 December 2017.
20. On 27 December 2017, they counted the money, which amounted to R620 000 excluding coins. It was in a plastic bag that was placed in a pink Nike bag. He produced the R13 000 from before, which was his share for transporting accused 3 around and accused 4 to Danlyn Mall. He called Kabelo, left with accused 3 who took R220 000 to buy a taxi. Mathema, accused 3, Kabelo and him went to Salamat in Braamfontein. Accused 3 bought a kombi that he had negotiated down to R275 000. There was R213 000 in cash from the car speakers, R7 000 was missing. Accused 3 transferred R55 000 from Capitec to add

to the purchase price. He told him he changed ownership to his uncle Happy Mavundlela, who said he will fetch the kombi the next day.

21. Accused 3 took bullets and magazines and placed them at the bottom of the kitchen cupboard. He put some money in the trap door. Thabo Maleka arrived with accused 3 and the latter said he gave the guns to Thabo. The witness drove back with the rest of the contents of the bag to his home with accused 3. The next day, he took the taxi for wheel alignment. The police stopped accused 1 on that day.
22. Accused 3, Kabelo and him went to a car wash. Then they received a call from his neighbor saying there are many police officers at his house. The ADT alarm signal had gone off, and he requested them to go and check. He asked Ramonyatsi whom he knew through Kabelo to take him to Hammanskraal.
23. Ramonyatsi collected him and took him to his lawyer, Mr Kgatle, who advised him to hand himself over to the police. Accused 3 joined him. Accused 3 took his clothes from his home and left. He gave accused 3 the keys to his house. That is when he learnt that accused 1 got arrested. This was the last time he saw accused 3 until 30 May 2018 at Magistrate Court, Pretoria.
24. On Saturday he went to Springs with Mathema until 2 January 2018 when he handed himself over to the Hawks. The Hawks informed him and his lawyer that they had no case against him. He learnt from accused 3 that accused 1 was also released. He testified that accused 1 told the police about the firearms. He only learnt about it in court on 30 May 2018. When he got home, the door had been broken in, cupboards broken, sofas torn, guns, bullets and magazines missing; his clothes and jewelry were missing, including cash.

25. He confirmed that Photos 1 and 2 of Exhibit A were of his yard, car and house, Photo 4 as blue workers, guns, sellotape, magazines; all these were brought by accused 3 to his house on 9 December 2017. Photo 25 on Exhibit C looked like Photo 4 on Exhibit B as he noticed the barcode at the bottom of the plastic bags. Photo 26 from Exhibit C was that of white gloves, similar to those that were in accused 3's bag on 10 December 2017 and again on 29 December 2017.
26. He was arrested on 7 January 2018. He was formally arrested on 17 May 2018 at his home. He confirmed that his attorney approached the police on his behalf to turn state witness. He did so voluntarily, with no promise.
27. He confirmed that W/O Mankayi took his statement. Accused 3 and 5 were brought up from Polokwane and they all met in the holding cells. Accused 5 told him about the KwaMhlanga case, where the long rifle comes from. Accused 1 told him it was from a garage robbery where accused 3 started shooting at police. Accused 1 would visit them as he was in the cell next to them. Accused 3 wanted accused 1 to plead guilty to possession and he overheard the police saying it was accused 1 that gave them up.
28. During cross examination by counsel for accused 1, he testified that he does not have personal knowledge that accused 1 brought the police to his home. He confirmed that accused 1 is not his friend nor did he have keys to his house. It was the police that broke into his home, and he does not know their names. He claimed to have accused 1's phone number as it was used to send him locations and WhatsApp messages for accused 3.
29. He identified the statement he made on 8 September 2020 after 2 years in custody. He acknowledged a 7 January 2018 statement for bail application.

30. He says when the home security alarm went off on 29 December 2017, he did not go home because his neighbour told him that there were policemen there. He then remembered that accused 1 was at his place one morning to show him the S3. The witness could not explain why if he is innocent, he did not go home.
31. The items were found in his car speakers. He could only hand himself over in January as his attorney was only available then. He could not explain why accused 1 is not mentioned in his statement nor Ramonyatsi, except that he was responding to the questions asked in his evidence in chief. He conceded that he was never close by when the guns were being handled and does not remember accused 1's cellphone number.
32. He did not know police officers to whom he made a statement on 16 January 2018 and claimed that he was assaulted by police officers. This was the first time he mentioned being forced to make a statement. This was never reported. He claimed that even his ID must have been taken by the police from his house. He claimed that before September 2020, the police would torture him looking for accused 3. He claimed that some of the information the police wrote was incorrect and not from him.
33. He could not remember the Range Rover SUV's license plate numbers, nor the person they picked up in Garankuwa. He never saw accused 1 close to the Eersterust scene, nor accused 3. On 20 December 2017, he never saw accused 1 and 3 committing a robbery. He never saw registration numbers of any vehicles including those of the police at Nellmapius. He now testified that accused 1 arrived in a Kombi, which is new evidence. He also said he was given R13 000 or R13 300, whereas to W/O Mankayi he said he could not remember. He now refers to Braamfontein for the purchase of the kombi whereas in his statement he refers to Randfontein.

34. He indicated that he was arrested on 16/17 May 2018 and taken to Kagiso Police Station. Accused 1 was in the vehicle when he was arrested by W/O Mashao. He does not know where accused 1 was arrested, nor kept, nor when he was released.
35. He does not know police who took his statement. He never opened a case against the police for the items they took from his house on 29 December 2017. He conceded that everything he says about accused 1 including what happened at KwaMhlanga is not within his personal knowledge.
36. Under cross examination on behalf of accused 4 regarding Exhibit D, a statement he made to W/O Mankayi on 8 September 2020, he reiterated that he was fully conversant with section 204 of the CPA, that he must tell the truth when testifying. He testified that the statement was taken down in question / answer format, not read back to him, and he only saw it again in court on 22 June 2022 when testifying.
37. The section 204 statement was different as he was narrating. He did not see the vehicle that was robbed at the CIT scene, however saw it leave the Danlyn Mall. He surmised that because when accused 3 came to Nellmapius he had guns and money, they had committed the CIT robbery. He was satisfied with the R13 300 as they did not have an agreement beforehand. He gave the money back so that it may be given to the police that arrived in the second police vehicle. He testified that he never saw accused 3 deposit money at Capitec.

Captain Hermanus Conrad Mortlock

38. He was a captain at Nelspruit LCRC. He detailed his qualifications and experience. He confirmed his statement and signature. He has been a facial recognition expert since 2011. He received a request from Sgt

Johannes Mahlangu on 29 October 2018 for analysis of persons on CCTV footage. He confirmed handling of evidence bag and its contents. He could not positively identify or eliminate accused 1 due to quality of footage. There were not enough points of similarities to make a conclusive determination.

Sergeant Johannes Mahlangu

39. Sgt Mahlangu was the investigating officer. He knows Captain Mortlock and is the one that handed him video footage, downloaded by the Manager at Engen KwaMhlanga. He testified that a Captain Machabe is the one that took the pictures of accused 1 to compare with CCTV footage. Accused 1 was introduced to him by W/O Mashao. He testified that accused 1 told him his name and that he implicated himself in the KwaMhlanga incident.
40. The warning statement for accused 1 (murder, attempted murder, kidnapping, armed robbery) was admitted as Exhibit A28. He recalls arresting accused 1 at the Pretoria Magistrate Court on 6 June 2018, in the presence of his lawyer. He denied that the matter was enrolled maliciously,

Constable Ismael Machabe

41. He works for SAPS, KwaMhlanga LCRC. He testified that he knows the investigating officer Sgt Mahlangu. He photographed accused 1 at Regional Court KwaMhlanga on 2 October 2018; his legal representative was present with Sgt Mahlangu. He confirmed that the photo album comprised of pictures he took.

42. Under cross-examination on behalf of accused 1, he maintained that there was nothing untoward about accused 1. Accused 1 did not raise any complaints and it was Sgt Mahlangu that introduced everyone including the lawyer.

William Metsi Seala

43. He testified that he works for Fidelity Cash Solutions, collecting cash from clients as a driver. On 20 December 2017, he was on duty from 6am. Piet Makgwale (Piet) and him, started in Mamelodi and ended in Eersterust. Piet had a 9mm pistol. The last client for the day was a BP Garage in Eersterust. They experienced a puncture but continued driving, suspecting that they were under attack. Then he heard gunshots coming from a white vehicle. He did not see the occupants, only passengers holding firearms. At one point, one was holding a rifle through the sunroof. He described being under attack for some time, trying to drive off and two other cars, that he could not describe joining in the attack. Throughout, he could not observe what Piet was doing, until the car came to a standstill next to a cement fence and he was ordered to get out at gunpoint; by a person holding a rifle. He was instructed to lie down and therefore only observed the boots of the person that instructed him.
44. Then he heard a loud bang, and immediately thereafter community members arrived at the scene, some collecting the cash as the vehicle had burst open. Next two police officers arrived, then some staff from Fidelity Cash Solutions with an ambulance, and they were taken to hospital. He was discharged later the same day.
45. Under cross-examination on behalf of accused 5, he confirmed that it was dark, after 19h00 when all was done.

Piet Bolidi Makgwane

46. He testified that he was William Metsi Seala's colleague. He confirmed that he was robbed of his handgun during the robbery.

Frederick Johannes Jacobus Holtzhausen

47. He is employed in the Pretoria K9 Unit, SAPS. On 20 December 2017, he was with W/O Potgieter. There was a lookout for a white Audi from Control. They confronted it at S-bend in Duikor. The Audi made a U-turn, stopped, doors opened and two unknown black males alighted and started shooting, one with a long rifle. W/O Potgieter was hit in the chest and had bullet proof vest on. At that time, they were still waiting for the registration number for the vehicle of interest, the Audi.
48. He suffered burns to his left face/neck and Potgieter to his index finger. He reversed their vehicle and asked Control if he can take W/O Potgieter to hospital. He took him to Eugene Marais Hospital where he was admitted for injuries on the index finger. He was only cleaned where he was injured by shrapnel from the bullet-proof vest. He cannot identify any of the persons in the Audi.
49. He went back to the scene and proceeded to the CIT scene with General Wiese. He did not investigate the CIT scene, nor see much as it was already dark.

W/O Gert Pieter de Klerk

50. He works for DPCI in Silverton. Sgt Herbst was part of the unit. On 29 December 2017, a Friday, at 20h00, he received information from Constable William Kgomonge from Soshanguve, that a suspect was arrested for Eersterust 133/12/2017 at House 7395/40 Ext 5 Soshanguve and they were there.

51. At the scene, he found Constable Kgomonge and Sgt Mashishi of TRT. He was informed that accused 1 was arrested and an R5 rifle and a 9mm pistol (PX4 Storm Baretta – new model police issue) were found in the maroon Mercedes Benz parked in the yard. The scene was handed over to him and Col Maluleke. Sgt Mashishi remained with him at the house, whilst others left to follow-up on other information.
52. They contacted SAPS photographers to come to the scene. Whilst waiting outside the kitchen door, he noticed that the bottom of the cupboards had shifted. When he moved them, he found an R5 magazine, brown box with 9mm rounds, a black balaclava, black masks as well as a plastic bag with explosives. They searched the house and next to fridge, the cupboard was loose. They discovered a black mask, woolen hat plus plastic bag with money (not counted). They contacted the explosives unit to neutralize the scene. The whole scene was photographed.
53. The suspect was in good physical condition. He cannot identify him, as he saw him briefly and never saw him again.
54. Under cross-examination, he testified that he was informed that the suspect was found at the house and there was no one else at the house. He indicated that he found the suspect there already and therefore cannot dispute that he was taken to the house by police.

