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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: SS 118/2022

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

DATE 31/03/2026 SIGNATURE

In the matter between:

THE STATE

and

MAZIBUKO, SIZWE	1 ST Accused
SHABALALA, MENZIWA	2 nd Accused
NGUBENI, QAPHELA	3 rd Accused
MNGUNI, KITSO	4 th Accused
DUGE, HLONIPHENI	5 th Accused
MVUBU, PHENDULANI	6 th Accused
NGWADI, MIKE	7 th Accused
THOBOLO, ANDREW	8 th Accused

NKOSI, KHULEKANI

9th Accused

MATJEBELE, ALEX

10th Accused

GASA, SANDILE MILTON

11th Accused

JUDGMENT

Mia, J

Introduction

[1] The charges in this matter arise from a coordinated law enforcement operation conducted on 21 February 2022 in Rosettenville, during which a group of armed individuals engaged police officers and a helicopter in a sustained exchange of gunfire, resulting in multiple fatalities and injuries. The accused are indicted on the following charges:

- (a) conspiracy to commit robbery with aggravating circumstances;
- (b) murder (8 counts);
- (c) attempted murder (28 counts);
- (d) possession of prohibited firearms (8 counts);
- (e) unlawful possession of ammunition (8 counts);
- (f) unlawful possession of explosives (2 counts);
- (g) robbery with aggravating circumstances (4 counts); and
- (h) theft (2 counts)

Accused 11 faces only the charges of possession of prohibited firearms (5 counts), unlawful possession of firearms (2 counts), and unlawful possession of ammunition.

The accused entered pleas of not guilty in respect of all charges and elected to remain silent. Formal admissions were made during the trial.

[2] The State's case is not one of isolated individual conduct but of organised criminal activity, culminating in armed resistance to law enforcement. The defence disputes that the accused can be linked to the shooting, the

conspiracy to commit robbery with aggravating circumstances, the murders or the robberies.

[3] The evidence established, prima facie, that:

- (a) a group gathered at the premises at 5[...] Friars Hill Road;
- (b) the gathering was for the purpose of executing a robbery, as evidenced by the presence of firearms and explosives;
- (c) a coordinated police operation was mounted in response;
- (d) upon confrontation at 5[...] Friars Hill Road, multiple individuals armed with firearms opened fire on police officers and a police helicopter; and
- (e) the events unfolded across several interconnected crime scenes.

[4] During the trial the accused made formal admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977 (Criminal Procedure Act), concerning the collection of exhibits and specimens. The admissions relate to the location of several vehicles found at the various crime scenes, and the formal admissions did not directly implicate any of the accused.

[5] It is common cause that the incident involved multiple crime scenes in Rosettenville, including 5[...] Friars Hill Road, [...] Hekla Road, Violet Street and South Rand Hospital. A map of the terrain indicates that Friars Hill Road extends from Daisy Street in the north to South Rand Hospital in the south. Several streets run perpendicular to Friars Hill Road, significant among them being Hekla Road, the second significant address where the response team engaged the suspects. Violet Street, the third road where shooting occurred, ran parallel to Friars Hill Road behind South Rand Hospital.

[6] The State called witnesses from several law-enforcement agencies as well as forensic witnesses in support of its case. The response team witnesses testified about the armed resistance they encountered, evidence led to establish the inferential framework of common purpose. To succeed, the prosecution must establish that the accused shared a common intent and actively participated in the criminal acts. The evidence of each witness is addressed below.

[7] The confrontation arose when members of the South African Police Service received information about a planned robbery and the address at which the perpetrators were alleged to have assembled. The response team planned to apprehend the suspects before the robbery was executed. The response team comprised an airwing component and a ground team. Colonel Maartens (Maartens) and Warrant Officer Naicker (Naicker) were stationed in Pretoria at the airwing division of the South African Police Service and formed the airwing team. The ground team comprised Sergeant Zola Mrulekani (Highway Patrol), Constable Lincoln Moloi (JMPD K9 Unit), Constable Nhlanhla Vilakazi (JMPD K9 Unit), Constable Percy Mothapo (Highway Patrol), Constable Sello Johannes Makhafula (South African Police Service), Constable Sibusiso Mthiya, Sergeant Levy Ramolwa Semisi, and Constable Modjadji (all EMPD). The response team attended a briefing and resolved to approach the property by air and land. All team members were added to a WhatsApp group, as it was believed that police radio communications were compromised.

