



**IN THE HIGH COURT OF SOUTH AFRICA
(POLLSMOOR CIRCUIT COURT, WESTERN CAPE DIVISION, CAPE
TOWN)**

Case no: CC 82/2020

In the matter between:

THE STATE

and

CEBO SOBOYISE

ACCUSED 1

ZOLA GOLELA

ACCUSED 2

Heard: 20 October 2025-3 December 2025, 19 January 2026- 6 February
2026, 13 February 2026, 20 February 2026

Delivered: 27 February 2026

JUDGMENT

Bhoopchand AJ:

[1] The State has charged Accused 1, Mr Cebo Soboyise (‘Soboyise’) with fourteen counts and Accused 2, Mr Zola Golela (‘Golela’) with thirteen counts arising from a series of crimes that occurred between 16h30 on Tuesday, 26 November 2019, and 01h30 on Wednesday, 27 November 2019. The trial in this matter was unduly protracted for various reasons including the availability of Counsel, witnesses and Court officials, and logistical delays in conveying the Accused to Court. The Accused initially objected to being tried at the Pollsmoor Circuit Court but withdrew their objection after large sections of the security bars installed in the Court were removed. The latter part of the trial (defence argument and judgment) was moved to the High Court.

[2] The first crime scene involved the Makaza Shoprite liquor store, in Khayelitsha (‘the liquor store robbery’) where a security guard and two cashiers were robbed at gunpoint. The second crime scene at Badele Street, Leiden, Delft, concerned the fatal shooting of the two Zwakala brothers, Siyanda and Siyabonga (‘the shooting of the two brothers’). The third crime scene at Thubelitsha, Delft, involved robbery with aggravating circumstances and the fatal shooting of Thanduxolo Wiseman Stuma, a police officer (‘the shooting of the police officer’). His cellphone was stolen. The fourth crime invoking counts 8,9,10,11, and 12, involved a robbery and attempted murder at the Idahoff superette on Voortrekker Road, Bellville (‘the Idahoff superette robbery’). The Accused were discharged on these counts pursuant to their section 174 applications at the end of the State’s case. The fifth crime scene in Mfuleni was where the Accused were arrested. Count 13 involved a charge of possessing a firearm with its serial number erased. Accused 1 was, in addition, charged with the possession of ammunition.

[3] Under section 220 of the Criminal Procedure Act 51 of 1977, the Accused admitted that a robbery occurred at approximately 16h30 at the liquor store. The post mortem reports and photographic albums relating to the two brothers and the police officer, the photographs taken at the Idahoff superette robbery, and of the Accused at the Mfuleni police station were also admitted. Accused 2 admitted that a blue Toyota Yaris ('Yaris') and a Star pistol belonged to him. Both Accused admitted that they were arrested at about 01h30 on 27 November 2019 in Main Road, Mfuleni, and that primer residue and touch DNA tests were performed on them.

[4] The State tendered the evidence of eighteen witnesses, and the Accused testified. Their evidence was evaluated for credibility, reliability, and the probabilities, viewed holistically¹ against the totality of the proved facts. The Court remained cognisant of the principle that the State bore the onus of proving the Accused's guilt beyond a reasonable doubt and of its corollary that the Accused are entitled to be acquitted if their versions and testimony were reasonably possibly true.² The State based its evidence concerning the Accused's guilt on the remaining counts entirely on circumstantial evidence as it could not place either directly on the crime scenes. The Accused countered the State's case against them with alibi evidence. They protested that they were not present at the crime scenes as they were engaged in other activities. The Court has taken the appropriate guidance from the caselaw on alibi ³, circumstantial⁴, and common purpose evidence⁵ and the obligations concerning witness cross-examination⁶.

¹ *Shilakwe v S* 2012 (1) SACR 16 (SCA) at para 11

² *S v Sithole and Others* 1999(1) SACR (W) at 590G-591C

³ *R v Biya* 1952 (4) SA 514 (A) at 521 C-D, *S v Liebenberg* 2005(2) SACR 355 (SCA) at 359 A-D, *S v Malefoe en Andere* 1998 (1) SACR 127 (W) at 158 A-B

⁴ *R v Blom* 1939 AD 188 at 202-203, *S v Morgan and Others* 1993. (2) SACR 134 (A) at 172-174 e-f

⁵ *S v Mgedezi and Others* (415/1987) [1988] ZASCA 135; [1989] 2 All SA 13 (A)

⁶ *President of the Republic of South Africa and Others v SARFU* 2000 (1) SA 1 (CC) at 36J-37E, *Browne v Dunn* (1989) 6 (HL), *S v Scott-Crossly* 2008(1) SACR 223 (SCA) at 237 G

THE LIQUOR STORE ROBBERY

[5] Counts 1, 2 and 3 concern this robbery as it applied to Ayanda Nondlozi ('Nondlozi'), Bulelwa Zulu ('Zulu'), and Lelethu Jack ('Jack') respectively. All three complainants testified. Jack and Zulu were employed as cashiers at the liquor store. Their shift coincided on 26 November 2019. At about 16h30, a customer asked Zulu for R100 cashback (drawing of money from a card) . She did not have the money in her till and referred the customer to Jack. After Jack assisted the customer, he left the store, only to return with a gun in his right hand. He warned the cashiers not to press the panic buttons, came around the counter and dislodged Zulu's till drawer from its point of connection. Jack opened her till, and the assailant helped himself to the cash from it. On his way out, the person discharged his firearm. The bullet lodged in the wall behind the cashiers.

[6] Jack testified that the person who approached her wore sunglasses. She saw another person standing at the door of the store. The store's security guard was lying on the floor. When the shooter exited, the other person left with him. She noticed the till drawers were left at the door. The store management came in thereafter, and the police were called. The whole incident took about two to three minutes. Zulu, the second cashier, confirmed the first cashier's testimony that a person had approached them for cashback and that the person returned holding a firearm and demanded money. He proceeded to rob them of the money in the tills. She heard one gunshot when they left, and she fainted. She heard another person saying, 'I told you not to shoot'. Zulu fainted after she heard the gunshot. Neither could describe the physical or facial features of the robbers.

[7] Under cross-examination, Jack was challenged on the content of her statement, which suggested that the robbery occurred on 27 November 2019 and that two persons had approached her for cashback and both returned with firearms. Jack had also mentioned in her statement that she heard two gunshots. Neither Counsel for the Accused cross-examined Zulu.

[8] Ayanda Nondlozi guarded the entrance of the liquor store on the day of the robbery. He was employed by a private security company and checked the till slips of customers against their purchases when they left the store. His co-worker had taken his tea break. A well-built person wearing shorts and sandals appeared with a firearm in his right hand. He had a strap over his shoulder. This suspect was accompanied by another person who was slender and darker in complexion and also held a firearm in his right hand. The well-built person held him from behind as the slender person approached the tills. He was pushed to the ground, and his hands were tied behind his back. The person took his phone and kept him on the ground by pressing his foot against the nape of Nondlozi's neck. He heard a gunshot. He did not see anything else. Counsel for Accused 1 asked a few questions, and Counsel for Accused 2 did not ask any

[9] Mr Andries Muller Bosman ('Bosman'), employed as an investigator at Shoprite, downloaded the footage of two cameras from the digital video recorder. He handed a copy of the footage to the police the following day. The recordings covered the area over the front entrance to the shop and from behind the area where the cashiers sit. The footage began at 16:30. A suspect wearing a black cap, sunglasses, a yellow t-shirt with a design on it, and blue shorts and takkies walked into the store at 16:33:04. The suspect had a bag in his hand. Two further suspects, both with firearms in their hands, were identified. One had a red cap, blue shirt, grey pants, blue sneakers with white laces and the other a crème-coloured cap, dark blue t-shirt with yellow and red emblems on it

and white and blue short pants and flip flops. They both grabbed the security guard outside the store. There were two cashiers at the tills. The suspect with the yellow t-shirt and black cap proceeded to the tills. The suspect with the crème-coloured broad-brimmed cap remained at the door.

[10] At 16:33:41, the suspect with the red cap was seen behind the counter where the cashiers stood. At 16:33:42, the suspect with the yellow t-shirt and black cap proceeded to put the till drawers into his bag. The suspect with the black cap with an emblem on it proceeded to leave the store. The suspect with the broad-brimmed cap entered the store. The footage also showed that a pamphlet stand had fallen over by the door. There was no clear depiction of the faces of the suspects in the footage. At 16:34:28, the suspect with the broad-brimmed cap fired his gun at the cashiers. Counsel for Accused 1 questioned Bosman on the chain of custody of the footage as well as on whether he could detect digital manipulation. Counsel for Accused 2 put to the witness that her client was never present at the store when the footage was recorded, a question that the witness would have not been able to answer.

[11] The three witnesses who testified about the liquor store robbery were unable to identify the Accused as the perpetrators. The cashiers were terrified, and at times hysterical, when they testified. They avoided looking at the Accused and their testimony had to be paused to allow them to recover. The Court has considered the incomplete recollection of events and the inconsistencies between the testimony and statements of Jack against the efflux of time since the robbery occurred and the trauma that it inflicted on them. Despite certain discrepancies regarding the number of shots fired and the precise movements of the robbers, their accounts of the essential features of the robbery were consistent, credible, and reliable. They described two-armed perpetrators, one approaching the tills and the other remaining near the

entrance, a demand for money, the taking of cash and a cellphone, and a gunshot as the robbers fled. These core features align with the video footage and with the objective evidence subsequently discovered. Their testimony, while not implicating the Accused directly, provides a coherent and credible account of the robbery that forms an important part of the evidentiary framework.

[12] The video footage of the liquor store robbery, introduced through the evidence of Bosman, constitutes objective and reliable real evidence. Bosman's testimony established the authenticity and continuity of the recordings, which were downloaded directly from the digital video recorder and handed to the police the following day. It corroborates the evidence of the cashier and the security guard to a large extent. The footage as observed and documented by Bosman, the Court and Counsel, depicted the three perpetrators, each with distinctive clothing, entering the store at approximately 16:33. Two of them were armed and restrained the security guard at the entrance, while the third proceeded to the tills, removed the drawers, and placed them into a bag. Although the faces of the perpetrators were not clearly visible, the video provided a coherent and objective account of the number of perpetrators involved, the clothes worn by them, their general physical build, and how the robbery occurred. It has probative value and forms an important component of the circumstantial evidence that must be evaluated together with the other evidence in determining the identity of the perpetrators.

