

**IN THE HIGH COURT OF SOUTH AFRICA****NORTH EAST CIRCUIT LOCAL DIVISION**

Case Number: CC169/07

In the matter between:

**THE STATE**

versus

<b>MFANUFIKILE GOODWILL SHANGE</b>	<b>Accused 1</b>
<b>FOX SITHOLE</b>	<b>Accused 2</b>
<b>ZOFANIA MTHETHWA</b>	<b>Accused 3</b>
<b>SAKHELE JAN SIBISI</b>	<b>Accused 4</b>
<b>FANI JOHANNE MBONAMBI</b>	<b>Accused 5</b>
<b>SISUSISO BENEDICT SHABALALA</b>	<b>Accused 6</b>
<b>XOLANI MHLUNZI BUTHELEZI</b>	<b>Accused 7</b>
<b>THEMBA NQOBIZITHA KHATHIDE</b>	<b>Accused 8</b>
<b>MPHO PATRICK TSOTENSI</b>	<b>Accused 9</b>
<b>LEBOHANG LEBO MOTHEPU</b>	<b>Accused 10</b>
<b>FLAVIO JOSE LOUIS</b>	<b>Accused 11</b>
<b>BHEKINKKOSI LEAONARD KUNENE</b>	<b>Accused 12</b>
<b>JOHANNES KHEHLA LANGA</b>	<b>Accused 13</b>
<b>SIPHO MHLONGO</b>	<b>Accused 14</b>
<b>THABO OSCAR MAHOA</b>	<b>Accused 15</b>
<b>Sipho PEREY KUNENE</b>	<b>Accused 16</b>
<b>THABANI MGISI ZONDO</b>	<b>Accused 17</b>

<b>LUCKY BUTHEZ PHASHA</b>	<b>Accused 18</b>
<b>VUSI PELE NJOKO</b>	<b>Accused 19</b>
<b>Sipho VUSI MPONDO GUMEDE</b>	<b>Accused 20</b>
<b>BONGANI SHIPA TSHABALALA</b>	<b>Accused 21</b>
<b>ERNEST NLANGAMANDLA</b>	<b>Accused 22</b>
<b>HAMILTON LIZOKA MAZIBUKO</b>	<b>Accused 23</b>
<b>MBUSO MNCUBE</b>	<b>Accused 24</b>
<b>EDDIE KALANGA UBISI</b>	<b>Accused 25</b>
<b>THULANI BLESSING MTHETHWA</b>	<b>Accused 26</b>

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

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**COMBRINK, J:**

### **INTRODUCTION**

Originally there were 26 accused who were indicted on 31 charges of murder, attempted murder, armed robbery, attempted armed robbery, kidnapping, motor vehicle hi-jacking, theft of motor vehicles and an assortment of charges framed under the Arms Control Act. During the course of this protracted and difficult trial accused number 10 passed away. I commenced the trial sitting with two assessors, Mr Ian Reid and Mr Bruce Dalling. Halfway through it, Mr Dalling unfortunately passed away. We have sorely missed his valuable input. As required by law I had to

decide whether to stop the proceedings, summon another assessor in Mr Dalling's place and re-start the trial *de novo* or to proceed with it sitting with Mr Reid alone. I considered the latter course to be in the interest of Justice and resolved accordingly.

The trial commenced on 15 October 2007, a year after the offences were committed and thereafter assumed monumental proportions, with a record numbering in excess of 7 000 pages, augmented by documentary exhibits which have to be read as part of it comprising of some 12 000 pages and a host of physical exhibits. What makes this trial somewhat unique is the introduction of wide-ranging and detailed cellphone evidence by the State, which took up considerable time and effort and which the Court will deal with in some detail later in this Judgment. Suffice it to say at the outset that some 72 000 calls were analysed in order to place the relevant evidence on record with various experts testifying with regard to the nature and reliability of information stored by the Service Providers of cellphones used by the public at large.

### **THE CARDINAL ALLEGATIONS AGAINST THE ACCUSED**

The crimes charged to the accused and the associated allegations central to those may be contextualised as follows. Two motor vehicles belonging to Fidelity Cash Management Services (Fidelity) were conveying cash along the N2 National Road, when they were ambushed, capsized and assaulted with firearms in order to rob them of the cash.

By all accounts the two armed robberies occurred contemporaneously albeit some

30 kilometres apart. The first to be reported occurred near the Charters Creek turn-off from the National Road (hereinafter referred to the Charters scene of crime or Charters as the case may be) and the other took place on the same National road in proximity of the Penicuik turn-off near Kwambonambi (hereinafter referred to as the Penicuik scene of crime or Penicuik as the need arises). The attack at Charters forms the subject-matter of count 9 and the attack at Penicuik count 6.