[8] Several critical facts are either formally admitted or not placed in dispute:

- (a) a coordinated police operation was conducted in respect of 5[...] Friars Hill Road;
- (b) a police helicopter arrived first on the scene;
- (c) the helicopter was fired upon by persons inside the premises;
- (d) armed individuals exited the premises, fired at police, and fled;
- (e) a BMW with armed occupants discharged firearms at police;
- (f) police pursued suspects to [...] Hekla Road, where further shooting occurred;
- (g) four deceased persons were found at that location;
- (h) accused 4 and accused 9 were arrested inside the Hekla Road premises;
- (i) firearms, explosives, ammunition, and stolen vehicles were recovered; and
- (j) forensic evidence, including DNA and gunshot residue found at the scene, did not conclusively link certain accused to the scene.

- [9] Notwithstanding the challenges to the State's witnesses, the facts establish the existence of a coordinated armed group engaged in ongoing criminal conduct across multiple locations.
- [10] The airwing team was among the first to arrive at the property. This was confirmed both by the State witnesses and by the defence witness Ms Mntambo. The evidence indicated that the helicopter hovered overhead and circled the property. Whilst orbiting the safe house, Naicker saw people running around in the yard and observed three people running out through the gate, heading south down the road towards South Rand Hospital. He testified that persons in the courtyard moved between the vehicles parked there before exiting. Naicker informed Maartens that persons in the courtyard were firing at the helicopter. Naicker returned fire using an R5 rifle and, as a result of shots fired at the helicopter, sustained a serious injury. This prompted Maartens to withdraw, to convey Naicker to Milpark Hospital and to prevent further damage to the helicopter. Maartens also requested assistance from the ground officers, who had parked a distance from 5[...] Friars Hill Road.
- [11] The defence challenged this version, asserting that no cartridges were found in the area where the shooter was said to be when Crime Scene Management processed the scene. This challenge was maintained throughout cross-examination. It was put to the State witnesses that a significantly higher number of cartridges found at the various scenes were identified as having emanated from the response team's firearms. The large number of cartridges found at the scene was relied upon by the defence to suggest that the response team used excessive force during the confrontation. However, this does not suggest that no force was directed at the response team when the helicopter hovered overhead, or that the suspects offered no resistance to the response team's efforts to enter the property.
- [12] Upon hearing the request for assistance and the gunshots, the ground team approached the property. The consistent account from the State witnesses was that they observed the gate opening and a BMW reversing into the road. They observed a passenger leaning out of the window, firing an automatic rifle

at the helicopter and at the ground team approaching from the Daisy Street entrance in Friars Hill Road.

- [13] Sergeant Zola Mrulekani, employed at the South African Police Service in the Highway Patrol Unit, was responsible for organising members of the police for this operation. On 18 February 2022, he received information from the National Crime Intelligence unit and was tasked with overseeing the operation. He organised the ground team comprising members of the South African Police Service, JMPD and EMPD. A briefing was conducted with the response team, which concluded at approximately 14h00. All members of the team wore civilian clothing and bullet-proof vests. The plan was to divide into small groups, to corner the suspects and to arrest them. Scouts who had attended the briefing were deployed to maintain surveillance of the suspects. After the briefing, they headed to the safe house, approaching from different directions. It was agreed that the helicopter would go in first.
- [14] Mrulekani heard gunshots from multiple directions and proceeded to check on the members of the team. During the operation he requested backup assistance from Moffatview Police Station, upon hearing that shots had been fired at the helicopter and the ground team. Whilst approaching the safe house, he saw a silver BMW motor vehicle nearby. He cordoned off the street and, upon investigating further, saw that two persons in the BMW had been shot. He called emergency services.
- [15] During cross-examination, he conceded that he was not familiar with the Standard Operating Procedures and could not provide the names of the officers he had travelled with, the vehicles used, or the procedures that had been followed. The defence argued that he should never have overseen the operation as it was not conducted in the manner required for such operations. The witness conceded that his approach to conducting operations was not consistent with the applicable standing orders relating to crime scenes.
- [16] Constable Nhlanhla Vilakazi is employed as a metro officer at JMPD K9 unit. He confirmed the plan to take the persons at 5[...] Friars Hill Road by surprise and arrest them as they exited. He travelled in an Isuzu bakkie with Constable

Moloi and Sergeant Tlotli when they entered Friars Hill Road from Daisy Street. Upon entering the street, they saw ten people exiting the yard via the black gate at 5[...] Friars Hill Road. Three of those persons were in possession of large firearms and fired in their direction whilst running towards South Rand Hospital. He recalled the BMW reversing from the yard while the helicopter was still overhead. The person seated in the right rear passenger seat was shooting at the helicopter. Constable Vilakazi fired at that passenger, which stopped the shooting from the BMW, though he could hear gunshots from other areas. He was positioned at the indentation of the school wall for cover. He used an LM5 rifle and fired 30 rounds. He did not enter the courtyard at 5[...] Friars Hill Road.