Sgt Ettiene George Petro

55. He is a Sergeant in the SAPS, Criminal Record and Crime Scene Management where he is attached to the Explosives Section. He testified that he conducted investigations relating to explosives residue after the Eersterust heist (Exhibit O and O1)

E. TRIAL WITHIN A TRIAL

A trial within a trial was held to determine the admissibility of the various statements made by accused 1 and 3.

56. Accused 3 alleged that he was assaulted by the police, denied his constitutional rights and not given an opportunity to read the statements attributed to him. He was merely ordered to sign, and the pointing out was not made freely.

Captain Richard Boshomane

57. He is a captain in the SAPS. On 6 March 2018, he was on duty in Polokwane. He knows accused 3 and pointed him out in court. He knows him from being part of a CIT investigation team in Limpopo where accused 3 was arrested and brought to him. He was the team leader.
58. Accused 3 was brought to his office where he introduced himself to him, however they were familiar with each other from a previous arrest. He was in good physical condition and informed him that he was sorry for what he did. He had advised accused 3 of his constitutional rights during the introductions and he understood them. Accused 3 never told him that he was assaulted by the team or anyone. He was being interviewed for robberies in Limpopo, when he admitted to some in Gauteng and Mpumalanga. He admitted that he was a member of a group. He understood that he was making an admission and then he called Captain Ntini as he was part of the investigating team.
59. Accused 3 was escorted to Captain Ntini's office by one Sgt Ratsoma. He never saw him again on that day, only later during court appearances in Polokwane High Court. He never indicated that he was assaulted and was in good physical condition. Captain Ntini handed

him the statement, which he placed in the docket and charged accused 3.

60. Under cross examination by counsel for accused 3, he testified that he verbally informed him of his rights. An SAP 329 need not be completed for every interview during an investigation. He indicated that he informed him of his constitutional rights including the right to legal representation.
61. Under cross examination by counsel for accused 5, initially he indicated that he does not know W/O Mashao, however later admitted that it was an error as it was a long time ago. He admitted that he is aware that the accused were not found guilty in the Polokwane matters.
62. Under re-examination, Captain Ntini indicated that he was a commissioned officer, hence he took the statement. He is unaware of accused 3's attorney lodging any complaint with IPID.

Sgt Philemon Jakalala Ratsoma

63. He is a Sgt in the detective unit in Polokwane. On 6 March 2018, he was called by Captain Boshomane, then W/O, to escort a suspect to Captain Ntini. It was accused 3, whom he identified in court. He introduced himself to accused 3 and told him where he was taking him and that he had been requested by Boshomane. He uncuffed him, left him there and when he collected him, handcuffed him. He never saw him again until these court appearances.
64. Under cross examination by counsel for accused 3, he maintained that there were no injuries to accused 3.

Captain John Makukuna Ntini

65. He is a captain in the SAPS and was on duty on 6 March 2018. He knows Captain Boshomane. Captain Boshomane informed him that there was a suspect that wanted to make a confession. He was able to assist at noon. They introduced themselves to each other with accused 3.
66. Sgt Ratsoma removed the handcuffs, closed the door and left. He informed accused 3 of his rights and the latter signaled that he understood. He confirmed that he took down a confession and recognized his signature thereon. Accused 3 had no injuries, including on his wrists. He recorded the confession in English and explained it to accused 3 in Sepedi sentence by sentence.
67. Thereafter accused 3 signed and appended his thumb print. He confirmed that he was not involved in the investigation of the matter; and does not know Captain Mankayi, W/O Mashao nor Seebe.
68. Under cross examination by counsel for accused 1 and 3, he testified that he knows Captain Boshomane, however has never worked with him. He indicated that he was a commissioned officer (section 33 of the South African Police Service Act 68 of 1995) even though he does not have a certificate. After reading him his rights, he confirmed that he still wants to proceed with the confession. He insisted that he read back the statement in English and Sepedi to accused 3. He denied that accused 3 merely signed, that there was no conversation as he was assaulted. He did not ascertain where accused 3 was between his arrest on 2 March 2018 and being brought to him on 6 March 2018.

Sgt Tumo Nobel Mohutsiwa

69. On 17 May 2018, he was a Sgt at Provincial office with the ATM bombing task team. He met Col Siphungu for the first time on that day. He received accused 1 from then W/O Mankayi. He was the interpreter

(Exhibit Q). W/O Mankayi left and Col Siphungu introduced them. He identified accused 1 in court. Accused 1 said he was there to make a statement. He relayed to accused 1 everything that Col Siphungu said and accused 1 understood. Col Siphungu spoke IsiXhosa whilst accused 1 spoke Setswana. Accused 1 confirmed correctness of interpretation, signed and appended thumb print. Accused 1 was never threatened by either one of them nor was he assaulted. He was uncuffed when giving statement. Thereafter Mankayi collected him.

70. Under cross examination by accused 1, Mohutsiwa testified that the statement was taken at Aeroton SAPS. After accused 1 read his statement, he interpreted it to him in Setswana. He confirmed that he read him his rights, which he indicated that he understood. He acknowledges that he knows W/O Mankayi but does not work with him.

Lt Col Raphadu

71. He is a Lt Col in the SAPS. He was on duty on Friday, 9 March 2018 at Naledi. He received a call from W/O Mashao to take a confession from a detainee. Accused 3 was brought to his office by Sgt Sithole. Sgt Sithole left and it was him, a photographer and accused 3. He introduced himself and warned accused 3, who replied that he wishes to make a confession.
72. He asked him in Sepedi if he understood and he answered in the affirmative. He wrote the statement in English however, interpreted it back to accused 3 in Sepedi. Accused 3 was calm and had no visible injuries. He never complained of assault, nor was he assaulted. He knew the investigating officer, W/O Mashao before this day. After he signed the statement, he was handed back to Sgt Sithole and he never saw accused 3 again until now in court. Accused 3 did not advise that he had a legal representative.

73. Under cross examination he confirmed that he was a commissioned officer (justice of the peace when taking a confession). He explained that he indicated this to accused 3. He denied that he was involved with the case nor that he did not read the *pro forma* to accused 3. He indicated that he does not know the practice of tubing by the police, i.e, placing a plastic bag over the head nor did accused 3 tell him that he was assaulted. He established at the beginning that there was no link between the statement made in Polokwane and the one accused 3 was about to make as they dealt with two different crime scenes. He denied that the statement was not read back to accused 3. He noted some handcuff injuries.
74. Under re-examination he indicated that the injuries were mere scratches and that he was a justice of the peace *ex-officio* upon becoming a captain.

John Gezeni Sithole

75. He testified that he was a Sgt in the SAPS. He was on duty on 9 March 2018. He knows Lt Col Raphadu and met him that day at Naledi Police Station. Captain Chauke called him and requested him to take a statement. He transported accused 3 to Naledi and observed that he was in good physical condition, could walk properly. He pointed to accused 3 as the person in question. He uncuffed him and left him with Lt Col Raphadu and collected him later to return him to Chauke.
76. He did not see W/O Mashao or W/O Mankayi, however he was aware that they were part of the investigating team. He would meet them at crime scenes sometimes. Thereafter he would be in the company of accused 3 as he transported him to court in Mpumalanga.
77. Under cross examination from accused 3, he reiterated that he fetched accused 3 from a police station around Soweto and not Soshanguve.

Sgt Ernest Thapelo Seleka

78. On 8 March 2018 he was a Constable in SAPS, Pretoria North. He knows Captain Muller and met with her at Soshanguve Police Station where there was a suspect who was to conduct a pointing out. Captain Chauke assigned him. He went with Captain Muller and accused 3.
79. Accused 3 was giving directions. Either to Soshanguve XX or VV, then to Silverton, at some industrial area. When they got to the scenes, accused 3 would point out and the photographer would take pictures. The photographer had followed them from Soshanguve SAPS in a separate vehicle.
80. At Soshanguve XX and VV they spent less than 10 minutes, thereafter to Nellmapius where they spent about 5 minutes along the road, next to a sportsfield. Accused 3 was pointing out and Captain Muller writing. Then they went to some rural village in KwaMhlanga, where they spent 10 minutes at a house and then proceeded to a petrol station whose name he cannot remember.
81. He knows W/O Mashao and W/O Mankayi, however did not see them on that day, neither did he know that they were involved in the investigating team. Next time he saw accused 3 was during the current court proceedings.

Captain Sussana Jacoba Muller

82. She is a Captain in the SAPS, Hawks DPCI West Rand. On 8 March 2018, she was called by W/O Mashao to assist with pointing out by suspect in custody. She found accused 3 in the cells in Soshanguve, booked him out, and handcuffed him. She showed him appointment

card and they conversed in Sotho. She informed suspect of purpose and he indicated that he was ready.

83. She read him his rights, and he indicated that he understood. He was also in possession of an SAP14 form. She made use of the confession *pro forma*. The photographer took accused 3 pictures before and after the pointing out. She recognized her signature and where accused 3 signed and appended his thumb print. Accused 3 understood Sotho and English.
84. Accused 3 directed them to the scenes. They went to Soshanguve, Eersterust and KwaMhlanga. He did the pointing out and the photographer took pictures. Thereafter they returned him to the cells. She denied that accused 3 was assaulted. She also denied that accused 3 was merely given forms and instructed to sign. Accused 3 indicated that he wants to proceed without legal representation. She was not part of the investigating team. She had noticed some marks where the handcuffs were. She knows Captain Chauke as they are both at the Hawks, however she did not see him on the day.
85. Under cross examination on behalf of accused 3, she confirmed that she was a justice of the peace, a commissioned officer. She denied that accused 3 requested legal representation. She was unaware of any tubing that occurred after the arrest on 2 March 2018. She denied that accused 3 never read the statement, nor that he did not participate freely. She indicated that accused 3 was so free, he even proposed to pay *lobola* for her. The photographer remained within hearing distance all the time.

Captain Johan Marius Colyn

86. He was a captain in SAPS stationed at Tembisa Detective Branch. He attended to pointing out with accused 5 on 30 June 2018.

W/O Richard Nziyana

87. He was still employed at SAPS as W/O on 30 June 2018. He was a driver with Captain Colyn for accused 5's pointing out.

Colonel Wiseman Siphungu

88. He was a Col in the SAPS, Aeroton Provincial Office. He knows Mankayi and spoke to him on 17 May 2018 when he brought accused 1 for a statement / confession (Exhibit S). He was with Sgt Mohutsiwa who interpreted. Mankayi brought accused 1 and left. He was in handcuffs. He introduced himself and asked for accused 1's name, read him his rights and asked him to take out his SAP14 form. He read it to him in English with Mohutsiwa translating. Accused 1 indicated that he understood.
89. Accused 1 indicated that he wanted to explain his involvement. Then he took the pro forma and elected to proceed without legal representation. He had no visible injuries. Accused 1 indicated that he was arrested on 17 May 2018. He did not complain of any assaults or threats. He indicated that he was arrested at 01h00. Before accused 1 signed, they went through the statement again and he appended his thumb print. After that, Mankayi collected him and they left.
90. Under cross examination by counsel for accused 3 he testified that he has deed of commission as officer. He insisted that he gave accused 1 a choice to continue and he did. He indicated that accused 1 stated that he had not made a statement before. He used Mohutsiwa because he knows him and he was not involved in the case. He did not work with Mankayi.

