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**SOUTH GAUTENG HIGH COURT**

**JOHANNESBURG**

**CASE NO:** SS31/08

**DATE:** 2009/06/09

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In the matter between

**THE STATE**

and

**TWALA, MZWANDILE VINCENT THOMAS**

**Accused**

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**J U D G M E N T**

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20 **WILLIS J:**

[1] The accused stands indicted on 25 separate counts.

[2] The first count is theft, it being alleged that on or about 09 November 2006, and at or near 20 Audrey Street, Chrisville in the

district of Johannesburg, the accused did unlawfully and intentionally steal the following items, namely four motor vehicle tyres, the property or in the lawful possession of Elricco Elvin Coerecias.

[3] The second count is housebreaking with intent to rob and robbery with aggravating circumstances as defined in section 1 of Act 51 of 1977, read with the provisions of section 51 of Act 105 of 1997, and sections 260 and 262 of the Criminal Procedure Act 51 of 1977, it being alleged that upon or about 20 April 2007 and at or near 224 Kimberly  
10 Road, Robertsham, in the district of Johannesburg, the accused did unlawfully and intentionally break and enter the residential premises of Tajuddin Mohamed, with intent to rob, and did unlawfully and intentionally assault the said Tajuddin Mohamed, and did then and there and with force take from his possession the following, namely jewellery, clothing, cellular phones, money and watches, the property or in the lawful possession of Tajuddin Mohamed.

[4] The third count is assault with intent to go grievous bodily harm, it being alleged that upon or about the date and place mentioned in count  
20 2, in the district of Johannesburg, the accused did unlawfully and intentionally assault Tajuddin Mohamed by burning him with a hot clothes iron on his legs, with the intent of causing him grievous bodily harm.

[5] The fourth count is housebreaking with the intent to rob, and robbery

with aggravating circumstances. Similar statutory provisions to those mentioned in count 2 being present, it being alleged that upon or about 23 May 2007 and at or near 24 Pansy Street, Winchester Hills in the district of Johannesburg, the accused did unlawfully and intentionally break and enter the residential premises of Naresh Munga, with intent to rob, and did unlawfully and intentionally assault the said Naresh Munga, and did then and there and with force take from his possession the following, namely jewellery, cellular phones, money and cigarettes, the property or in the lawful possession of Naresh Munga and/or Savita  
10 Munga.

[6] The fifth count is assault with intent to do grievous bodily harm, it being alleged that upon or about the date and place mentioned in count 4, in the district of Johannesburg, the accused did unlawfully and intentionally assault Naresh Munga by threatening to burn him with a hot clothes iron, with the intent of causing him grievous bodily harm.

[7] The sixth count is murder, read with the provisions of section 51 of Act 105 of 1997, it being alleged that upon or about 31 May 2007, and  
20 at or near 19 Totius Street, Ridgeway, in the district of Johannesburg, it being alleged that the accused did unlawfully and intentionally kill Hendrick Jacobus Nicholas Kotze (the deceased).

[8] The seventh count is housebreaking with the intent to rob, and robbery with aggravating circumstances, with similar statutory

provisions applicable as in the case of counts 2 and 4, it being alleged that upon or about the date and place mentioned in count 6, in the district of Johannesburg, the accused did unlawfully and intentionally break and enter the residential premises of Janetta Johanna Hendriena Kotze, with the intent to rob, and did unlawfully and intentionally assault the said Janetta Johanna Hendriena Kotze, and did then and there, and with force take from her possession the following, to wit jewellery, clothing, a cellular phone, a Walther PPK pistol, ammunition and toiletries, the  
10 property or in the lawful possession of Janetta Johanna Hendriena Kotze.

[9] The eighth count is attempted rape, read with the provisions of sections 51, 52, 52(A) and 52(B) of Act 105 of 1997, it being alleged that upon or about the date and place mentioned in count 6, in the district of Johannesburg the accused did unlawfully and intentionally attempt to have sexual intercourse with a female person, namely Janetta Johanna Hendriena Kotze, without her consent.

20 [10] The ninth count is assault with the intent do do grievous bodily harm, it being alleged that upon or about the date and place mentioned in count 6, in the district of Johannesburg, the accused did unlawfully and intentionally assault Janetta Johanna Hendriena Kotze by kicking her and throwing her on the floor, and threatening her with a firearm and/or knife, with the intent to cause her grievous bodily harm.

