



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG
NORTH EASTERN CIRCUIT, MTUNZINI**

CASE NO: CCD28/2024

In the matter between:

THE STATE

and

SIPHAMANDLA GUMEDE

Coram: MOSSOP J

Heard: 26, 27 February 2026, 2, 3, 5, 6, 9, 10, 11, 12, 16 March 2026

Delivered: 17 March 2026

ORDER

The following order is granted:

1. On count 1, being the murder of Mr Edwin Zungu, the accused is found guilty.
2. On count two, being the murder of Mr Simo Luthuli, the accused is found guilty.

3. On count three, being the common assault of Mr Siphamandla Ngema, the accused is found guilty.

4. On count four, being the murder of Mr Bongani Mhlongo, the accused is found guilty.

JUDGMENT

MOSSOP J:

Introduction

[1] The accused, Mr Siphamandla Gumede (the accused), faces four counts, three of which are murder counts and one of which is a count of common assault. He pleaded not guilty to all of the counts and offered no plea explanation when he was called upon to plead.

[2] The first two counts of murder and the count of common assault allegedly occurred sometime ago, on 16 December 2018, and involve the allegation that the accused murdered a Mr Edwin Zungu (Mr Zungu) and a Mr Simo Luthuli (Mr Simo Luthuli) and assaulted a Mr Siphamandla Ngema (Mr Ngema). The third count of murder occurred more recently, on 9 February 2024, when the State alleges that the accused murdered a Mr Bongani Mhlongo (Mr Mhlongo) at the Mafunda High School, in the district of Eshowe.

[3] The two older murder counts were presented in terms of s 51(2) of the Criminal Law Amendment Act (the Act), which provides for a minimum sentence of 15 years' imprisonment for a first offender upon conviction, whilst the more recent count of murder was presented in terms of s 51(1) of the Act, which demands a minimum sentence of life imprisonment upon conviction.

[4] These nuances, together with the concept of competent verdicts, were explained to the accused before he was called upon to plead, and he indicated that he understood what had been explained to him.

[5] I do not propose considering the evidence called at the trial in the sequence in which witnesses were called to testify, which was somewhat haphazard, but I shall rather consider the evidence adduced in respect of each count irrespective of when it was called, commencing with the oldest offences first.

Evidence for the State

Counts 1, 2 and 3: Being two counts of murder and a count of common assault allegedly committed on 16 December 2018

The evidence of Mr Mndeni Simiso Bethwana (Mr Bethwana)

[6] Mr Bethwana is a qualified quantity surveyor and is acquainted with the accused, having grown up with him in the same area, namely Ngununu, which is in the vicinity of Entumeni, near Eshowe, in Zululand.

[7] On 15 December 2018, Mr Bethwana was in the company of the accused at a local homestead known as the Luthuli homestead (the Luthuli homestead), which is also in the Entumeni area just mentioned and, more specifically, at the Machanca area. This is not the homestead of one of the murder victims, Mr Simo Luthuli, but is the homestead of another Mr Luthuli. To avoid any potential confusion, I shall refer to the deceased Mr Luthuli as 'Mr Simo Luthuli' throughout this judgment and to the place where he resided as 'Mr Simo Luthuli's house.'

[8] The accused and Mr Bethwana were at the Luthuli homestead to celebrate the 21st birthday of a daughter of the Luthuli homestead. After an afternoon of festivities, at around 19h00, all the guests still in attendance were asked to leave the celebrations as Mr Luthuli, their host at the Luthuli homestead, wished to bring the celebrations to an end and retire for the night.

[9] Mr Bethwana, the accused and a group of other men accordingly left the 21st birthday celebration and then proceeded to Mr Simo Luthuli's house, which was very near to the Luthuli homestead. While I have chosen to refer to this place as Mr Simo Luthuli's house, it appears that it did not actually belong to him and that he was merely in occupation of it to guard it.

[10] One of the group who proceeded to Mr Simo Luthuli's house from the 21st birthday celebration was a man by the name of 'Geja'. Geja is a friend of the accused. The name 'Geja' is a nickname, and his real name is Njabulo Nene, but I shall continue to refer to him as 'Geja.'¹ Mr Simo Luthuli had extended an invitation to Geja, the accused and Mr Bethwana to come over to his house and have a few drinks after the conclusion of the 21st birthday celebrations. More than these three men, however, proceeded to Mr Simo Luthuli's house from the 21st celebration.

[11] Upon arrival at Mr Simo Luthuli's house, the group of men sat in the living room, drinking beer. Mr Bethwana, however, stated that he did not drink anything there, although he admitted that he had consumed four to five quarts of beer at the 21st birthday celebration. Present at Mr Simo Luthuli's house when Mr Bethwana and his companions arrived were Mr Simo Luthuli, and both previously mentioned men, Mr Zungu and Mr Ngema.

[12] According to Mr Bethwana, at some stage during the evening, the accused requested Mr Ngema to go and purchase some cigarettes for him and gave him R10 to do this. Mr Ngema at first declined to do so and, consequently, the accused slapped him once with an open hand across his face. Mr Simo Luthuli begged Mr Ngema to go to Mr Ngema's grandmother's place, which appeared to function also as a tuck shop, and purchase the cigarettes. Mr Ngema relented and left the house to do as he was asked.

[13] According to Mr Bethwana, the accused then rose, took out a revolver handgun from the front of his jacket, and told Mr Simo Luthuli to load one bullet into the rotating cylinder of the weapon. The bullet had originally been in the accused's shoe but had been transferred from there by him to the surface of the sofa upon which he sat and was then offered to Mr Simo Luthuli by the accused. Mr Simo Luthuli did not initially take the round of ammunition but commenced apologizing to the accused. Mr Bethwana testified that he did not understand why he did so. The accused then took a stick and struck Mr Simo Luthuli a blow with it to the head, causing a bleeding wound. The accused again told Mr Simo Luthuli to load the bullet

¹ The English translation of the isiZulu word 'geja' is 'plow'.

into the revolver and he now did as he was told. The revolver was never given to Mr Simo Luthuli but was held by the accused who merely tilted it to allow the round of ammunition to be placed in the cylinder by Mr Simo Luthuli. That having been done, the accused then shot Mr Simo Luthuli in the head, for no apparent reason.

[14] Mr Bethwana, shocked, sprang to his feet, and fled the house, running, followed by a man called 'Menzi.' After a short while, they stopped running and paused for a moment. Whilst standing there, the accused, Geja and a cousin of Mr Bethwana, Mr Siphamandla Nkosi, ran up to them. The accused asked Mr Bethwana why he had run away and said that because Mr Bethwana and Menzi had chosen to run away, they would have to bear the cost of a cleansing ceremony that the accused would now have to undergo because of their conduct.

[15] At Mr Bethwana's suggestion, they agreed to all go home. At the gate to Mr Bethwana's homestead, the accused allegedly told him to keep quiet about what he had just witnessed and was told that if he did not do so, the accused would kill all Mr Bethwana's relatives and leave him alive, on his own.

[16] Later the same morning, during the daylight hours, Mr Bethwana received a fare to transport some people locally using a family owned motor vehicle that was hired out from time to time. He also received a telephone call from Geja, who asked how he had slept the previous night and said that he should go that day to a certain place in the Ngununu area that had a distinctive tree where he would find him and the accused.

[17] Having delivered his fare paying passengers to their destination, Mr Bethwana, indeed, found the accused and Geja at the tree, with two other men. What had occurred in the early hours of the morning of that day was discussed and Mr Bethwana then learned that a second person had also been shot and killed. The second person shot was said to be Mr Zungu. The accused insisted that Mr Bethwana had to cough up the money for a cleansing ceremony for himself. An amount of R1 500 was apparently needed, which the accused said was to be paid by Mr Bethwana and Menzi equally.

[18] A few days later, Mr Bethwana and Menzi went to another local ceremony and there they met the accused and Geja. Geja asked for the cleansing money. Mr Bethwana said that he had only R120 on him and paid it over. Menzi said that he had R500 at home.

[19] It appears that Mr Bethwana had no further contact with the accused until approximately six years later, in 2024, when the accused telephoned him. The accused had wanted to know from Mr Bethwana if he had spoken to the South African Police Service (SAPS) about what had occurred in 2018. Mr Bethwana lied, and said that he had not, when, in truth, he had been contacted by the SAPS and had made a full disclosure to the investigating officer about what had occurred. The accused warned him that if he did speak to the SAPS, he would deal with Mr Bethwana.

[20] Mr Bethwana gave his evidence, as he finally revealed, whilst he was a participant in a witness protection scheme. He explained that he was in that scheme as a direct result of the threats made against him by the accused.

[21] Mr Bethwana could offer no insight into why the accused had killed Mr Simo Luthuli.

[22] Under cross-examination, Mr *Mkhwanazi*, who appeared for the accused throughout the trial, denied virtually the entirety of the evidence of Mr Bethwana. The accused, whilst admitting that he had been at Mr Simo Luthuli's house, denied sending Mr Ngema to purchase cigarettes, denied assaulting him, denied shooting Mr Simo Luthuli, and denied shooting Mr Zungu.

[23] As to how the death of Mr Simo Luthuli came about, the accused advanced the version through Mr *Mkhwanazi*, that whilst the men were sitting drinking alcohol in the living room of Mr Simo Luthuli's house, an unknown male (the stranger) entered the house and the room and, without saying anything, shot Mr Simo Luthuli in the head. As a consequence, everyone in the room had fled from the house.

[24] The accused denied demanding cleansing money from Mr Bethwana and denied contacting him telephonically in 2024. Mr Bethwana, tellingly, replied to this latter assertion by saying that the reason why he was in a witness protection scheme was primarily because of the telephone call that had been made to him by the accused in 2024. Mr Bethwana was asked to estimate when that call had been made and said that he thought that it had been in November 2024. It was then put that the accused had already been arrested by then and was in custody and had no access to a cellular telephone.

[25] And still the denials from the accused did not end. The accused denied possessing a firearm. And he denied forcing Mr Simo Luthuli to load it with a bullet.

The evidence of Mr Siphamandla Ngema (Mr Ngema)

[26] Mr Ngema, already mentioned in this judgment, was the person who had been dispatched to purchase cigarettes for the accused in the early hours of 16 December 2018, and who had allegedly been slapped by the accused when he initially declined to do so. He testified that he knew the accused from the general area and had known him for about two years prior to the events at Mr Simo Luthuli's house.