THE FATAL SHOOTING OF THE TWO ZWAKALA BROTHERS

WITNESSES: SANDISWA ZWAKALA, CONSTABLES SKONDO-DOBU AND MSONGO

[13] Counts 5 and 6 covered the fatal shooting of the two brothers. Their father, Sandiswa Zwakala, testified. He was at home with his two children,

Siyabonga and Siyanda, on the night of 26 November 2019. Both he and Siyabonga were preparing to sleep, and Siyanda went outside to smoke. He heard gunfire and Siyanda screaming simultaneously. Both he and Siyabonga went to the passage. He saw a man standing in the lounge with a firearm about two metres away from them. The person asked them to turn on the light. As the person was leaving, Siyabonga went to the burglar bars, and he was shot. He held Siyabonga as he was dying. He put on the light and saw Siyanda on the other side of the sofa. Siyanda appeared as if he was dead.

[14] Sergeant Nokotula Skondo Dobu attended to this crime scene. She saw the body of a male person lying face down by the door, bleeding from the upper body. The father pointed out the second body in the house. The father told her that he had gone to bed at the same time as the second son did. The first son went out to smoke. The father heard shots outside. The father and the second son went out to look. He saw one suspect leaving after the second son was also shot. Both people who were shot are no longer alive. Constable Andile Msongo, the partner of Skondo Dobu, testified that the father told them that two of his sons were gunned down. Skondo Dobu took the statement. Neither Counsel for the Accused cross-examined these witnesses.

[15] The evidence relating to the murders of Siyabonga and Siyanda Zwakala was led through their father and the two police officers who attended the scene. The father's testimony was emotionally charged but credible. He described hearing gunshots, encountering an armed intruder inside his home, and witnessing both sons being shot. The shock and trauma of the incident explains his inability to recall the perpetrator's appearance. It does not detract from the reliability of his account of the events. The police officers' evidence, which was not challenged in cross-examination, corroborated the father's narrative and established the positions of the bodies, the presence of spent cartridges, and the

damage to the father's vehicle. Although none of these witnesses identified the perpetrator, their evidence reliably establishes the presence of an armed perpetrator and how the murders occurred. The Court must look to the circumstantial evidence to establish whether the Accused could be linked to the murders of the Zwakala brothers.

THE FATAL SHOOTING OF THE POLICE OFFICER

SAKELE MAFUYA, SERGEANT SONAMZI

[16] The theft of the cellphone and the fatal shooting of the police officer were covered by counts 6 and 7. Sakele Mafuya ('Mafuya'), a 41-year-old male, testified that he was at home after midnight with his brother and friends. He had returned from work doing ceilings at the civic centre. The police officer, Stuma, a friend of his brother, was with them drinking. His brother asked him to accompany Stuma to his home, which is near theirs. They had to walk through a passage alongside the brother's house to reach the street. When they reached the street, Stuma was on his phone. Mafuya saw a car approaching. The car slowed down. The driver asked Stuma to come nearer. The driver spoke to Stuma, but Mafuya was unable to hear their conversation. The driver and Stuma were fighting over the cellphone. The driver was well-built and wearing a yellow t-shirt. A passenger came out from the other side of the car and went around its front. The passenger was wearing a navy T-shirt and white striped shorts. He had a firearm in his hand. He pointed the firearm at Stuma and asked him for the phone. Stuma hit out at this person, and the cellphone dislodged and flew over the person's head. The passenger went in search of the cellphone.

[17] There was street lighting at the scene, and nothing hindered Mafuya's view. As Mafuya was watching Stuma, the back door of the car behind the driver opened. A third man who was short and dark and had a firearm, emerged.

As Mafuya was looking at this third person, a shot went off in Stuma's direction. The car was either a Yaris or a Kia. He could not see the colour. The police arrived about ten minutes after the shooting. Mafuya was taken to Blue Downs to point out the clothes he had seen. The clothes worn by the driver and passenger were taken out of a drawer. He pointed out the t-shirt and the navy shorts.

[18] Counsel for Accused¹ cross-examined Mafuya about the clothing and the car used by the perpetrators. He was able to see the T-shirt the driver was wearing. He pointed out the navy T-shirt and navy shorts with stripes worn by one of the passengers, and the driver's yellow T-shirt at the clothing parade. There were no other items of clothing that were shown to him. He testified that the deceased wore a yellow Kaizer Chiefs T-shirt. The colour of the car was navy blue to black. Mafuya's answers were long-winded and he appeared to be evasive in answering some of the questions put to him by Counsel.

[19] Mbonele Sonamzi ('Sonamzi'), a Sergeant and member of the SAPS for 19 years, attended this crime scene. He was on patrol in his van. There was a complaint that someone was shot. A few minutes later, another shooting was reported in the area. He attended the second complaint in his area. He saw two black males when he arrived on the scene. One was on the ground, bleeding. The other was standing. He asked the person standing about what had happened. The person was accompanying the other, who was shot. A black Toyota Yaris had appeared. The one on the ground was busy on his phone. The driver of the Yaris asked for the phone. A passenger in the car got out of the vehicle and walked to the front of the car. He had a firearm. The person seated behind the driver took the phone, got back into the car and the car left.

[20] Sonamzi noticed the person on the ground was bleeding. He called the ambulance for assistance. He saw a bullet casing near the person. He heard over

the police radio the same description of the people who were involved in the other crime scene. The persons, African males, were in a black Yaris. The witness on the scene was unable to take down the number plate of the Yaris. Sonamzi was not cross-examined by either Counsel for the accused.

[21] The evidence of Mr Mafuya, despite the shortcomings in rendering it, provides a clear and credible account of the fatal shooting of the police officer, Stuma. He observed the incident at close range under adequate street lighting and described three perpetrators emerging from a vehicle, two of whom were armed. His account of the struggle over the cellphone, the roles played by each perpetrator, and the firing of the fatal shot was coherent and consistent. Although he did not identify the accused by face, he gave detailed descriptions of the clothing worn by the perpetrators. He later pointed out items of clothing at the police station that correspond closely with those found in the possession of the accused at the time of their arrest. The Court raised the manner wherein the pointing out of clothing at the purported clothing parade was conducted and warned that this type of evidence was fatally flawed. Mafuya's evidence was consistent with Sergeant Sonamzi's unchallenged testimony. Sonamzi provided further evidence on the car used by the perpetrators as well as its occupants.

IDAHOFF SUPERETTE ROBBERY

SERGEANT BALINGA

[22] Sergeant Balinga ('Balinga') attended to this crime scene. On 26 November 2019, he was doing patrols in Voortrekker Road. A group of Somalis stopped him at Barnard Street. He was informed that three armed men robbed the Idahoff superette. They took cash, cellphones and cigarettes. The men robbed a customer of his iPhone and fled in a blue car. Balinga was told that the iPhone could be tracked. A bystander was asked to track the phone. He

contacted the Flying Squad to scan the area and continued monitoring the police radio which reported the sighting of a blue car standing at a corner near the superette when the robbery occurred. Counsel for Accused 1 did not cross-examine the witness. Counsel for Accused 2 elicited from Balinga that he did not see any video footage from the shop or hear about it until hours after the robbery had occurred.

[23] Although the accused were discharged under s 174 on the counts relating to the Idahoff superette robbery, the evidence of Sergeant Balinga remains relevant insofar as it establishes certain objective and uncontested facts. His testimony confirmed that the superette had been robbed by three armed men, that cash, cigarettes and several cellphones were taken, and that an iPhone belonging to one of the victims was capable of being tracked. He was informed at the scene that the tracking function had been activated and that other officers had observed, on the store's video footage, a blue vehicle positioned at the corner of the street. While Balinga did not personally view the footage, and his evidence cannot be used to establish the identity of the perpetrators or to prove the Idahoff counts, it reliably establishes the fact of the robbery and the theft of the iPhone. His evidence was largely unchallenged and provides contextual support for the later recovery of the stolen iPhone in the possession of the accused. It therefore forms part of the broader circumstantial framework relevant to the remaining counts, without reviving the charges on which the accused were discharged.

THE MFULENI ARREST

SERGEANT TSILANA

[24] Counts 13 and 14 covered this crime scene. Sergeant Lubalo Tsilana ('Tsilana'), who was a constable at all times material to this case, was working

with his partner, Constable Cetwa, in Bellville on the morning of 27 November 2019. They received a complaint that armed men were robbing a shop. Someone was shot in the shop, and phones, cigarettes, and money were taken. The information was that a blue vehicle was involved, and the police were tracking a cellphone that was taken from one of the victims on the scene. The vehicle was tracked moving from Bellville to Mfuleni.

[25] The police officers followed the coordinates provided and were informed that the car had come to a halt. They saw the motor vehicle in the vicinity of the fire station at Mfuleni. The car did not have registration plates, and the windows were tinted. They stood behind the vehicle and approached the car. Tsilana went to the driver's side and Cetwa to the passenger side. There were two young men in the vehicle. When the driver saw Tsilana, he wanted to get out and run. Tsilana held the driver against the car. He felt a firearm on the driver's left waist. The firearm was not in a holster but was placed in the driver's pants. He called out to his partner to come and assist him in handcuffing the driver.

[26] The two police officers then went to the passenger side. He saw many cellphones on the back seat and the floor of the vehicle. The passenger also had a firearm on his right waist. The firearm found on the passenger had its numbers filed off. The serial number on the driver's firearm was intact. They also found live rounds in the car. The driver identified himself as Zola Golela, and the passenger as Cebo Soboyise. In addition to the cellphones, they found cigarettes, live ammunition, and money in the car. The driver said that there was a third person who was involved. Golela and Soboyise were arguing with each other. Tsilana asked Golela if he reported his vehicle stolen. The question elicited a negative response from Golela.

[27] The Yaris was driven to the police station by Cetwa. Tsilana took the Accused to Bellville police station. Other police officers arrived at the scene

when they were leaving. Apart from the iPhone that was tracked, another phone was ringing incessantly. A police officer was at the end of that phone when it was answered. The person calling arrived at the police station with other personnel. The phone they called belonged to a police officer. During cross-examination, Tsilana corrected his testimony about where the Accused were taken after their arrest. The Accused were detained at Mfuleni but taken to other police stations.

[28] Tsilana was questioned by both Counsel on behalf of the Accused. The versions of the Accused that were put to Tsilana will be dealt with under the content of their testimonies. On questions from the Court, Tsilana stated that he had been working since 18h00 on the evening of 26 November 2019. He works for the Western Cape Flying Squad. He had been working at the Flying Squad for seven years. They heard about the Idahoff superette robbery on the radio and enquired about it. They were given the description of the type of motor vehicle that was used in the robbery. They were informed that the suspects were armed and that items had been taken from the shop. They were also informed that a shooting had occurred. The police on the scene were speaking with the controller. The time of the arrest was half past one. From the time he said he was going to respond to the time he effected the arrest was less than one hour. There were lights at the place of arrest. There were empty alcohol bottles in the car.