Lt Colonel Ntlhane Onismus

91. He was a Colonel in the SAPS. On 20 December 2017, he was a detective at head office. He was asked to take a statement on 30 December 2017. A suspect needed to make certain admissions / confession at Soshanguve SAPS.
92. He recognized accused 1's statement – admission / confession but used *pro forma* indicated "interview" as he did not have the correct *pro forma*. He was taking down an admission statement. He advised accused 1 of his rights. They were in the interview room in the holding cells. He spoke in English and it was translated into Sepedi / Sotho. Thereafter, accused 1 signed. He had no visible injuries and was not emotional. He was not threatened, nor assaulted, nor promised anything to influence him. He does not know W/O Mankayi but knows W/O Mashao. He never saw accused 1 again nor can he identify him.
93. Under cross examination by accused 1, he testified that the case was linked to Eersterust. He told accused 1 that he was a commissioned officer. He never told accused 1 that he was the I/O. He did not see anything wrong with using the incorrect *pro forma*. Accused 1 declined legal representation and did not tell him whether he had a lawyer. He denied the accused's version that he was not present when the statement was commissioned.

W/O Andile Mankayi

94. He was now a captain in the SAPS organized crime DPCI Gauteng. He was a W/O back then. He knows accused 1. He assisted the investigating officer with warning statement on 17 May 2018. The investigating officer was W/O Mashao. His partner identified accused 1. He read him his constitutional rights. He was arrested for CIT robbery, possession of explosives and unlicensed firearms. He got the warning statement after reading him his rights. Accused 1 indicated that he

understood his rights and that he does not need a legal representative at that stage – nor did he indicate that he had one. He was present the day accused 1 was arrested. He proceeded and at a certain point asked for a piece of paper and pen and started scribbling notes. He saw that the notes amounted to an admission / confession, whereupon he stopped the interview and arranged for Col Siphungu to assist.

95. He handed the admission statement to W/O Mashao. They communicated in Setswana and English. W/O Mashao was present during arrest and accused 1 did not resist arrest nor was he assaulted.
96. Under cross examination, he testified that W/O Mashao commissioned the statement. It is not true that accused 1 was threatened by W/O Mankayi and W/O Mashao. He had not arrested accused 1 before 17 May 2018.

Accused 1 Kgaukgelo Godfrey Mokoane

97. He testified that he was arrested on 28 December 2017, for a CIT heist in Eersterust near Soshanguve Crossing by TRT members. One Mashishi was there and W/O Mankayi. He was taken to Soshanguve Magistrate Court and Pretoria Magistrate Court. In Pretoria, he appeared for Eersterust heist. The matter was struck off in Soshanguve and removed from the roll in Pretoria. He was told that if needed, he will be summoned through his attorney to appear in court by W/O Mashao and W/O Mankayi.
98. He had a legal representative at Pretoria, Mr Shela, however in Soshanguve the legal representative just came to the cells. He was interviewed by Lt Col Mashabela in Soshanguve holding cells on 30 December 2017. Before being interviewed and making a statement to Lt Col Mashabela, he was interviewed by many police officers between 28 and 30 December 2017. He was arrested during the day and taken to his home that was searched, then where he was renting. At the

police station, police informed him that they needed money and firearms from him. He cannot identify the police as they were wearing balaclavas. He admits that he was read his rights at which stage he elected to have legal representation and gave his lawyer's numbers. He did not proceed to talk to Lt Col Mashabela. He was presented with blank papers and told to sign. He claims to have been threatened by Lt Col Mashabela from the beginning, who was aggressive.

99. The TRT police never threatened him. The ones wearing balaclavas pointed him with firearms. He is not the source of what Lt Col Mashabela wrote in the statement. He was taken to Aeroton by W/O Mashao and W/O Mankayi. He says that when he was interviewed by Col Siphungu, Sgt Mohutsiwa and W/O Mankayi stayed in the room. He did not want to make a confession. He testified that when he was arrested on 17 May 2018, W/O Mashao and W/O Mankayi interviewed him. They told him that he had a "death warrant" meaning if he does not cooperate, they will kill him. That is why he cooperated. No one was interpreting for him and the statement was never read back to him. He denied that W/O Mankayi read him his rights. He does not remember when he appeared in court after the 17 May 2018 arrest. His legal representative called police officers looking for him and will come and testify to that.
100. Under cross examination he testified that he understood English. He read and understood his SAP14. He now claims that Lt Col Mashabela only explained two rights to him. He could not explain why his version on threats was not put to Lt Col Mashabela. He remembered Exhibit T. Last saw it when making statement, until now in court. It was never put to Lt Col Mashabela that he told him about a request for a legal representative.
101. W/O Mankayi told him of "death warrant" on the way to Kagiso Police Station. When it was put to him that W/O Mashao and W/O Mankayi

were not at his first arrest and that the matter was with a different investigating officer then, he could not explain why he said they were there. He only knows Mashishi as part of TRT. He now says that TRT people wear balaclavas, he was cuffed and tubed during arrest. He later changed back to TRT arresting him and the balaclava clad police (only three of them) pointing him with firearms. He testified that the balaclava clad police had nothing to do with the statement taken down by Lt Col Mashabela, except that it is the same information that they gave him to repeat to Lt Col Mashabela.

102. Lt Col Mashabela just gave him the papers to sign and left. The contents of Exhibit T did not come from him. For the 17 May 2018 arrest, he was threatened by W/O Mankayi who wanted guns, money and information on Eersterust CIT heist. W/O Mashao did nothing. W/O Mankayi forced him to make the statement at Aeroton. He now said the statement was taken at the back of a vehicle and this was never put to W/O Mankayi and W/O Mashao.
103. The differences in Siphungu being in an office and car could not be explained. He says that he told both W/O Mankayi and Siphungu that he did not want to make a statement, that he wanted his legal representative. He denied that Siphungu read him his rights. He testified that he made a statement because he was fearful. He never complained about this to W/O Mashao, W/O Mankayi and Siphungu. He could not explain why this version was not put to the police officers when they testified.
104. On 17 May 2018, he now says he was arrested by other police officers that handed him over to W/O Mankayi and not by W/O Mankayi himself. This was not put to W/O Mankayi. He testified that he was just agreeing to what W/O Mankayi was writing down. He now says that W/O Mashao also asked him questions. They told him that if he does not cooperate, they will deal with him.

Accused 3 Aphane Boitumelo Daniel

105. He was arrested on 2 March 2018 in Mpumalanga by officers Makola and Bopape. There were about 5 police officers during his arrest. It was in the early hours of the morning at Eccentia Madiseng's house. The police officers were wearing balaclavas, had rifles and started assaulting them. He was cuffed. The police officers put a pepper sprayed plastic bag over his head. Then Eccentia said the firearm is in the house and handed it over to them. They throttled him and he accepted that the firearm was his.
106. He was forced to agree to robberies in Motetema, Tzaneen, Mankweng, Polokwane and Seshego. The police asked him about the Easterust robbery and one in KwaMhlanga; and they wrote the information in their books. If he disagreed with what they said, they would throttle him
107. In Polokwane, he found Boshomane, Mothwa and Captain Ntini and told them as ordered. He was never interviewed by Captain Boshomane. He was referred to Captain Ntini who introduced himself; however did not tell him he was a justice of the peace. He did not want to make a statement.
108. He says he was not read his rights and had a legal representative by then, Adv Mpe. He did not use him upon arrest because he was not informed of this right. He says that during arrest, he sustained injuries to chest, lungs and hands and did not get medical assistance.
109. He denied cooperating with Captain Ntini on completion of *pro forma*. After the interview, he was taken to Mothwa. He says he was not tried for the other cases as there was evidence that he was assaulted upon his arrest in Denilton.

110. He was fetched from Polokwane by W/O Mashao. At Naledi Police Station, he was taken to Lt Col Raphadu by W/O Mashao. Lt Col Raphadu never told him that he was a justice of the peace. He was threatened with being suffocated with a plastic bag. He was not free. The *pro forma* was never read back to him. He was not told that he could have legal representation. He incriminated himself under duress.
111. Regarding Captain Muller, he testified that she introduced herself to him. He never said that he wanted to do any pointing out. Captain Muller read him his rights and he was satisfied. He told her of need for legal representation, however she did not respond. He denied directing Seleka to the different scenes. He testified that they were in fact following W/O Mashao to the scenes and when they got there W/O Mashao would instruct him where to point and threatened him with a plastic bag over the head. He denied that Captain Muller asked him if he was threatened or assaulted. The pointing out notes were not read to him.
112. Under cross examination, he testified that during his arrest on 2 March 2018, he was assaulted by the balaclava clad police officers. Some of them, it was not the first time that they were arresting him. For Mokopane case, the investigating officer did not assault him. He was charged and convicted for murder, attempted murder and possession of firearms.
113. After Gauteng, he was taken back to Polokwane by W/O Mashao who treated him well. He was told in front of W/O Mashao to cooperate. Captain Ntini did not assault him and he did not tell him of assault. When completing the *pro forma*, he told him what he had been instructed to tell him, that he was involved in the Eesterust case, KwaMhlanga, Tzaneen, Motetema, Mankweng and Seshego matters.

114. He could not explain why it was not put to Captain Ntini that the statement (Exhibit V) was taken on 3 March 2018 and not 6 March 2018 and he responded that all information in the statement was written by Captain Ntini without his input.
115. The statement with Lt Col Raphadu in Naledi was taken on 9 March 2018. He did not tell Lt Col Raphadu that he was assaulted, nor that he was instructed to initial and put the thumb print on the statement. Lt Col Raphadu never told him he was a justice of the peace. On Saturday, he was returned to Polokwane. He appeared in court in Siyabuswa on the Monday. He only told Adv Mpe of threats and assault and not the magistrate. To date, this has not been reported to anyone.
116. Both Lt Col Raphadu and Captain Muller noted the handcuff injuries.
117. It was put to him that it was not put to Captain Muller that she followed W/O Mashao to the scenes nor was it put to the driver that he followed W/O Mashao. Captain Muller also testified that he was jolly, conversing whilst he testified that he was tired and not fine emotionally (Exhibit W)

Tiisetso Vincent Shela

118. He is an attorney practicing as Shela Attorneys since 2016. Accused 1 was his client from November 2016 to date with ongoing matter at Moreleta Themba Magistrate Court. Accused 1's mother called him during the festive season of 2017 (either 28/29 December) and told him that accused 1 has been arrested. He drove to Teminus, Mabopane and was informed by W/O Mashao that accused 1 has not been charged and if he talks to him, he would be interfering with investigation. Accused 1 was a suspect in a CIT heist and was in a yellow Audi Quattro S3 when he was arrested, with the vehicle suspected as stolen. However, they presented its papers together with

the late Thabitha, an associate of accused 1 that the car was duly financed under her name and not stolen.

119. He could not see accused 1 until 31 December 2017 or 2 January 2018 at Pretoria Central. Accused 1 requested that handcuffs be moved from back to front to alleviate pain, which request was refused. Accused 1 told him that he was poured with water over the head, covered with a blanket, electrocuted and assaulted grievously. The prosecutor could not proceed with the matter as 48 hours had lapsed.
120. The vehicle was released at approximately 18h00. Accused 1 was released at 16h00 however they did not want to give him his cellphone, money and vehicle. W/O Mashao and him had each other's contact details.
121. Accused 1 was arrested again in March 2018 by the same police officers for robbery in Pretoria. He was unaware of accused 1's 30 December 2017 confession. He looked for him at several police stations in Pretoria until he located him in KwaMhlanga and met him at the Magistrate Court. He learnt that accused 1 was heavily assaulted, with no medical attention. The injuries were not visible.
122. Accused 1 did not take civil action nor report the matter to IPID.
123. Under cross examination, he indicated that he did not report the matter to IPID because Hawks officers hold a higher rank and he did not have proof of the assault. He testified that he consulted with accused 1 on 30 December 2017, then he was shown a statement of interview with accused 1 in Soshanguve and not Terminus (Exhibit T).
124. Despite accused 1 never mentioning Terminus Police Station, the attorney insisted that he met him there. He does not remember the name of the station commander that he enquired on the whereabouts

of accused 1 from. He testified that accused 1 was tied up with blanket, poured with water, electrocuted, his genitals tied and pulled heavily by police officers unknown to him. Accused 1 told him of assault on 30 December 2017.