[17] Constable Lincoln Moloi is a metro officer at JMPD K9 unit. He attended the briefing at 14h00 alongside his co-driver Constable Vilakazi and confirmed the plan to surround the safe house and arrest the occupants as they were leaving. On the way to the safe house, they were informed by the helicopter team that they were being fired upon. They drove in convoy behind a VW Polo, driven by officers from EMPD, and entered via Daisy Street. He observed suspects inside the courtyard at the gate, who fired in their direction. He took up position between a tree in Gothard Street and the boundary wall of 5[...] Friars Hill Road and fired from that position at suspects and at the BMW when it reversed. He fired 30 rounds with his rifle. He could not see all officers but warned Constable Vilakazi, who was positioned at the indent of the school wall, to move out of his line of fire. When the shooting ended, he, Constable Vilakazi and Sergeant Tlotli guarded the BMW until the Local Criminal Record Centre (LCRC) and Directorate for Priority Crime Investigation (DPCI) arrived. His view regarding Video 4 is that the footage was taken out of context.

[18] Metro Police Officer Percy Mothapo is stationed at the Gauteng Highway Patrol and has eight years' experience. He attended the briefing and confirmed that he was given an instruction by Sergeant Mrulekani and Constable Moloi to observe the area near South Rand Hospital. He travelled in an unmarked vehicle in civilian clothes, together with Constable Mogotlo. He parked opposite South Rand Hospital, facing the hospital gate, at the

position marked PM on Exhibit H. He observed people getting out of vehicles and meeting there. A police aircraft flew past, which appeared to unsettle those present. When a helicopter was heard, people retreated to their vehicles and left. He heard gunshots and, together with Constable Mogotlo, proceeded on foot towards 5[...] Friars Hill Road from the hospital side. He saw colleagues driving towards 5[...] Friars Hill Road from the opposite direction via Daisy Street. He also saw the BMW reversing from 5[...] Friars Hill Road and the person sitting in the rear passenger seat. He recalled seeing the passenger pointing a firearm and shooting towards the helicopter and recalled his colleagues shooting at the BMW.

[19] He similarly observed men exiting 5[...] Friars Hill Road carrying rifles. They ran south down Friars Hill Road and then turned into Hekla Road. He was approximately 100 to 200 metres away from them at that stage. Constable Mncwango and Constable Makhafula followed these men, and he too turned into Hekla Road to provide backup. Upon entering Hekla Road, he saw six men shooting towards Constable Mncwango and Constable Makhafula to prevent them from following. The men ran into the yard at [...] Hekla Road. His colleagues stood outside the gate, unable to enter as they were being fired upon from the house. They returned fire, with him serving as backup. When the shooting subsided, they entered the yard and observed a person rolling on the floor inside the house. That person rolled outside and remained there. He observed two people lying at the door entrance and two others who were injured. One person was uninjured. He saw a rifle lying near the injured people in the room. He arrested a person named "Kitso", while Constable Makhafula arrested the other person. Both were taken to Moffatview Police Station. He identified accused 4 as the person he had arrested; the second person arrested was accused 9.

[20] During cross-examination, he conceded that he was unable to differentiate between civilians and suspects when he was sent to observe the area, and that the road was not closed to civilians during the operation. He also conceded that civilians could have run into yards and houses to escape the shooting. While the witness made this concession, none of the accused

advanced this explanation or placed any reliance upon it. The evidence from the State witnesses and the video footage shows that two civilian persons were held outside the property, did not form part of the group of arrested persons, and were not prosecuted.

[21] Constable Sello Johannes Makhafula is attached to the Gauteng Highway Patrol Unit. He was partnered with MPO Makola and travelled in an unmarked VW Golf, both in civilian clothes and wearing bullet-proof vests. They carried firearms: a pistol and an R5. The R5 was loaded with 60 rounds in two magazines; Constable Makhafula's pistol had 34 rounds in two magazines. He heard gunshots before they turned onto Friars Hill Road and also heard the helicopter team reporting that the suspects were shooting at them. When they entered Friars Hill Road, he noticed a Toyota Quantum on the road and a male person actively shooting with a firearm. When the shooter noticed their vehicle, he turned in their direction while still firing. The shooter was approximately two streets away from where they had parked. They alighted from the vehicle and returned fire. The man fired at them from the hospital side of Friars Hill Road, having previously been shooting at the helicopter. When Constable Vilakazi arrived, Constable Makhafula observed the gate at 5[...] Friars Hill Road opening and closing. They advanced and, when the gate opened, he noticed a silver vehicle reversing and alerted Constable Vilakazi. As the vehicle reversed, he saw that the windows were open and the rear passenger was holding a firearm protruding through the window directed towards them. He could only see the driver of the vehicle. They fired in the direction of the vehicle. He also noticed people running out of the yard towards the hospital.