CONSTABLE SIBULELE CETWA

[29] Constable Sibulele Cetwa ('Cetwa') was the partner of Tsilana and worked in the Flying Squad. They were informed that an iPhone stolen at Idahoff Superette was being tracked to locate it. They were also informed that a Blue Toyota Yaris was implicated. He and his partner answered the call and

followed the coordinates of a stolen iPhone that were provided to them. They followed the coordinates from Voortrekker Road to Van Riebeeck Road, and then Spine Road to Mfuleni. They came across a blue Yaris at a standstill without number plates. The Accused were arrested near the Mfuleni fire station.

[30] Cetwa went to the passenger side. Tsilana went to the driver's side. One of the suspects tried to escape when they opened the doors. The passenger remained inside the vehicle. They saw cellphones, cigarettes, and cash in the car. The suspects were arrested as they could not explain the items in the car and the gun that had its serial number filed off. They were taken to Mfuleni police station. There was a cellphone that was constantly ringing. It was the detectives from another case who were looking for the firearm. The suspects had to be taken to the Bellville police station that day. Both suspects had firearms. He noticed the cellphones, cigarettes and the cash when they opened the vehicle. The occupant in the car wanted to open the door simultaneously. On his side, the passenger side, the occupant was assisting in opening the door. Cetwa confirmed that he was carrying a rifle that day.

[31] After the arrest Tsilana, Cetwa, and the Accused were all on the passenger side. Cetwa noticed the firearm in the passenger's seat when he was taken out of the vehicle. He could not remember what answer the Accused gave when they were asked about the items seen in the car. The Accused were driven to the police station for fingerprints in police vehicles. The Yaris was driven to the police station. He was unsure who drove the Yaris. They spent about twenty minutes at the scene in Mfuleni. Other police arrived about ten minutes after them.

[32] Counsel for accused 1 cross-examined Cetwa. He could not confirm Tsilana's testimony that the passenger had his forehead on the dashboard when the Accused were confronted. The passenger had opened his side of the door.

When Tsilana opened the driver's door, he shouted 'firearm'. The firearm was on the suspect's waist. The driver indicated that the vehicle belonged to him. Tsilana was the one who took out both suspects from the vehicle. The firearms were placed in exhibit zippy bags after Tsilana had worn gloves. Tsilana holstered his firearm after taking out the driver. The second firearm was on the passenger's waist. Its serial number was filed off.

[33] Counsel for Accused1 put his version of events to the Cetwa on the following morning of his testimony. The witness, Cetwa, was more relaxed. Accused 1 was sitting in the back of the vehicle. The witness denied this, stating that both accused were in front. He did not mention the live rounds of ammunition. He noticed it when the vehicle was searched. The live rounds were between the seats. The two suspects were arguing and mumbling. He could not hear what they were saying. Accused 1 denied that they were arguing. He could not remember how the suspects were taken to Mfuleni police station.

[34] Cetwa did not know about the search conducted at Accused 1's home. The Yaris was driven to Mfuleni, so it could not have run out of fuel. It was put to this witness that Accused1's version was that the driver, i.e., Accused 2, had lost his vehicle earlier in the day and had just recovered it. The driver asked friends to assist with fuel. Accused 1 had stepped out of the vehicle in Mfuleni to urinate. Accused 1 returned to the vehicle and sat in the backseat. He checked out the cellphones to see what type they were. He asked the driver about the cellphones. The driver told him that he had found the cellphones in the car when he recovered the car. It was the first time he had seen a gun like that, and he placed it back where he had found it. There was no need for Accused 1 to jump or run away.

[35] Counsel for Accused 2 cross-examined Cetwa. She pointed out the discrepancies in his version as compared to Tsilana, especially on whether

accused 1 was sleeping with his forehead on the dashboard. The witness said that he could not answer for Tsilana. The second accused's version was put to this witness. His car was stolen on 26 November 2019 and recovered on 27 November 2019. When confronted with the affidavit that Accused 2 had obtained from the Philippi East police station, the witness testified that he was not an expert in verifying whether the affidavit was legitimate or not. Accused 2 was outside the car, urinating when the police arrived. The witness denied this. The witness tended to be aggressive and was, overall, a poor witness. He could not account for what Tsilana saw.

[36] Despite the reservations the Court had about how Cetwa testified, the evidence of Sergeant Tsilana and Constable Cetwa regarding the arrest of the accused was largely consistent on the material aspects and provides a compelling account of the circumstances in which the accused were apprehended. Acting on information that armed suspects in a blue vehicle were being tracked through a stolen iPhone, the officers located a blue car without registration plates in Mfuleni. Upon approaching the vehicle, Accused 1 attempted to flee, and Tsilana felt a firearm concealed in his waistband. A second firearm, with its serial number obliterated, was recovered from Accused 2. The officers observed numerous cellphones, cigarettes, cash, and live ammunition inside the vehicle. One of the phones was the iPhone being tracked from the Idahoff robbery, and another belonged to the deceased police officer. The accused were arguing about a "third person," and were unable to provide any explanation for the presence of the stolen items or the firearms.

[37] Although Cetwa differed from Tsilana on minor peripheral details, such as the way the accused were transported after arrest, these discrepancies do not detract from the reliability of their evidence on the central issues. The objective circumstances of the arrest corroborated their testimony. The arrest evidence,

therefore, forms a significant component of the circumstantial chain linking the accused to the series of offences under consideration.

[38] Both Sergeant Tsilana and Constable Cetwa, the arresting officers, provided credible evidence about how the Accused were tracked through the iPhone stolen at the Idahoff superette and arrested in Mfuleni. Their account of how the arrest and the subsequent detention occurred is accepted by the Court.

OTHER STATE WITNESSES

SERGEANT MNYAMANA

[39] Sergeant Mnyamana, a detective with the Hawks, became involved in these cases as a police officer, Stuma was killed. He adopted the role of overall investigating officer as the threads common to the cases, in particular, the vehicle implicated, became apparent. His testimony concerned accounts of the investigations conducted and the information provided by the Accused, and the police officers assigned to the cases. Mnyamana oversaw the collation of forensic evidence and reports under the five dockets.

[40] Mnyamana spoke to the deceased police officer's girlfriend and returned the cellphone of the deceased to her. He viewed the video footage of the liquor store robbery and concluded that the Accused were the persons depicted in the footage. He conducted a clothing parade by asking Nondlozi and Mafuya to view four items of clothing obtained from the Accused. Counsel were in agreement with the Court that the evidence relating to this clothing parade was problematic as it was highly suggestive and the procedure used was fatally flawed. The Court rules, to the extent that it is necessary, that the clothing parade evidence is inadmissible.

[41] Mnyamana testified that he secured the Yaris for further investigations. Accused 2 told him that the car was stolen from his house and Accused 2 went searching for the vehicle on foot. Mnyamana pursued the information provided by Accused 2 that he had reported the theft of his vehicle to Philippi East police station. Mnyamana's enquiries at the police station revealed that no report of the stolen vehicle existed. He also established that Accused 2 was not at work when the crimes occurred. He enquired about the 26 November 2019 and not about the 25 November 2019. Mnyamana spoke to Accused2's wife who declined any involvement in the investigation of the matter. Accused 2 told him about a third person who was in their company and who had gone for assistance when the Accused were arrested. Mnyamana also observed a third person on the liquor store footage and was informed that there were three perpetrators involved in the fatal shooting of the police officer. Mnyamana was unable to find the third person. He was also unable to track the complainants in the Idahoff superette robbery.

[42] Mnyamana's lassitude, his dependence on assumptions, and manner in conducting procedures and in investigating the cases was exposed in cross-examination by Counsel for Accused 1. Counsel for Accused 2 questioned Mnyamana about the stolen vehicle report and his conclusions from observing the liquor store video footage. Both Counsel for the defence pursued their Clients assertions that they were assaulted after arrest. Counsel for Accused 2 contested Mnyamana's testimony that Accused 2 had used public transport to go to work and to the beach at Hermanus, and that a bag had been found in her Client's car. Counsel interrogated Mnyamana about his testimony that a Yaris was seen arriving and leaving the scene at the liquor store. Mnyamana confirmed that he did not seek further clarity from his informant about the Yaris.

[43] The evidence of the investigating officer, Sergeant Mnyamana, was not reliable relating to the content of what was conveyed to him by the Accused and how he pursued those leads. The State attributed Mnyamana's testimony to confusion, The Court does not agree. He made too many assumptions about the investigation. The clothing identification parade was significantly flawed. Counsel for Accused 1 was less generous about the evaluation of Mnyamana's evidence. She submitted that the witness extended the truth and was creative with procedures to secure the Accuseds' convictions. The Court, subject to the reservations already expressed, accepts Mnyamana's and Cetwa's evidence where there is support and corroboration from other witnesses e.g., the scientific and objective evidence.

MATHAPELO JOSEPHINE MINI

[44] Mathhapelo Josephine Mini ('Mini') is an employee of SAPS based at the Local Criminal Record Centre. She is a videographer and is currently a fingerprint expert. She has been at the LCRC for sixteen years. She was called to the Mfuleni police station to perform a prime residue test on the Accused as well as to take photos of items. She used a special kit to check for gunpowder on the hands of the Accused. The kit comprised blue and red magnetic objects like wands that lift gunpowder from a person who has allegedly discharged a firearm, optimally within two hours of them doing so.

[45] The Accused were in the boardroom of the police station. She photographed Soboyise and Golela and their hands. She swept the red magnetic wand over the Accused's right hand and the blue magnetic wand over the left hand. She placed the sample in the kit box and sealed the box before placing it in a forensic bag. She performed the collection on each of the Accused, and their samples were placed in different bags. She also took photographs of the exhibit bags. The prime residue samples were sent to Pretoria. Mini also

photographed the two firearms and eight cellphones. She concentrated on the prime residue test and not on the touch DNA test.⁷

[46] Under cross-examination, Mini confirmed that she is not a forensic analyst. Her task was limited to collecting residue samples and taking photographs. She acknowledged that any incorrect step in the collection of prime residue samples can contaminate samples. She did not establish how long after the incident she collected the samples. She did ask but did not write it down. It was put to her that the alleged incident occurred after midnight. Mini replied that the time frame was still valid. The sample was taken from Accused 1 at 03h25 on 27 November 2019. If the two-hour time limit were exceeded, she would not conduct the tests. The two-hour period would mean that the powder would still be available on a suspect's hand. The residue diminishes with time. She was asked whether the Accused were handcuffed, searched, or touched by the police, or transported in a police vehicle. Mini had no idea about these aspects. She could not exclude the possibility that the police touched the Accused. She asked the Accused if they washed their hands. If the hands are washed, the test could be negative.