125. Accused 1 never said that W/O Mashao wanted him to stay in jail for the new year as being said by Mr Shela, the latter responded that when this was said accused 1 was not present. He testified that accused 1 was also injured in the scrotum however that it was not visible, he urinated blood and could not get an erection and had internal pain. W/O Mashao assaulted him heavily and arrested him in all 3 instances. Mr Shela testified that he has destroyed accused 1's consultation file. He could not explain the difference in his evidence on the assault and that of accused 1 nor why he failed to report the matter.

W/O Mashao

126. W/O Mashao was recalled as he was implicated by Mr Shela. He testified that he only took over dockets on 6 Feb 2018. The investigating officer until then was W/O Hlatwayo. He also did not know Mr Shela in December 2017. He never went to Terminus between 28 December 2017 and 2 January 2018 nor attend court for these matters.
127. Under cross examination he insisted that he only took over the matter in February 2018.

Sgt Mofomme

128. Constable in SAPS, TRT, now Sergeant. Accused 1 was arrested on 29 December 2017 around 17h00 and detained in Soshanguve. He denied that when accused 1 was arrested, he was with Mashishi during arrest.

W/O Bongani Hlatswayo

129. He said he was a W/O in SAPS and the initial investigating officer for the Eersterust matter. He got involved with Soshanguve matter on 2 January 2018. He detained accused 1 at the Soshanguve, never at Terminus. Accused 1 was never assaulted, W/O Mashao was not present, just the late W/O Malefotsane. He met Mr Shela at Mabopane when releasing the vehicle several days after accused 1 was released. W/O Mashao was not present at Soshanguve court. The matters were not placed on the roll due to further investigation. W/O Mashao and W/O Mankayi were not there.
130. Under cross-examination, he testified that accused 1 was informed of his rights, including the right to legal representation. He does not know why the yellow Audi was in Mabopane.

The trial within a trial came to an end and a ruling was handed down admitting the statements into evidence.

Captain Nthaodi

131. He is based at laboratory services, ballistics. He confirmed that the rifle was linked to both robberies at Eersterust and KwaMhlanga, whilst the 9mm parabellum was only linked to the KwaMhlanga robbery (Exhibits X1 – X4).

Captain John Ntini

132. Captain Ntini took a confession / admission statement from accused 3 on 6 March 2018. It was entered into evidence as Exhibit V. He read it into the record. It shall not be repeated here as it forms part of the record.

Captain SJ Muller

133. She testified that the statement, entered into evidence as Exhibit W, was read back to accused 3 who initialled and affixed his thumbprint. She acknowledged an error in the rights' section and undertook to resend proof for defense counsel of her being a commissioned officer to the replacement prosecutor. The statement was a pointing out by accused 3 of the KwaMhlanga crime scene, the Eersterust crime scene, Silverton Industrial area and the area near a sportsfield in Nellmapius.

Lt Col Mashabela

134. He took a statement from accused 1 on 30 December 2017, that was entered into evidence as Exhibit T1. He testified that he became a commissioned officer on appointment to rank. He was notified of that by his superiors. It shall not be repeated here as it forms part of the record.

Sgt George Mashishi

135. He was a Sergeant in TRT. On 29 December 2017 at 05h45 he was with Mofomme. He got information and they set up vehicle checkpoint at 17h00 near Soshanguve Crossing Mall. A chopper was hovering above when they stopped a yellow Audi, searched suspect, accused 1. Nothing was found on him or in the car. They informed him that they are following up the Eersterust heist.

136. Accused 1 took them to his home. They left the Audi at Mabopane Police Station. His mother confirmed that he does not live with her anymore. Accused 1 took them to Soshanguve VV. He had keys to the house, opened the house and the Mercedes keys were on the table. Nothing was found in the house. When it was searched the house

alarm went off. In the Mercedes Benz speakers, they found a Z88 firearm, rifle, pair of gloves, balaclava, blue worksuit, live rounds of firearms, serial numbers were scratched off.

137. Accused 1 said he knows the firearms and did not have licenses for them. They read him his rights and arrested him. The fingerprint expert from the LCRC was called to process the scene.
138. W/O de Klerk found some explosives, rifle magazines and money in the house. The scene was handed over to the LCRC and bomb squad and they left for Soshanguve Police Station to open a docket against accused 1. They explained his constitutional rights to him and completed the SAP14. He gave him a copy that he signed, it was around 23h48 on 29 December 2017.
139. Under cross examination, he indicated that he was given the name of Matsatsela. He confirmed with accused 1 that it was his street name. They left the car at Mabopane and proceeded to Soshanguve Police station. Accused 1 had keys and opened, not aware of alarm going off. They asked him where he stays, not who owns the house. He denied that accused 1 was assaulted. He was unaware that accused 1 was released and not tried for possession in 2017/2018.
140. He does not know W/O Mankayi nor W/O Mashao even today.

Col Wiseman Siphungu

141. He took a statement from accused 1 on 17 May 2018. He read the statement, Exhibit S, into the record. It shall not be repeated here as it forms part of the record.
142. Under cross examination he indicated that it was his first statement. Accused 1 was brought by W/O Mankayi, he took a statement at

16h20. He explained that he was a justice of the peace. Sgt Mohutsiwa interpreted. He has known W/O Mankayi since 2011.

Lt Col Mohale Solomon Raphadu

143. He took a statement from accused 3 on 9 March 2018 that he read into the record as Exhibit R1. It shall not be repeated here as it forms part of the record.

Captain Gerald Arnold Boonstra

144. He is employed with DPCI as telecoms analyst. He compiled a report – the numbers were within the vicinity of the Eersterust crime scene on 20 December 2017. He was given three numbers to analyse (Exhibits BB and BB1-3). The investigating officer identified the 076 number as accused 3's. It was not RICA'd in his name or his address

F. DEFENSE CASE

Accused 1 Kgaugelo Godfrey Mokoane

145. He was arrested twice.

Arrest 1

146. He was travelling from Mabopane to Audi Centre in Pretoria. He saw a helicopter hovering above, slowed down and police vehicles approached. He stopped and was ordered out of car. The police wanted firearms and money, he denied knowledge thereof.

147. They took him to his mother's home and did not find anything. They took him to Mabopane Police Station for questioning. More police arrived. Mashishi was present at arrest. They put him in a chair, put a plastic bag over his head and suffocated him – he was still in handcuffs. Then they took him to a house in Soshanguve where they recovered firearms, money and explosives. He did not know the place he went to nor the owner. He remained in the car the whole time. He never had the keys to that house, even the witness said so. He never saw what was recovered from the house, he was just informed by the police. He knows nothing about these items. They took him to Eersterust and an industrial area in Silverton.
148. They took him back to Soshanguve Police Station. He was just told that Mr Shela looked for him at Terminus, Mabopane but he never saw him. Mr Shela had been called by his family. Mr Shela represented him in court and came to him in the cells. He never appeared in court, Mr Shela informed him of the outcome. Lt Col Mashabela interviewed him in Soshanguve. When the police woke him up, he told them that he had no knowledge of the Eersterust robbery, money or firearms. He cannot identify the police as they were wearing balaclavas. One squeezed his private parts whilst another put a plastic bag over his face.
149. From Soshanguve, he was taken to court in Pretoria. W/O Mashao and W/O Mankayi came. Hlatwayo took him to Soshanguve and released him.

Arrest 2

150. He was looking after house when he heard people jumping over walls, in Soshanguve. He opened the door and was arrested and handcuffed. W/O Mashao and W/O Mankayi came. He was put in a Ford Focus ST and taken to Katlehong Police station. He was read his rights at police station and given completed SAP14 form. He slept there.

151. W/O Mankayi and W/O Mashao came the next day, refused him access to legal representation and informed him that he was being arrested for the same issues as the first arrest. He was told that there was evidence, footage that he killed a policeman and stole his service firearm. W/O Mashao, W/O Mankayi and another police officer threatened him. They informed him of the Eersterust robbery, KwaMhlanga murder and robbery (bombing safe). They would leave and the police would put a towel over his head, pour water on it and suffocate him.
152. They told him what to say and then called W/O Mashao / W/O Mankayi back. W/O Mankayi took the statement. They went to a police station next to a panel beater establishment and stayed in the parking lot. He went to W/O Mashao for discussion, then he ordered him to sign statement.
153. Then a cameraman joined them to go to a pointing out – however the cameraman refused to go with them. He was refused legal representation until he appeared in court when Mr Shela found him.
154. As far as the witness's evidence is concerned, he did not know the witness before first arrest. The witness, accused 3 and him never met in 2017; nor did he know accused 3 in 2017. He never had a Range Rover SUV, never saw accused 3 in Silverton. He was never in Eersterust on 20 December 2017, instead he was at Bra Oupa's house with one Thuli. He does not know Mathema or Mapula and never borrowed accused 3 a firearm. The information in the statement is from the police. He does not know why the witness would implicate him.
155. He says he told Mr Shela he was badly assaulted. His balls were swollen, had sores inside, however not visible. This was caused by the police at Terminus and Soshanguve. During the second arrest, he

could not urinate from the assault. He did nothing to pursue the police because he was just relieved to be out on bail.

156. Under cross examination, he indicated that he does not dispute that the incidents happened, just his involvement. After arrest, he was taken to his mother's house where he lived and then to Terminus, Mabopane where he was assaulted. He denied knowledge of allegations and thereafter he was taken to the witness's house. He was arrested by Mashishi and other police in balaclavas. He saw W/O Mankayi at Mabopane Police Station, he was with W/O Mashao.
157. At the witness's house, the police jumped over the fence into the residence. He never got out of the Ford Everest that they transported him to the house in. The policeman that was standing outside of the vehicle is the one that informed him what was recovered. He never informed them of the witness's house nor was he ever on the premises. He denied that he was removed from the scene due to explosives being found.
158. He was then taken to Silverton industrial area, then to Soshanguve Police Station. They said they were looking for money and guns from the Eersterust robbery. He was only informed of the KwaMhlanga incident during his second arrest.
159. The statement taken down by Mashabela was done late at night. There were five to ten policemen dressed in balaclavas. He surmised that they were somehow connected to Mashishi. Mashabela did not have a balaclava on. At Soshanguve, they only tubed him in the presence of Mashabela and Mashishi. Also at Mabopane Police Station before going to the witness's house. These balaclava clad policemen did not say anything to him as they assaulted him.