[11] The tenth count is also one of assault with intent to do grievous bodily harm, it being alleged that upon or about the date and place mentioned in count 13, in the district of Johannesburg, the accused did unlawfully and intentionally assault Geret Kotze by hitting him with a flashlight, on the head, and/or threatening him with a knife and/or firearm, with the intent of causing him grievous bodily harm.

[12] Count 11 is unlawful possession of a firearm, it being alleged that upon or about the date and place mentioned in count 6, in the district of  
10 Johannesburg, the accused did unlawfully possess a firearm, to wit a Walther PPK 7.65 pistol without being the holder of a license, permit or authorisation in terms of Act 60 of 2000, to possess such firearm.

[13] Count 12 is a contravention of section 90 read with sections 1, 103, 117, 120(1)(a) and 121, read with schedule 4 of Act 60 of 2000, and further read with section 250 of Act 51 of 1977, unlawful possession of ammunition, it being alleged that upon or the date and place mentioned in count 6, in the district of Johannesburg, the accused did unlawfully possess ammunition, 4 X 50 7.65 millimetre, whilst not being the holder  
20 of: - (a) a license in respect of a firearm capable of discharging that ammunition; (b) a permit to possess such ammunition; and (c) a dealer's license, manufacturers license, gunsmith's license, import/export or in transit permit, or transporters permit issued in terms of the Act; (d) is otherwise authorised to do so.

[14] Count 13 is a contravention of section 2(1), read with sections 1 and 3 of the Dangerous Weapons Act 71 of 1968, possession of a dangerous weapon, it being alleged that on or about the date and place mentioned in count 10, in the district of Johannesburg, the accused was unlawfully in possession of a dangerous weapon which, if used in an assault, could inflict serious bodily injury.

[15] Count 14 is a count of housebreaking with the intent to rob, and robbery with aggravating circumstances, with similar statutory  
10 provisions as those applicable in counts 7, 4 and 2, it being alleged that on or about 07 June 2007, and at or near 13 Surmon Street, Glenanda, in the district of Johannesburg, the accused did unlawfully and intentionally break and enter the residential premises of Jeanette Susanna Carolin Moolman, with the intent to rob, and did unlawfully and intentionally assault the said Jeanette Susanna Carolin Moolman, and did then and there, and with force take from her possession the following, namely jewellery, cellular phones and money (R1 800), the property or in the lawful possession of Jeanette Susanna Carolin Moolman.

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[16] Count 15 is also a count of housebreaking with the intent to rob, and robbery with aggravating circumstances, with similar statutory provisions being applicable as is the case in respect of counts 14, 7, 4 and 2, it being alleged that upon or about 12 June 2007, and at or near 24 Pansy Street, Winchester Hills, in the district of Johannesburg, the

accused did unlawfully and intentionally break and enter the residential premises of Naresh Munga, with the intent to rob, and did unlawfully and intentionally assault the said Naresh Munga, and did then and there, and with force take from his possession the following, namely jewellery, cellular phones, money and cigarettes, the property or in the lawful possession of Naresh Munga.

[17] Count 16 is a count of robbery with aggravating circumstances as defined in section 1 of Act 51 of 1977 and read with the provisions of  
10 section 51 of Act 105 of 1997, it being alleged that upon or about the date and place mentioned in count 15, in the district of Johannesburg, the accused did unlawfully and intentionally assault Naresh Munga, and with force and violence did take out of his possession a Toyota Corolla with registration number LRM892GP, his property and/or property in his lawful possession, and did thereby rob him of the same, aggravating circumstances as defined in section 1 of Act 51 of 1977 being present.

[18] Count 17 is assault with intent to do grievous bodily harm, it being alleged that upon or about the date and place mentioned in count 15, in  
20 the district of Johannesburg, the accused did unlawfully and intentionally assault Naresh Munga by burning him with a hot clothes iron on his legs, with the intent of causing him grievous bodily harm.

[19] Counts 18, 19, 20, 21, 22 and 23 are all counts of attempted murder, read with the provisions of section 51 of Act 105 of 1997, it

being alleged in respect of each count that upon or about 14 June 2007 and at or near Diepkloof Hostel, Block B, Soweto, in the district of Johannesburg, the accused unlawfully and intentionally attempted to kill Charles Mikatedo Chabalala, Bhekizima Ngubane, Jaco Cronje, Wiseman Siphungu, Mphikeleni Ndlovu and Joseph Jabulani Yende respectively.