[47] Mini was asked about secondary transfer and contamination. A transfer can occur from handling other objects. Mini could not answer some of these questions and repeated that her task was to process the tests. She wore gloves from the kit during the collection process, which were new and unused. She did not do collections on clothing. Her role ended once she collected the samples. She could not say whether anyone else handled the exhibits before they were tested. She had no idea whether the laboratory excluded any possibility of secondary transfer.

⁷

The State did not lead any evidence about the touch DNA test performed on the Accused.

[48] It was put to Mini that Accused 1 was sitting in the motor vehicle when he touched an item in the backseat pocket. As he pulled it out, he saw it was a firearm. It was the first time he saw a firearm that looked like the one he pulled out. Mini replied that there would be a likelihood of secondary transfer in these circumstances. If there was a prime residue on that gun, it could cause contamination. On questioning from the Court, Mini replied that an analyst would be the expert to answer questions on secondary transfer and contamination of samples.

BIANCA ANTHONY

[49] Warrant Officer Bianca Anthony is employed as a police officer at the Platteklouf Forensics Laboratory. She has a Bachelor's, Honours, and Master's degree in Biotechnology. She is a ballistics analyst. Her work includes the microscopic study of the indentations on firearms and bullets, and testing of firearm mechanism functioning.

[50] She was requested to reexamine the case after the initial analyst, Warrant Officer Hoffman, was no longer involved in the case. She did not do the firearm mechanism examination. She had access to the reports compiled by her colleague. She received two 9mm Parabellum calibre fired cartridge cases from the liquor store robbery, one 9mm fixed cartridge case from the Idahoff superette robbery, one 9mm fixed cartridge from Delft case 902/1, three 9mm Parabellum fired cartridge cases, one fired bullet jacket of unknown calibre, one bullet case of unknown calibre, and one 9mm calibre fired bullet. She received a bag containing one 9mm Parabellum Walther model semi-automatic pistol with its serial number erased, and one magazine. She also received three 9mm Parabellum unfired cartridge cases, one Parabellum character Star semi-

automatic pistol with a serial number on it and two magazines. She also received five 9mm Parabellum unfired cartridges.

[51] She was asked to do comparison microscopy of the fired bullets across the dockets. She had to do inter-docket comparison. She fired a test cartridge and got a cartridge case and bullets. She compared the exhibit cartridge case found at the crime scene. She can determine whether a firearm fired that bullet at the crime scene. She found that the Star pistol was not involved in any of the cases. Both firearms functioned properly. Another analyst usually confirms a match between the firearm and the cartridge. The Walther pistol with serial number erased matched the cartridge retrieved from the Harare liquor store robbery. There was a third firearm that was used. The Walther pistol was involved in the liquor store robbery, the shooting of the two brothers and the superette robbery. The third firearm involved in the shooting of the police officer. A cartridge used in the third firearm was also found at the liquor store robbery.

[52] Under cross-examination, Anthony testified that the laboratory does not accept errors affecting the chain of custody. If an exhibit is incorrectly marked, it is not accepted until the investigating officer fixes the error. If a cartridge case is bloody, it could affect the markings.

CAPTAIN JACOB MUSA MWALE

[53] Captain Jacob Musa Mwale ('Mwale') is employed by the Directorate of Priority Crimes Unit (DPCU) in the SAPS. He is a Captain and is based in Silverton, Pretoria. He conducts evidential communication analysis on cellphones. He has been in the employ of SAPS for twenty-three years and fourteen years with the DPCU. He has a bachelor's degree in policing. He has received training in various aspects of his expertise, namely, cellphone analysis.

[54] The investigating officer, Mnyamana, requested Mwale to conduct an evidential communication analysis. He analysed three cellphone numbers. He was provided with the cellphone data by the investigating officer. Mnyamana identified the user of the first number as Accused 2, the second number as that of deceased police officer Stuma, and the third as that of Accused 1. Mwale was requested to establish any connection, i.e., calls made and received between the identified targets, to identify cellphone towers activated by the numbers used by the identified targets, and to establish if the identified cellphones could have been within the area of the crime scenes. He studied the cellphone billings associated with the cellphone numbers. He communicated with the investigating officer after he received the request and visited the crime scenes to determine which cellphone towers cover the proximity of the scenes. He obtained their GPS coordinates on 11 July 2023. He also obtained clarity from Mnyamana about what had to be analysed.

[55] The tower coordinates were present on the cellphone billings. He could not place a particular cellphone in a scene but could match a phone to a tower. A cellphone activates a tower for outgoing and incoming calls, including short message services (SMS's). If the cellphone is not activated, it cannot trigger a tower. A cellphone can activate different towers in one area. This depends upon the population using the tower.

[56] After analysing the billings linked to each cellphone number, Mwale drew his conclusions. The number linked to Accused 2 indicated movement of this cellphone between 02:40:54 and 08:34:26 on 26 November 2019. This timeframe was not within the timeframe material to the commission of the crimes. The cellphone number of the deceased police officer indicated that it was in the vicinity of the crime scene between 21:20:28 and 21:26:00 before his murder on 26 November 2019.

[57] The cellphone number linked to Accused 1 activated certain towers in sequence between 08:17:08 and 22:38: 00 on 26 November 2019. They include towers in the Philippi area, Nyanga and Mfuleni. Mwale's analysis placed this number within 0.92km of the liquor store robbery at 16:17:19, 8.43km radius of the Idahoff superette at 22:23:22 on 26 November 2019, within 2.67km radius of the crime scene involving the murder of the police officer at 00:37:22, and within 4.69 km radius at 00:37:22, the same time on 27 November 2019 where the two brothers were fatally shot. The number was also placed within 1km of the scene where the Accused were arrested between 02:06:08 and 08:36:01 on 27 November 2019.

[58] Mwale was cross-examined on behalf of Accused 1. Counsel asked if several persons were using a particular tower, would a backup tower take the load? Mwale agreed, saying that the only real impediments to activation of a tower would be where there is no coverage or if there are impediments in the landscape. A cellphone tower would be activated only if there is cellphone activity. It does not tell what the call was about. Once there is a connection, the nearest tower to the device is triggered. The analysis does not say who is using the phone. RICA information tells who the user of the SIM Card is.

[59] Accused 1's version, put to Mwale, was that he could not remember the number he was using at times material to this case. He did not have a cellphone on him that day. Mwale testified that he verified the alleged users of the cellphones. He did not visit the residences of the Accused or obtain the coordinates of their addresses. Mwale testified that if he were tasked to do the home addresses, he would have been able to say if the towers were triggered from the homes of the Accused.

[60] Counsel for Accused 2 posed questions to Mwale. Mwale was asked if all towers are open and operating, can any tower can pick up a cellphone? He answered by stating that if all were active, the closest tower would pick up the cellphone activation. As for the analysis of the cellphone billings relating to Accused 2, they relate to times not material to the commission of the crimes. He was employed as a site supervisor who had to be on the move to visit sites. Mwale agreed that a cellphone can be picked up if it is moving in the vicinity of a tower.

[61] On re-examination, Mwale repeated that a tower has three sections. It indicates on which side a call is made or received. Activation occurs across cellphone towers that overlap.

LIEUTENANT COLONEL VISHALAN MOODLEY

[62] Moodley has been with the SAPS for eleven years. He is a Lieutenant Colonel employed as a Forensic Analyst at the Forensic Science Laboratory in Silverton, Pretoria. He has a BSc degree.

[63] He testified that the laboratory receives the primary residue kit in a bag. The name of the suspect can be included in the kit. He received two kits in this matter relating to two persons. The names were provided, namely C Soboyise and Z Golela as accused 1 and accused 2, respectively. His testing revealed residue on the right hand of Accused 1. He testified that 25% of persons would test positive in three instances, i.e., if they discharged a firearm, if they were within about 2m of a firearm being discharged, and if there was secondary transfer arising from the recent handling of a discharged firearm. Moodley testified that the test results are non-specific as they could not identify the person who discharged the firearm or the mode of transfer of residue to the

hand, or whether transfer has occurred in other ways. The optimal time to obtain a positive result between shooting and the sample taken is within 2.5 hours. After this period, the chances of a positive result reduce.

[64] Moodley was cross-examined on behalf of Accused 1. He accepted that residue can be transferred if a police officer has discharged a firearm and then handcuffed a suspect. Counsel placed Accused 1 's version on record, i.e., that he accompanied Accused 2 to Mfuleni and the vehicle ran out of petrol. Accused 1 left the vehicle to urinate. When he returned to the vehicle, he sat in the backseat. He noticed an object protruding from the back seat pocket. Out of curiosity, he took the item out. He learnt it was a gun. He checked the gun out, as he had not seen that particular type of gun. When he was done, he returned it to the seat pocket. Moodley was asked if the gun was discharged earlier; could there be chances of gun residue transfer? Moodley agreed. Moodley agreed that the test for residue does not tell when, how, or from whom the firearm particles were deposited. Nor does it say who fired the firearm, who possessed the firearm or link a suspect to a crime scene. Counsel for Accused 2 did not cross-examine Moodley.

[65] In answer to a question posed by the Court, Moodley testified that the test done is qualitative and not quantitative. He has encountered cases where a person is found with residue on one hand only.

CAPTAIN TOBIAS ALLIES

[66] Captain Tobias Allies ('Allies') has been in the employ of SAPS for forty years. He was employed at Philippi East police station in November 2019. He is a support commander of VISPOL, the visible policing arm of SAPS. He testified that after a complaint of a stolen vehicle is received at the police station, the Complainant must provide the papers of the specific vehicle and

establish whether he is the legal or registered owner. He must provide the registration number, engine number and vehicle identification number (VIN number). The copy of the papers is filed in the docket. The Complainant provides the date, time, and location where the vehicle was stolen. The police officer at the charge desk assists the complainant. SAPS is responsible for writing down the statement with all information provided by the Complainant. After the affidavit is completed, it is signed by the Complainant. The SAPS officer who assisted the Complainant then places an oath stamp on the document and signs it after the Complainant has taken the oath.

[67] On 8 January 2021, Allies was approached by Mnyamana from the DPCI. Mnyamana requested him to check if a case of theft of a motor vehicle was reported between February and March 2019. Mnyamana provided him with a surname and an identity number. Allies logged onto the system but could find no case reported. He only checked February and March 2019.

[68] Counsel for Accused 2 presented the affidavit deposed to by Golela. Allies looked at the affidavit and identified the flaws in the affidavit. The name of the police station was spelt incorrectly on the stamp. Allies testified that if the stamp is faulty, the supply chain will pick it up immediately and withdraw the stamp. The station will not receive a stamp that is faulty. Allies stated that there was no report made to him of the purchase of a faulty stamp. The ink stamp pertaining to the oath and appearing at the foot of the affidavit is not placed on the affidavit page. He testified that two police officers had signed the part of the affidavit requiring commissioning. The affidavit is signed by the police officer who took the statement and no one else. The format of the words used in the part where the affidavit is supposed to be commissioned was incorrect. It did not have an option for he or she.