160. Mashabela never read him his rights. Mashabela just wrote down statement and he agreed to everything because he had been assaulted. Thereafter, he just signed the statement (Exhibit T1).
161. He testified that he only knew accused 3 from court appearances. He denies what is in the statement. He says that the Audi was new and was acquired after the robbery. He never received any medical treatment for the assault, however for the first time during the trial, stated that he informed five police officers that are unknown to him that he was assaulted by the police.
162. He testified that when he was arrested he was alone, sleeping, and not in boxers with girlfriend as stated in the trial within a trial. He was taken to Kagiso Police Station, past Soshanguve Police Station. W/O Mankayi and W/O Mashao arrested him and put him in the Ford Focus ST. They informed him that the arrest is in connection with the same issues as the first arrest.
163. Whenever he denied any knowledge of the crimes and his involvement therein, they would assault him. W/O Mankayi was questioning him and the other balaclava clad policemen would only come in to assault him. He could not remember who came in with the bucket of water. He was tubed by 3 balaclava clad policemen. Then they took him to Siphungu. He told Siphungu that he was involved in the Eersterust robbery. He agreed that he was driving the vehicle that was used and received money.
164. He did not remember if the statement was read back to him. He denies a Witbank robbery where he is said to have received R15 000. From Eesterust, he told Lt Col Mashabela that he received R10 000, however told Siphungu that he received R12 500. He cannot dispute that Siphungu and Lt Col Mashabela read him his rights. He admits that W/O Mashao and W/O Mankayi explained his rights, however they

denied him access to his legal representative. He submitted that Mr Shela exaggerated the assault. He also admits that the attempted pointing out was never put to the state witnesses.

165. He indicated that he does not know the witness and never lived with accused 3. He does not know Mapula and Mathema. He denied stating in conversations in the cells that it was accused 3 who shot and killed a policeman in KwaMhlanga.

Boitumelo Daniel Aphane – Accused 3

166. He was arrested in Denilton, Mpumalanga on 2 March 2018, by police in civilian clothing wearing balaclavas, at a house, at night. He was with Eccentia Madiseng at the time. The policemen were more than five. He lay on the floor and they handcuffed him on his legs and arms. They were looking for money and firearms. They wrapped him in a blanket and ‘tubed’ him. They continued ‘tubing’ him until Eccentia said that there was a firearm in the house in a bag and cash in a shoe box.
167. He says he was arrested for the Ekhangala and Eersterust robberies. He was not informed of his rights. He knew some of the policemen from the Polokwane arrest. Makola, Bopape and another policeman instructed him on what to say in his statement. He only agreed to do that due to fear of assault. He was taken to Polokwane Police Station to Captain Ntini and Mothwa, then back to Boshomane. He did not make the statement freely and voluntarily. He already had an attorney for one matter where he was granted bail, however he was not given the opportunity to state this during arrest. The officers saw his attorney during the bail application in Mokopane.
168. On the Saturday morning, W/O Mashao, Boshomane, Makola and Bopape told him that he was to leave with W/O Mashao. When they were going to the vehicle, W/O Mashao checked if he remembered

what the Polokwane officers told him. He did not have the opportunity to state that he had a legal representative. The police had taken his phones and Boshomane refused him legal representation. He was not read his notice of rights. He was transported to Kagiso Police Station. They were 4 in the vehicle, including Sithole.

169. He denied that W/O Mashao informed him that the arrest was for Ekhangala and Eersterust. He indicated that he conversed with accused 2 on 0[...]. He had 2 MTN phones and only remembers this one number. He denied that he told W/O Mashao that 0[...]² was also his number.
170. They arrived in Kagiso at 18h00 and he was taken to the cells. Between 20h00 and 21h00, he was taken to Naledi Police Station, stopped at Shell garage and they bought him food. He still did not have a notice of rights. Sithole took him to Lt Col Raphadu where he repeated what he was told in Polokwane due to fear of assault. He was returned to Polokwane on Sunday.
171. Before leaving for Polokwane, they went back to Soshanguve where they met with Captain Muller. He was never at a fuel station in Ekhangala. He does not know the place in Eersterust where the robbery took place and was never in Silverton. He was merely ordered to point out and pictures taken. He was only given his notice of rights back at the police station, before leaving for Polokwane. He was added to this matter as accused 3 during the bail hearing of accused 1 and 2.
172. He contacted the witness to accompany him to Audi Centre, Arcadia, however there were no two ladies. He did not know Mathema in 2017. He was never in Soshanguve. He did not know accused 1 then. He denied ever staying with the witness and he never had a sports bag. He accepts that the witness accompanied him to buy a taxi. They were three, with another man driving the witness's car. The taxi was

registered in his uncle's name. This was on 28 December 2017. When they were at a car wash, the witness informed him of policemen in his yard, as notified by his neighbour telephonically. He responded that it was not him at the house when the alarm went off, however will notify ADT to go and check. The witness then wanted to go and see his lawyer.

173. He was never at the witness's in December 2017. He was last there on 29/30 November 2017 when he went to buy his child's clothing. He did not leave any of his items at the witness's. The witness never gave him his house keys after 28 December 2017. He denied all the information that the witness said he told him in the cells. He only knows he was being implicated from W/O Mashao at court during accused 1 and 2's bail application proceedings.
174. Under cross examination, he indicated that he did not dispute that there was a robbery at KwaMhlanga and a policeman was killed.
175. When told that the robbery at Eersterust was of an amount of R10 155 055 and a firearm was stolen, he did not deny this. He denied that his nickname was 'Small' and admitted only knowing accused 1 from court appearances. He claims and he and Eccentia were assaulted, with fists and plastic pulled over his head. The police stopped when Centia said there were guns in the house. Centia was only slapped and grabbed when she was instructed to leave the room. She later told him of plastic dish being placed over her head.
176. He was not in a relationship with Centia. He met her at a tavern that night and wanted to have relations with her. He now says the evidence bag and black plastic bag were placed over his head which is new evidence. Centia has since died in a car accident, however during the trial within a trial, he says he did not have her numbers. He says he never asked her where she got the money and the gun from.

177. He was arrested by Makola and Bopape. He now says that he was arrested for not appearing in court (this was never put to Boshomane) whilst earlier he had stated that he did not know why he was arrested.
178. He was told to agree to what was in the statement at the house, including CIT robbery in Eersterust, in Ekhangala, his accomplices, Mercedes and Audi vehicles at both robberies and that more than ten people were involved. They made him repeat the details twice. Bopape, Makola and Boshomane were not present – all Boshomane wanted to know was if accused 3 remembered. Captain Ntini never asked him if he was assaulted. The statement was read back to him and he was satisfied.
179. He gave eight names of those involved including accused 5. He says that he was able to remember these names and number of vehicles in quite some detail.
180. He did not inform Lt Col Raphadu of assault. He says he only informed him of what he was told to. He says he was told of accused 1 street name being 'Matsatsela'. He insisted that he was never informed of his rights. He had a girlfriend in Bochum, Limpopo by the name of Mpho. He never had a girlfriend in Hammanskraal. In November/December 2017, he met the witness and went to his house.
181. Captain Muller did not explain rights. He appeared in court on a Monday and the statements were made over the weekend, therefore the dates are incorrect. He admitted that this was not put to the witnesses.
182. He was arrested on a Friday and then taken to Captain Ntini, then Lt Col Raphadu. On Saturday, he left for Pretoria underground offices, then to Soshanguve, then Kagiso, thereafter Naledi to Lt Col Raphadu.

He was returned to Kagiso to sleep there in the cells. On Sunday, he was taken to Soshanguve for pointing out with Captain Muller.

183. He had two cellphone numbers an 060 and an 076 one. He could not explain why the 076 number was completed in A48 at arrest. He knows the witness from church in Limpopo from 2013. He never slept at the witness's home in Soshanguve. They never discussed personal things.
184. W/O Mashao testified that in accused 1's phone they found Libisho Aphane's name next to the 076 number which the witness confirmed was accused 3.
185. Accused 3 testified that he said nothing about the witness in his statements because that is what the police told him to state. He could drive a motor vehicle back in 2017 and during November 2017 to March 2018, he drove a white Audi even though he does not have a license. It belonged to his friend Sibusiso Masango. Accused 3 never disputed that he cannot drive when the witness was testifying. He denied ever being with Mapula and Mathema.
186. He testified that his uncle went to Salamat Motors sometime in December 2017 and found the kombi that he wanted. He viewed the vehicle around 20 December 2017. His uncle sent him money on 27 December 2017 and the next day, he went to purchase the vehicle. His uncle was short of R55 000 and he transferred it for him with the understanding that it will be returned. The witness had come with another person in his Mercedes Benz. His uncle knew the witness from Zebediela.
187. He denies that he ever counted money with the witness nor that he paid the witness R13 000 on 27 December 2017. At the car wash when the witness received a call about an incident at his home, he was unaware that the witness gave accused 1 his house keys.

188. He indicated that he had several bank accounts and does not want any of his bank balances to exceed R60 000. He had a Capitec bank account, a Standard Bank one with approximately R22 000 and a Nedbank one with approximately R5 000. Although his accounts have never been frozen, he remembers this from PR / Business Studies at school that if a bank balance exceeds a certain amount, the account may be frozen. He acknowledged that he did not dispute the witness's evidence about the counting of the money at his house.
189. He does not dispute that the firearm and cartridge cases in the KwaMhlanga case are linked to the Eersterust heist as per Exhibit X.
190. In his statement, he agreed that the 076 number communicated with accused 4. He conceded that it was never put to the witness that he used a Samsung phone instead of a "lepopotwane". He did not remember mentioning the witness in his statement to Lt Col Raphadu. Accused 3's two uncles were not asked to come and testify on his behalf as his legal representative indicated that Happy Mavundlela is not willing to testify on his behalf, whilst Samuel Mavundlela will not advance his case.

G. THE STATE'S ARGUMENT

191. The State counsel argued that as per the indictment, the State led approximately 24 witnesses to prove its case.
192. The witness testified that he had known accused 3 for 12 years, from church. He knew accused 1 as 'Matsatsela' and accused 3 as 'Small' and / or Libisho. He was introduced to accused 1 by accused 3. They lived together until a misunderstanding, as a result, accused 3 stayed at the witness's home.

193. Accused 1 was in possession of a black Range Rover SUV, which he drove around, whereas it was only supposed to be used during robberies. On 19 December 2017, accused 3 spent the night at the witness's place. The witness drove accused 3 to accused 1's place to collect the firearms for the robbery in Mamelodi.
194. Accused 1 put the two firearms on the floor of the Range Rover SUV. Accused 1 sent the witness the location to a place where there were many police vehicles that looked like they were being repaired, this is where he was introduced to accused 4.
195. The witness and accused 4 drove to Danlyn Mall to scout for a CIT vehicle. After they spotted the vehicle, accused 4 contacted others, including accused 3. The witness was told by accused 1 not to drive to the safe house or town because of the presence of police. The witness drove to Nellmapius where accused 4 opened the gate for him. Accused 3 came with lots of cash in his pockets and informed the witness that there was not a lot of money in the van, but receipts. They robbed the vehicle on the wrong day.
196. Accused 1 wanted to be paid more because he was carrying a rifle. Accused 3 was driven by the witness to Pretoria Central and deposited money into a Capitec account at an ATM. The bag with the firearms was placed inside a speaker at the back of the witness's vehicle. Accused 3 had R620 000 excluding coins that was kept at the witness's house. The witness was given R13 300 or R13 500 as his share for transporting the accused. Accused 3 used R220 000 to buy a kombi that he intended to register in his uncle's name.
197. When the witness was arrested and kept in custody with the accused, he testified that accused 1 was angry with accused 3 because firearms were found at the witness's house and accused 3 told accused 1 that

he must plead guilty for possession because he led the police to the firearms. Accused 1 told accused 3 that the firearms were from a robbery in Mpumalanga, according to the witness.