[20] Count 24 is a contravention of section 4(1)(a), read with sections 1, 103, 117, 121(1)(a) and 121, read with schedule 4 of Act 60 of 2000, and further read with section 250 of Act 51 of 1977, unlawful possession of a firearm, it being alleged that upon or about the date and place mentioned in counts 18 to 23, in the district of Johannesburg, the accused did unlawfully possession a firearm, to wit a 0.45 millimetre semiautomatic pistol and/or other firearms of which further specifications are unknown, without being the holder of a license, permit or authorisation in terms of Act 60 of 2000 to possess such firearms.

[21] Finally, count 25 is a contravention of section 90 read with sections 1, 103, 117, 120(1)(a) and 121, read with schedule 4 of Act 60 of 2000, and further read with section 250 of Act 51 of 1977, unlawful possession of ammunition, it being alleged that upon or about the date and place mentioned in counts 18 to 23, in the district of Johannesburg, the accused did unlawfully possess ammunition, to wit 19 X .45 calibre cartridges, 50 X 7.65 cartridges, 2 X 9mm Parabellum cartridges, 3 X 5.56 X 45mm calibre, and 2 9mm cartridges, whilst not being the holder



of:- (a) a license in respect of a firearm capable of discharging that ammunition; (b) a permit to possess ammunition; (c) a dealer's license, manufacturers license, gunsmiths license, import/export or in transit permit or transporters permit issued in terms of this Act; (d) is otherwise authorised to do so.

[22] The accused was represented throughout the trial by Adv. *A. T. Mathunzi*, the State by Adv. *D. Vlok*. The accused pleaded not guilty on all 25 counts. He tendered no plea explanation in  
10 terms of section 115 of the Criminal Procedure Act 51 of 1977 as amended.

[23] It should be noted at the outset that the arrest and the prosecution of the accused is not the result of pure chance. That the accused stands indicted on these 25 counts is attributable to an investigating officer doing his job as it is meant to be done. That is: properly.

[24] A single fingerprint led to the arrest of the accused. It is only by reason of the fact that the investigating officer, Inspector Jaco Cronje  
20 had the presence of mind to send a cool drink bottle, a so-called Sprite cool drink bottle which had been used in order to soften the ceiling to gain access to the premises of the Kotze family. It is by following up and following through on this fingerprint, that a match was found with that fingerprint, linking the accused to a relatively minor crime of theft, in respect of which the police had knowledge of his whereabouts. This led

to the arrest of the accused at the Diepkloof Hostel, Block B, Soweto, in the shootout which occurred with the police on 14 June 2007.

[25] I hope no one will think it an abuse of my position as a judge, to pass a few remarks on the importance of proper police investigation. The pattern of these crimes, which I shall outline in more detail later, is typical of that of a serial offender. It would seem that he started with relatively minor crimes, they progressively escalated in severity. The frequency with which the crimes were committed narrowed in time as he  
10 grew bolder. The violence which he used progressively increased. Moreover, he perpetrated a classic symptom of a serial offender, namely he revisited a scene of crime.

[26] It is not unreasonable to suppose that, had proper police investigation been done earlier, namely had proper fingerprint exercises been undertaken earlier, the accused would have been arrested earlier, and the murder of Mr Kotze, the deceased, would not have taken place. It hardly needs to be mentioned that, had this investigating officer not done his job properly, there might well have been further murders  
20 committed after Mr Kotze was so murdered.

[27] We are inadequately aware, in our society, of how we are to reduce the incidents of serious and violent crime. There are salutary lessons to be learnt from this particular case. We must get back to basics, basics which are as elementary as routinely taking fingerprints thoroughly at

any scene of crime. We must get back to the basics of appointing investigating officers who know about the basics, who apply the basics and follow up and follow through on the basics.

[28] Earlier this term, I made an appeal for there to be greater use made of DNA testing. It is a hugely and especially important tool in tracking doing the perpetrators of rape. Today I make an appeal for something that is even more basic than DNA testing: take fingerprints, and appoint investigating officers who will make sure that this is done and that it is  
10 followed up.

[29] This is not the only case I have come across where elementary police work has made a huge difference. As judge sitting in the criminal sessions, from time to time, I have had to read numerous petitions. This occurs where accused persons seek to appeal against judgments from the regional court. Frequently, in those judgments, one comes across despairing magistrates, distressed that proper police work is not being done. This case shows just how important it is that proper police work is done.  
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[30] At the risk of being repetitive, I hope that nobody will accuse me of abusing my position as a judge by emphasising just how important proper basic elementary police work is in this country.