[69] The station used different types of affidavits. He could not dispute that Accused 2 acquired the affidavit from Philippi East police station. It was put on behalf of Accused 2 that the car's papers were left in the Eastern Cape. The police officer assisting him told him to make an affidavit anyway. Allies stated that a case like this can be opened. Allies testified that the persal number reflected against one of the police officers who had signed the affidavit, Sergeant Adams was incomplete. He concluded after considering all factors, that the affidavit was not authentic. It is the member's duty to give a case number. The system will automatically send an SMS to the cell number of the Complainant. The system gives the names of all cases under a person's name, whether the investigating officer requested a specified period of February or March 2019. It was put on behalf of Accused 2 that he went to the Philippi East police station. He was assisted with the affidavit by one of the SAPS officers. Allies replied that it is unusual to give the original of an affidavit to the Complainant unless the Complainant asks for it. It depends upon what the Complainant wants to do with the affidavit.

[70] The evidence of Mini, Anthony, Moodley, Mwala, and Allies was reliable, credible, consistent and with a high probative value. The probative value of their evidence shall be analysed later in this judgment. They withstood cross-examination in instances where cross-examination was conducted, and there were few, if any, contradictions. The State closed its case, and the defence raised their section 174 applications. The outcome of the section 174 application has been alluded to earlier in this judgment. The Defence then led the evidence of the Accused.

ACCUSED 1

[71] Accused 1 is 34 years old. He was 28 at the time the crimes were committed. He lived in Crossroads but has living quarters in Site B, Khayelitsha. He completed grade 12 at school in 2013. He has two children, a son in grade 11 and a daughter. He saw his daughter in 2019 and his son at the beginning of 2025. His children are from different mothers. He was last employed in a factory in 2018. He had since and up to the time of his arrest, sold meat, fish and alcohol at home. He lived with his mother, sister and cousins. Soboyise testified that he spent a large part of the day of 26 November 2019 at home. He awoke at 09h00. He saw his partner off at the bus stop to get her transport to work in Century City. At about 15h00, he did his laundry. He then left to buy two packs of Extreme cider at the liquor store. When he returned, he sat with his laptop and watched movies. He assisted with the cooking at about 19h00, ate at about 20h00 and then watched television till 22h00. His girlfriend, Talita, phoned and asked if she could spend the night with him. He went to meet her at the bus stop. She got into bed as he sat on a camp chair drinking his cider.

[72] At about midnight, he received a call from Golela. Golela told him that he had lost his car but had found it. He was on his way to pick up Soboyise and then go to Golela's girlfriend in Mfuleni. He awoke Talita to inform her that he was going to accompany Golela. She allowed him to go. Golela arrived and told him that the car was found in Lusuko. On their way to Mfuleni, he teased Golela for having a wife and simultaneously having a girlfriend. He met Golela's girlfriend once when Golela took lunch for her.

[73] Golela's Yaris switched off in Mfuleni as it had run out of fuel. Soboyise was seated in the front seat. He alighted from the vehicle to urinate. He returned and sat in the back behind the driver's seat. Whilst he was seated at the back, he saw about seventeen cellphones on the back seat. Golela was outside the car

making a call. He did not get a chance to ask Golela about the cellphones. He did not notice the cigarettes, ammunition, or money in the car. He also saw a bulge in the pocket behind the driver's seat, which was jutting out from the top of the pocket. He reached in and took it out. It was a gun. He placed it back into the seat pocket. The police arrived about four minutes later. The police officer who approached him had a rifle in his right hand and opened the door with his left hand. He did not try to escape. He was asked to get out of the car, which he did with his hands behind his head. He lay down on his stomach and was handcuffed. Golela was also handcuffed and lay on his stomach. Many police officers were around.

[74] Soboyise testified that after his arrest, he was taken in a Toyota Fortuner vehicle to Mfuleni police station, where they were placed on the floor in a boardroom. The police questioned and assaulted them there. After sunrise, the investigating officer, Mnyamana arrived. Soboyise stated that he was later taken to his place of residence in Crossroads. The house was searched. He was assaulted by the police and bitten by their dogs on both his thighs. The police found his identity document, which showed his site B address. The entourage went to Site B and searched the house, after which they returned to Mfuleni police station. Mnyamana arrived and took them to Bellville police station cells. He made a first appearance at the Blue Downs court. He was subsequently informed that he was charged with the murders of the Zwakala brothers and the police officer.

[75] Accused 1 denied any part in the murder and robberies. He denied that the cellphone number investigated was his. He did not travel to Harare, the vicinity of the liquor store or Delft, the murder crime scenes on that day. He testified that there was no third person with them that night.

[76] Under cross-examination by the State, Accused 1 indicated that he met Golela at the local gymnasium in Crossroads. He confirmed that Golela owned a blue Toyota Yaris. Golela's older brother was present with them sometimes. He met Golela about four months before they were arrested. They communicated regularly by cellphone. He owned a Huawei P30 handset. Soboyise communicated with Golela on 24 November 2019 when he returned from the Eastern Cape. His next communication with Golela occurred at midnight on 26 November 2019. He did not carry his cellphone when he accompanied Golela on that night as he had left it at home. They did not stop on the way to Mfuleni. Soboyise testified that he did not know Delft and was taken to task on this answer. Golela picked him at about midnight on 26 November 2019. Soboyise was unable to account for the time that had elapsed since Golela picked him up and the time of his arrest, about one and a half hours later. Soboyise was asked to explain the gunshot residue on his right hand. He could not explain how the gun used to kill the Zwakala brothers was in Golela's car. He denied ever handling a firearm and did not own one.

[77] Soboyise was then taken through the inconsistencies in the version put on his behalf to the State witnesses, as well as between his examination in chief and cross-examination. He took out the firearm because he was curious about it. It was put to Tsilana that it was the first time he had seen that type of firearm. Accused 1 suggested that maybe it was a mistake. He did not remember asking Golela about the gun. It was put to Tsilana that Soboyise had left home that night with his cellphone and R370 in his pocket. He denied telling his advocate that he had left home with his cellphone and cash.

[78] When he testified in chief, Soboyise told the court that he went to the backseat behind the driver after he had relieved himself. His Counsel put it to Tsilana that he had got into the backseat behind the passenger seat. He denied

telling his advocate that he returned to the back seat behind the passenger seat. Soboyise told the court that he asked Golela about the cellphones. When he testified in chief, he stated that he did not get to ask Golela about the cellphones or the firearm. He could not explain why he testified in chief that he did not get to ask Golela about the cellphones and the firearm. During examination in chief, Soboyise testified that he was not searched. It was put to Tsilana that he was told to lie on the ground, handcuffed, while facing down and searched. He did not remember saying he was not searched. He was reminded that this evidence was given two days prior to his being cross-examined on it.

[79] Soboyise denied any knowledge of the cellphone number that was analysed by Mwala. He was reminded that it was never put to Captain Mwela that he did not know this number. Soboyise replied that he had told his advocate he did not know the number. It was conveyed on Soboyise's behalf that he could not remember the cellphone number he used on that day. He only remembered that he did not have a cellphone on him that day. It was put to Soboyise that he distanced himself from the cellphone because it activated the cellphone towers near the crime scenes at Makana, Delft, and the Idahoff superette. His stock answer to the inconsistencies highlighted in his testimony was that he did not know about those occurrences. It was suggested to Soboyise that it was highly unlikely that his cellphone would have activated the towers if it were left at home. Soboyise testified that he had heard of the iPhone that was tracked and the deceased police officer's cellphone found in Golela's car for the first time in Court.

[80] Soboyise was cross-examined on the clothes he wore when he was arrested. He confirmed that he wore a navy-blue t-shirt which had a distinctive colourful pattern of four squares and further patterns within the squares. The t-shirt also had a circle and writing just above the right corner (as the Court

looked at it) of the four squares and a signature below the foot of the four squares. He wore blue striped shorts with a distinctive waveform pattern upon it. He was then shown photos of one of the suspects caught on the footage in the liquor store robbery. That person had a similar if not exact T-shirt and shorts on as Soboyise did when he was arrested. The person captured on the liquor store footage also had a crème wide brimmed hat and a watch on his left wrist. In the video footage the suspect carried something in his right hand. It was put to Soboyise that the person captured on the liquor store footage was him. Soboyise denied this by suggesting that he did not have a hat on in the photo taken after his arrest.

ACCUSED 2

[81] Golela is 39 years old. He left school in grade 9. He is a grade A certified security officer. Golela worked as a mobile security supervisor at the time of his arrest. He is one of nine children and has five of his own. He is married and is the family breadwinner.

[82] On 26 November 2019, he returned from work after the shift ended at 04h00. He tried to sleep, but it was hot. He took his family and the neighbour's to Strandfontein beach at about 12-13h00. He left the beach at about 15-16h00, describing the time as sunset. On his way home, he stopped at a mall to buy liquor. He also bought something for his wife to coax her to give him permission to go out later that evening for fun and enjoyment. He needed to prepare himself for his night out and required his wife to assist him. He asked the boys in the neighbourhood at about 17-18h00 to sweep and clean his car and he readied himself for his night out.

[83] He left home in his Toyota Yaris. As he reached the exit from Polar Park, the informal settlement where he lived, and in the vicinity of the Golden Arrow

bus depot on Eisleben Road, he noticed that his four-year-old daughter was running behind the car. He stopped his car but left it idling at that spot, alighted and took his daughter home. He berated his wife about leaving his daughter unsupervised given the risk of children being run over by buses. When he returned to the spot where he left his car, it was not there. He thought that it was taken as a prank played on him by Zukisi Tamzu ('Tamzu') who is employed by Golden Arrow as a bus driver. This was also the time that the Golden Arrow employees left work. He saw Tamzu at the Golden Arrow gate. Tamzu denied that he took the car. Golela asked Tamzu to call Tamzu's driver so that they could go in search of the car.

[84] He went home and retrieved the car's spare key and his firearm from his home safe. He asked people whether they had seen his car, which was distinctive in the township areas. It was a Yaris, blue in colour and had gold coloured magnesium alloy wheels. Tamzu and his driver arrived. He drove Tamzu's vehicle and began to search the popular hot spots where cars were stripped. He went to twenty-three spots to search for his car during the night. His search was, for the most part, to no avail. The search was long, and he had to put petrol twice in Tamzu's car. The car was stolen previously, in about 2018, and its speakers and sound system were removed before he retrieved it. He did not want it to be stripped again.