The Charters and Penicuik armed robberies may be looked upon as the primary offences around which the occurrence of a number of other secondary offences, no less serious, centred. At the primary crime scene at Charters the secondary offences were as charged under counts 1, 2, 10,11, 12, 13 and 14.

At Penicuik the secondary offences are those charged to the accused in counts 3, 4, 5, 7, 8, 15, 16, 17, 18, 19, 20, 21, 22 and 23.

**TURNING TO CHARTERS, THE SECONDARY OFFENCES IN QUESTION ARE THE FOLLOWING:**

**Counts 1 and 2** relate to theft of motor vehicles, where it is alleged that the accused stole the motor vehicles in question to be used in the cash-in-transit robberies and thereafter abandoned them on or in the vicinity of the scene of crime.

**Counts 10 and 11** relate to attempted murder of the crew of the Fidelity motor vehicle, namely Mnguni and Mnqayi, the driver and crew respectively. Here the allegations are that the attempted murder arose from the capsizing of the motor vehicle in which they were and shooting at them.

**Counts 12, 13 and 14** relate to the attempted murder of the three policemen who chanced upon the scene where the robbery was in progress. Here it is alleged that the accused attempted to kill student Constable Biyela, Sergeant Mthethwa and Inspector Khoza by literally riddling the police vehicle with bullets fired at short range.

**PROCEEDING ON TO PENICUIK, THE SECONDARY OFFENCES IN QUESTION ARE:**

**Counts 3, 4 and 5** relate to the theft of 3 motor vehicles, the allegation being that they were stolen to be used in the primary robberies and thereafter abandoned at the scene.

**Counts 7 and 8** relate to the attempted murder of Thring and Ncwane the driver and crew respectively of the armoured Fidelity motor vehicle by forcibly capsizing it and thereafter shot at the crew with heavy firearms intended to penetrate the armour behind which the two Fidelity employees were ensconced.

**Count 15** relates to the robbery of one Msweli of his motor vehicle keys.

**Count 16 and 17** relate to the kidnapping of Msweli and his passenger, Mkhize, by forcing them to lie down as instructed at gunpoint.

**Counts 18, 19 and 20** relate to the hi-jacking at gunpoint of a motor vehicle belonging to one Masango and the attempt made upon his life by shooting at him and the subsequent abduction of his daughter, Nothile, who was a passenger in the

motor vehicle with him.

**Count 21** relates to the murder of a security guard in the employ of Maxim Security, a certain Gumede, at a stage when the stolen motor vehicles referred to in counts 3, 4, and 5 were being abandoned in a plantation road off the N2 at the Penicuik scene of crime.

**Count 22 and 23** relate to the attempted murder of the two security guards in the employ of Maxim Security, namely Nkabinde and Ntombela.

**Counts 24 to 30 inclusive**, relate to charges framed under the Firearms Control Act 60 of 2000 in which it alleged that the accused were found in unlawful possession of a variety of firearms and ammunition thereto, ranging from handguns to automatic assault rifles.

**Count 31** applies to accused number 14 only and relates to his unlawful failure to exercise proper control over his licenced firearm.

The charges contained in counts 24 to 31 will be dealt with at the end of the judgment.

Bearing in mind the foregoing analysis of the individual charges contained in the Indictment, it is immediately apparent that all 25 accused could not individually have committed or taken part in each offence. It is difficult, for example, to see how 25 accused persons could individually take part in the theft of one motor vehicle.

In this regard the State alleges that, except for count 31, all the offences were

committed by all the accused in the execution of a purpose or design common to all of them. In that event, the actions of one in implementation of the common design are imputed to all of them. Accordingly the State relies on the doctrine of common purpose to which we shall return to and deal with fully during the course of the Judgment.

## **ARRAIGNMENT**

All the accused were legally represented throughout, but during the course of the trial changed counsel a number of times and at the final stage to date hereof were and are represented by counsel appointed by the Legal Aid Board. Thus Mr G Maree acts for accused 2, 8, 14 and 25. Mr H Fraser acts for accused 9, 13, 18, 21 and 23. Mr T Botha acts for accused 4, 5, 15, 16, 17 and 26. Mr Parmanand acts for accused 6, 10, 19, 22 and 24. Mr Seedat acts for accused 1, 7, 11, 12 and 20.

Upon arraignment each of the accused pleaded not guilty to all the charges and to a man denied complicity in any of the crimes charged to them. Thereby they placed in issue all the elements which the Prosecution is required to prove in relation to the respective charges brought against the accused.