[27] Mr Ngema stated that Mr Simo Luthuli was his uncle. In the early hours of the morning of 16 December 2018, he was with his uncle at a house that his uncle was guarding. He had been with his uncle since about 18h00 on the evening of 15 December 2024. They had been drinking alcohol. At some stage that evening, a group of men arrived at Mr Simo Luthuli's house, which group included the accused and Geja. Upon arrival, some of the men had carried sticks and had commenced prodding and poking the occupants of the house in an aggressive fashion with those sticks. When the accused had tried to poke Mr Ngema, Geja had told him to stop doing so, saying that 'the boy had nothing to do with this.'

[28] The accused had then demanded money from Mr Simo Luthuli in order that Mr Ngema might be sent to purchase cigarettes for him. Mr Ngema was reluctant to do this given the lateness of the hour, it being around 01h00. The accused slapped him in the face and told him to do as he said and go and buy the cigarettes. Mr

Ngema left to do so but was told by the person that sold the cigarettes, who was, in fact, his grandmother, that it was far too late for such a sale to be entertained, that he was too drunk, and that she was sleeping. He returned to the dwelling to announce what had happened and was again slapped in the face by the accused and was told to go and get the cigarettes.

[29] Chastened, Mr Ngema left Mr Simo Luthuli's house and now resolved to go to another place in his quest to acquire cigarettes. He chose to go to a place that he referred to as 'Khulekhane's homestead'. As he moved on his way there, he heard a gunshot. He, in fact, heard two gunshots in quick succession to each other. Hastening on to Khulekhane's homestead, he discovered that Khulekhane was not there, but Khulekhane soon arrived home and told Mr Ngema that his uncles had been seriously injured at Mr Simo Luthuli's house.

[30] They then both proceeded back to Mr Simo Luthuli's house and upon arrival there found that Mr Simo Luthuli and Mr Zungu had both been shot. Mr Simo Luthuli was still alive and tried to speak but could not. Mr Ngema was later told that he had died at the hospital.

[31] Mr Ngema indicated, fairly, that he had not seen anyone with a firearm at the house, and that he did not know who had fired the two shots that he had heard on his way to Khulekhane's homestead.

[32] Under cross-examination, it was again denied on behalf of the accused that Mr Ngema had been sent to purchase cigarettes or that he had been slapped by the accused.

The evidence of Sergeant Khethukuthula Gift Zikhali (Sgt Zikhali)

[33] Sgt Zikhali is a crime scene expert employed by the SAPS at the Local Criminal Records Centre at Richards Bay in Zululand. At 03h30 on 16 December 2018 he was called out to attend a crime scene. The crime scene was at a private house in the Machanca area. On his arrival at the scene, he found a deceased black male lying on his back in a corner of the living room of a house. He took photographs of the scene and of the deceased male that he found inside the house and looked

for, but could not find, any exhibits. The body of the deceased person in the house bore signs of having been shot.

[34] Sgt Zikhali ascertained that there was a second person at the house who had also been shot. He learned that upon the arrival of the first responding members of the SAPS at the scene, the second victim was found to be still alive and had been rushed to a local clinic to receive medical treatment. The second victim, however, did not survive and Sgt Zikhali later took photographs of his lifeless body at the mortuary. These photographs were added to an album of photographs of the house and the other deceased person and were handed in as an exhibit.

[35] That concluded the State's evidence on the first three counts.

Count 4: Being a count of murder allegedly committed on 9 February 2024

The evidence of Ms W[...] Z[...] M[...] (Ms M[...])

[36] Ms M[...] was a grade 12 student at Mafunda Secondary School on 9 February 2024. The security guard employed at that school was the previously mentioned Mr Mhlongo and she testified that he was killed on that date in her presence.

[37] A meeting for parents of scholars who attended the Mafunda Secondary School was being held at the school during the day of 9 February 2024. It so transpired that there was also an interruption in the supply of water to the school that day. It appeared that this was not an uncommon occurrence, for the scholars knew that Mr Mhlongo usually kept containers of water in his guard house at the entrance gate to the school premises specifically for such days when the water supply was disrupted. At around 12h00, on that day, Ms M[...] testified that she had gone down to Mr Mhlongo's guard house with a friend to get some water from him. She found him seated under a tree a distance from the guard house with other scholars. She went to him and requested some water from him, and he fetched it from his guard house and poured some for Ms M[...] and her friend.

[38] Just then, a white motor vehicle drove into the school grounds through the gate near the guard house. Ms M[...] thought it may have been a parent arriving late for the meeting. It was driven towards the tree where Mr Mhlongo and the scholars were. Mr Mhlongo got up and walked over to it. A gunshot was then heard and the scholars under the tree, including Ms M[...] and her friend, ran in terror in the direction of the gate through which the motor vehicle had just entered. Ms M[...] looked at the motor vehicle and saw that the driver's window was slightly down so that she was able to see the driver, who wore a blue garment on his upper body. She saw the face of the driver and stated that it was the accused.

[39] Ms M[...] was at the rear of the group of fleeing scholars and as she looked back, she came to the realization that Mr Mhlongo had been shot. The front doors of the motor vehicle were open and the person who had fired the first shot, who was the driver of the motor vehicle, had alighted from the motor vehicle and continued thereafter to shoot at Mr Mhlongo as he lay on the ground. Ms M[...] repeated that the lone gunman was the accused.

[40] The fleeing scholars exited the school grounds and Ms M[...] saw the white motor vehicle also leave the school grounds and proceed to a local shop called 'Mbongolwane.' Ms M[...] was unable to state how many shots had been fired in all but stated that many had been fired. While she confirmed that there was a single gunman, she further estimated that there may have been up to three or four people in the motor vehicle. Shown a photograph of a motor vehicle in a photograph album handed in previously as an exhibit, she confirmed that what was depicted in the photograph was the motor vehicle that she had seen in the school grounds. The motor vehicle that she identified was a white Toyota Etios.

[41] Finally, Ms M[...] confirmed that she had attended an identification parade and that she had pointed out the accused on that parade.

[42] Mr *Mkhwanazi* cross-examined Ms M[...] and denied that the accused had ever driven the motor vehicle that had entered the school grounds or that he had shot Mr Mhlongo. Ms M[...] remained resolute that the driver, and gunman, was the same person and was the accused. Asked to explain why she had identified the

accused as being the driver, she explained that he was dark complexioned and wore a cap and that because of what had occurred before her very eyes, she had not forgotten his face and would never forget his face. She later appeared to contradict herself and said that the accused was light complexioned. Asked to explain this, she said that he was not really dark or light complexioned. But she was sure that it was the accused that she had seen.

[43] As regards her identification of the accused at the identification parade, Mr *Mkhwanazi* pointed out to her that the accused was the only person on the parade wearing a blue top, something that the witness mentioned the gunman had been wearing when Mr Mhlongo was shot. Ms M[...] agreed with this. It was then explained to her by Mr *Mkhwanazi* that the accused believed that the members of the SAPS had taken his photograph when he was arrested and that Ms M[...] had been shown these photographs before she had attended the identification parade. She stated emphatically that she had not been shown any photographs of the accused.

The evidence of Mr Mfanafuthi Mzimela (Mr Mzimela)

[44] Mr Mzimela was a father of a child attending Mafunda Secondary School and had gone to the school on 9 February 2024 for a parents' meeting. At some stage during the meeting, he felt the need to smoke a cigarette and he went out to Mr Mhlongo's guard house to do so. He estimated that this was at around 12h00.

[45] He stood smoking a cigarette, facing away from the school premises, and saw a white Toyota Etios motor vehicle being driven into the school grounds from the road outside the school. Less than a minute later he heard a gunshot and saw Mr Mhlongo fall to the ground. Mr Mzimela took cover behind the guard house, and in doing so, dropped his cigarette. He heard several more gunshots before he saw the motor vehicle being driven away.

[46] Mr Mzimela was unable to see the gunman because of his position behind the guard house nor was he able to tell if there were any other occupants of the motor vehicle.

The evidence of Sergeant Joel Masango (Sgt Masango)

[47] Sgt Masango is, like Sgt Zikhali, a member of the SAPS attached to the Local Criminal Records Centre in Richards Bay, Zululand, where he also serves as an expert crime scene investigator. On 9 February 2024, he was summoned to a crime scene. The scene was at a school near Mbongolwane in Zululand, where a security guard stationed at the school had been murdered.

[48] Upon his arrival at the scene, Sgt Masango, indeed, found the body of a deceased black male, who appeared to have been shot a number of times. The deceased was found lying face down on the ground and, upon closer examination, was ascertained to have suffered multiple gunshot wounds to the head, back, chest and arm.

[49] Sgt Masango took a number of photographs of the scene and of the body of Mr Mhlongo and prepared a photograph album, which was handed in as an exhibit. He also recovered a number of exhibits at the scene, including two spent bullet heads, eight spent 9mm firearm cartridges and a partially smoked cigarette. All of the exhibits were identified, numbered, bagged in exhibit bags that were then sealed and photographed at the scene, and then handed in to the SAP 13 register of the Mbongolwane police station. The cartridges and bullet heads were later sent by courier to a laboratory for ballistic analysis, and the partially smoked cigarette was sent to a laboratory that specialised in biological examinations. Sgt Masango was not aware of the results of any of the tests that he had ordered.

The evidence of Constable Sandile Hlabisa (Cst Hlabisa)

[50] Cst Hlabisa testified that on 9 February 2024 he had been at court and was on his way back to his police station at Mbongolwane in a marked SAPS motor vehicle when he had received a message of a suspicious motor vehicle being driven on the road that he would be taking to return to the police station. He was warned to be on the alert for a white Toyota Etios motor vehicle, and he soon spotted such a motor vehicle travelling in the opposite direction to the direction in which he was travelling.

[51] There were, in fact, two motor vehicles that appeared to be travelling together, in convoy. Leading the Toyota Etios was a gold Toyota Tazz motor vehicle.

Both motor vehicles were being driven swiftly and Cst Hlabisa did a U-turn and followed them. After a while, the Toyota Tazz turned off the road at a junction, but Cst Hlabisa continued to follow the Toyota Etios. He was in the company of a colleague, and he drove his motor vehicle very close behind the Toyota Etios and in so doing he was able to read its registration mark, which he reported to his superiors. He also recorded the registration mark in his statement. In so doing, he made an elementary error and incorrectly transposed one number for another.²

[52] Cst Hlabisa observed that there were three people in the Toyota Etios, two of whom were seated on the right hand side of the back seat. He ultimately lost sight of the Toyota Etios and that ended his involvement in the matter. He did indicate, however, that he had been informed that the occupants of the Toyota Etios had been involved in a shooting at Mafunda Secondary School near Mbongolwane, which he estimated was about 40 kilometres from where he had first observed the Toyota Etios.