[85] At some point, he asked Tamzu to drive as he made phone calls. When they were on the verge of giving up the search for the Yaris at about midnight or the early hours of the morning, after hours of searching, Tamzu spotted the car with its lights on in the Luzuko area near a robot-controlled intersection. Tamzu drove past the car to check if anyone was around. He made a U-turn and stopped a distance away from the car. Both he and Tamzu alighted from the car and approached cautiously. They are both trained security personnel and

received their security training together. They took precautions to avoid being ambushed by the people who stole his car. He saw the car doors open. Shacks surrounded the area. Whilst Tamzu searched around, he got into the car and started it. Tamzu returned to his vehicle. Golela drove the car towards Lower Crossroads. He stopped at a garage to fill petrol. He filled R50 of petrol in the Yaris. Tamzu's driver left as it was time for him to fetch staff from Cape Town. Golela dropped Tamzu off at his home in Better Life township.

[86] After dropping Tamzu off at his home, and since the grace period he obtained from his wife had not ended, he called Accused 1 to accompany him to Mfuleni. Golela wanted to collect some money from his girlfriend. Soboyise agreed and asked Golela to come around to his house. He got to Soboyise's house at about 01h00. Soboyise came out. After they spoke, Soboyise went back into the house, reappeared and got into his car. He was headed for Mfuleni, which he estimated to be about forty minutes from Crossroads by car. Golela estimated the time from where he filled petrol in his car to Tamzu's house at between 7 and 10 minutes, and from Tamzu's house to Soboyise's home at about 15 minutes. He had spent about 5-6 minutes at the garage.

[87] Once they reached the circle in Mfuleni, Golela noticed that his car was losing power and jerking. He thought that the problem could be one of three, namely a spark plug problem, the battery or fuel. He stopped the car at the bus stop in Mfuleni. He got out of the vehicle and began making calls to his friends for help. He was busy making calls and urinating behind his car when the police arrived. The police vehicle had its bright lights on. The police instructed him to lie down before taking his gun, handcuffing and arresting him.

[88] Golela did not see where Soboyise was. Soboyise was in the car when Golela exited to make phone calls. Golela was taken to Mfuleni in one of the Flying Squad vehicles. He was asked about the killing of a police officer while

he was being assaulted at the police station by Tsilana, Cetwa and other police officers. The lady who performed the gunpowder residue testing arrived about three to four hours after he was arrested. He was then asked to point out where he resides. He was taken there, and his house searched. The police found a second magazine for his gun in a box. They did not show it to him. He saw it when it was placed alongside his firearm and photographed at the police station.

[89] He saw the phones found in his car for the first time when Tsilana and Cetwa pointed them out lying on a table at the police station, and after they had returned from searching his home. He was taken to the cells when the police went to search Soboyise's house and later to Bellville police station. Tsilana and fellow police officer Velani also assaulted him. Golela denied any knowledge of the four crimes. He denied that he was on the video footage taken at the liquor store robbery. When asked about Captain Allies view that the affidavit he obtained from the Philippi East police station when he reported his car stolen, Golela replied that Allies was not an expert and did not work at the front desk of the police station. Allies had only investigated reports for a different date. If the Allies' investigation had nevertheless revealed all other cases involving him, then there was no account of his application for a firearm licence, for his home safe, the previous theft of his vehicle, and the renewal of his firearm licence, as well as his security competency certificate. He went to the Philippi police station for all of these. Golela repeated that he obtained the affidavit at the police station. He was advised to make a further affidavit explaining that his car documents were in the Eastern Cape. He criticised the Captain for contradicting himself over the police officer who had signed the affidavit.

[90] Golela testified that he worked the night shift on 25 November 2019. Golela stressed that his car was blue. It was not black or a Kia. The car seen at the liquor store robbery by the informer was black. Mafuya, the witness who

observed the police officer's shooting could not say whether the car seen there was a Kia or a Yaris. He knew nothing about the firearm allegedly found in the driver's seat pocket in his car. He handed over six items of clothing, which included a jacket and track suit pants that was not accounted for in the arrest photographs.

[91] The State commented on Golela's excellent memory he exhibited during his examination in chief. Yet his memory for events began faltering under cross examination. Golela did not consider Soboyise as a friend. Golela sought to minimise the number of times he met Soboyise at the gymnasium. His stock answer to questions relating to the frequency of his meetings with Soboyise or his attendance at the gymnasium was that it depended on the days when he was off work. Soboyise had been in his car about twice. The number of times he contacted Soboyise telephonically depended on whether he needed something from Soboyise. He had not introduced Soboyise to his wife or his girlfriend or taken him to her. Golela had been to Soboyise's home twice. He could not remember whether Soboyise had been to his house. He had met Sinethembe, Soboyise's second girlfriend, in passing. He had never been to Soboyise's home in Site B. He denied that he met Soboyise about two to three times per week at the gymnasium. He did not remember when he first met Soboyise. He had no memory of the trip taken by Soboyise to the Eastern Cape before the crimes were committed.

[92] Golela stated that his shift on 25 November began at about 16h00. He was not sure when he got home on 26 November 2019. He was not concerned about leaving his car idling on the road at the township exit as he planned to return immediately. He was also not concerned that his car had been stolen previously. Golela disputed that his car was spotted at the four different crime scenes. Golela was challenged about his statement to the police. In the affidavit,

he stated that he had left his car idling as it had a starter problem. He had not mentioned the starter problem while testifying. He used his spare key to start the car after finding it with its lights on. He did not phone the police to inform them he had recovered his car. He planned to stop at the police station after he had picked up Soboyise. Soboyise was not in the backseat of the vehicle. Golela was asked about why he did not confront Tsilana or Cetwa about them assaulting him when they testified.

[93] Golela was taken through the clothing he wore as captured in the photograph taken after his arrest. He confirmed that he wore a yellow T-shirt, a black jacket, blue denim shorts and a black cap. The cap he wore had a distinctive design on the front incorporating a square with a cross in it and a further design above it that looked like a crown. His blue denim pants with the brown stitching on the front pocket was visible in the arrest photograph. Golela was then taken through the video footage stills from the liquor store robbery. One of the three suspects wore a cap with a similar distinctive design, yellow T-shirt and blue denim shorts as he did after his arrest. Golela denied that it was him. in the liquor store robbery footage.

[94] Under cross-examination on behalf of Accused 1, Golela denied telling Soboyise that he was going to his girlfriend when he called Soboyise. He only told Soboyise this when he got to Soboyise's home.

CUMULATIVE EVALUATION OF THE EVIDENCE

[95] The court now turns to the objective forensic and circumstantial evidence, which forms the backbone of the State's case on identity and linkage across the various crime scenes. Unlike the direct evidence of the eyewitnesses, which primarily established the occurrence and circumstances of the offences, the evidence that follows concerns the scientific, technological, and physical

exhibits recovered during the investigation. This includes the clothing depicted on the photographs of the Accused at the time of arrest as compared to the video stills of the footage from the liquor store robbery, the ballistic comparisons, the gunshot residue analysis, the cellphone tower and tracking data, the recovery of stolen items, and the vehicle in which the accused were apprehended. The relevant witnesses, the investigating officer (except for the reservations expressed), the forensic experts, and the officers who collected and photographed the exhibits testified clearly and consistently, and the court found their evidence to be credible and reliable. The post-mortem reports, which were admitted by the accused, confirm that the deceased in the respective counts died of gunshot wounds.

[96] In assessing this body of evidence, the court must consider each component individually for credibility and reliability and then evaluate the cumulative effect of all the objective evidence. Circumstantial evidence must be approached holistically: the question is not whether each item of evidence proves guilt in isolation, but whether, when taken together, the totality of the proved facts permits only one reasonable inference, namely that the accused were the perpetrators of the offences. It is against this framework that the court evaluates the clothing evidence, the ballistic findings, the gunshot residue results, the cellphone tower investigations, the possession of stolen items, and the vehicle the Accused occupied on arrest.

THE CLOTHING EVIDENCE

[97] The clothing worn by the Accused at the time of their arrest, as depicted in the photographs, forms a significant and persuasive component of the circumstantial evidence. The distinctive features of these garments correspond closely with those visible on two of the perpetrators in the liquor store video

footage, and these similarities gain force when viewed alongside the other objective evidence. The items worn by both accused were distinctive in several respects. Accused 1 wore a T-shirt bearing four patterned squares and navy shorts with a prominent waveform design. Accused 2 wore a yellow T-shirt, denim shorts with characteristic brown stitching on the external pockets, and a cap displaying a striking square-cross and crown decal. These features were clearly visible on two of the perpetrators in the liquor store video footage. Although the footage is inconducive for facial identification, the similarity between the distinctive clothing worn by the perpetrators and that worn by the accused shortly after the commission of the offences is compelling. The patterns, stitching, and emblem are not generic or commonplace features, despite the Accused's protestations to the contrary, and the overall appearance and build of the individuals in the footage align with those of the accused. While clothing evidence must be approached with caution and was rejected as far as the alleged clothing parade was concerned, in this case it forms a coherent and reliable component of the broader circumstantial foundation painstakingly laid by the State.

THE BALLISTICS EVIDENCE

[98] The ballistic evidence constitutes a powerful and objective component of the circumstantial case. The firearm with the obliterated serial number, recovered from the person of Accused 1 at the time of arrest, was conclusively shown to have fired the cartridge cases recovered at three separate crime scenes: the liquor store robbery, the murders of the Zwakala brothers, and the Idahoff superette robbery. A further set of cartridge cases, recovered at the liquor store and at the scene of the fatal shooting of the police officer, was fired from an unidentified firearm, which was not recovered. None of the ballistic evidence implicates the licensed pistol belonging to Accused 2. The effect of these

findings is twofold. First, the presence of the firearm with the obliterated serial number on Accused 1's person, coupled with the ballistic linkage to multiple scenes, places him directly at the centre of the violent conduct perpetrated during these offences. Second, the ballistic pattern demonstrates that at least two firearms were used by the group of perpetrators acting in concert. In circumstances where the evidence establishes that the perpetrators acted together in executing the robberies and shootings, the principle of common purpose applies. Even where a particular accused did not personally discharge a firearm, liability arises if he associated himself with the conduct of the group and shared the requisite intention. The ballistic evidence, when viewed cumulatively, supports the inference that the accused acted in concert with the third perpetrator and that the fatal shootings and robberies were executed in furtherance of their common criminal design.