[31] The State has accepted that in respect of counts 1, 18, 22 and 23

there is insufficient evidence to secure a conviction. In respect of count 13, which is the count relating to possession of a dangerous weapon, the state relies on the doctrine of common purpose. The evidence was that his co-perpetrator possessed a knife. For reasons that I shall outline later, I accept this evidence, namely that the accused's co-perpetrator possessed a knife. Nevertheless, I am prepared to accept that the accused may not have known that his co-perpetrator possessed the knife at the time when they entered the premises. In accordance with the high standards that are applied in this court, in respect of count 10 13 I do not believe that one can safely convict the accused.

[32] In this case the State has relied on what is known as 'similar fact evidence'. The similar facts are the following: in respect of counts 4 and 5, 6 to 13, 14, 15, 16 and 17, the crimes in each instance were perpetrated by two black men acting together; the same individual at all times took a leading roll and issued instructions; the perpetrators of the crimes gained access to the premises by lifting roof tiles, climbing into the attic, pouring water onto the soft ceiling (which water had been transported in a cool drink bottle), cutting the ceiling with an instrument, 20 lowering themselves into the premises - it would seem certainly in some instances but probably all - through an acrylic nylon rope that had been tied in loops so as to create a ladder; using the most foul and disgusting language; abusing their victims; torturing at least some of them with a hot iron in order to extract information as to valuables; tying their victims up and gagging them over their mouth with the kind of tape

that is used for sealing carton boxes. Moreover all, these crimes were perpetrated in the southern suburbs of Johannesburg and in close proximity to the major highways. I should also mention, in regard to similar facts, that the incidents always took place in the small hours of the morning, somewhere between 01:00 am and 03:00 am, and that the always entered the bedrooms of the occupiers.

[33] This case therefore provides a classic example of 'similar fact evidence'. As such, it is also a case which would be of interest to all  
10 students of criminal procedure. There is, of course, a debate among lawyers as to when the similar fact evidence may be determined sufficiently similar to justify inferences as to identity when there is not satisfactory direct evidence as to the identity of the perpetrator. I refer for example to the cases of *R v Kalkiwtch & Kruger* 1942 AD 79; *R v Sebeso & Others* 1943 AD 196; *R v Straffen* [1952] 2 QB 911, [1952] 2 All ER 657; *Harris v DPP* [1952] AC 694 (HL), [1952] 1 All ER 1044.

[34] It nevertheless needs to be emphasised that, in this case, the similar fact evidence is in fact irrelevant in terms of whether one  
20 determines whether the accused is guilty or not. It merely acts as what is known in Afrikaans as "stawing". In respect of the the incidents at 224 Kimberley Road, Robertsham; 24 Pansy Street, Winchester Hills; 19 Tortius Street, Ridgeway, the direct evidence of identity is so strong that it would stand on its own regardless of the similar fact evidence. In respect of the incidents at 13 Surmon Street, Glenanda, where Mrs

Moolman and her domestic worker were attacked, neither she nor the domestic worker were able to identify anybody. The evidentiary link was established by reason of the fact that a cellular phone of hers which was taken was later found in the room or cubicle of the accused, for which there is no satisfactory explanation. This link, taken together with the aggregate of circumstances, justifies the conviction in respect of count 14, the attack on Mrs Moolman.

[35] The case turns purely on identity. There was no dispute, throughout the trial, that these various incidents of housebreaking, robbery and murder did, in fact take place. There is also no dispute that the items listed in the indictment in respect of which the various witnesses testified were taken from the victims. The accused simply disputes that it was he who entered the premises concerned and perpetrated the crimes.

[36] In summarising the evidence, shall start with the evidence relating to counts 6 to 13. The reason I do so is firstly that it was this particular series of crimes that led to the engagement of Inspector Jaco Cronje, which in turn led to the arrest of the accused. They are also the most serious.

[37] The evidence of Janetta Kotze is that she and her husband were rudely awoken in the small hours of the morning on 31 May 2007. They were subjected to the most vicious racial abuse. The Kotze's had a

grown man as a son, who was a quadriplegic, who was seriously injured in a motor accident some 17 years ago. He is entirely incapable of looking after himself, and utterly vulnerable. He was hit repeatedly on the head by the assailants, using a torch, and threatened with a knife and a firearm. Mrs Kotze's husband, ('the deceased') was viciously assaulted repeatedly. The post mortem report of Dr Hestelle Nel shows that he had no fewer than 29 visible injuries on his body. I wish to emphasise that these were visible injuries. There were other injuries that were not immediately visible to the naked eye. Dr Nel determined

10 that the cause of death was blunt force injury to the chest in a person with ischaemic heart disease. She testified that, even if the deceased had not suffered from ischaemic heart disease these injuries, these multiple injuries would have been sufficient to kill any normal, healthy young person. Mrs Kotze testified that her husband, who it seems was approximately 66 years of age at the time, was an active person living a useful life, keenly involved in the affairs of his grandchildren and the life of the community.