[53] Mr *Mkhwanazi*, after taking instructions from the accused, said that the accused would deny that the Toyota Etios was speeding and when the court asked, with some incredulity, whether by insisting on this correction, the accused admitted that he had been in the Toyota Etios, it was confirmed that this was, indeed, the case. It was further put to Cst Hlabisa that the Toyota Etios had not been stopped by the SAPS but had been stopped by its driver, who at this stage was not named, because the driver had insufficient money to be able to proceed through the approaching Mandeni Toll Plaza.

[54] It was also put to Cst Hlabisa that there were only two people in the Toyota Etios, which was denied, and it was further asserted that the accused and the other occupant of the Toyota Etios were on their way to Durban, having first visited the accused's homestead and then having visited the other unnamed occupant of the Toyota Etios's homestead.

The further evidence of Sergeant Zikhali

² The registration number of the Toyota Etios, as revealed in the photograph album handed in, was ND 259 650. Cst Hlabisa recorded it as being ND 269 650.

[55] Save for one portion of his evidence, all the evidence of Sgt Zikhali was given during a single visit to the witness box. His evidence covered all the offences in respect of which the accused was charged, from the earliest in 2018 to the latest in 2024. His evidence has been dissected into separate stanzas of evidence for the purposes of this judgment so that his evidence on a particular count is dealt with together with the other evidence relating to that particular count.

[56] On 9 February 2024, at 15h30, Sgt Zikhali was called to the scene of a crime near the town of Mandeni, which is just over 90 kilometres north of the city of Durban. The crime scene was located on a bridge over the N2 in the vicinity of the Mandeni Toll Plaza, which was below the bridge. Two men had been arrested there.

[57] At the scene, Sgt Zikhali found members of the SAPS and was informed that two persons had been stopped and arrested in a motor vehicle. He was shown a white Toyota Etios motor vehicle and was requested to take photographs of it. He did so and prepared a photographic album which was also received as an exhibit. It was these photographs of the Toyota Etios that were shown to Ms M[...] when she later testified.

[58] The two arrested suspects had been separated from each other according to Sgt Zikhali and each of them had been placed in different motor vehicles. Sgt Zikhali had with him gunshot residue test kits and he was requested to test both the suspects for the presence of gunshot residue on their hands, which he did. He thereafter took the completed gunshot residue test kits to the Mandeni police station, where they were placed in the SAP 13 register, and were later sent off to the Forensic Science Laboratory for analysis. There was also a quantity of clothing at the scene of the arrest of the two suspects and Sgt Zikhali took photographs of that clothing as well. The clothing was also put into an exhibit bag and accompanied the gunshot residue kits to the laboratory for some form of analysis, the precise nature of which was never described.³

³ No test results were ever handed in with regards to the clothing and it appears that the clothing was never received by the Forensic Science Laboratory for analysis.

[59] This was still not the end of Sgt Zikhali's involvement in events. Two days later, on 11 February 2024, at about noon, he was called to attend an identification parade that was to be conducted at the Sundumbili police station. Two witnesses had been invited to consider certain men standing on the identification parade and Sgt Zikhali was required to photograph proceedings at the identification parade that was to be held.

[60] According to Sgt Zikhali, both witnesses made a positive identification of a person on the parade. In both instances, the person identified by the witnesses was the accused. Sgt Zikhali took photographs of all the men standing on parade as well the accused after each of the witnesses had identified him.

[61] Under cross examination from Mr *Mkhwanazi*, it was suggested to Sgt Zikhali that he had, in fact, taken a photograph of the accused at the crime scene on the bridge near the Mandeni Toll Plaza when the accused had initially been arrested. The witness vehemently denied this and said that it most definitely was not his job to photograph accused persons. It was then put to him that other members of the SAPS had taken photographs of the accused with their cellular telephones at that crime scene. Sgt Zikhali said that he bore no knowledge of that. It was also suggested to Sgt Zikhali that at the identification parade, the accused was the only person not wearing shoes. Sgt Zikhali acknowledged this to be an accurate observation.

The evidence of Lieutenant Colonel Ilse Kitching (Lt Col Kitching)

[62] Lt Col Kitching is stationed at Vryheid, KwaZulu-Natal where she is attached to the Zululand Crime Intelligence Division. She described herself as being a crime analyst and a profiler of entities. On 24 April 2024, she was requested to analyze certain data. The data related to an offence that had occurred on 9 February 2024 and was provided to her on compact discs.

[63] Lt Col Kitching was requested to analyze data pertaining to three cellular telephone numbers, namely 0[...], 0[...] and 0[...]. She indicated that she personally had no idea to whom those cellular telephone numbers belonged. She was

requested to ascertain whether those three numbers could be linked to each other by being in the same geographical area at the same time on 8 and 9 February 2024.

[64] For reasons that will be mentioned later, I do not intend discussing her evidence at all and I have not taken it into account when arriving at my judgment in the matter.

The evidence of Mr Thabang Victor Matsoso (Mr Matsoso)

[65] Mr Matsoso is employed by Tracker as a compliance coordinator. In his evidence, he indicated that he had been requested to consider certain data pertaining to a Toyota Etios motor vehicle that had been fitted with a Tracker telematics device. A Ms Bongiwe Msomi owned that motor vehicle.

[66] He explained that the system employed by Tracker is a GSM (Global Service for Mobile Communication) based system. All positions recorded by the system are determined by using GPS (Global Positioning System), which has a measurement accuracy of up to five metres, which means that the device being tracked, in this instance a Tracker telematics device, is within 5 meters of its true location.

[67] The Tracker records that Mr Matsoso consulted indicated that the Toyota Etios mentioned above had been at the Mafunda Secondary School at 12h04 on 9 February 2024. He was able to determine this by taking the GPS reading recorded by the Tracker device,⁴ which recorded the time of the day and the position of the Toyota Etios using longitude and latitude co-ordinates and inputting those co-ordinates into Google Maps. It was then possible, using those co-ordinates, to call up a photograph of the physical surroundings of the Toyota Etios at those precise co-ordinates. The photograph brought up with the co-ordinates mentioned in footnote 4 below revealed that the Toyota Etios was at the Mafunda Secondary School. Copies of the photographs depicting this were handed in as an exhibit.

⁴ The GPS reading was Latitude: -28.93132; Longitude: 31.19817.

[68] Mr Matsoso testified that the motor vehicle had moved slowly up to 12h04 and had then come to a stop for approximately 14 seconds before moving off and later being driven at a speed considerably over the permitted speed limit.

The further evidence of Sergeant Zikhali

[69] It was earlier mentioned that all the evidence given by Sgt Zikhali had been given in one visit to the witness box, save for one occasion. The evidence dealt with now was given on a separate occasion and on another day subsequent to his initial testimony.

[70] Sgt Zikhali was recalled by the State to give evidence on the outcome of the gunshot residue tests that he had performed on the two people under arrest on the afternoon of 9 February 2024. In making its application to recall him, the State explained that it did not have the results when he first testified. Mr *Mkhwanazi* indicated that he, too, did not have a copy of those results when Sgt Zikhali initially testified. It therefore seemed to me that the test results, despite the date of their commissioning by a commissioner of oaths, had not been to hand when Sgt Zikhali had initially testified, and I accordingly granted leave for him to be recalled on this issue.

[71] Sgt Zikhali had three documents in his possession when he entered the witness box for a second time. The first two documents recorded the details of the two men whose hands he had tested for the presence of gunshot residue. One of them was the accused. Both hands of both arrested men were tested. The document in respect of the accused had printed on it the unique bar code number of 13S1F556TF. The third document that Sgt Zikhali had in his possession was an affidavit from an expert stationed at the Forensic Science Laboratory, namely a Warrant Officer Maluleke, which reported on the results of the two gunshot residue tests performed by Sgt Zikhali on the two men tested by him. The expert who conducted the test determined that the test results that had the unique serial number 13S1F556RIGHT and 3S1F556LEFT tested positive for characteristic gunshot residue.

[72] The serial number mentioned above was the one that related to the test performed on the accused. The other gunshot residue test performed on the other man returned a negative result.

[73] Under cross-examination, Mr *Mkhwanazi* asked Sgt Zikhali if gunshot residue could have got onto the accused's hands if a firearm had been fired in the motor vehicle in which he was sitting, the unspoken inference being that the accused would not in this situation be the person firing the firearm. The answer received was that it could happen but that all the windows of the motor vehicle would have to be closed. As it later transpired, this was simply a hypothetical proposition, for it was not the accused's version that he had ever been in the Toyota Etios when a shot had been fired from inside that motor vehicle. It will, in any event, be recalled that Ms M[...] had testified earlier that the driver's window was lowered, allowing her to observe the driver's upper body and face.

[74] A different proposition was then put to Sgt Zikhali by Mr *Mkhwanazi*: if a gun had been fired from inside a motor vehicle by another person, not the accused, and the accused was not then in the motor vehicle but had later got into the motor vehicle, could he get gunshot residue precipitate on his hands? Sgt Zikhali did not directly answer the question initially, and his first response was that if this was the case, then everyone in the motor vehicle would have gunshot residue on their hands and it was already known that the test performed on the other arrested person had been negative. Asked the question again, Sgt Zikhali said that he could not answer it because there were too many variables but emphasized that gunshot residue would not hang in the air for a long period of time.

The evidence of Sergeant Simphiwe Ndlovu (Sgt Ndlovu)

[75] Sgt Ndlovu is the investigating officer of the murder of Mr Mhlongo, being count 4 to the indictment. He was not the investigating officer of the offences identified in counts 1, 2 and 3 relating to the multiple murders and the count of common assault. Those offences were investigated by the Eshowe SAPS, but the investigating officer had been murdered and Sgt Ndlovu was given the completed investigation once it had been finalized.

[76] Sgt Ndlovu explained that the overall investigation of the matter, and the presentation of witnesses to court, had been bedeviled by the persistent threats made to witnesses by the accused and by persons associated with him. A witness on counts 1, 2 and 3 had refused to testify because of threats made to him. Other witnesses avoided Sgt Ndlovu when he sought to ensure that they would come to court and testify, and some witnesses said outright that they were too afraid to testify and refused to give evidence. One witness, Mr Bethwana, was placed in a witness protection scheme because of threats made against him by the accused. Another female witness had gone into, and had then voluntarily exited, a witness protection programme, and would now not testify. The accused's uncle had allegedly threatened another witness to say nothing. A co-accused was dead, shot in the head in Durban by unknown men.