[22] They pursued the persons running away as they turned left into Hekla Road. He was joined by Constable Mothapo, MPO Ncwane, and MPO Makgotlo, the latter two having come from the direction of the hospital. They pursued the men who had entered [...] Hekla Road. A person fired at them as they entered through the gate. He waited for MPO Ncwane, MPO Makgotlo, and Constable Mothapo at the gate. They formed a stack-up by the gate, a tactical manoeuvre in which some members kept guard while another observed from

behind. Upon entering, they saw that the front door was open and gunshots were coming from inside. They returned fire through the door. Before they reached the door, both sides ceased fire. Upon entering, they found people lying inside the house and two large firearms.

[23] MPO Ncwane and MPO Makgotlo secured those firearms and stood guard over them. In searching the house, they discovered six occupants. Five of the six were injured; one was uninjured. Three had died. At this address, Constable Makhafula arrested Khulekani Nkosi, who was injured. He was, however, unable to identify Mr Nkosi in court, which was attributed to the passage of time between the encounter and the date the evidence was tendered. The arrest was effected on the basis that Mr Nkosi was found in possession of an unlicensed firearm and ammunition and was suspected of the attempted murder of police officers.

[24] A fourth person managed to crawl on his hands and knees outside the house, where he succumbed to his injuries. They called all role-players, including emergency services, to attend the scene and administer aid to the injured. The scene was handed over to the LCRC. Constable Makhafula denied the suggestion that one of the persons found in the house, who had dust on his hands, was not a suspect. It was put to the witness that it was inevitable that anyone in the house would have had dust on their hands, as the house was under construction.

[25] Sergeant Semisi has been stationed at the highway patrol unit for 15 years. He was on duty but could not recall his crew. He wore civilian clothes and drove a marked BMW while on crime prevention duties but proceeded to Friars Hill Road in an Isuzu vehicle. He received an instruction from Colonel Molefe to attend the briefing. They waited near the dam for a go-ahead from the National Crime Intelligence unit and the helicopter team. Sergeant Semisi knew officers Mthiya, Mncwango, and Modjadji, having conducted similar operations with them previously. They drove in convoy to 5[...] Friars Hill Road after receiving the instruction to proceed, entering from the Daisy Street side of Friars Hill Road. When they approached the school, he heard active gunshots.

- [26] He confirmed that the helicopter was orbiting the safe house. Upon hearing gunshots, he ran towards the direction of the sounds and stopped at the corner of the property. He observed the Quantum vehicle parked in the road and noticed suspects at the gate of 5[...] Friars Hill Road actively shooting at them. He returned fire using an R5 rifle. He confirmed that the BMW reversed from the yard at 5[...] Friars Hill Road with its window down and a person on the left rear side in possession of a rifle, which was pointed through the window. He also noticed other suspects inside the yard in possession of a rifle. They encountered fire from those persons and fired back. The person dropped the firearm next to the vehicles parked in the courtyard. He noticed three suspects between vehicles and marked their positions as "LS4", "LS5", "LS6", and "LS7." At that point, those persons had nothing in their possession. He later ordered them to lie down. Mthiya brought two further suspects. All were searched and nothing illegal was found on them.
- [27] During cross-examination he stated that the suspects were not taken to the police station immediately because there was no police vehicle available.
- [28] Sergeant Semisi confirmed that the suspects were made to lie on their stomachs near the white wall, as depicted in Exhibit "N", and that they were not handcuffed after arrest. He conceded that the former Minister of Police, Mr Bheki Cele, and his entourage entered the crime scene at 5[...] Friars Hill Road, despite no one being permitted to do so. Sergeant Semisi also conceded that the suspects were taken to the police station late and that people walked through the crime scene impermissibly.
- [29] Constable Mthiya is employed at EMPD Crime Prevention. He arrived at JMPD at 13h00 with his colleagues Mncwango and Modjaji, where they met members of the South African Police Service and the National Crime Intelligence unit, who conducted the briefing. The plan was that they would approach the house where the suspects had assembled from different directions. Scouts, namely Dana and Makgotlo, were sent to observe before they arrived. He drove an Isuzu bakkie and was armed with a pistol and 5[...] rounds. They stopped en route and heard gunshots whilst approaching Daisy Street. They also heard the airwing response team communicate that they

were in a shootout with the suspects. He observed Sergeant Tlotli and Constable Vilakazi ahead of him and proceeded to 5[...] Friars Hill Road. He observed approximately six men in the street armed with rifles, running towards the hospital, with Modjaji and Semisi behind him. Whilst approaching, he saw a BMW coming out from the black gate in reverse. He then saw the person seated on the left rear in possession of a firearm pointed in their direction, and as soon as they were noticed, shots were fired. They returned fire towards the BMW. Sergeant Semisi entered the property chasing after one person, followed by Constable Modjaji. Constable Mthiya focused on some suspects while his colleagues focused on others. He found two males, one of whom was shooting with a rifle; he did not know the second person. He ordered them outside to join the suspects lying on the ground. He observed that accused 10 was injured. He watched over the suspects while Sergeant Semisi checked the vehicles parked inside the yard. In a room, he found bottles containing paraffin and petrol, and explosives. After calling for emergency assistance, the crime scene was handed over to the LCRC while the investigating officer stood outside.