[38] The perpetrators of the crimes threatened to chop off her finger in

20 order to get her wedding ring removed. She was incapable of removing it from her finger. Mrs Kotze adamantly identified the accused as being one of the perpetrators. She said the accused attempted to rape her but did not succeed in penetrating her. He did, however, have an erection and did ejaculate. I have indicated that there is no dispute that the various items listed in the indictment were taken from the victims. I

should here mention, because it is specifically relevant, that they took a Walther PPK pistol from the deceased, which was in his possession. The deceased was a retired police officer and he had purchased this firearm from the force on his retirement.

[39] In addition to all this, Mrs Kotze herself was also assaulted and threatened with firearms and knives. Not only was she adamant as to the identity of the accused but, as was the case with a number of other witnesses, she identified him at a parade held on 06 September 2007. I  
10 shall refer to this identification parade later.

[40] Inspector Cronje was assigned to the case. As I have said, he ensured that fingerprints were taken, including on the bottle that had been left on the ceiling through which the accused and his co-perpetrator entered the premises. This led Inspector Cronje, in his follow-up, to notice a certain pattern, linking this crime to the ones that had been perpetrated at 224 Kimberley Road, Robertsham and 24 Pansy Street, Winchester Hills.

20 [41] In regard to counts 2 and 3 Mr and Mrs Mohamed both gave evidence as to how they were woken up at 24 Pansy Street in the small hours of the morning on 20 April 2007. They both described how they were terrorised, how the premises were cast into total disarray, and how Mr Mohamed was tortured with a hot iron on his legs in order to extract information from him as to the whereabouts of valuables. The accused



and his co-perpetrator both left in the small hours of the morning. They appeared anxious to make their getaway before daylight. Both Mr and Mrs Mohamed were adamant in their identification of the accused, and also identified him at the identification parade, to which I have referred earlier.

[42] Counts 4 and 5 took place at 24 Pansy Street, Winchester Hills. These counts relate to the incidents where the daughter of Naresh Munga was about to leave for school in the early hours of the morning.

10 She was forced back into the house. The occupants of the house were similarly terrorised. Naresh Munga had a hot iron placed upon his body, again to torture him in order to extract information as to his whereabouts. In regard to counts 2 and 3 the perpetrators had gained access, as I have described, by lifting tiles and cutting a hole in the ceiling and then entering the premises. Counts 4 and 5 differ from counts 2 and 3 inasmuch as in this regard the accused did not enter through the roof and ceiling, and the crimes took place somewhat later than the other times.

20 [43] I have mentioned that there was a pattern of the accused returning to the premises of his victims. On 12 June 2007 the accused and his co-perpetrator again attacked this very property, 224 Kimberley Road, Robertsham. This time they entered through the roof, having lifted the tiles and having cut a hole in the ceiling and lowered themselves into the premises. Again there was a similar pattern of terrorising everybody in

the home, abusing them, burning the legs of Mr Naresh Munga. On this occasion they threatened to rape his daughter. The accused and his co-perpetrator also took a Toyota Corolla, having the registration number described above.

[44] It would seem that the properties in question had been under observation. When the accused raided the property of the Kotzes he, together with his co-perpetrator, made inquiries about a vehicle that had been standing outside on the property and which had been sold several  
10 weeks previously. The Mungas were adamant that it was the same persons who entered their premises on 12 June, as had entered on 23 May.

[45] The investigating officer at this time, then received the information relating to the fingerprint. He traced the whereabouts of the accused. This led to the arrest that was effected on 14 June 2007.