[77] Sgt Ndlovu testified that an attempt had also been made to bribe him to withdraw his opposition to the accused being admitted into bail. At a meeting in Durban, he had been handed an envelope by unknown men but had turned down the bribe and had handed back the envelope, unopened.

[78] As regards the Toyota Etios, he testified that it belonged to a lady whose boyfriend had bought it and who had registered it in her name. The motor vehicle was used as an Uber motor vehicle and had been driven by Mr Mzwandile Dlodla (Mr Dlodla), who had been employed by the owner of the motor vehicle for that purpose. Mr Dlodla was the unnamed person in the Toyota Etios when the accused was arrested, and he had also been arrested and his hands had been tested for gunshot residue but had tested negative. He was now dead, a victim of an unsolved murder.

[79] Under cross-examination, Mr *Mkhwanazi* put it to Sgt Ndlovu that the persons that attempted to bribe him might have been the accused's enemies who wanted to get him out of custody so that they could conclusively deal with him. Sgt Ndlovu had no knowledge of this rather imaginative possibility. It was then suggested to Sgt Zikhali that photographs of the accused being arrested, depicting both him and the motor vehicle in which he had been travelling, had been placed on the social media platform known as Facebook. Asked by the court for particularity as to who

had allegedly made such a post, Mr Mkhwanazi stated that it had been posted by an entity known as 'IPSS Security.' Sgt Ndlovu indicated that IPSS Security was headed up by a former head of detectives of the SAPS and had assisted the SAPS in the apprehension of the accused with their cameras, situated on roads upon which the Toyota Etios had been driven being consulted. In the event, no evidence was ever led on this aspect by the defence.

[80] It was denied on behalf of the accused that he had committed any crime or that he had fired a firearm.

Section 220 admissions

[81] The State and the defence co-operated with each other to produce a document in which certain admissions made by the accused were recorded. This was of some assistance in shortening the duration of the trial. The admissions related primarily to the postmortem examinations that were performed on the three persons alleged to have been murdered by the accused. The accused admitted that none of the three bodies of the three dead men suffered any injuries after their deaths and before the postmortems were performed upon them.

[82] The now admitted postmortem results indicated that:

- (a) The deceased on count 1, Mr Zungu, had died from two gunshot wounds, one to the head and one to the left shoulder;
- (b) The deceased on count 2, Mr Simo Luthuli, had died from a gunshot wound to the head causing extreme intra-cranial projectile damage; and
- (c) The deceased on count 4, Mr Mhlongo, had died from multiple gunshot injuries to the head, chest, and abdomen with intra-cranial, intra-thoracic and intra-abdominal projectile damage.

[83] In addition to these admissions regarding the postmortem examinations, a ballistics report was admitted by the defence pertaining to the murder of Mr Mhlongo on 9 February 2024. The report was, however, of no real evidential value because no firearm had been recovered in relation to that crime. Its only possible value was that it found that all the spent cartridges found at the scene had been fired from the same firearm.

[84] Finally, the accused admitted that the Toyota Etios motor vehicle was owned by a person called M A Msomi and had been used as an Uber motor vehicle and had been in the possession of the now deceased Mr Dludla on 9 February 2024.

[85] The postmortem reports of each of the three dead men were attached to the document recording the s 220 admissions. Significantly, the reports relating to Mr Simo Luthuli and Mr Zungu indicated that bullets had been removed from each of their bodies and had been handed to a representative of the SAPS in each instance.

The State case

[86] The State then closed its case.

Evidence for the defence

The evidence of the accused

[87] The accused initially wanted to call a witness to testify before he testified. He wished to call Geja. Geja, is presently an awaiting trial prisoner being held at the Newcastle prison, which is situated approximately 300 kilometres from this circuit court sitting in Mtunzini. The State had apparently intended calling Geja as a witness in its case and he had consequently been delivered from Newcastle prison to this court for this purpose. However, Ms *Ntsele* advised me that upon his arrival at this court, he had refused to testify for the State, and he had subsequently been returned to the Newcastle prison. Given the wishes of the accused, steps were taken to have Geja again delivered to this court to give evidence, this time for the defence.

[88] After some discussion and prevarication, the accused decided to testify before he called his witness, and he accordingly took to the witness box.

[89] As regards the first three counts mentioned in the indictment, the accused denied all imputations of criminal conduct on his part. He testified that he had been in Eshowe on 16 December 2018 when he had met Geja and, having met him, he then met his sister, Ms Londiwe Gumede, near the taxi rank. As Christmas was approaching, he gave his sister R1 500 to purchase groceries. He and Geja

remained near the taxi rank, drinking alcohol. Having arrived in Eshowe at between 10h00 and 11h00, the two of them remained drinking near the rank until about 19h00 on 16 December 2018.

[90] When the court pointed out to the accused that the date could not be correct because Mr Zungu and Mr Simo Luthuli were already dead at 19h00 on 16 December 2018, having been killed during the early hours of the morning of that day, the accused changed the date from 16 December 2018 to 15 December 2018.

[91] The accused went on to explain that from Eshowe, he and Geja went to Entumeni to join in a 21st birthday celebration. Geja had received a telephone call from one Phe Luthuli advising him that there was a function at the Luthuli homestead, and Geja was invited to drop by and join in the celebrations and to bring the accused with him. They proceeded to the Luthuli homestead and on the way there they passed Mr Simo Luthuli's house. Geja had spoken to Mr Simo Luthuli briefly at the house, but the accused did not and had remained standing on the road.

[92] The accused had no idea what time they had arrived at the 21st celebration because, so he said, he had consumed a quantity of alcohol and estimated that by that stage, he had already drunk 5 to 6 quarts of beer. There was singing and traditional dancing going on at the celebration and they joined in and drank more alcohol until their host called a halt to proceedings and chased them all away.

[93] A group of them then went to Mr Simo Luthuli's house because he had alcohol there. He did not personally know Mr Simo Luthuli, but upon arrival at the house, everyone sat down and drank more alcohol. People kept moving around and flowing in and out of the house. The accused explained that at a certain point, the stranger walked into the house and fired a shot at Mr Simo Luthuli, and everyone ran out of the house.

[94] The accused denied sending Mr Ngema to purchase cigarettes for him whilst at Mr Simo Luthuli's house and denied that he had slapped him. He also had not shot Mr Simo Luthuli in the head, as described by Mr Bethwana, and he, like Mr Bethwana, had not even known that a second man had also been shot and killed at

that time but he had only discovered this fact the following day. He had also never demanded money from Mr Bethwana to pay for a cleansing ceremony and if he had required money for that purpose, he would have paid for it himself as he was working and was earning money. Any person who said that he had shot Mr Simo Luthuli was lying. He had, indeed, met Mr Bethwana the next day, but not under a tree at Ngununu as described by Mr Bethwana, but at Qwabe's store, where they had discussed the events of earlier that morning. It was only then that he discovered a second man had been shot and killed. He had also not telephoned Mr Bethwana in 2024 and he had not threatened him if he spoke to the SAPS.

[95] As regards the events of 9 February 2024, the accused said that he knew nothing of what had occurred at the Mafunda Secondary School. He had been in Durban on 8 February 2024 when he had been contacted by Mr Dludla on the social media platform WhatsApp, who had informed him that he was proceeding to Eshowe that day. He was due to return to Durban the very same day, and Mr Dludla offered to give him a lift, which offer the accused accepted. In the end, they did not return the same day. Or, in fact, at all, given that they were both arrested the next day.

[96] The accused stated that he had never been to Mafunda Secondary School but he said that he had been transported in a Toyota Etios motor vehicle that Mr Dludla had been driving. He indicated that when they arrived in Eshowe, it had been agreed that Mr Dludla would take him to his family homestead in the Ngununu area. It was by then late at night and after travelling a substantial distance towards his family homestead, Mr Dludla said that they had insufficient petrol in the tank and so they returned to Eshowe, put in some petrol, and then returned to the Ngununu area where Mr Dludla dropped the accused off and then went on his way.

[97] The next morning, the accused said that he had met up with Mr Dludla for the return trip to Durban. When he arrived at the motor vehicle, he had moved some clothing from its front passenger seat. En route to the toll road to Durban, Mr Dludla had visited his family homestead. The accused remained in the motor vehicle while Mr Dludla went inside. On his return, Mr Dludla drove the motor vehicle towards the toll road. He had previously passed through toll roads using an e-tag affixed to the Toyota Etios but, somehow, Mr Dludla had determined that there was no credit available on the e-tag. How he had determined this was not explained. Mr Dludla

consequently stopped the motor vehicle and then reversed it and parked it so that he could telephone the owner of the motor vehicle and ask him to top up the funds in the e-tag account. Whilst so stationary, a private security company had arrived and security officials had ordered the accused and Mr Dludla out of the motor vehicle.

[98] The accused confirmed that he had been identified at an identity parade. He could give no explanation for how his hands had gunshot residue on them.

[99] The accused was cross-examined by Ms *Ntsele*, who appeared for the State. I deal firstly with the cross-examination that related to counts 1, 2 and 3.

[100] Ms *Ntsele* attempted to gain some understanding of when the accused had done certain things. He was asked when he had gone to Mr Simo Luthuli's house and Ms *Ntsele* received the response that it was already late. Asked when the stranger had entered the house to shoot Mr Simo Luthuli, the accused replied that it was the very same night. None of this was helpful nor, I suspect, was it intended to be helpful.

[101] It was suggested to the accused that he knew from the moment of his arrest that he had not killed Mr Simo Luthuli and that the stranger was responsible for his death. Yet the accused never raised the presence of the stranger with anyone. The accused agreed that he had never told anyone else of the presence of the stranger in the room, except the people that he was on the road with immediately after the shooting. That, of course, had not been put to Mr Bethwana who had been on the road with the accused. As to why he had told no-one else, he said that he had not met anyone else on the road on the night after the shooting. He confirmed that he had also not told the SAPS about the stranger, even after he had been arrested. He explained that he was shocked by what had occurred.