- [30] It was put to Constable Mthiya that he had not searched the suspects when he ordered them out of the room, indicating that he did not regard them as dangerous. He responded that he had not searched them because of safety concerns; he ordered Sergeant Semisi to search whilst he stood guard. Constable Mthiya confirmed that the two suspects were compelled to lie on the ground with their heads resting on the buttocks of the person in front of them, in an area where shots had been fired and where spent cartridges were evident. He conceded that this would spread gunshot residue, though he would not concede that gunshot residue could transfer to a person merely from being in the vicinity where a gun had been fired. He confirmed that the suspects were touched by the same police officers who had handled several of the accused, thereby creating the possibility of gunshot residue transfer. He conceded that no one was permitted to enter the crime scene and that the Minister's, Deputy at the time, entry had potentially compromised the forensic evidence. He maintained that Captain Molefe from the National Crime Intelligence unit had arranged the operation.

- [31] Constable Mfana March Modjadji is employed at EMPD as a constable with ten years' service. He confirmed the briefing and that they were armed. He observed the helicopter flying above 5[...] Friars Hill Road and then saw two men run out of the safe house carrying firearms. A third man knelt at the gate of 5[...] Friars Hill Road with a rifle, shooting at the helicopter. The two men and the third man then fired shots in their direction. The three males at the gate ran back into the yard at 5[...] Friars Hill Road when they returned fire. A BMW reversed out of the yard. The person sitting in the back seat was holding a rifle and shooting in their direction.
- [32] He fired shots towards the person in the BMW. He was unsure how many shots he fired or whether his colleagues also fired, although he heard shots from all around. After a short while, the shooting stopped and he, Sergeant Semisi, and Constable Mthiya approached the BMW, announcing that they were police. Seeing that the people in the BMW were not moving, they then approached the black gate at 5[...] Friars Hill Road.
- [33] As they approached the gate, shots were fired in their direction. They returned fire. There were two males standing next to the wall and another person standing next to the rooms. He ordered a person identified as standing at the marked point MM5 to lie down. He admitted that, according to the applicable legislation, he was not permitted to investigate crimes and that he had participated on the instruction of the National Intelligence unit. He confirmed that the people arrested were not physically in possession of any firearms or explosives, and that only one firearm was recovered in the yard at 5[...] Friars Hill Road, while explosives were found in several rooms in that yard. When questioned about a discrepancy between his evidence and his prior statement, he said that he had not thought the matter important and that it had not been put to him. He added that he had not mentioned the men he encountered in his statement because he had only recalled them when giving his evidence. He maintained that the three people shooting at them provided him with a legal justification to shoot in return.
- [34] He stated that the person seated outside at the wall of 5[...] Friars Hill Road, wearing a red t-shirt as depicted in Video 1, had said he was a tenant in the

rooms there. He denied that the person had been brought to 5[...] Friars Hill Road improperly, saying he had no motive to do so. He disagreed with the version that the accused had been brought to the scene while innocently sitting in their vehicles. He maintained that he had arrested accused 1 in the courtyard and accused 2 in the yard, disputing that accused 2 had been some distance away in his vehicle. In relation to the defence proposition that accused 2 and accused 7 were not on the property, he was unable to comment. He was similarly unable to comment on accused 5's version that he owned the vehicle depicted parked at the hospital in photos 39 to 62, or on the movement control records showing that accused 5 had only entered South Africa that morning.

- [35] The defence proposition that 352 cartridges fired by police were found on Friars Hill Road was accepted. Constable Modjadji maintained that this was not evidence of excessive force, proof of an intent to kill, or proof that the police had exceeded the permissible bounds.
- [36] Accused 5 testified that he had been contracted to transport bodies from South Rand Hospital to Zimbabwe. He had arrived in South Africa that morning. He received a call and went to meet a family at the hospital to transport them to the undertaker's office and was arrested in his vehicle. A contradiction arose regarding whether, after arriving, he had gone home first or had gone directly to the office and then to the hospital. A time delay may account for this discrepancy, as it does for the inaccuracies in the State witnesses' accounts, which were attributable to the heightened activity, shooting, and the arrival of law enforcement at the scene. Of significance, however, is the change in accused 5's testimony as compared to the statement he made during his bail application.
- [37] Ms Mntambo's evidence clarified the issue regarding the timing of the shooting. She confirmed that police entered the property in search of persons who had taken refuge inside to escape the confrontation. She did not observe anyone but saw blood in the area after the police had left.