[46] Before I deal with that aspect (i.e. the evidence of the arrest of the accused), I wish to deal with the evidence relating to the attack on 07  
20 June at 13 Surmon Street, Glenanda, at the home of Mrs Janette Moolman. Mrs Moolman was an elderly woman who actually intended to celebrate her 80<sup>th</sup> birthday on the day that the crime took place. Because she was elderly and frail, her domestic worker of many years standing shared the bedroom with her in order to assist her with the ordinary day-to-day activities that she might require. Mrs Moolman

described how her sleep was rudely disturbed by two men coming into the room, and how they threatened her, were abusive to both her and her domestic worker, took various items such as jewellery and cellular phones, one of which she identified, which was recovered from the room or cubicle which belonged to the accused. They also took from her some R1 800 in cash, which was her float for a small home industry that she operated, making home made pastries, which at 80 years of age she did in order to supplement her meagre pension.

10 [47] Fortunately, Mrs Moolman had the presence of mind, during an unguarded moment by the accused and his co-perpetrator, to press a panic button. A siren went off. This seems to have frightened the accused and his co-perpetrator. They then hurried from the premises without inflicting further damage, either physically to the victims or in any other way.

[48] I have already referred to the fact that Mrs Moolman, alone of the various complainants in regard to the break-ins, was not able to identify the accused. Her domestic worker was also not able to do so.

20 Nevertheless, not only did Mrs Moolman she link the accused by reason of the cellular phone, but also the accused and his co-perpetrator attempted no less than three times to gain entry by lifting tiles on the roof. The third occasion where they had gained access through cutting a hole in the ceiling, they had lowered themselves with the nylon acrylic rope that was tied in loops. A similar rope, tied in loops, was recovered

in the cubicle or bedroom of the accused when he was arrested, although the colour was different. The one that was in her premises was yellow and white whereas the one that was recovered in the accused's cubicle was red and white. Clearly, in this instance, the rope was left hanging from the rafters because the accused and his co-perpetrator were disturbed.

[49] I have already mentioned that it was Inspector Cronje's linking of the accused with the fingerprints that led to the arrest of the accused.

10 On 14 June 2007 a police raid of the Diepkloof Hostel, Block B, Soweto took place. This raid was led by Superintendent Siphungu. A number of police officers took part in that raid. In addition to Superintendent Siphungu, the following police witnesses also testified: Inspector Cronje himself (the investigating officer who was there), Inspector Yende and Superintendent Ngubane.

[50] The police arrived at night at these premises. They went there in pursuit of the accused. They entered the hostel room or block. There were a number of men standing around a fire that was burning in the  
20 room. The police immediately ordered everyone to lie down, which all but two of the men standing at the fire did. One person ran off to the left and another person ran off to the right. Inspector Cronje ran in pursuit of this person who ran off to the right. He was unable to identify who this person was, but this person fired a shot at him, which injured the middle finger in his left hand. This shot disabled Inspector Cronje, resulting

in his being taken immediately to hospital. This finger ultimately had to be amputated but, for a period of approximately two years, Inspector Cronje had to endure the discomfort of this finger protruding and dropping to his palm.

[51] From the right of the hostel room shots were fired at the various police officers. It is clear that these were deliberate shots fired at intervals, because whenever the police retreated behind a small wall, and then tried to peek again at the person, different shots were fired.

10    Shots were fired such that all four of these police witnesses were in the line of fire and could well have been killed.

[52] The person who fled to the right then escaped through a room or cubicle in the hostel, by breaking through the window. Superintendent Siphungu immediately ran out, ordered this person to stop. He did not do so and was shot. He was shot in the leg near the groin. This person who was shot was the accused. The accused was then taken to hospital and arrested.

20    [53] In the room from which a person had escaped through the window, was found the firearm referred to in count 24, as well as various items of ammunition listed in count 25.

[54] Superintendent Siphungu, then having shot the accused and brought him to ground, then re-entered the hostel and walked down the

length of the hostel to the right. He encountered no other person there.

[55] As I have already indicated, in the room from which the person had escaped were found the ammunition I referred to in count 25, and the firearm in count 24. Accordingly, the inference is irresistible, that the person who ran to the right, who fired the shot that injured Inspector Cronje, who fired the shots at the other police officers, and who escaped through the window, was the accused. It should also be borne in mind that when the accused was brought to ground he did not have a firearm  
10 in his possession. Nevertheless, he must have fired from a firearm, and that firearm must have had ammunition. There can be no other explanation for how Inspector Cronje was injured or how the other police officers were shot at. That firearm must have been the firearm that was found in the room from which the accused had escaped through the window.

[56] I accept that it may be uncertain as to who possessed the other ammunition found in this cubicle from which the accused escaped through the window. Nevertheless, the accused must have been in  
20 possession of at least some live ammunition otherwise he could not have injured Inspector Cronje when he fired at him. He could also not have fired at the police officers. Accordingly, competent convictions of the accused may be made on counts 24 and 25.