[102] Asked by the court why he had not immediately alerted the SAPS to what had occurred at Mr Simo Luthuli's house, the accused said that the deceased man's family was there and that he was drunk. It was pointed out that the next day he would have been sober and yet he had still not reported what he knew to the SAPS. The accused indicated that he did not think that he needed to report what he knew.

[103] Ms *Ntsele* repeated that from the moment of his arrest until the commencement of the trial before this court, the accused had never mentioned the stranger who had allegedly shot Mr Simo Luthuli. The accused agreed with this proposition. The accused tried to extricate himself from the consequence of his answer by stating that he had told the SAPS that he knew nothing of these shootings. The court pointed out that this was not an accurate answer: he did know something about the shootings. He knew that someone else had shot Mr Simo Luthuli but had not disclosed this essential information to the SAPS. The accused's response was that he did not think of telling the SAPS anything and thought that he would disclose this information when at court. He had now done that. Pressed further on this issue, the accused now indicated that no-one had asked him about the stranger.

[104] The accused continued to deny that Mr Bethwana had been honest in his evidence but could not explain why he would falsely attempt to accuse him of these crimes. He also denied threatening Mr Bethwana. Asked why he had not disputed Mr Bethwana's evidence that he had met the accused later in the day of the shooting under a tree, when the accused asserted that they had met at Qwabe's store, the accused said that Mr Bethwana was lying, and others would come and say that they had met at the store. In the event, no witnesses came to dispute Mr Bethwana's evidence regarding the meeting or to confirm the accused's version.

[105] Asked by Ms *Ntsele* whether he had gone to Mr Simo Luthuli's funeral, the accused said that he had not. He was asked why he had not done so, given how Mr Simo Luthuli had died and given his admitted presence at the moment of his shooting. The accused said that he did not see the need to attend. He then said that given that it was December and the festive season and that there were many functions in the area, he had been in a perpetual state of drunkenness. Then he said that he did not know when the funeral was to have been held. Under questioning from the court, he admitted that if he had wanted to find out when the funeral was, he could easily have found out.

[106] As regards the shooting of Mr Simo Luthuli, the court sought clarity from the accused on the mechanics of the shooting to which the accused was allegedly a witness. He was asked where he was in the room when the stranger came in. He could not remember. He was shown photographs of chairs and sofas in the room and was asked on which he had been seated at the critical moment. He could not remember. He was asked where Geja had been in the room and responded that he could not remember. He was asked whether he was seated next to Geja but said that he could not remember. He agreed that he had run out of the door of the house and was asked where the stranger was when he did this. Besides saying that the stranger had taken a few steps into the room, he could not say where he was.

[107] Turning to the shooting on 9 February 2024, being count 4, the first fact elicited under cross-examination by Ms *Ntsele* was that despite Mr Dludla operating the Toyota Etios as an Uber motor vehicle, there was no discussion of the accused being charged by him for the return trip from Durban to Eshowe (and even beyond Eshowe, to his family homestead). In a throw-away question, it was suggested to the accused by Ms *Ntsele* that he had paid for the trip in alcohol because the accused had said that he had bought some alcohol for the trip and that he and Mr Dludla had drunk of it as Mr Dludla drove towards Eshowe. Amazingly, the accused initially said that he did not know that it was against the law to drink alcohol while driving a motor vehicle. He eventually retreated from this scarcely believable statement and conceded that he knew that it was wrong to drink and drive.

[108] The accused stated to Ms *Ntsele* that to get to his family homestead from Eshowe was a drive of 'less than an hour' and part of the road there was tarred, and part was gravel. He was not, on his version, ever required to even pay for this part of the trip, which had to be allegedly undertaken twice because of an initial want of petrol in the Toyota Etios.

[109] The accused indicated that he and Mr Dludla had left Durban on 8 February 2024 at around 13h00 or 14h00. This is probably the only instance in the accused's evidence relating to count 4 of him mentioning a definite time (even though in this instance it was a range of possible times). It was a recurrent theme in his evidence that he was unwilling to commit himself to any time when asked when an event that

he had mentioned had occurred. His standard response to questions as to what time an event occurred was to state that he had not taken note of the time. As he gave his evidence, the court noted that he wore a large wristwatch on his left arm. He stated that he had not had it on 8 or 9 February 2024 and therefore he could not have consulted it on issues of time. He was, however, forced to admit that he always had a cellular telephone with him that measured and displayed the time, but he fobbed this off by saying that he had never looked at it to determine the time.

[110] Asked why Mr Dludla had not simply taken him to his home before returning to Eshowe to purchase petrol, the answer given was that it was dark. Asked where Mr Dludla was going to stay after he had finally dropped him off at the accused's family homestead given the admitted lateness of the hour, the accused said that he did not know, had never asked Mr Dludla where he was going to stay and did not offer his benefactor a bed at his family homestead. Asked what time he had been dropped at his family homestead, his answer was 'at night.'

[111] Attempting to lecture Ms *Ntsele* on the geography of Eshowe and its surrounding areas, stating that she obviously was not familiar with it, he was put in his place by Ms *Ntsele*'s firm rebuke that he should desist from lecturing her on this topic because she had been born and bred in Eshowe.

[112] Asked what time he had met up with Mr Dludla on 9 February 2024, the accused said that it was 'during the day'. Asked what time it had been arranged for him and Mr Dludla to meet, he said there had been no time agreed upon. He mentioned that he had to walk from his family homestead to the point where he was to be picked up by Mr Dludla. Asked what time he had left home to walk to the meeting place, he said it was 'in the morning.' Asked why he remembered this, he said it was because he saw the sun.

[113] The accused indicated that when he had eventually met Mr Dludla, the intention had been to drive back to Durban. However, en route to that destination, Mr Dludla had stopped at his family homestead at Mandeni. Under cross-examination from Ms *Ntsele*, the accused indicated that after they had arrived at the homestead, he and Mr Dludla had gone inside, and he had met Mr Dludla's mother. She had

prepared a meal for them, which was largely comprised of meat, which he had eaten. Having finished eating, he had returned to the Toyota Etios and awaited the arrival of Mr Dludla.

[114] Ms *Ntsele* asked the accused how long he and Mr Dludla had been at the latter's family homestead. The first answer was about an hour. Asked if it could have been less than half an hour, the accused said that he was not sure. It was then put to him that the data provided by Tracker indicated that the Toyota Etios had its ignition switched off at 13h20 on 9 February 2024 and the ignition was switched on again at 13h32 on that day. If this was when they were at Mr Dludla's homestead, then they had only been stationary for 12 minutes. The accused agreed. The proposition was then put to him by Ms *Ntsele* that the meal had then been prepared, and eaten, within 12 minutes. The accused again agreed, saying that he had eaten beef which appeared to have been prepared for an earlier function.

[115] From the Dludla homestead, the accused indicated that they had headed for the Mandeni Toll Plaza. It now emerged for the first time that the Toyota Etios had been driven up to the payment booth at the toll plaza but that there were insufficient funds standing to the credit of the e-tag affixed to the Toyota Etios to allow it to pass through. Mr Dludla had therefore reversed the motor vehicle away from the toll plaza and parked it on the side of the road to phone the owner of the motor vehicle and request him to top up the e-tag account when he and Mr Dludla were apprehended.

[116] The accused was prepared to admit that Mbongolwane, where the Mafunda Secondary School is located, lies north of Mandeni and is not on the route to Durban. He was then asked why, if they were travelling south to Durban, they had in fact gone north to Mbongolwane, as recorded in Tracker's data. The accused said that he could not dispute Tracker's information, but that he had not been in the Toyota Etios when it had gone to Mbongolwane. It was pointed out that, according to Tracker, the motor vehicle had been in the Mbongolwane area from 08h39 that morning until 12h16 that afternoon. The accused's only response was that he had not been in the motor vehicle and had not gone to Mbongolwane. He was confronted with his earlier answer that he had got into the motor vehicle in the morning and

therefore had to have been in Mbongolwane given the data recorded by Tracker but he just repeated his answer that he had not gone to Mbongolwane.

[117] Turning to consider the evidence of Ms M[...], Ms Ntsele asked how she could have known that he was travelling in a white Toyota Etios motor vehicle if she had not seen him at the Mafunda Secondary School. The accused indicated that he could not explain that, and he had been 'surprised' by her evidence. He could give no explanation either for the gunshot residue later determined to have been on his hands.

[118] Pursuant to the accused's earlier request, Geja was fetched from Newcastle prison and he was present at the Mtunzini High Court on the morning of 12 March 2026. He apparently arranged for his legal representative to also be present. Discussions then occurred between his legal representative and Mr *Mkhwanazi* for the accused, and after the lapse of several hours, it finally emerged that Geja did not want to give evidence for the accused. He was consequently delivered back to the Newcastle prison for a second, and final, time.

[119] Mr *Mkhwanazi* accordingly closed the case for the accused without calling any witnesses other than the accused.

Argument

[120] I heard argument on Monday, 16 March 2026. Ms *Ntsele* submitted that the guilt of the accused had been established on all four counts. I asked her to address me on the murder described in count 1. I specifically mentioned that there was no evidence led that the same firearm had occasioned the death of both Mr Zungu and Mr Simo Luthuli. She agreed with that and explained that the investigating officer on counts 1, 2 and 3 had retrieved the bullet that had been extracted from the body of Mr Zungu at his postmortem examination from the doctor who had removed it and the bullet that had been removed from the body of Mr Simo Luthuli and was on his way to the Forensic Science Laboratory in Durban with the two extracted bullets when he had been murdered and the two bullets had gone missing.

[121] Ms Ntsele submitted that the only reasonable inference was that the accused, who was the only person known to have a firearm in the room at Mr Simo Luthuli's house, was responsible for the death of the two men in the absence of a satisfactory explanation from the accused.

[122] As regards the murder described in count 4, Ms *Ntsele* indicated that the accused had been with Mr Dludla at all material times and that this fact had been established by the evidence of Lt Col Kitching. I asked whether this was, indeed, the evidence of this witness, for she said that she did not know who owned each of the cellular telephone numbers that she was called upon to analyze. Ms *Ntsele* said that Mr *Mkhwanazi* had made an admission during his cross-examination of Lt Col Kitching that one of the numbers, namely 0[...], was the accused's number. My notes indicated that Mr *Mkhwanazi* had asked no questions of Lt Col Kitching. Eventually, Ms *Ntsele* conceded that this was the case and did not require the record to be consulted on this issue.