198. The State also relies on other circumstantial evidence, like cellphone records, statements made by the accused as well as ballistic reports and the statements made by the accused before commissioned officers.
199. The witness testified that he knew accused 3's number as 0[...]2 as they communicated on it. W/O Mashao testified that when he was completing the A48 form, adding accused 3 to the docket, accused 3 gave him this number as his. W/O Mashao also indicated that he found this number on accused 1's cellphone contacts saved as Libisho Aphane. This, the State says, shows that accused 1 and 3 knew each other before arrest.
200. Col Boonstra testified that cellphone number 0[...]2, Exhibit BB1, which he was told belongs to accused 3, communicated with 0[...]3, Exhibit BB2, belonging to the witness and 0[...]4, Exhibit BB3 belonging to accused 4. He testified that on 20 December 2017, these cellphone numbers were communicating with each other. Accused 1 called the witness, three times and received three calls from accused 4 and communicated seven times in and around the vicinity of the Eersterust CIT heist. The witness testified that he called accused 3 when at Danlyn Mall and that accused 4 tried to call first, however could not get through, then used the witness's cellphone.

Accused 1

201. He was arrested on 28 December 2017. He took the police to Soshanguve VV to a house belonging to the witness. Accused 1 made

a statement to Lt Col Mashabela on 30 December 2017 wherein he says he got a call from 'Small' about a job in Eersterust.

202. He was supposed to bring his vehicle and there was also a red Mercedes Benz. At this stage, the witness had not yet been arrested. Accused 1 says he was assaulted to make statements, however, did not report this to anyone. The severity of the assaults and the manner differ in the trial within a trial and the main trial and further differs with what Mr Shela, his legal representative, testified to.
203. Accused 1 was rearrested in May 2018 whilst at a friend's house. He made a statement before Mankayi, then to Siphungu. He says he was assaulted in front of witnesses that he failed to call to testify, Thuli and Oupa.
204. In the statement to Siphungu, he talks about role players at robberies in KwaMhlanga where accused 3 took a rifle and two firearms belonging to the police. In the statement, he names other people involved, that three vehicles were involved and that there were two rifles and five pistols used. After robbery, they went to a safe house in Silverton and he was paid R10 000.
205. Accused 1 talks of an attempted robbery in December, in Soshanguve near Shoprite and another one in Danlyn Mall. The State argues that the statement was made by accused 1, freely and voluntarily. Accused 1 says he was denied access to his legal representative.
206. The State submits that accused 1 was not truthful and said whatever fitted the narrative. He also testified that he was surprised as to the severity of his assault as testified to by Mr Shela.

Accused 3

207. He was arrested on 2 March 2018 at one Eccentia's house, whom he met earlier and was spending the night with. The police demanded firearms and money from them. During the assault Eccentia produced these items. He does not know where they came from.
208. He made a warning statement to Boshomane. Captain Ntini took a statement on 6 March 2018 and did not observe any injuries on accused 3. In the statement he says one Masemola called him about work. He asked one 'Segwapa', the witness, to take him to Pretoria in his reddish Mercedes Benz. All four of them had AK47 rifles. Masemola received a call about the CIT van. He was paid R15 000 and gave the witness R6 000.
209. He made another statement to Captain Muller on 8 March 2018. He did not indicate that he was injured other than the handcuff scratches observed by Captain Muller. He pointed out places they met to share money and where the two robberies took place.
210. On 9 March 2018, he made another statement to Lt Col Raphadu. He stated who he was with, that they met at accused 1's place to conspire. Three pistols and two rifles belonged to 'Matsatsela' and another. He named who had explosives for KwaMhlanga and that they were driven by 'Matsatsela'. He took a rifle and 'Matsatsela' took pistols (handed to Masemola to erase serial numbers).
211. On the Eersterust robbery, Masemola informed them about the planned robbery. They met in Silverton. The witness and accused 4 left to track the CIT van. The van was stopped by shooting its tyres. They shot at police, explosives were used and money taken from the CIT van, then they drove to Silverton. He was given R26 000 and paid the witness R6 000.

212. Accused 3 says dates on statements were incorrect as he made all the statements in one weekend (this was not put to the police witnesses). He was denied legal representation. Captain Muller and Lt Col Raphadu were not asked about this, only Captain Ntini was asked, and he insisted that the date on the statement he took was correct. Furthermore, the State argued that the officers are from different stations under different command, therefore could not conspire on the dates.
213. Accused 3 says he does not know anything about these crimes, he was told what to say after the assaults by the police. The state argued that in the statements, he details his role and that of his co-accused. The State submitted that given the detailed nature of the statement, it was highly unlikely that he could repeat such detail after repeating it only once. The only reason he knows this information is because he was involved.
214. The State admits that the witness's evidence must be approached with caution as an accomplice witness, however claimed that it was corroborated. The State submits that the cellphone evidence places accused 3 at Eesterust robbery scene. The records further show that accused 3 and 1 knew each other. As far as money laundering is concerned, the accused received and possessed stolen money, while they knew it was stolen. Some of the R10 155 055 from the Eersterust robbery was used by accused 3 to buy a kombi and some deposited in his Capitec bank account. Accused 3's uncle did not come to court to corroborate his version and therefore the version should be rejected as false.
215. The court can convict based on a confession if it was made freely and voluntarily, whilst of sober mind. Exhibits R and S were statements from accused 1 whilst exhibits V,W, S and R1 were statements from accused 3.

216. The court may rely on the witness as he did not minimise his role, and the accused could not say why he would lie about them. Both accused claimed to have alibis for both robberies, however failed to produce them. The State relied on the evidence of the witness in the main as he was part of those that committed the robbery on 20 December 2017, the ballistic reports of Exhibit X link the firearms, cartridge cases and rifle to robbery scenes. The cellphone data places them at the scene and the accused's statements.

H. THE DEFENSE CASE

217. The defense submitted that the State in proving its case, relied on the evidence of the witness and statements purportedly made by the accused.

218. It is trite that the State bears the onus of establishing the guilt of the accused beyond reasonable doubt, and the converse is that the accused are entitled to be acquitted if there is a reasonable possibility that they might be innocent (*R v Difford 1937 AD at 373, 383*).

219. In *S v van der Meyden 1999 (2) SA 79 (W)*, which was adopted and affirmed by the court in *S v van Aswegen 2001 (2) SA SACR 97 (SCA)*, it was reiterated that in whichever form the test is applied, it must be satisfied upon a consideration of all the evidence. A court does not look at the evidence implicating the accused in isolation to determine whether there is proof beyond a reasonable doubt, so too does it not look at the exculpatory evidence in isolation to determine whether it is reasonably possible that it might be true (*Moshepi and Others v R LAC (1980-1948) 57 at 59F – H and S v Hadebe and Others (1) SACR 422 (SCA) at 426H*).

220. *In casu* and slotting in with the law and principles applicable in considering evidence of an accomplice, regard must be had to the

provisions of section 204 of the CPA. In this matter, the section 204 witness was only told by the court to testify according to the agreement he had with the State. It is the defense's contention that the witness was not warned to the letter of the section by the court. The purpose of the explanation is to afford the witness the opportunity to reflect upon the importance of giving truthful and satisfactory testimony which incriminates him/her in the commission of an offence or offences and what the possible consequences may be if he/she gives unsatisfactory evidence (S v Maunye and others 2002 (1) SACR 266 (T) 278-280).

221. In any case, the witness did not incriminate himself in any way, going to the extent of denying possession of the firearms and ammunition found in his vehicle by the police.
222. The failure of the court to comply with section 204 provisions rendered the trial unfair and as such the evidence of the witness ought to be disregarded for these reasons.
223. As far as the confessions are concerned, reference was had to the SCA matter of *Litako and Others v S* 2015 (3) SA 287 (SCA) tracing the origins of the common law rule that confessions and admissions made by an accused are only admissible as evidence against the maker and noted the prohibition against the confession of one accused being used by another. This is captured in section 219 of the CPA, which deals with admissions and does not contemplate an admission being tendered against anyone else but the maker.
224. Both accused testified and distanced themselves from the incriminating contents of their respective confessions during the proceedings, therefore it follows that one accused's confession may not be used against the other. Evidence outside of the statement is then relied upon for corroboration.

225. The cellphone evidence that was tendered against accused 3 was strictly hearsay evidence and the State failed to bring an application in terms of section 3 of the Law of Evidence Amendment Act, 1988. W/O Mashao testified that it was the witness that told him the number belonged to accused 3. The witness never testified about the alleged cellphone number of accused 1 or 3. The best evidence rule should be RICA and not a mere suspicion that such cellular number belonged to accused 1.
226. The evidence by W/O Mashao that after arresting accused 3 in Limpopo, he made an admission about the cellphone number, remained his word against that of accused 3. Such a statement is not in writing.
227. Accused 3 was detained at various stations in Polokwane, Kagiso and Soshanguve without a notice of rights, in violation of his section 35 constitutional rights and such conduct by the police vitiates the validity of any subsequent statement purported to have been made by the accused.
228. As far as common purpose is concerned, the defense contends that there exists no evidence of an agreement between accused 1 and 3 to commit the offences as set out in the indictment. There is further no independent evidence regarding their respective participation except for their uncorroborated extra curial statements.
229. As far as the possession of firearms, ammunitions, explosives, cash and all other items found at Soshanguve VV, such items were not found in a vehicle or house belonging to accused 1 and 3. If fact, the accused were not found in possession of anything.

230. Therefore, the defense contends that the State has failed to prove the guilt of the accused beyond a reasonable doubt and the accused are entitled to a discharge on all counts.

J. Summary of the issues to be decided as well as the applicable law

231. It is trite that in criminal proceedings the burden of proof, to establish the guilt of the accused, rests on the state. Such proof should be beyond reasonable doubt and further, that there is no onus, for the accused to prove their innocence. In *S v Van der Meyden* the court correctly held that:

“The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false; some of it might be found to be unreliable; and some might be found to be only possibly false or unreliable; but none of it may simply be ignored.”

232. The approach to be adopted or implemented in the evaluation of evidence was set out in the Supreme Court of Appeal matter of *S v Chabalala*, thus;

“The trial court’s approach to the case was, however, holistic and in this it was undoubtedly right: S v Van Aswegen 2001(2) SACR 97 (SCA). The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and having done so, to decide

whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt. The result may prove that one scrap of evidence or one defect in the case for either party (such as the failure to call a material witness concerning an identity parade) was decisive but that can only be an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch on to one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence..."

233. Section 204 of the CPA provides as follows:

“(1) Whenever the prosecutor at criminal proceedings informs the court that any person called as a witness on behalf of the prosecution will be required by the prosecution to answer questions which may incriminate such witness with regard to an offence specified by the prosecutor—

(a) the court, if satisfied that such witness is otherwise a competent witness for the prosecution, shall inform such witness—

(i) that he is obliged to give evidence at the proceedings in question;

(ii) that questions may be put to him which may incriminate him with regard to the offence specified by the prosecutor;

(iii) that he will be obliged to answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the answer may incriminate him with regard to the offence so specified or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified;

(iv) that if he answers frankly and honestly all questions put to him, he shall be discharged from

prosecution with regard to the offence so specified and with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and

- (b) such witness shall thereupon give evidence and answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the reply thereto may incriminate him with regard to the offence so specified by the prosecutor or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified.

- (2) If a witness referred to in subsection (1), in the opinion of the court, answers frankly and honestly all questions put to him—

- (a) such witness shall, subject to the provisions of subsection (3), be discharged from prosecution for the offence so specified by the prosecutor and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and

- (b). the court shall cause such discharge to be entered on the record of the proceedings in question.”

234. The witness was warned by the court when he commenced his evidence to confirm that he had an agreement with the State and must give evidence as per that agreement. It was held in *R v Qongwana* (1959 (2) SA 227 (A)) that although section 254 of Act 56 of 1955 (which was the predecessor of section 204) did not expressly require that a witness must in advance be informed of the substance of the section, that it was proper and indeed common practice to do so.