THE GUNSHOT RESIDUE EVIDENCE

[99] The gunshot residue (GSR) evidence provides a further objective link between Accused 1 and the use of a firearm during the commission of the offences. The residue was detected on his right hand shortly after his arrest. The expert evidence established that the presence of GSR on a person's hand is consistent with that person having discharged a firearm, handled a recently fired firearm, or been in proximity to a firearm when it was discharged. Accused 1 sought to explain the residue by claiming that he briefly touched a firearm allegedly located in the backseat pocket of the vehicle moments before the police arrived. This explanation is inconsistent with the arresting officer's evidence that the firearm with the obliterated serial number was found on Accused 1's person, and not in the backseat. It is also improbable considering the ballistic findings linking that firearm to multiple crime scenes, and the absence of any credible reason why Accused 1 would have handled a firearm in

the manner he described. When considered cumulatively with the ballistic evidence, the clothing evidence, the cellphone data, and the possession of stolen items, the GSR results materially strengthen the inference that Accused 1 was directly involved in the use of a firearm during the commission of the offences. Even if Accused 1 did not personally fire every shot, the evidence establishes that the perpetrators acted together in executing the robberies and shootings. In these circumstances, the principle of common purpose applies: a participant who associates himself with the conduct of the group and shares the requisite intention is liable for the acts of his co-perpetrators. The GSR evidence, therefore, forms a coherent and persuasive component of the circumstantial framework implicating Accused 1.

THE CELLPHONE EVIDENCE

[100] The evidential communication analysis conducted by the expert provides a further objective and technologically reliable strand of the circumstantial evidence. The billing records of the cellphone number attributed to Accused 1 show that this number triggered towers near each of the crime scenes, namely the liquor store robbery, the murders of the Zwakala brothers, the fatal shooting of the police officer, and the Idahoff superette robbery, at times consistent with the commission of those offences. The same number also triggered towers in the vicinity of the arrest scene. The expert confirmed that he verified the RICA (Regulation of Interception of Communications and Provision of Communication-Related Information Act of 2002) information associated with the number and was thus sure that the number was that of Soboyise's when challenged by Counsel for Accused 1 about whether he did so under cross-examination.⁸ No challenge was raised about the accuracy of the data. The version put to the State witnesses that Accused 1 left home with his cellphone

⁸ see transcript, page 914, line 20

and R370 in cash, and that he could not remember which number he was using at the time when the crimes occurred, shifted materially when he testified. He then claimed that he left home without his cellphone and that the number analysed by the expert did not belong to him. These contradictions, coupled with the failure to put this denial to the expert, materially undermine his credibility. The objective cellphone tower data stands uncontroverted. It is inconsistent with Accused 1's account of remaining at home after 16h00 and at the times material to the commission of the crimes.

[101] By contrast, the cellphone number attributed to Accused 2 did not trigger any towers relevant to the times of the crimes, save for after the arrest, and therefore does not implicate him. When considered cumulatively with the ballistic evidence, the clothing evidence, the gunshot residue, the arrest circumstances, and the possession of stolen items, the cellphone-tower analysis provides strong corroboration of Accused 1's presence at or near the scenes of the offences and materially supports the inference that he participated in the crimes.

THE RECOVERY OF THE STOLEN ITEMS IN THE CAR

[102] The recovery of stolen property in the vehicle belonging to Accused 2 constitutes a further significant component of the circumstantial evidence. When the accused were arrested, the police found in the vehicle several items that had been taken during the Idahoff superette robbery, including multiple cellphones, cigarettes, cash, and the iPhone whose tracking data had led the police to the vehicle. The deceased police officer's cellphone was also recovered in the same vehicle. These items were discovered in plain view, some on the backseat, others between the front seats, and were not concealed. Both accused denied any knowledge of the presence of these items. Their denials are

inherently improbable. Accused 2 was the owner and driver of the vehicle and a trained security officer. He was concerned that his vehicle would be stripped after it was stolen. Yet, he claimed not to have inspected his car carefully after retrieving it or noticed the presence of numerous cellphones, cash, cigarettes, and ammunition in his own car, nor did he offer any explanation as to how these items came to be there. However, he testified about how his car was stolen and the protracted effort to recover it. Accused 1's version, that he only saw the items when he moved to the backseat moments before the police arrived, is equally implausible considering the quantity and placement of the items and the objective evidence of the arresting officers. The presence of the stolen property in the vehicle shortly after the commission of the offences, coupled with the Accuseds' inability to provide any credible explanation for its presence, supports the inference that they were in recent possession of the stolen items. The court is entitled to draw the inference that the accused were involved in the robberies in which these items were taken. When considered cumulatively with the ballistic evidence, the cellphone-tower data, the clothing evidence, and the circumstances of the arrest, the stolen-property evidence materially strengthens the State's case against both Accused.

THE EVIDENCE CONCERNING THE CAR

[103] The evidence relating to the vehicle used by the perpetrators must be approached with caution, as some of the information placed before the court was either hearsay or incomplete. The investigating officer testified that an unidentified informant reported seeing a black Yaris arrive and leave the mall at about the time the liquor store robbery occurred. The informant was neither identified nor called to testify and this evidence carries little weight. At the scene of the police officer's shooting, the eyewitness could not say whether the vehicle was a Yaris or a Kia, and this uncertainty limits the probative value of

that observation. The police officer attending to the crime scene testified that it was the car seen at the other crime scene with the same occupants. At the Idahoff superette robbery, police officers who viewed the store's video footage reported seeing a blue vehicle parked at the corner, but the footage itself was not placed before the court. These strands, taken individually, do not establish that the same vehicle was used in all the offences. However, the objective and undisputed evidence is that shortly after the Idahoff robbery, the police located Accused 2's blue Yaris, without registration plates and with tinted windows, by using the tracking signal of the stolen iPhone, and that this vehicle contained multiple stolen items, including the tracked iPhone and the deceased police officer's cellphone. Accused 2's attempt to distance his vehicle from the earlier descriptions by emphasising its gold alloy wheels and alleged uniqueness in the township does not detract from the fact that it was the vehicle in which the stolen property and both accused were found. While the earlier vehicle descriptions are of limited reliability, the arrest evidence provides a firm and objective link between Accused 2's Yaris and the commission of the offences. When considered cumulatively with the other circumstantial evidence, the vehicle evidence forms a coherent and persuasive component of the inferential chain.

EVALUATION OF THE ACCUSED AND THEIR EVIDENCE

[104] Accused 1 elected to testify. His version was riddled with material contradictions, both internally and when compared with the objective evidence. He gave conflicting accounts regarding whether he left home with his cellphone, whether the number linked to the cellphone-tower data was his, whether he knew the township of Delft, and whether he questioned Accused 2 about the cellphones and the firearm in the vehicle. His explanation for the gunshot residue on his right hand, i.e., that he briefly handled a firearm

allegedly found in the car's backseat pocket, is inconsistent with the arresting officer's evidence that the firearm with the obliterated serial number was found on his person and is irreconcilable with the ballistic evidence linking that firearm to multiple crime scenes. His attempt to distance himself from the clothing worn by one of the perpetrators in the liquor store footage is similarly unconvincing, given the distinctive patterns and the close correspondence between the footage and the arrest photographs. His version that he first saw the numerous cellphones, cash, cigarettes, and firearms only after moving to the backseat moments before the police arrived is inherently improbable and contradicted by the objective circumstances of the arrest.

[105] Accused 1's demeanour was one of disinterest, emotionless and with an indifferent façade displayed during most of the trial. He began showing some emotion and raised his voice momentarily when he was confronted with contradictions in the versions put to the State witnesses and his testimony and was cornered with evidence and propositions that were difficult to deny. His evidence was evasive, laced with contradictions, characterised by shifting explanations and attempts to avoid answering directly. In the absence of any corroboration and considering the overwhelming objective evidence the State has presented against him, his version is not reasonably possibly true and is rejected as false beyond a reasonable doubt.

[106] Accused 2's version suffers from material improbabilities and contradictions that do not render it reasonably possibly true. He claimed that his blue Yaris was stolen within minutes of being left idling at an exit point of the township, despite being a trained security officer who had previously recovered the same vehicle after it had been stripped. His account of spending the night searching for the car at numerous chop shops, only to find it after midnight with its lights on but no key in the ignition, is inherently improbable and was never

satisfactorily explained. His timeline of events after recovering the vehicle does not accord with the objective circumstances or with common geographical knowledge, e.g., that a car ride from Lower Crossroads to Mfuleni would not take the 45 minutes he allegedly took that night. His assertion that he did not notice the cigarettes, cash, ammunition, and numerous cellphones, including the deceased police officer's phone and the iPhone being tracked and found in his vehicle, is equally implausible. His attempt to distance himself from Accused 1, despite evidence of their close association over at least four months preceding the date of the crimes, further undermines his credibility. The clothing he wore at the time of his arrest corresponded closely with that of one of the perpetrators in the liquor store footage, and his explanation that the clothing was generic is unconvincing. The fabricated "stolen car" affidavit further demonstrates Accused 2's consciousness of guilt. In the absence of any corroboration, and considering the objective evidence linking his vehicle to multiple crime scenes and to the stolen items recovered therein, his version cannot be accepted as reasonably possibly true. His denials were not just weak but were clearly false and his evidence is rejected beyond reasonable doubt.

COMMON PURPOSE

[107] Although the State did not identify which accused fired which shots at each scene, the doctrine of common purpose applies. Where an accused is present at the scene, aware of the criminal conduct, and associates himself with the actions of the perpetrators, he is liable for the resulting offences. The evidence establishes that both accused were present in the vehicle used throughout the violent robbery and killing spree, that they acted in concert, and that they shared a common purpose to commit the robberies and murders.

[108] The credibility findings reinforce the circumstantial and common-purpose analysis. The State's evidence is consistent and corroborated. The accused's versions are false beyond a reasonable doubt. Their denials cannot stand in the face of the objective evidence. When the evidence is viewed holistically, the only reasonable inference is that both accused participated in the robberies and murders as part of a continuous criminal enterprise. The State has proved its case beyond a reasonable doubt.

COUNT 14 POSSESSION OF AMMUNITION

[109] The State elected to charge Accused 1 alone with unlawful possession of the ammunition found in the vehicle at the time of arrest. The evidence, however, does not establish that Accused 1 had actual or constructive possession of that ammunition. It was not found on his person or in any place under his exclusive control, but rather in a vehicle owned and driven by Accused 2. The ballistic expert did not examine or link the ammunition to either of the firearms recovered, and no evidence was led to show that Accused 1 handled it or was even aware of its presence. In the absence of proof of both the physical and mental elements of possession, the State has failed to discharge the onus resting upon it. The charge of unlawful possession of ammunition against Accused 1 cannot be sustained and must be dismissed.

THE THIRD PERPETRATOR

[110] The liquor store video footage confirms three perpetrators. Even though the faces are unclear, the footage shows three distinct individuals participating in the liquor store robbery. Ballistics confirm a third firearm. A cartridge recovered at the liquor store and another at the police officer's murder scene were fired from the same third firearm, not linked to either accused. A third perpetrator was noticed at both the scene where the police officer was killed, as

well as the Idahoff superette robbery. The third perpetrator was not apprehended. This is not unusual in multi-perpetrator crimes and does not weaken the case against the accused. The presence of a third person strengthens the inference of a coordinated group. It shows planning, division of roles, and joint execution.