[123] Ms *Ntsele* went on to argue that the presence of gunshot residue on the hands of the accused was a damning fact that could not be innocently explained by him. As regards the identity parade, I inquired why the documentation that is normally prepared that records the preparations for, and the conduct of, an identity parade was not handed up in this matter. Ms *Ntsele* indicated that it was never in dispute that the accused had been identified by two persons, one of whom was Ms M[...]. This was subsequently, if somewhat reluctantly, confirmed by Mr *Mkhwanazi*.

[124] Mr *Mkhwanazi* in his argument submitted that, to the contrary, the State had not proved its case against the accused beyond reasonable doubt. He argued that there was no evidence implicating the accused on count 1. On count 2, he submitted that the accused's version could be reasonably possibly true. It will be remembered that the accused's evidence on this count involved the stranger who had shot Mr Simo Luthuli. As regards count 3, I was urged to disbelieve the evidence of Mr Ngema, for undisclosed reasons, and that I should find the accused's denial that he had slapped Mr Ngema might be reasonably possibly true. Finally, on count 4, Mr *Mkhwanazi* drew attention to Ms M[...]'s uncertainty on whether the gunman had had a dark or light complexion. He also focused on the colour of the jacket that the

accused wore on the identity parade. The accused's evidence was, however, that when he was taken into custody, he had worn no shirt as he had taken off the white vest that he had been wearing and had used it to wipe blood from his head and it had been left at the scene.⁵

[125] Mr *Mkhwanazi* argued that the identity parade had been unfair because the accused had been wearing a shirt which was the same colour (blue) as the shirt described by Ms M[...] as being worn by the gunman and because he had no shoes on. I asked what the prejudice was occasioned by the accused not wearing shoes, but Mr Mkhwanazi could not think of any, other than it made the accused appear different. As regards the blue shirt, Ms M[...] did say that the gunman had worn a shirt of that colour, but the accused's version was that he had worn a white vest at the moment of his arrest. He had also said that he had been shirtless when he was arrested. The court pointed out that if he wore a blue shirt on the identification parade, it was accordingly through his own choice and not something that had been forced upon him. The person in charge of the identity parade could not have known what colour shirt the accused had allegedly worn two days before the identity parade was held.

[126] Mr *Mkhwanazi* urged me to find the accused not guilty on all counts on the basis that his version could be reasonably possibly true.

Analysis

[127] I indicated earlier in this judgment that I had rejected the evidence of Lt Col Kitching and that I would pay no heed to it in arriving at my judgment. The reason for this decision is relatively simple. Lt Col Kitching indicated that she had been asked to ascertain if she could group three cellular telephone numbers together geographically by analyzing data generated from cellular telephone towers scattered throughout the province of KwaZulu-Natal. She testified that she had no idea to whom the cellular telephone numbers belonged. I was told from the bar by Ms *Ntsele* during Lt Col Kitching's evidence that one of the three cellular telephone numbers mentioned by Lt Col Kitching belonged to the accused and the other two belonged,

⁵ The white vest features in some of the photographs taken at the scene of the accused's arrest. No blood stains can be discerned on it.

to his companion, Mr Dlodla. There was, however, no evidence whatsoever led before me that this was the case.

[128] The State called no evidence from the cellular network provider to establish who owned the cellular telephone numbers to which reference had been made. Lt Col Kitching, as she herself acknowledged, did not know to whom those numbers belonged. When he testified, the accused was never asked what his cellular handset number was. There was no admission in the s 220 admissions regarding the cellular telephone numbers. Ms *Ntsele* argued that Mr *Mkhwanazi* had admitted when cross-examining Lt Col Kitching that one of the numbers belonged to the accused. The difficulty with that submission was that Mr *Mkhwanazi* had not cross-examined Lt Col Kitching. While it may be so that the three numbers tracked by Lt Col Kitching are, indeed, those that belonged to the accused and to Mr Dlodla, Ms *Ntsele*'s assertion from the bar that this is the case is not evidence of those facts. The evidence of Lt Col Kitching must accordingly be rejected and ignored.

[129] It is so that not many witnesses have been called to testify in this trial despite its duration. From what has been stated by Ms *Ntsele*, there were many witnesses, all things being equal, that notionally could have been called by the State to testify but I heard evidence that many of those witnesses declined to testify out of fear for their personal safety. That explains why in respect of most of the charges there is but a single witness called in an attempt to establish the guilt of the accused. It follows that the cautionary rule pertaining to the evidence of single witnesses is in play.

[130] Section 208 of the Criminal Procedure Act 51 of 1977 provides that an accused may be convicted of any offence on the single evidence of any competent witness. It is generally understood that for the evidence of a single witness to be acceptable, that evidence should be clear and satisfactory in all material respects,⁶ and it goes without saying that the witness should, in addition, be credible.

⁶ *R v Mokoena* 1932 OPD 79 at page 80 (this judgment dealt with a section of an act that preceded s 208.)

[131] In *Rugnanan v S*,⁷ the Supreme Court of Appeal observed that the cautionary rule:

‘... does not require that the evidence of a single witness must be free of all conceivable criticism. The requirement is merely that it should be substantially satisfactory in relation to material aspects or be corroborated.’

[132] In *S v Webber*,⁸ the Appellate Division provided some guidelines to the way in which the evidence of a single witness should be approached when it stated the following:

‘A conviction is possible on the evidence of a single witness. Such witness must be credible, and the evidence should be approached with caution. Due consideration should be given to factors which affirm, and factors which detract from the credibility of the witness. The probative value of the evidence of a single witness should also not be equated with that of several witnesses.’

[133] There is, however, no universally defined threshold which if met, or exceeded, automatically determines when a single witness’s evidence will be acceptable. This was confirmed in *S v Sauls and Others*,⁹ where the Appellate Division observed that:

‘There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of a single witness. The trial judge will weigh his evidence, will consider its merits and demerits and having done so, will decide whether it is trustworthy and whether despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told’.

[134] I consider now the evidence adduced on each of the counts, but I do not commence immediately with count 1, but with count 2. It appears to me that before count 1 can be considered, it is necessary to first consider count 2.

[135] The evidence adduced on count 2, being the murder of Mr Simo Luthuli, is the evidence of a single witness, namely Mr Bethwana. While Mr Ngema had been at the house where the murder was committed, on his version he had been sent out to purchase cigarettes for the accused shortly before the critical moment and did not

⁷ *Rugnanan v S* [2020] ZASCA 166 para 23.

⁸ *S v Webber* 1971 (3) SA 574 (A).

⁹ *S v Sauls and Others* 1991 (3) SA 172 (A).

observe what thereafter occurred within the house. The cautionary rule just mentioned therefore applies to the evidence of Mr Bethwana.

[136] Mr Bethwana gave an understandable version of events that occurred in the early hours of 16 December 2018. His evidence provided a clear and detailed explanation of how Mr Simo Luthuli was killed. It included ancillary details that led up to the shooting, including the transfer of the bullet from the accused's shoe, and the interaction between the accused and Mr Simo Luthuli shortly before he died in which a head wound was inflicted upon Mr Simo Luthuli. The explanation offered by Mr Bethwana was rich in detail and that detail helped to provide meaning to the events that were said to have occurred. His evidence had a flow to it that explained each small event that took its place in the complete picture of a murder.

[137] The only thing that Mr Bethwana could not explain was why the accused had shot Mr Simo Luthuli. That, however, is not something that he could be expected to explain, for there was, on the face of it, no discernible reason for the shooting that arose from his narrative. That, however, does not mean that there was no reason for the shooting, merely that Mr Bethwana did not know it and that nothing that he saw suggested a reason.

[138] I observed Mr Bethwana closely during his time in the witness box. He was undoubtedly nervous in giving his evidence, for his hands ceaselessly trembled as he testified. This was clearly observable when he was asked to handle photograph albums and other documents when in the witness box. But this outward manifestation of his inner nervousness did not intrude into the quality of the evidence that he gave. He spoke well, was confident in his version, and gave his evidence free from contradictions. In short, Mr Bethwana was generally an impressive witness, who inspired confidence in the accuracy of what he stated. His evidence was confirmed, in part, by the evidence of Mr Ngema, who supported his version that he, Mr Ngema, had been sent to purchase cigarettes for the accused.

[139] A noticeable feature of Mr Bethwana's evidence was the fact that he was only prepared to give evidence about what he had personally seen. Two men were murdered in the early hours of 16 December 2018, but Mr Bethwana testified only

about one of those murders. Had he been dishonest, or if he had held a grudge against the accused that drove him to falsely implicate him in events, he could have quite easily mentioned that he also saw the accused shoot Mr Zungu. He did not do so.

[140] Mr Bethwana is an educated man, being a qualified quantity surveyor as already mentioned. He is also a person who has been absorbed into a witness protection programme because of the threats made against him by the accused. As Ms *Ntsele* submitted, the threats had commenced immediately after Mr Simo Luthuli had been murdered and recommenced in November 2024. The accused has denied making any threats against him, stating that he was already in custody when he was alleged to have telephoned Mr Bethwana. I attach no weight to this submission because it is a matter of some notoriety that generally those in custody still have relatively easy access to cellular telephones. I simply cannot imagine that a person such as Mr Bethwana would give up the comfort and ease of his life for the rigidity and forced anonymity of a witness protection programme for no tangible reason. That reason was the threatening conduct of the accused towards himself.

[141] I must therefore accept that threats had been made against Mr Bethwana by the accused that necessitated him being placed in a witness protection scheme. That being the case, then the question that must be asked is why the accused would have made such threats given his version of events that exonerated himself and placed the blame for the shooting on the stranger. This version could not have warranted a threat being made to the physical well-being of Mr Bethwana. The only sensible reason for the threat could be some conduct attributable to the accused that the accused did not want Mr Bethwana to mention to the authorities.

[142] The accused's contrary version of the event described by Mr Bethwana can only be described as being improbable in the extreme. According to him, the stranger slipped into the room in the house where a large number of men were gathered drinking alcohol. Before anyone could say or do anything, the stranger, for no apparent reason, shot Mr Simo Luthuli in the head and had then allowed all those who had witnessed this callous murder at close range to leave the room, potentially

to raise the alarm that could have led to his apprehension. It seems to me to be an entirely fanciful and contrived explanation.