- [38] The forensic evidence tendered in support of the State's case proved inconclusive in respect of both gunshot residue (GSR) and DNA analysis. Warrant Officer Wilson Ramolamu Morotjele (Morotjele), a DNA analyst from the Forensic Science Laboratory in Pretoria, provided expert testimony on DNA analysis. His evidence indicated that DNA can be deposited through touch, sweat, blood, saliva, hair, or nails, and that analysis can yield positive, negative, or inconclusive results. Inconclusive results arise where there is insufficient DNA or where environmental factors affect the sample.
- [39] Morotjele confirmed that his analysis was based on the samples received and the results obtained, but that he could not definitively determine how the DNA was deposited on the items or whether the individuals were physically present at the scene. He analysed various exhibits, including vehicle keys, blood clots, rifles, gloves, facemasks, and jackets. He found positive DNA results on vehicle keys, a blood clot, a glove, a facemask, and a jacket, all of which contained blood from the same donor. Some rifle swabs yielded inconclusive results due to insufficient DNA. Mixed DNA profiles were found on certain items, indicating contributions from more than two individuals.
- [40] Significantly, Morotjele's evidence was that DNA can be transferred through shaking hands or touching objects, and that a person's DNA found on an object does not necessarily mean that person was present at the location where the object was found. In the present matter, when the defence put it to him that DNA could be transferred where different persons had been in contact with each other, Morotjele agreed that transfer could have occurred where the alleged perpetrators were required to lie in a line against a wall with their heads resting on the person in front of them. The evidence also indicated that one of the persons lying on the ground was lying on top of exhibits found on the property. Morotjele confirmed that contamination could occur in such circumstances.
- [41] The defence's submissions that some accused were arrested at locations other than the alleged crime scene and were later brought to the yard at 5[...] Friars Hill Road support the possibility of DNA transfer and contamination. Morotjele acknowledged that transfer DNA could explain the presence of DNA

on certain items without the person having been physically present at the scene. He agreed that mixed DNA profiles could result from indirect transfer and contamination, particularly if items were packed together in one evidence bag. This is especially so given that the source of DNA found on the vehicle keys, blood clot, glove, facemask, and jacket was blood, and that a mixture of DNA profiles was found on a glove and a steering wheel swab, with the DNA source being epithelial (skin) cells. One possible inference is that, while planning the crime, the perpetrators may have touched the glove and facemask. The different DNA samples found on the steering wheel similarly point to several persons having been in the vehicle. Morotjele also stated that foreign DNA results were obtained from some exhibits, meaning that none of the 11 accused's DNA matched those samples. This evidence highlights the complexities of DNA analysis, including the potential for transfer and contamination, and its impact on the interpretation of the forensic results. Despite gunshot residue being found at the scene at Friars Hill Road, the evidence did not conclusively link the 11 accused to the shooting, and the DNA analysis excluded all accused as contributors to the DNA found on the firearms.

[42] The defence contends that the eyewitness testimony is contradictory and fabricated, and that the witnesses did not corroborate one another; that some witnesses adapted their versions under cross-examination; that the crime scenes were compromised or manipulated; and that several accused were in truth arrested elsewhere, including at South Rand Hospital and [...] Hekla Street, rather than inside the yard at 5[...] Friars Hill Road. The defence also highlighted discrepancies in the evidence, such as the absence of blood trails or cartridges in locations where the accused were allegedly shot or had fired weapons.

[43] At the close of the State's case, the defence applied for a discharge in terms of section 174 of the Criminal Procedure Act. Section 174 requires the court to determine whether there is evidence upon which a reasonable court, acting carefully, might convict. The defence relied on the formulation in *S v Shuping*

and Others,¹ which remains instructive, subject to the refinement in *S v Lubaxa*,² namely that an accused is entitled to a discharge where a conviction is possible only if the accused incriminates themselves. Importantly, the enquiry is not whether the evidence is convincing, but whether it exists in a form capable of sustaining a conviction. In *S v Agliotti*,³ the court emphasised that it is neither prudent nor permissible to impose rigid constraints on the evaluation of evidence at the section 174 stage, nor to artificially exclude credibility considerations where they are material. The bar for rejecting evidence on credibility grounds at this stage is high: the evidence must be of such poor quality that no reasonable court could accept it. The application for discharge was accordingly refused.

- [44] The central issue is whether the State has proved beyond reasonable doubt that the accused formed part of a coordinated armed criminal enterprise and are liable, primarily through the doctrines of common purpose and joint possession, for the offences charged.