235. Section 204 makes it peremptory for the witness to be informed of its substance. The wording of section 204(1)(a) that states “the

court...*shall* inform such witness...” dictates that it is peremptory to inform the witness of the contents of subsection (1)(a)(i)-(iv). The purpose of the explanation is to afford the witness the opportunity to reflect upon the importance of giving truthful and satisfactory testimony which incriminates him/her in the commission of an offence or offences and what the possible consequences may be if he/she gives unsatisfactory evidence.

236. The warning given to the witness *in casu* was no more than a reminder to testify truthfully and in line with the agreement he had with the State, with the prosecutor having introduced the subject of the provisions of section 204 to the Court, without any reference to the four points mentioned by the subsection (*Modime v The State unreported AA 10/2023 Limpopo High Court*).
237. It is to be noted, however, that nothing turns on the failures alluded to above, as it emerged during the trial that the witness was legally represented and was well aware of the provisions of section 204 of the CPA as he testified that his attorney approached the State on his behalf to turn state witness and he did so voluntarily with no promise. However, a careful look at the witness’s evidence indicates that he failed to incriminate himself in any of the crimes committed. Some of his evidence was hearsay on crucial aspects of the charges faced by the accused. Further, his evidence was unreliable as he contradicted himself on several aspects and when caught out, sought to tailor his evidence accordingly, and lastly, his aversions on some crucial aspects were not put to the accused or some state witnesses for a response.
238. As far as confessions are concerned, section 217 of the CPA provides as follows:

“(1) Evidence of any confession made by any accused person in relation to the commission of any offence shall, if such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto, be

admissible in evidence against such person at criminal proceedings relating to such offence: Provided—

- (a) that a confession made to a peace officer, other than a magistrate or justice or, in the case of a peace officer referred to in section 334, a confession made to such peace officer which relates to an offence with reference to which such peace officer is authorized to exercise any power conferred upon him under that section, shall not be admissible in evidence unless confirmed and reduced to writing in the presence of a magistrate or a justice; and
- (b) that where the confession is made to a magistrate and reduced to writing by him, or is confirmed and reduced to writing in the presence of a magistrate, the confession shall, upon the mere production thereof at the proceedings in question —
 - (i) be admissible in the evidence against such person if it appears from the document in which the confession is contained that the confession was made by a person whose name corresponds to that of such person and, in the case of a confession made to a magistrate or confirmed in the presence of a magistrate through an interpreter, if a certificate by the interpreter appears on such documents to the effect that he interpreted truly and correctly and to the best of his ability with regard to the contents of the confession and any question put to such person by the magistrate; and
 - (ii) ...”

239. Section 35(1) of the Constitution of the Republic of South Africa, 1996, (Constitution) *inter alia* provides:

- (1) Everyone who is arrested for allegedly committing an offence has the right—
 - (a) to remain silent;
 - (b) to be informed promptly—
 - (i) of the right to remain silent; and
 - (ii) of the consequences of not remaining silent;

- (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
- (d) to be brought before a court as soon as reasonably possible, but not later than–
 - (i) 48 hours after the arrest; or
 - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
- (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
- (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.

240. A few things become clear from a reading of these provisions of the Constitution and the law. Firstly, an extra-curial confession made by an accused person is admissible as evidence against that accused person at his trial for the offence confessed to, provided that

- (a) it has been made freely and voluntarily by the accused, while in his sound and sober senses and without having been unduly influenced thereto; and, further that
- (b) it has not been made to a police official, correctional official or a peace officer referred to in section 334 of the CPA who is not “a justice of the peace under the provisions of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963)”, unless it has been confirmed and reduced into writing before a magistrate or a justice of the peace.

241. Section 3(1)(c) of the Law of Evidence Amendment Act provides for the circumstances under which hearsay evidence may be admitted as evidence. The general principle is that hearsay evidence shall not be admitted unless it is in the interests of justice to do so. The section is as follows:

"3. Hearsay evidence

1. *Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless –*

- (a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;*
- (b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or*
- (c) the court, having regard to -*

- I. the nature of the proceedings;*
- II. the nature of the evidence;*
- III. the purpose for which the evidence is tendered;*
- IV. the probative value of the evidence;*
- V. the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;*
- VI. any prejudice to a party which the admission of such evidence might entail; and*
- VII. any other factor which should in the opinion of the court be taken into account, is of the opinion that such evidence should be admitted in the interests of justice.*

242. Hearsay evidence is unreliable and therefore inadmissible. In *S v Ramavhale* Schultz JA, quoted in agreement, from another judgment, namely; *".....a Judge should hesitate long in admitting or relying on hearsay evidence which plays a decisive or even significant part in convicting an accused, unless there are compelling justifications for doing so. "*

243. With specific reference to this case, the defense contends that the evidence of Captain Boonstra, towards the tail end of the State's case

is hearsay evidence. Cellphone evidence was tendered against accused 3 placing him at the scene of the Eersterust robbery. W/O Mashao had testified that the cellphone number in question belonged to accused 3, who provided it to him when he was completing the A48 form. W/O Mashao testified that the witness told him that the number belonged to accused 3, however the witness never testified to this fact. Accused 3 denies this and there is no documentary evidence to prove what W/O Mashao testified to. The only reference to cellphone numbers in respect of accused 3 are the numbers 0[...]5 and 0[...]6 in Exhibit V, which is accused 3's statement to Captain Ntini. Those numbers are not amongst those in Captain Boonstra's report.

244. The purpose of the evidence is to show that the accused was in the vicinity of the Eersterust robbery at the time the robbery took place. Opposition to admission of the hearsay evidence was strong on this point. The proposition that the accused would be prejudiced in that the hearsay evidence may end up determining his guilt was considered in *S v Shaik & others*. In paragraph 177 of this judgment the following is said;

"The fact that the admission of the fax could lead to the conviction of the appellants was clearly not intended to constitute prejudice to be taken into account in deciding whether the evidence should be admitted or not. It is for this very purpose that hearsay evidence is, in the interests of justice, admitted in criminal cases. The appellants, however, contended that they were prejudiced by the admission of the fax because they had not had an opportunity to cross-examine Thétard. However, it could only be found that the appellants would be prejudiced in this respect if there appeared to be a reasonable possibility that cross-examination of Thétard would strengthen the appellants' case. In the light of what has been said in the preceding paragraph it is highly unlikely that cross-examination of Thétard would have rendered positive results for the appellants. All the indications were that cross-examination of Thétard would have served no other purpose than to reinforce the impression that he is dishonest and unreliable. In the circumstances the risk that the appellants would be prejudiced by not being

given an opportunity to cross-examine Thétard was very slim.”

245. I did consider all the factors, and I concluded that admitting the hearsay evidence would be an affront to justice. Hence my ruling that the cellphone evidence as far as it purports to relate to accused 3 is excluded.

246. In addition, the prosecution in this respect and overall with the rest of the case, made no application for hearsay evidence to be admitted at any time during the presentation of the case for the prosecution. The important cautionary words expressed by Cameron J in *Ndhlovu supra*:

“Third, an accused cannot be ambushed by the late or unheralded admission of hearsay evidence. The trial court must be asked clearly and timeously to consider and rule on its admissibility. This cannot be done for the first time at the end of the trial, nor in argument, still less in the court’s judgment, nor on appeal. The prosecution, before closing its case, must clearly signal its intention to invoke the provisions of the Act, and, before the State closes its case, the trial Judge must rule on the admissibility, so that the accused can appreciate the full evidentiary ambit he or she faces.”^[15]

247. Evidence was introduced by the State as proof that the accused were in the vicinity of the CIT robbery in Eersterust. The prosecution failed to apply for the admission of the hearsay evidence prior to the conclusion of the state case. The accused, accordingly, had no opportunity to deal with the admissibility of the hearsay evidence prior to it being admitted. It is to my mind neither in the interest of justice that the hearsay evidence outlined above be allowed nor to attach any probative value to that evidence.

248. Section 18(2)(a) of the Riotous Assemblies Act describes conspiracy to commit a crime as follows:

“18(2)(a) Any person who ... conspires with any other person to aid or procure the commission of or to commit ... any offence, whether at common law or against a statute or statutory regulation, shall be guilty of an offence and liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.”

249. Where several persons conspire to commit a crime, it is not necessary, for a conviction to follow that each and every co-conspirator play an individual role in the commission of that crime or that such co-conspirator be physically present at the scene when such crime is committed. In *S v Cooper and Others* the Appellate Division held:

*“A conspiracy normally involves an agreement, express or implied, to commit an unlawful act. It has three stages, namely, (1) making or formation, (2) performance or implementation and (3) discharge or termination. When the conspiratorial agreement has been made, the offence of conspiracy is complete, it has been committed and the conspirators can be prosecuted even though no performance has taken place. But the fact that the offence of conspiracy is complete at that stage does not mean that the conspiratorial agreement is finished with. It is not dead. If it is being performed, it is very much alive. So long as performance continues, it is operating, it is being carried out by the conspirators, and it is governing or at any rate influencing their conduct. The conspiratorial agreement continues in operation and therefore in existence until it is discharged (terminated) by completion of performance or by abandonment or frustration or whatever it may be; per Lord PEARSON in *Director of Public Prosecutions v. Doot and Others*, (1973) 1 All E.R. 940 (H.L.) at p. 951. While the conspiratorial agreement is in existence it may be joined by others and some may leave it. The person who joins it is equally guilty; *R. v. Murphy*, (1837) 8 C. & P. 297 at p. 311(173 E.R. 502 at p. 508). Although the common design is the root of a conspiracy, it is not necessary to prove that the conspirators came together and actually agreed in terms to have the common design and to pursue it by common means and so carry it into execution. The agreement may be shown like any other fact by*

circumstantial evidence. The detached acts of the different persons accused, including their written correspondence, entries made by them, and other documents in their possession, relative to the main design, will sometimes of necessity be admitted as steps to establish the conspiracy itself. It is generally a matter of inference deduced from certain acts of the parties concerned, done in pursuance of a criminal purpose in common between them. R. v. Briscoe and Scott, (1803) 4 East 164 at p. 171 (102 E.R. 792 at p. 795). If the conspirators pursued, by their acts, the same object, often by the same means, some performing one part of the act and others another part of the same act, so as to complete it with a view to the attainment of the object which they were pursuing, the conclusion may be justified that they have been engaged in a conspiracy to effect that object. The question to be answered is, had they a common design and did they pursue it by a common means?"

250. There need not be an agreement about the exact manner in which the crime was to be committed and further that a conspiracy can be inferred from the conduct of the parties provided the inference sought to be drawn was the only reasonable inference that could be drawn from the facts, this of course being in line with *R v Blom*.

In *Reddy and Others v S* the legal position was explained as follows:

"In assessing circumstantial evidence one needs to be careful not to approach such evidence upon a piece-meal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by an accused is true. The evidence needs to be considered in its totality. It is only then that one can apply the oft-quoted dictum in R v Blom 1939 AD 188 at 202-3 where reference is made to two cardinal rules of logic which cannot be ignored. These are firstly, that the inference sought to be drawn must be consistent with all the proved facts and secondly, the proved facts should be such "that they exclude every reasonable inference from them save the one sought to be drawn". The matter is well put in the following remarks of Davis AJA in R v De

Villiers 1944 AD 493 at 508-9:

“The Court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way; the Crown must satisfy the Court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence.”