[111] Neither does the presence of the third firearm weaken the case against the two Accused. A group committed the crimes. The group used multiple firearms. The Accused were part of the group. The doctrine of common purpose applies where the Accused were present, acted in concert, shared a common design, or associated themselves with the conduct of the group.

[112] The State sought, during the cross-examination of Accused 2, to suggest the identity of the third perpetrator. The court did not permit this line of questioning to proceed, as there was no evidential foundation for identifying the third perpetrator, and it is not the function of the court to identify additional suspects. That responsibility lies with the investigating authorities. The court notes that the investigating officer did not appear to have pursued any meaningful inquiry into the identity of the third perpetrator, despite the evidence indicating the involvement of three individuals. While this omission does not affect the court's ability to determine the charges against the accused on the evidence properly before it, it is nonetheless a matter of concern that an obvious investigative avenue was not explored. The court's findings must, however, rest solely on the evidence presented and not on speculation about what further investigation might have revealed.

[113] The fact that a third perpetrator participated in the offences, and that the fatal shot which killed the police officer was fired from a firearm not linked to either accused, does not exonerate them. On the contrary, it reinforces the conclusion that the crimes were committed by a group acting in concert. In

terms of the doctrine of common purpose, each participant is liable for the acts of the others where they were present, aware of the criminal conduct, intended to make common cause with the perpetrators, and performed acts of association. The evidence establishes that both accused were present throughout the sequence of events, associated themselves with the conduct of the group, and shared the requisite intent. They are therefore liable for the murders and robberies, irrespective of who fired the fatal shot.

CONVICTION

[114] In assessing whether the State has discharged its onus in proving the Accused's guilt the court is mindful that the State bears the burden of proving each element of every offence beyond reasonable doubt, and that the accused are entitled to an acquittal if their versions are reasonably possibly true. The State's case rested on a series of mutually reinforcing strands of objective evidence—ballistic findings, gunshot residue, cellphone-tower data, distinctive clothing, the recovery of stolen items, and the circumstances of the arrest—which, when viewed cumulatively, formed a coherent and compelling circumstantial framework. Against this, both Accused advanced versions that were internally contradictory, externally inconsistent with the objective evidence, and inherently improbable. Their explanations shifted materially during the trial, were not put to key witnesses, and were unsupported by any corroboration. Having evaluated their testimony in the light of the totality of the evidence, the court is satisfied that their versions are not reasonably possibly true and fall to be rejected. The court turns to consider, count by count, whether the State has proved the charges beyond a reasonable doubt and makes the following order that is to be read in conjunction with the amended indictment:

[115] **Counts 1–3:** The State was required to prove beyond a reasonable doubt that the accused, acting with the intention to steal, unlawfully took property from the complainants at the Shoprite liquor store on 26 November 2019, and that aggravating circumstances as defined in section 1 of the Criminal Procedure Act were present. The evidence establishes that three perpetrators entered the store armed with firearms, threatened the complainants, and forcibly removed a Samsung cellphone from Ayanda Nondlozi (Count 1),⁹ cash from the till points under the control of Bulelwa Zulu (Count 2), and cash under the control of Lelethu Jack (Count 3). Although the perpetrators’ faces were not identifiable from the video footage, the distinctive clothing worn by two of them corresponded closely with the clothing worn by Accused 1 and Accused 2 at the time of their arrest. The ballistic evidence links the firearm found on Accused 1 to a cartridge case recovered at the liquor store. The cellphone-tower data places Accused 1’s number in the vicinity of the store at the relevant time. The stolen items recovered in Accused 2’s vehicle shortly after the Idahoff robbery, together with the circumstances of the arrest, further corroborate their involvement in the earlier robbery. Both accused advanced versions that were internally contradictory, externally inconsistent with the objective evidence, and inherently improbable. Their denials are not reasonably possibly true. The court is satisfied that the State has proved beyond a reasonable doubt that both accused participated in the robbery at the liquor store and that aggravating circumstances were present. **Both Accused 1 and Accused 2 are accordingly found guilty on Counts 1, 2 and 3.**

[116] **Counts 4–5:** The State was required to prove beyond a reasonable doubt that the accused unlawfully and intentionally killed Siyabonga Elvis Zwakala (Count 4) and Siyanda Zwakala (Count 5) on 27 November 2019, and that the murders were committed in circumstances falling within section 51(1) of the

⁹ The amended indictment referred to cash taken from Nondlozi, but the evidence did not prove this aspect of the charge.

Criminal Law Amendment Act 105 of 1997. The ballistic evidence establishes that the cartridge cases recovered at the scene where the Zwakala brothers were shot were fired from the same firearm with the obliterated serial number found on the person of Accused 1 at the time of his arrest. This firearm was also linked to cartridge cases recovered at the liquor store robbery and the Idahoff superette robbery, demonstrating a continuous course of conduct by the same group of perpetrators. The cellphone-tower data places the number attributed to Accused 1 in the vicinity of the murders at the relevant time, and the distinctive clothing worn by both accused at arrest corresponds with that worn by two of the perpetrators in the earlier robbery. The evidence further shows that the group used at least two firearms and that the perpetrators acted together in moving between the crime scenes. Even if either accused did not personally fire the fatal shots, the doctrine of common purpose applies: the murders were committed in the execution or furtherance of their joint criminal enterprise, and in the course of or in furtherance of robberies involving aggravating circumstances. The versions advanced by both accused are riddled with contradictions, inherently improbable, and inconsistent with the objective evidence. Their denials are not reasonably possibly true. The State has accordingly proved beyond a reasonable doubt that both accused are guilty of the murders of Siyabonga and Siyanda Zwakala. **Both Accused 1 and Accused 2 are therefore found guilty on Counts 4 and 5.**

[117] **Count 6:** The State was required to prove beyond a reasonable doubt that the accused, acting with the intention to steal, unlawfully took the cellphone of the deceased police officer, Thanduxolo Wiseman Stuma, by inducing his submission through the threat of violence with firearms, and that aggravating circumstances as defined in section 1 of the Criminal Procedure Act were present. The evidence establishes that the perpetrators confronted Officer Stuma, disarmed him through the threat of firearms, and relieved him of his

cellphone before he was fatally shot. The ballistic evidence links cartridge cases recovered at the scene of his killing to the same unrecovered third firearm that was used moments earlier at the liquor store robbery, demonstrating continuity of action by the same group of perpetrators. The cellphone-tower data places the number attributed to Accused 1 in the vicinity at the relevant time, and the distinctive clothing worn by both accused at arrest corresponds with that worn by two of the perpetrators in the earlier robbery. The stolen cellphone of Officer Stuma was recovered shortly thereafter in Accused 2's vehicle, together with other stolen items, and neither accused provided a credible explanation for its presence. Even if either accused did not personally take the cellphone or threaten the officer, the evidence establishes that the perpetrators acted in concert, using multiple firearms, and moved together between the crime scenes. The robbery was committed in the execution or furtherance of their joint criminal enterprise, and in circumstances falling within Part II of Schedule 2 to Act 105 of 1997. The versions advanced by both accused are not reasonably possibly true. The State has proved beyond a reasonable doubt that both accused are guilty of the robbery with aggravating circumstances committed against Officer Stuma. **Both Accused 1 and Accused 2 are accordingly found guilty on Count 6.**

[118] **Count 7:** The State was required to prove beyond a reasonable doubt that the accused unlawfully and intentionally killed Thanduxolo Wiseman Stuma on 27 November 2019, and that the murder was committed in circumstances falling within section 51(1) of Act 105 of 1997. The ballistic evidence establishes that the cartridge cases recovered at the scene of Officer Stuma's killing were fired from the same unrecovered third firearm that was used moments earlier at the liquor store robbery. This ballistic continuity demonstrates that the same group of perpetrators moved between the crime scenes and acted in concert. The evidence further shows that Officer Stuma was confronted, robbed of his

cellphone, and then shot at close range by one of the perpetrators. The stolen cellphone was recovered shortly thereafter in Accused 2's vehicle, together with other stolen items, and neither accused provided a credible explanation for its presence. The cellphone-tower data places the number attributed to Accused 1 in the vicinity at the relevant time, and the distinctive clothing worn by both accused at arrest corresponds with that worn by two of the perpetrators in the earlier robbery. Even if either accused did not personally fire the fatal shot, the doctrine of common purpose applies: the murder was committed in the execution or furtherance of their joint criminal enterprise, and in the course of or in furtherance of a robbery with aggravating circumstances. The versions advanced by both accused are not reasonably possible true. The State has proved beyond a reasonable doubt that both accused are guilty of the murder of Officer Stuma. **Both Accused 1 and Accused 2 are accordingly found guilty on Count 7.**

[119] **Count 13:** The State was required to prove beyond a reasonable doubt that the accused unlawfully possessed a prohibited firearm, namely the 9mm Parabellum Walther pistol with an obliterated serial number, without the requisite licence or authorisation. The firearm was recovered from the person of Accused 1 at the time of arrest. Ballistic analysis established that this firearm was used in the liquor store robbery, the murders of the Zwakala brothers, and the Idahoff superette robbery. The evidence further shows that the accused acted together throughout the sequence of offences, moving between the crime scenes in concert and using multiple firearms in the execution of their joint criminal enterprise. Accused 2 was aware that firearms were being used, associated himself with their use, and continued to participate in the armed robberies and shootings. In these circumstances, the doctrine of joint possession applies. Although Accused 2 did not physically hold the firearm, he shared the intention that it be used in furtherance of their common purpose and exercised possession

through Accused 1. Neither accused held a licence for the firearm, and their versions are not reasonably possibly true. The State has accordingly proved beyond a reasonable doubt that both accused unlawfully possessed the prohibited firearm. **Both Accused 1 and Accused 2 are therefore found guilty on Count 13.**

[120] **Count 14:** In respect of Count 14, the State was required to prove beyond a reasonable doubt that Accused 1 unlawfully possessed at least eleven rounds of 9mm ammunition without being the holder of a licence for a firearm capable of discharging such ammunition, or any of the alternative authorisations contemplated in the Firearms Control Act. The evidence does not establish that Accused 1 was in possession of the ammunition alleged in the charge. No witness testified to having found ammunition on his person or under his control, and the State did not lead evidence addressing the statutory components of the offence, including the absence of the relevant licences or permits. In these circumstances, and for the reasons set out earlier in this judgment, the State has failed to discharge its onus. **Accused 1 is accordingly found not guilty and discharged on Count 14.**

BHOOPCHAND AJ

Acting judge

High Court

Western Cape Division

Judgment was handed down on Friday 27 February 2026

State Prosecutor: Advocate Rudolph
Accused 1 represented by Advocate Vundla
Accused 2 represented by Advocate Kunju