[143] What occurred in the early hours of 16 December 2018 was a profoundly shocking event. It cannot but have disturbed every person who observed it and it cried out for a report to be immediately made to the SAPS, both for help in apprehending the gunman and for medical assistance for the unfortunate men who had been shot. The accused showed no inclination to help in any way. There was no report of his version of events to the SAPS nor was there any request for medical assistance. Notwithstanding that he was clearly a witness to a cold blooded murder, the accused said that he saw no need to report his observations to the SAPS because Mr Simo Luthuli's family members were present at the scene. This explanation beggars belief. One human being seeing the suffering of another would ordinarily try to alleviate that suffering, if possible. The accused, however, was not prepared to do anything to help his fellow man or, if that was not possible, to ensure that the true killer, the stranger, faced justice.

[144] The likelihood of the accused's version being reasonably possibly true is further weakened, in my view, by the fact that not only did he not report what he had seen to the SAPS, but he did not mention what he had allegedly observed to another living soul for a period of over eight years. He first mentioned the alleged involvement of the stranger during the course of this trial. When Mr Bethwana was informed of the accused's version when testifying, he indicated that he did not see things that way. In that I am not surprised, for the version of the accused is incapable of being accepted.

[145] Explaining again why he had not reported what he saw to the SAPS, or anyone else, the accused indicated that he had not done so because he had resolved to tell his version to this court. Why would anyone, who had unquestionable proof that another person had committed the very offence for which he had been wrongly charged, choose to remain in custody for several years until the occurrence of his trial, when he could have told the SAPS of his observations and his innocence could potentially have been established without the necessity of a trial? This is one of those instances where the proposition just has to be stated to be rejected. In my view, the accused's version is a fabricated one and has been conceived of by him

during his period awaiting trial in an attempt to avoid the inevitable consequences of his unlawful conduct.

[146] Ironically, but for a few issues, Mr Bethwana's version and the version of the accused are not dissimilar. They both agreed that they had been at the 21st birthday celebration at the Luthuli homestead, where they drank alcohol. They both agreed that they were told to leave the celebration when the host wanted to go to bed. They both agreed that they went on to Mr Simo Luthuli's house, where they continued to drink alcohol. The only differences that arose between their respective versions related to the assault of Mr Ngema and the shooting of Mr Simo Luthuli. Thus the accused's criticism that Mr Bethwana had continuously lied cannot be accepted.

[147] It seems to me that in an attempt to portray himself as being free of any blame, the accused has simply attempted to align his evidence with Mr Bethwana's evidence. When Mr Bethwana stated in his evidence that he heard only one shot fired, the accused adopted that version as well. When Mr Bethwana said that he had run from Mr Simo Luthuli's house, the accused said that was what he had done. When Mr Bethwana said that he did not know of the murder of Mr Zungu until later that day, the accused also adopted that position.

[148] On a general conspectus of the evidence, I find the evidence of Mr Bethwana to be entirely acceptable and satisfactory in all material respects, and I reject the accused's explanation of those same events. There was, accordingly, no stranger who entered Mr Simo Luthuli's house in order to slay him and Mr Zungu.

[149] Which brings me to count 1. There are no witnesses to how Mr Zungu was murdered and the State relies upon circumstantial evidence and inferential reasoning to establish the guilt of the accused.

[150] It is trite that in cases in which there is no direct evidence and where circumstantial evidence must be relied upon, the courts are enjoined to follow the judgment and reasoning articulated in *R v Blom*.¹⁰ That case sets out the two

¹⁰ *R v Blom* 1939 AD 188 at 202.

‘cardinal rules of logic’ relating to inferential reasoning in cases based on circumstantial evidence as follows:

- ‘(1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.
- (2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.’

[151] As was stated in *Mahlalela v S*:¹¹

‘... circumstantial evidence provides a basis from which the fact in dispute can be inferred. The salient question to be answered is whether the appellant was guilty of the crimes committed beyond reasonable doubt. All circumstantial evidence depends ultimately upon facts which are proved by direct evidence.’

[152] To determine whether an accused person's version is reasonably possibly true, the Supreme Court of Appeal in *S v Trainor*,¹² stated that:

‘A conspectus of all the evidence is required. Evidence that is reliable should be weighed alongside such evidence as may be found to be false. Independently verifiable evidence, if any, should be weighed to see if it supports any of the evidence tendered. In considering whether evidence is reliable, the quality of that evidence must be of necessity, be evaluated, as must corroborative evidence, if any. Evidence of course, must be evaluated against the onus of any particular issue or in respect of the case in its entirety.’

[153] While the overriding principle is that the guilt of the accused must be established by the State beyond reasonable doubt, the necessary corollary is that the accused is entitled to be acquitted if there is a reasonable possibility that an innocent explanation which he has proffered might be true.¹³

[154] The State has presented some evidence on count 1. It has placed Mr Zungu at Mr Simo Luthuli’s house. It has, furthermore, led evidence that the accused was also there. It has also led evidence that the accused was armed with a revolver. It has led evidence that the accused shot Mr Simo Luthuli in the head. And through the evidence of Mr Ngema, it has led evidence that a second shot was rapidly fired after

¹¹ *Mahlalela v S* [2016] ZASCA 181 para 16.

¹² *S v Trainor* 2003 (1) SACR 35 (SCA) at 9.

¹³ *S v Sithole* 1999 (1) SACR 585 (W).

the first shot. I have already found that the witnesses called by the State who gave that evidence were reliable witnesses whose evidence may be accepted. That evidence called for a response from the accused. The response was a denial of the State's case and the advancing of the version involving the stranger that has remained undisclosed for the last eight years.

[155] There has been no evidence at all of any other person possessing a firearm in Mr Simo Luthuli's house. There is, furthermore, no acceptable likelihood of there being another gunman in the house after the rejection of the accused's version of the stranger actually being the murderer. The spent ammunition used to kill both men and which was extracted from their bodies after their respective deaths may have indicated that both were shot with the same firearm. I was, however, advised of the terrible events that led to the unavailability of that evidence, being the murder of the erstwhile investigating officer while en route to the Forensic Science Laboratory to deliver to it the two bullets removed from the bodies of the dead men. I regretfully did not hear evidence on this issue, simply an address from the State advocate. I am, consequently, not entitled to draw any inference from this tragic event.

[156] Mr *Mkhwanazi* submitted that the accused's version was reasonably possibly true and that he should be acquitted on count 1. There is no alternative version of the accused. He claims not to know how Mr Zungu died, or even that he had died, only discovering this later the same day. I do not accept that to be a true expression of the state of the accused's knowledge but is, rather, an unacceptable mimicking of Mr Bethwana's evidence.

[157] The accused has not given an innocent explanation that permits it to be accepted as being reasonably possibly true. Given the finding that the accused was armed and that the second shot was fired in close succession to the first shot, and in the absence of an innocent explanation from the accused, I must find that the only inference to be drawn from the established facts is that the accused was the person who shot Mr Zungu. I am fortified in this conclusion by the fact that it explains the accused's apathy in reporting what he knew of the shooting to the SAPS. He had no interest in communicating with the SAPS as he was the gunman.

[158] As regards count three, Mr Ngema testified that the accused had slapped him twice in the face. The indictment alleged that he had been slapped but once. Mr Ngema was clearly not at the house when the murders occurred, for he saw neither of the two shootings, only hearing two shots. Had he been intent on falsely incriminating the accused he, too, could easily have said that he had been present and had seen the accused carry out the shootings. But, like Mr Bethwana, he was not prepared to testify about things that he had not seen.

[159] I can discern no reason to disbelieve Mr Ngema, for the fact that he was slapped at least once was confirmed by the evidence of Mr Bethwana, who I have already found to be a reliable witness. On the other hand, the accused simply denied the act of slapping and the additional allegation that he had twice demanded that Mr Ngema leave the house and purchase cigarettes for him. The demand for the purchase of cigarettes, however, explains Mr Ngema's absence from the house and why he saw none of the shootings. Absent that request, he would have been inside the house and a witness to all that occurred. His evidence accordingly has the ring of truth to it, and I accordingly accept it in preference to the accused's denials. I am therefore satisfied that the accused's guilt on this count has also been established.

[160] I turn now to consider count 4.

[161] Whilst identification was not an issue in the first three counts, as the accused admitted his presence at Mr Simo Luthuli's house, identification was an issue in count 4, being the murder in February 2024 of Mr Mhlongo. The accused has consistently denied that he was ever at the Mafunda Secondary School, yet he was identified by Ms M[...] as being the person who had committed the murder that she witnessed.

[162] When it comes to issues of identification, the Appellate Division stated the following in *S v Mehlape*:¹⁴

'It has been stressed more than once that in a case involving the identification of a particular person in relation to a certain happening, a court should be satisfied not only that the identifying witness is honest, but also that his evidence is reliable in the sense that he had a

¹⁴ *S v Mehlape* 1963 (2) SA 29 (A) (*Mehlape*).

proper opportunity in the circumstances of the case to carry out such observation as would be reasonably required to ensure a correct identification.’¹⁵

[163] The court went on to state that:

‘The nature of the opportunity of observation which may be required to confer on an identification in any particular case the stamp of reliability, depends upon a great variety of factors or combination of factors; for instance the period of observation, or the proximity of the persons, or the visibility, or the state of the light, or the angle of the observation, or prior opportunity or opportunities of observation or the details of any such prior observation or the absence or the presence of noticeable physical or facial features, marks or peculiarities, or the clothing or other articles such as glasses, crutches or bag, etc, connected with the person observed, and so on may have to be investigated in order to satisfy a court in any particular case that an identification is reliable and trustworthy as distinct from being merely *bona fide* and honest.’¹⁶

[164] In *Mehlape*, Williamson JA further cautioned that:

‘The often patent honesty, sincerity and conviction of an identifying witness remains, however, ever a snare to the judicial officer who does not constantly remind himself of the necessity of dissipating any danger of error in such evidence.’¹⁷

[165] While two witnesses gave evidence on the events that occurred at the Mafunda Secondary School, namely Ms M[...] and Mr Mzimela, only Ms M[...] testified about the identity of the person who shot Mr Mhlongo. Her evidence must accordingly also be cautiously approached as a single witness on the issue of identity. There is, however, significant corroboration of her evidence.

[166] Ms M[...] testified that there had been a meeting attended by parents of scholars at the school on 9 February 2024. Her evidence on this point was corroborated by the evidence of Mr Mzimela, who was the parent of a scholar attending that school and who had also attended the meeting at the school. Ms M[...] had been in the company of Mr Mhlongo moments before he died. She was therefore in close proximity to the events that unexpectedly unfolded. She mentioned

¹⁵ Ibid at 32A-B.

¹⁶ Ibid at 32C-D.