251. On the other hand in the event of a person who was party to a common purpose or prior agreement to committing a particular crime (like robbery), and he/she foresaw the possibility that another crime (for example murder or attempted murder), may be committed in the execution of the plan, but he/she persisted, reckless of such consequences, and it occurred, he/she will also be guilty of the secondary crime. This was the correct legal position.
252. Counsel relied on *S v Mgedezi* (1989 (1) SA 687 (A) at 7051 – 706B where it is stated that:

“in the first place, he must have been present at the scene where the violence was being committed. Secondly, he must have been aware of the assault on the inmates of room 12. Thirdly, he must have intended to make common cause with those who were actually perpetrating the assault. Fourthly, he must have manifested his sharing of a common purpose with the perpetrators of the assault by himself performing some act of association with the conduct of others. Fifthly, he must have the requisite mens rea; in respect of killing the deceased, he must have intended them to be killed or have foreseen the possibility of their being killed and performed his own act of association with

recklessness as to whether or not death was to ensue.”

K. Evaluation of the evidence and application of the law to the facts

253. From the evidence led in court, only the evidence of the witness and Captain Boonstra, in as far as it relates to the cellphone evidence of accused 3, has not been considered by the court for the reasons mentioned earlier. The rest of the evidence and the exhibits related thereto will be considered in determining the guilt or innocence of the accused. This includes their statements that were ruled as admissible from the trial within a trial.
254. The State's case is that accused 1 and 3 were involved in a CIT heist that took place in Eersterust and an armed robbery at a Total Garage in KwaMhlanga that resulted in the death of a police officer, unlawful possession of unlicensed firearms, assault with intent to do grievous bodily harm, possession of explosives, kidnapping and money laundering. The accused deny all the charges and testified that what is contained in their various statements, is information that the police forced them to state.
255. The State's witnesses, from the employees at the Total Garage in KwaMhlanga, to the passengers in the taxi and the VW vehicle at the garage, to the occupants of the Fidelity van in Eersterust, through to the SAPS's facial recognition expert, could not identify the accused as the persons who perpetrated the offences complained of. The facial recognition expert could neither confirm nor exclude accused 1 as the person in the CCTV footage from the garage. Although the court had sight of the comparative analysis, if the facial recognition expert is unable to positively identify accused 1 as the person in the CCTV footage, it would be a long uncertain leap for the court to state with the naked untrained eye that the person in the CCTV footage is indeed accused 1.

256. From the onset, I must also deal with the assertions by the accused that what is in their statements, is what the police told them to state. Accused 1 testified that when he made the statements to Lt Col Mashabela and Siphungu, he had been told what to say by other police members. However, his December 2017 statement, shortly after the commission of the Eersterust robbery took place at a time when the police investigation was in its infancy. This statement had detail and names of persons that the police could not have established through any other means at that stage.
257. The same can be said of the statements by accused 3 including the pointing out with Captain Muller. Accused 3's version that the information that is in the statements to Captain Ntini and Lt Col Raphadu was information that he was told to repeat is farfetched. Based on the detailed nature of the content, this cannot reasonably possibly be true. Accused 3 testified that he knows the witness from church and that his uncle also knows him from their rural home in Zebediela.
258. The police only discovered the witness much later. It was accused 1, by his own admission, that took the police to the witness's home in Soshanguve where they discovered the rifle, 9mm firearm, balaclavas, gloves and the workers' suit.
259. The police arrested accused 1 for the first time on 29 December 2017. In his testimony, he confirms that he was arrested on that date and there was a chopper hovering above. Both accused admit to there being a white Audi S3, grey/silver Audi A4 and a Peugeot / Citroen that were used in the commission of the Eersterust robbery. The accused in their statements both talk of being at a Silverton warehouse for the planning of the heist and after returning. They talk of a Fidelity van that was robbed, after collecting money from a BP Garage. They both admit to being taken home by the witness after the heist, although the one

refers to him as Segwapa whilst the other refers to him as Segwahla; however they both refer to him as being the owner of the red / reddish Mercedes Benz C-class vehicle, which vehicle was at Soshanguve VV where accused 1 took the police after his arrest on 29 December 2017.

260. They both admit to there being many men at the warehouse in Silverton, before and after the heist. They both indicate that explosives were used to open the Fidelity van, the occupants of the van were not shot at, however told to lie on the ground, the van was brought to a standstill by gunfire, money was taken from the van, all of which was corroborated by the Fidelity van driver; including the fact that he was robbed of his gun. Both accused admit to sharing in the proceeds of the CIT robbery. They both admit to being in possession of firearms during the robbery. As far as the robbery at the Total Garage KwaMhlanga is concerned, both accused admit that accused 1 approached the shop with others, whilst accused 3 remained outside as a look-out.
261. Mashishi testified that accused 1 took the police to his mother's home, his own home and then to the witness's home where they found the firearms and other paraphernalia. Under cross examination, he testified that accused 1 confirmed that his street name was Matsatsela. There were attempts throughout accused 1's evidence to paint of W/O Mashao and W/O Mankayi as having orchestrated his arrest and statements in an unlawful manner, however Mashishi denied knowing them, even as at the date that he testified.
262. Accused 1 in his statement to Siphungu says he robbed the Total garage with four other persons, they drove a blue Polo GTI, armed with a rifle and pistols. They bombed a safe, overpowered police. Accused 3 admits to being in possession of a rifle during this robbery. He admits to being the look-out, ordering taxi occupants to lie on the ground, including those that arrived in a VW Golf. Accused 3 admits to disarming the police of a 9mm pistol plus a rifle from the first police van

that arrived at the scene.

263. Accused 1 was arrested in Soshanguve, whilst accused 3 was arrested in Denilton and brought up to Gauteng. The police that processed them belonged to different SAPS stations and were therefore under different command structures. It is, therefore, unlikely, if not impossible, that they could have conspired to implicate the accused. In addition, the accused state that the police instructed them as to what to state in their statements, and for this, they never refer to the policemen involved referring to any documents for the details. The level of detail contained in the statements, including the names of other persons involved, is such that it is highly unlikely that someone not involved in the activities would have been able to remember and relay without reference to documents.
264. The witnesses robbed at the garage in KwaMhlanga were in the taxi and the VW Golf, which cars were referenced by accused 3 who was the look-out and admits to ordering the occupants out of their vehicles. Accused 1 admits to them bombing the safe, which failed to open according to accused 3. Accused 1 admits to firing at the police, whilst accused 3 admits to disarming them and stealing their rifle and 9mm firearms at gunpoint.
265. Accused 3 admits to receiving money from the various robberies, albeit small amounts of cash. He indicates that he had three bank accounts with positive balances. As to the purchase of the Kombi, he testified that it was for his uncle, however both uncles were not called to corroborate the evidence.
266. Accused 1 and 3 never talk of the witness being at either Eersterust or KwaMhlanga scenes with them. Accused 1 is the one that led the police to the witness's home where the rifle and 9mm gun were discovered. Accused 1 and 3 admit to being at the Eersterust and KwaMhlanga

scenes and the rifle and 9mm gun recovered from the witness's vehicle were linked to both crime scenes.

Common purpose, murder and attempted murder

267. Exhibit C is the post-mortem examination report compiled by Dr Shingange after conducting a post mortem on the body of the deceased police officer on 7 November 2017 in which the cause of death is recorded as gunshot wounds on head and lower back. Exhibit D is the photo album depicting the scene of the KwaMhlanga robbery and the body of the deceased police officer at the scene, plus the bullet riddled police vehicle.
268. In my view, the only reasonable inference that can be drawn from all the evidence, the proven facts, and the circumstances in this case, is that the accused committed the two robberies. The totality of the evidence before this court, supports a finding of guilt on some of these counts.
269. It came out during the cross examination of the accused, that a few assertions which were relevant to the State witnesses, were not put to the State witnesses. I cannot over-emphasize the value of putting a version to a witness so that such a witness can have an opportunity to comment thereon, particularly when the proposition is that the witness is not telling the truth. This is so that the witness may respond to the proposition, and if necessary, dispute it.
270. Accused 1 and 3 were at the Total Garage in KwaMhlanga. They admit to shooting at the police when the latter responded to the unfolding robbery. The police investigators recovered cartridges at the scene that were linked by ballistics to the rifle and 9mm firearm recovered from the witness's home, at the behest of accused 1. The police van had multiple bullet holes, and the deceased succumbed to a gunshot

wound, whilst another injured police officer was transported to hospital.

271. I therefore have no hesitation, considering the facts, that the crimes of murder and attempted murder were committed by the accused who were in unlawful possession of firearms and ammunition. In firing at the police, they also attempted to kill them.

272. The State alleges that there was a furtherance of common purpose. In this matter, where a conspiracy is proven and common purpose is proven, it follows that the actions of one accused are also the actions of the other and vice versa. The accused must have foreseen the possibility that the planned armed robbery may necessitate the use of firearms; hence they brought them and in furtherance of the common purpose, they may meet resistance that will require them to use the firearms. I therefore find that the shots fired by one accused, must be imputed to both of them, rendering them guilty of the murder and attempted murder charges.

Conspiracy to commit the robberies

273. The conspiracy to commit the robberies is based on circumstantial evidence and the statements of the accused. In this instance, inferential reasoning may be applied to arrive at a finding. The inference sought to be drawn must be consistent with all the proven facts, if not, then the inference cannot be drawn. The proven facts should be such that they exclude every other reasonable inference from them save for the one sought to be drawn.

274. In *S v Agliotti supra*, Kgomo J, sets out the following with regards to a conspiracy, that:

- it may not be express, may be tacit
- it may be inferred from the conduct of the persons involved

- the conspirators need not agree about the manner in which the crimes will be committed.

275. Having considered the versions of the State and the accused, and having evaluated the evidence, I find as follows:

- the accused admitted to being part of the two robberies
- in their statements, the accused admitted to being part of meetings, in both KwaMhlanga and Silverton, where plans were put in place for the commission of the robberies, which areas they departed from and returned to
- accused 1 took the police to the witness's home where they discovered a rifle and a 9mm firearm that were linked to both robberies by ballistics
- the two employees of Fidelity that were in the van, corroborated some of the information that was in the accused statements as to the goings on during the robbery
- the employees and customers at the Total Garage in KwaMhlanga corroborated some of the information in the accused's statements as to the goings on during the robbery
- the accused admitted to their roles in both robberies
- the vehicles involved in the robberies were similar in the accused's statements
- both accused admitted to receiving some of the proceeds of the Eersterust robbery
- the accused admit to shooting at the police at the garage at different times during the robbery
- the statements made by the accused were deemed admissible
- accused 3 bought a kombi with some of the proceeds of the Eersterust robbery

276. From the conduct of the parties, the only inference that can be drawn and is reasonable, is that the accused came together with others, and

conspired to commit the robberies.

277. The version of the accused, that they were assaulted and forced to make the statements as narrated by the police, is rejected as false beyond a reasonable doubt. As previously stated, the statements are quite detailed, with several names, the police were under different command structures and some of the victims of the accused's actions corroborated the versions in the accused's statements.

278. Considering the cautionary rule applicable to the evidence of accomplices, I am unable to convict accused 1 and 3 based on the evidence of the section 204 witness with regard to the alleged acts.

279. With regard to accused 1 and 3, I am satisfied that they are to be convicted based on the formal admissions they made with regard to their respective acts and their evidence before this court.

280. In the result, I find that the State proved beyond a reasonable doubt that the following offences, in respect of which the version by all the accused, in turn, is not reasonably possibly true, and I find accordingly, is false beyond reasonable doubt, have been committed;

281. Accordingly, I find that

281.1 Both accused 1 and 3 are found guilty on counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 33, 34 and 35.

281.2 Both accused 1 and 3 are not found guilty on counts 11, 12, 23, 27, 28, 29, 30, 31 and 32.

M A LUKHAIMANE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Appearances:

Representation for the State: Adv N Maphalala

Representation for the Accused: Adv OKK Matshego

Instructed by Legal Aid South Africa