[57] After Superintendent Siphungu had returned and surveyed

thereafter scene, Inspector Yende then ordered everyone to stand at their cubicles or rooms. There was only one cubicle outside which no one stood. As it so happens (it is common cause) that this cubicle was that of the accused. The evidence of Inspector Yende was that there was only one bed in the cubicle, as was the case for all the other cubicles. The evidence of the accused was that there were in fact two beds in that cubicle, and that he shared the room with another person. There is also no dispute that the police recovered the accused's identity book in that room although there is a minor dispute as to precisely  
10 where that identity book had been kept.

[58] The police also recovered number plates of an Opel Kadett, which had been standing outside the hostel, to which Kadett the accused was linked in a transfer of ownership.

[59] In the room that belonged to the accused numerous items were found. These items were recovered and brought to court as exhibits. Various of these items were identified by the victims in the counts to which I have already referred. Others remained unidentified. There  
20 were, among the unidentified items, items in respect of which it is difficult to believe any person living in a hostel could naturally have been in possession, other than through crime. I refer, for example, to a number of firearms. It is common cause that the accused had no licence to possess firearms. I refer to numerous cellular phones. I refer to religious texts. I refer to instructions in learning Japanese. In all the

circumstances it is hard to believe that the accused could have acquired these items in an honest way.

[60] In any event it was not the accused's version that he acquired these items honestly, but simply that they were not there. Nevertheless, the evidence is overwhelming that these items were there. Furthermore, if the accused did in fact share a room with somebody else (which was emphatically denied by the witnesses who saw the scene), it is quite extraordinary that the accused had no idea that they were there.

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[61] The evidence is, accordingly, overwhelming that in addition to these various counts in respect of which the accused has been indicted, there were other crimes that the accused committed, and in respect of which he remains uncharged.

[62] I shall give a brief summary of the items that were recovered from his room, which were identified by various witnesses. Mr Mohamed identified certain especially minted coins. Mrs Mohamed identified a diamond and gold jewellery. She also identified a jewellery bag. The  
20 Mungas identified: a collection of coins; a bag that had been used by the accused to remove items that were taken from them; black leather gloves; wallets; cotton gloves; running shoes; jewellery box; a tiger eye ring and a gold chain with ornaments; cartons of cigarettes of the brand and packaging that was taken; the carton even specifically linked with Mr Munga's details on it; camouflage gloves similar to those that had



been used when the Mungas were attacked; organic mineral foods; key rings; merchandise such as SIM cards and MTN cell cards, etc which they had had as merchandise which they sold from the premises that were attacked.

[63] Mr Neels Kotze, the son of Mrs Kotze, identified rounds of ammunition as being identical to those that were used by his father and that were to be used in the firearm to which I have already referred. He also identified a Nokia cellular phone. Mrs Kotze identified small items  
10 such as deodorant and so on, which had belonged to either her or her husband. Mrs Moolman pointed to the nylon ski rope which had been tied in loops to be used as a ladder, and said that, other than the colour, this one in court was identical to the one that had been hanging from the rafters at her room after the assailants ran from her premises at 13 Surmon Street, on 07 July 2007.

[64] I have already mentioned that Inspector Cronje was hospitalised. After he was hospitalised, he prepared a report which was submitted to the Director of Public Prosecutions, and he was advised to arrange for  
20 an identification parade to be held. The identification parade was held on 06 September 2007 under the auspices of Inspector van Blommenstein who is attached to the Hillbrow police station.

[65] This identification parade was a model of how an identification parade should be held. The detail of similarity between the accused and

the other persons on the parade was remarkable. It extended right down to the detail that every person on the parade was wearing a t-shirt and blue jeans. Every person on the parade was a very close age to that of the accused, height, appearance and complexion. Inspector van Blommenstein notes were thoroughly professional. He recorded that the various witnesses brought to the parade, namely Mr and Mrs Mohamed, Naresh Munga and Vanisha Munga (Sevita was Mr Munga's wife, Vanisha his daughter), and Mrs Kotze all identified the accused within seconds of being taken onto the parade.