Approach to the evidence

- [45] It is trite that a court must evaluate the evidence holistically and not in a piecemeal fashion. The proper approach requires a conspectus of all the evidence, weighing the strengths and weaknesses of both the State and defence cases and assessing the inherent probabilities. Whilst the State bears the onus to prove its case beyond reasonable doubt, it is not required to eliminate every conceivable doubt, only reasonable doubt. In *S v Chabalala*,⁴ the Supreme Court of Appeal emphasised that the court must weigh all elements pointing towards guilt against those indicative of innocence and determine whether the balance excludes reasonable doubt.

Conspiracy

- [46] The State alleges that the accused conspired to commit robbery with aggravating circumstances. It is well established that conspiracy may be proved by inference from the totality of the evidence and need not be

¹ 1983 (2) SA 119 (B); (CC 161/05) [2006] ZANWHC 5.

² [2001] ZASCA 100; [2002] 2 All SA 107 (A); 2001 (4) SA 1251 (SCA); 2001 (2) SACR 703 (SCA).

³ (SS 154/2009) [2010] ZAGPJHC 129; 2011 (2) SACR 437 (GSJ).

⁴ 2003 (1) SACR 134 (SCA).

established by proof of an express agreement. The following objective features are of particular significance:

- (a) the presence of fully assembled explosive devices requiring minimal activation;
- (b) the presence of petrol, consistent with post-offence destruction of evidence;
- (c) multiple stolen vehicles assembled at a single location;
- (d) numerous high-powered firearms;
- (e) the use of premises as a staging point or "safe house"; and
- (f) an immediate and coordinated armed response to police presence.

[47] These facts admit of no reasonable inference other than that the perpetrators had engaged in prior planning, allocated roles, and shared a common unlawful objective. I am satisfied that the State has proved the charge of conspiracy beyond reasonable doubt.

Common purpose

[48] The State relies on the doctrine of common purpose. The requirements for liability on this basis are well established: presence at the scene, awareness of the criminal conduct, and active association with the execution thereof. The evidence demonstrates:

- (a) immediate gunfire directed at the helicopter upon its arrival;
- (b) multiple shooters operating from the same premises;
- (c) coordinated flight from the scene while continuing to discharge firearms;
- (d) movement as a group to a secondary location; and
- (e) continued armed resistance.

[49] It is not necessary for the State to prove which accused fired which shot. The evidence establishes collective conduct indicative of active association. The only reasonable inference is that the accused associated themselves with and participated in the execution of the criminal enterprise.

Joint possession

[50] The principles articulated in *S v Nkosi*⁵ and *S v Mbuli*⁶ are applicable. The evidence establishes that firearms were physically possessed by certain members of the group and that those firearms were intended to be used on behalf of the group as a whole. The group's reliance on firearms to resist police and facilitate escape demonstrates the requisite intention for joint possession. Accordingly, all accused linked to the enterprise are liable for possession of firearms, ammunition, and explosives.

Murder and attempted murder

Initiation of violence

[51] The evidence establishes that the suspects initiated the violence by firing at the police helicopter. The police response was justified in terms of section 49 of the Criminal Procedure Act.

Common purpose liability

[52] The issue is whether the accused are liable for deaths resulting from the ensuing confrontation. The group was heavily armed and prepared for violent confrontation. The immediate resort to gunfire upon the arrival of law enforcement underscores this. It is clear that the accused foresaw the possibility that death could result from gunfire, crossfire, or explosives. Despite such foresight, they persisted. This establishes *dolus eventualis*.

[53] Accordingly, the accused are liable for:

- (a) the murder of co-perpetrators; and
- (b) the attempted murder of police officers.

Linking the accused

Accused at Friars Hill Road

[54] In assessing the link, it is notable that several accused were arrested inside the premises at 5[...] Friars Hill Road. They are linked through direct police

⁵ (CC33/2024) [2025] ZAMPMBHC 6.

⁶ (422/2001) [2002] ZASCA 78; 2003 (1) SACR 97 (SCA).

evidence. The forensic evidence proved inconclusive: GSR transfer could not be excluded, and the DNA evidence did not support the State's case. The accused, barring accused 5, elected not to confirm the versions put to the State witnesses. There is accordingly no credible evidence to contradict these links.

Accused 4 and 9

[55] Accused 4 and accused 9 were arrested inside [...] Hekla Road following a continuous pursuit from Friars Hill Road. Their presence at that location, together with firearms and deceased persons, places them squarely within the criminal enterprise.

The defence case

Accused 5

[56] The evidence of accused 5 is riddled with material contradictions and improbabilities. It is inconsistent with his prior statements and unsupported by objective evidence. It is rejected as false.