¹⁷ Ibid at 32F.

that it was noon and the events that she claimed to have witnessed occurred before her in broad daylight.

[167] Ms M[...] testified that she had observed the Toyota Etios drive into the school grounds, shortly after noon. Her evidence in this regard was confirmed by the data presented by Tracker, which showed that the Toyota Etios was at the Mafunda Secondary School at 12h04. Mr Mzimela also observed the arrival of that motor vehicle at the school at around 12h00 and thereby confirmed Ms M[...]’s evidence. Ms M[...] indicated that the driver’s window of the motor vehicle was partially down which permitted her to identify the driver, who was the accused. However, on this issue, there is no corroboration.

[168] Ms M[...] described the accused as being the person who had shot Mr Mhlongo multiple times. There is evidence that tends to corroborate her evidence on these issues as well. Firstly, the postmortem examination of Mr Mhlongo’s body confirmed the presence of multiple gunshot wounds to it. He had wounds to the head, chest, and abdomen. Secondly, there was also physical evidence found at the scene, in the form of two fired bullet heads and eight spent cartridges, which confirmed Ms M[...]’s evidence of multiple shots being fired by the gunman. And that evidence also confirmed that there had only been one gunman, because all the cartridges had been fired by the same weapon, as Ms M[...] had testified. Thirdly, she described the accused as being the gunman and immediately after he was arrested a short while later, the accused’s hands were tested for the presence of gunshot residue and such tests ultimately returned a positive result.

[169] Ms M[...] was a slim, young lady whose slight figure belied her strength as a witness. She, too, was confident in the giving of her evidence and she was sure in what she said. She spoke loudly and clearly and displayed no fear when testifying. She was certain about what she claimed to have seen and was able to describe her observations articulately. She was never in any difficulty when cross-examined and confidently rebutted suggestions that she was mistaken in her evidence. After careful consideration, I accordingly do not discern the presence of the snare referred to by Williamson JA in *Mehlape* in her evidence.

[170] There are also several other indications that her evidence is reliable. How could she have known that the accused was an occupant of a white Toyota Etios motor vehicle if she had not observed this herself? It is not in dispute that the accused was in such a motor vehicle, for the accused has admitted this fact. The accused could not explain how Ms M[...] could have known this and said that her evidence had 'surprised' him. The second indication was the presence of gunshot residue on the accused's hands. The third indication was that Ms M[...] identified the accused two days after the shooting at an identity parade. Despite the random points raised by the defence, I am satisfied that there was no dispute that the accused had been properly identified at the identification parade. And, finally, there was the evidence of Mr Mzimela which, while it did not identify the gunman and thereby corroborate Ms M[...]’s evidence further, it confirmed the sequence of events described by Ms M[...].

[171] In rebuttal of Ms M[...]’s evidence is the accused’s version, which is simply that he was not at the Mafunda Secondary School. Could that be reasonably possibly true?

[172] Whilst on the face of it this is a simple defence, the accused had great difficulty in explaining where he, in fact, was when it was alleged that he had been at the Mafunda Secondary School. The accused’s evidence on this point is difficult to understand because of his previously mentioned pointed refusal to commit himself to any point in time. Thus, on 9 February 2024 all that is known from the accused’s version is that he allegedly left his family homestead in the morning of that day. On his version, once he got into the Toyota Etios, the motor vehicle was driven towards Mr Dludla’s homestead and thereafter towards the Mandeni Toll Plaza. The difficulty with this is that Tracker had the Toyota Etios in the area of Mbongolwane from 08h39 that morning until 12h16, which is the very area in which the Mafunda Secondary School is located and which span of time covers the very time at which the murder of Mr Mhlongo occurred. If the accused was in the motor vehicle in the morning, which is what he appears to say then, contrary to what he has stated, he had to have been in Mbongolwane and, more particularly, at the Mafunda Secondary School in Mbongolwane.

[173] The accused's version is, furthermore, not a consistent one. In his evidence in chief, he indicated that he had waited in the Toyota Etios while Mr Dlodla went into his family homestead. His cross-examination was interrupted overnight and the next day it resumed. He initially indicated that he and Mr Dlodla had been at the latter's home for about an hour. He later appeared to abandon that estimate when he accepted that the Toyota Etios had only been stationary for 12 minutes. He then contradicted himself over what he had done at Mr Dlodla's homestead and simply appeared to have forgotten what he had said the day before. This is because he now stated that he had, indeed, gone into Mr Dlodla's homestead, met Mr Dlodla's mother and had consumed a meal that she had prepared for them. The meal was comprised primarily of meat.

[174] The court pointed out that he had previously said that he had remained in the motor vehicle when Mr Dlodla had gone into his homestead. There had been no mention of him also going in, let alone eating a meal there. Asked about this difference by the court, the accused blamed his counsel for his two different versions. The explanation that he advanced was tortuous in its logic. It was that his counsel had not asked him what he had done when at the Dlodla homestead and had not asked him if he had gone into the Dlodla homestead. When it was pointed out that the accused himself had provided the version of what he had done at the homestead, namely that he had not gone into the homestead and had, instead, remained in the Toyota Etios, the accused still laid the blame for the contradiction at the feet of his counsel.

[175] The accused's unreliability as a witness again manifested itself when he narrated the events surrounding his arrest. He claimed never to have been the driver of the Toyota Etios, claiming to not even know how to drive a motor vehicle. As it will be recalled, one of his complaints about the identification parade that was later conducted was that he was the only one on the parade who was barefoot. Asked by Ms *Ntsele* what had happened to his shoes, he had said that they had been left at the scene of his arrest. Coincidentally, the court remembered that there was a photograph of a sandal at the place where the accused was arrested.¹⁸ It was

¹⁸ Exhibit 'D', photographs 14 and 17.

depicted as being directly next to the driver's door of the Toyota Etios, on the surface of the road. The accused was asked to explain how it had come to be there if he had been a passenger on the other side of the motor vehicle. He could not explain its position satisfactorily. His version provided no scope for him ever being on the right hand side of the motor vehicle. He then suggested that the motor vehicle was not shown in the photograph at the place where he and Mr Dludla had been apprehended and it had been moved to another position where the photograph had been taken. If that were so, the court pointed out that the SAPS would also have had to move the sandal. The accused was asked why they would have done that. The accused did not know the answer to that.

[176] It would not be inaccurate to state that the accused displayed an air of studied indifference throughout the period that he gave evidence on count 4. He claimed to have no interest in why Mr Dludla was proceeding to Eshowe in the first place on 8 February 2024, he was not concerned where Mr Dludla was going to stay on the evening of 8 February 2024, and he had never asked him the next morning where he had stayed when he eventually met up with him. None of this appears likely. Mr Dludla was a friend of his and it was in the spirit of friendship that the accused was offered a lift to Eshowe by Mr Dludla in the first place, on the accused's own version. It appears improbable that the accused would not be concerned about any of these matters.

[177] Overall, the accused was an appalling witness. He could not answer a question directly but had to recite an answer embellished with details that he had not been asked. Indeed, that was the defining characteristic of his evidence under cross-examination: he chose not to answer the question that was put to him but preferred to answer a question that he wanted to answer but which he had not been asked. On countless occasions he was asked by the court whether he had been asked the question in respect of which he had provided an answer. On each occasion, without fail, he acknowledged that he had not been asked the question that he answered, and apologized. Yet, he did not change his ways and continued to provide answers for questions that he had not been asked.

[178] The accused can only be described as a deceitful and cunning witness. As mentioned, he had a strategy of not permitting himself to be confined to a specific time. Simple questions as to time were met with unhelpful answers such as, for example, that an event happened during the day or during the night. That, of course, was readily obvious: greater particularity was obviously being sought of when in that phase of the day or night the event had occurred. This happened more than a few times and accordingly can only have been part of a strategy decided upon by the accused. The advantage of this approach, so the accused must have believed, is that it gave him the ability to make adjustments to his version when required to do so, which he would not have been able to do if he was confined to a specific time. He was quite prepared to mislead the court by asserting that the lack of a watch prevented him from being certain about what time an event occurred. Ms *Ntsele* got the accused to admit that he had always had his cellular telephone handset with him which would have permitted him to know the time. Faced with this undeniable truth, the accused had no option but to admit it but to state, insouciantly, that he never looked at the handset to discern the time.

[179] When compared with the candor of the State witnesses called on count 4, the accused's demeanor was unimpressive and his evidence is clearly false and contrived. He is simply an unbelievable witness who was quite prepared to lie when it benefitted himself. When he had no explanation, he simply denied the facts with which he was confronted. A classic example of this may be discerned in the way in which he dealt with the gunshot residue found to be on his hands after his arrest. He could not dispute the objective fact of the presence of the gunshot residue, so he simply denied that he had discharged a firearm. Attempts were made through questions put to Sgt Zikhali to suggest that the gunshot residue could have come to be on the accused's hands without him ever having fired a firearm. But the accused's evidence on count 4 never included the firing of a firearm by anyone. None of the propositions put to Sgt Zikhali appeared likely, nor were they supported by any evidence presented by the defence and therefore remained nothing more than unsubstantiated speculation. Given the accused's unwillingness to clarify exactly where he was and when he was there, no weight can be attached to any of the speculative questions put to Sgt Zikhali. Questions do not amount to evidence.

[180] It follows from this analysis that I can only speak of the accused as a witness in the most unfavorable terms and the answer to the question that I posed is that it is not reasonably possible that the accused was not at the Mafunda Secondary School on 9 February 2024.

[181] I consequently do not accept the accused's evidence where it does not conform with the evidence of the State witnesses. I do not accept the version advanced by the accused that the stranger shot Mr Simo Luthuli, and by implication, Mr Zungu, nor do I accept his denial that he did not slap Mr Ngema. I reject the accused's version that he was never at the Mafunda Secondary School and that he was not the person who gunned down Mr Mhlongo. It follows that I accept the evidence of the State witnesses who contradicted the evidence of the accused.

[182] The State has accordingly established the guilt of the accused beyond a reasonable doubt on counts 1, 2, 3 and 4.

Conclusion

[183] I accordingly come to the following findings:

- (a) On count 1, being the murder of Mr Edwin Zungu, the accused is found guilty.
- (b) On count two, being the murder of Mr Simo Luthuli, the accused is found guilty.
- (c) On count three, being the common assault of Mr Siphamandla Ngema, the accused is found guilty.
- (d) On count four, being the murder of Mr Bongani Mhlongo, the accused is found guilty.

MOSSOP J

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