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[66] All of these witnesses denied that there was any improper suggestion made to them as to how to point out the accused and, in any event, it was not the complaint of the accused that the parade had been held improperly, save in these two respects: (1) that he was wearing dirty clothes and that his face was dirty and this is why he was pointed out. This is belied by the photographs that were taken on the parade. I accept that the accused may not have bathed for several days but the witnesses identified him through a one-way window. They would have not gotten close to him to smell that he had not bathed. He certainly did not look dirty in the photograph and all the witnesses who identified him at the parade were adamant that it was him, and also said that his clothing had no impact whatsoever. They identified him by his face.

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[67] The accused also complained that he was not told he could have a lawyer, but this is belied by the record of the magistrate's court

proceedings on 03 September, where he was legally represented and was told that he would be attending an identification parade shortly.

[68] The women who were called as witnesses were all excellent. They were adamant and clear about the identity of the accused. They all gave very similar explanations for the certainty of their identification: they had been in the presence of the accused, in these horrendous circumstances, over several hours. They all said, 'How can I ever forget that face?' There is, in my view, no room for reasonable doubt  
10 concerning the question of identification.

[69] Minor criticisms can be made as to detail of some of the witnesses. Sometimes, where two witnesses were describing the same scene, there were slight differences as to the sequence of events. No serious criticism of their evidence can be levelled so as to disturb the accuracy of their identification. These minor discrepancies as to sequences of events that took place, in very traumatic circumstances, over a protracted period of time, are entirely to be expected.

20 [70] The accused testified. He was a most unimpressive witness. He was often evasive. He refused to answer simple questions. He contradicted aspects that were put in cross-examination. For example, when he testified in the witness box he denied that the tool-box was his. This was the toolbox that is an exhibit, the one that was unidentified. In cross-examination of the State's witness, it was put that that toolbox

was his but had been in his motor vehicle, the Opel Kadett. When Superintendent Siphungu was being cross-examined, it was put to him that the accused had not shot him and that it was a coloured person who had shot him. When the accused testified in court he said that he had no knowledge as to who had shot Superintendent Siphungu. The accused was asked questions by counsel for the State and by myself, relating to how he could give some explanation for these numerous items that were found in his room. He was extraordinarily evasive on this important aspect.

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[71] It is well-established that a court, when evaluating evidence, must look at the totality of the evidence. The totality of the evidence is overwhelming in respect of all counts except counts 1, 18, 22, 23 and 13.

[72] The accused must please stand while I deliver the verdict of the court.

Count 1, the theft count, you are acquitted on that count.

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Count 2, housebreaking with the intent to rob, and robbery, you are convicted on this count.

Count 3, assault with the intent to do grievous bodily harm, you are convicted on this count.

Count 4, housebreaking with the intent to rob, and robbery with aggravating circumstances, you are convicted on this count.

Count 5, assault with the intent to do grievous bodily harm, you

are convicted on this count.

Count 6, the murder, you are convicted on this count.

Count 7, housebreaking with the intent to rob, and robbery, you are convicted on this count.

Count 8, attempted rape, you are convicted on this count.

Count 9, assault with the intent to do grievous bodily harm, you are convicted on this count.

Count 10, assault with the intent to do grievous bodily harm, you are convicted on this count.

10 Count 11, unlawful possession of a firearm, you are convicted on this count.

Count 12, unlawful possession of ammunition, you are convicted on this count.

Count 13, possession of a dangerous weapon, you are acquitted on that count.

Count 14, housebreaking with the intent to rob, and robbery, you are convicted on this count.

Count 15, housebreaking with the intent to rob, and robbery, you are convicted on this count.

20 Count 16, robbery with aggravating circumstances, you are convicted on this count.

Count 17, assault with the intent to do grievous bodily harm, you are convicted on this count.

Count 18, the attempted murder of Charles Chabalala, you are acquitted on that count.

Count 19, the attempted murder of Bhekizima Ngubane, you are convicted on this count.

Count 20, the attempted murder of Jaco Cronje, you are convicted on this count.

Count 21, the attempted murder of Wiseman Siphungu, you are convicted on this count.

Count 22, the attempted murder of Mphikeleni Ndlovu, you are acquitted on that count.

10 Count 23, the attempted murder of Joseph Yende, you are acquitted on that count.

Count 24, unlawful possession of a firearm, you are convicted on this count.

Count 25, unlawful possession of ammunition, you are convicted on this count.

COUNSEL FOR THE STATE	:	ADV D VLOK
COUNSEL FOR THE DEFENCE	:	ADV A T MATHUNZI
DATE OF HEARING	:	20 MAY TO 05 JUNE 2009
DATE OF JUDGMENT	:	09 JUNE 2009