Mntambo

[57] The evidence of Ms Mntambo confirms that the helicopter arrived prior to the shooting. It does not exculpate the accused and is of limited probative value.

Failure to testify

[58] Most accused elected not to testify. While there is no obligation to testify, where evidence calls for an answer, the failure to provide one may strengthen the State's case.

Evaluation

[59] Applying the approach set out above, the evidence is assessed with due regard to probabilities, reliability, and the cumulative effect of all material facts (*S v Chabalala*).

[60] The core factual findings are established beyond dispute:

- (a) police conducted a coordinated operation at 5[...] Friars Hill Road based on intelligence of a planned robbery;

- (b) a helicopter and ground units approached the premises;
- (c) gunfire was directed at police, including the helicopter;
- (d) armed individuals exited the premises and fled whilst firing;
- (e) a BMW reversed from the premises and shots were fired from it at both the helicopter and the ground response team;
- (f) suspects fled towards Hekla Road, where further shooting occurred; and
- (g) firearms, explosives, and stolen vehicles were recovered across the scenes.

Eyewitness evidence

[61] The State relied on multiple law enforcement witnesses. While there are discrepancies concerning the timing of the helicopter's arrival, the positions of individual shooters, and certain sequences of movement, these relate to peripheral aspects. On the material issue: whether armed persons at the premises fired at police, the evidence is consistent and mutually corroborative. The discrepancies are explicable by the differing vantage points of witnesses in a dynamic, high-intensity environment and do not affect the core narrative.

[62] The probabilities overwhelmingly support the inference that persons at the premises initiated the shooting. There is no credible evidence that police fired first.

Continuity of events

[63] The events from Friars Hill Road to Hekla Road constitute a single, uninterrupted course of action. The pursuit, continued shooting, and recovery of suspects and firearms across locations confirm a continuous chain of conduct.

Arrest evidence

[64] The defence challenged the location and circumstances of certain arrests. While aspects of the arrest evidence reflect procedural shortcomings, these do not displace the central evidential matrix. The evidence establishes that

arrests occurred within the operational continuum following the armed confrontation. Accused 5 testified in support of the defence case that suspects were arrested without reasonable suspicion. This version was demonstrated to be internally inconsistent: accused 5 placed a different version of events before the court during bail proceedings and altered details during cross-examination. No reasonably possibly true version was advanced to explain the presence of the accused within that continuum.

Forensic evidence

[65] The DNA evidence is not conclusive of presence, given the possibility of transfer and contamination. Similarly, gunshot residue evidence is of limited probative value in a multi-shooter environment, and in view of the possibility of transfer among the arrested persons who were required to lie against each other. The forensic evidence is therefore not decisively supportive. The absence of conclusive forensic linkage does not, however, undermine the inferential case arising from the totality of the evidence.

Crime scene criticisms

[66] Irregularities in crime scene management were identified. While these are concerning, they do not affect the core facts that armed resistance occurred, firearms were discharged, and suspects fled while continuing to shoot.

[67] Considering the totality of the evidence:

- (a) the State's case is coherent, corroborated, and probable;
- (b) the defence case is either absent or unreliable;
- (c) no reasonable innocent explanation exists on the evidence; and
- (d) the evidence establishes beyond reasonable doubt that the accused were participants in a coordinated armed criminal enterprise who foresaw the lethal consequences of their conduct.

Order

[68] In view of the above, I find as follows:

- (1) Accused 1 to 10 are each found guilty on:

- a. conspiracy to commit robbery with aggravating circumstances
- b. murder (all applicable counts)
- c. attempted murder
- d. possession of prohibited firearms
- e. possession of ammunition
- f. possession of explosives

(2) Accused 11 was discharged on several counts; however, the evidence indicated that he was found in possession of an unlicensed firearm and ammunition and could not tender an explanation or produce a relevant licence.

(3) Accused 11 is found guilty on the remaining counts relating to possession of a firearm and ammunition.

S C MIA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Appearances:

On behalf of the State	: Adv R Barnard
	: Adv R Phungo
Instructed by	: DPP
On behalf of accused 1–5 and 10	: Adv. Van den Heever
On behalf of 6-9 and 11	: Adv Y Britz
Instructed by	: Hadebe Attorneys

Dates of hearing	:19 Oct 2023
	20 Oct 2023
	23 Oct 2023
	24 Oct 2023
	25 Oct 2023
	26 Oct 2023
	27 Oct 2023
	30 Oct 2023
	31 Oct 2023
	8 Apr 2024
	18 June 2024
	24 July 2024
	25 July 2024
	26 July 2024
	29 July 2024
	30 July 2024
	31 July 2024 - inspection in loco
	6 Aug 2024
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20 Nov 2024
15 Jan 2026

Date of judgment :31 March 2026