Section 115 of the Criminal Procedure Act provides a procedure in terms whereof an accused person can choose whether or not to disclose his defence to the offences charged. Where the accused chooses not to do so, as here, the Court in its discretion may question the accused to clarify the issues raised by his plea of not guilty. I chose not to do so, as I was informed by the legal representatives of the

accused that the accused placed in issue all the elements of each and every charge preferred against them. That being the case, the lines were drawn and the State was required to prove the accused's guilt in respect of the offences charged without knowledge of the accuseds' respective defences thereto. As it turned out the defence raised by each of the accused who testified was in the nature of an alibi disclosed for the first time in the witness box.

### **THE UNCONTESTED FACTS :**

What follows is a summary of the relevant facts which are either common cause or not seriously challenged, bearing in mind the nature of the defences raised by the accused and the absence of countervailing evidence proffered on behalf of them. For convenience and ease of reference these facts are grouped under various headings with descriptive rubrics.

### **THE PRIMARY OFFENCES:**

It will be recalled that, in analysing the charges in the Indictment to determine the central allegations there made involving the accused, we identified two primary offences, namely the armed robbery of the cash-in-transit vehicle belonging to Fidelity at Charters and the attempted armed robbery of the Fidelity cash-in-transit motor vehicle at Penicuik.

Around those two were clustered a number of divergent crimes, which we choose to refer to as the secondary offences.



**FIDELITY'S CASH MANAGEMENT PRACTICE:**

In view of the fact that the alleged crimes all related to attacks on cash-in-transit vehicles, perhaps this is the appropriate stage in the Judgment to describe the operations of Fidelity in receiving, conveying and dealing with the cash placed in their care by a variety of clients – in the instance, chiefly from the area generally known as Northern Zululand.

From the evidence it emerged that Fidelity operates a fleet of security vehicles, some of which are armoured, as in the case of Penicuik, and some not, as in the case of Charters. These vehicles, normally manned by a driver who is alone in the cab of the vehicle and a crew man who operates the closed section at the rear. They travelled on a daily basis from their base at Richards Bay to the places of business of the various clients. The purpose is to collect monies for banking by these clients, then return to the base where the company on behalf of the client attends to the banking at the appropriate bank of the monies thus collected; and on the next trip to the client's business, deliver proof of the banked monies in the form of a stamped copy of the deposit slip.

In the case of the two Fidelity vehicles involved in the primary offences both collected cash from businesses situate from Petroport in the south, some 10 kilometres from the town of Hluhluwe to Emanguzi in the north, which is close to the Mozambique border at Kosi Bay.

All the mentioned clients were supplied with the necessary serialised so-called

“stop-loss” bags, documents and other material to ensure proper identification and security of all monies collected and intended for banking. Some clients with large cash turnovers opt for the “drop-safe” bags whereby, as monies are received in the tills, multiples of R1 000-00 are counted and sealed in the drop-cash bag which in turn is pushed into a chute which leads to a built-in drop-safe which is sealed and cannot be tampered with or robbed. Inside the drop-safe is a so-called “smart box” which is made of steel and ceramics into which the money bags fall and can only be opened by use of specialised equipment kept at Fidelity’s base.

Only Fidelity personnel are authorised to remove the smart-box from the drop-safe by means of a key and this only in the presence of the client’s representative who simultaneously must use a special tool to release the box from the safe.

On removal from the safe the smart-box automatically becomes “armed” and then can only be opened as mentioned above at Fidelity’s base at Richards Bay. Any unauthorised attempt to open the box, according to the evidence, would result in the cash contents being rendered valueless because of the permeation thereof by indelible dye.

In the case of the two vehicles attacked at Charters and Penicuik respectively, money was collected from the same areas but from different clients. The practice was, also on the day of the attacks, 2 October 2006, that the Hi-Ace Combi, robbed at Charters, would do the necessary banking at Mkuze First National Bank on their way out of monies collected the previous day and kept overnight in the safe of the

base of operation at Richards Bay. The Dyna, which was attacked at Penicuik, did not do banking.

That vehicle collected only money, which it would take to the base, which would be banked by the personnel of the Hi-Ace the next morning on their way out in order to serve Fidelity's clients in the areas aforementioned. On their way back to the base the Hi-Ace would stop at the Mkuze FNB and collect from them the deposit slips of the money which had been deposited at the bank that morning.

Thus on 2 October 2006 the Hi-Ace on its way out first stopped at the Mkuze bank and there deposited the money which had been collected by the Dyna previously. Hence the number of deposit slips which were in the Hi-Ace when it was robbed. From there the Hi-Ace proceeded to serve the clients in Northern Zululand as aforementioned. During the course of the day the two vehicles generally travelled together and were on their way back together, when the Hi-Ace had to turn off at Mkuze in order to collect the deposit slips and other documentation dealing with Fidelity's handling of the cash entrusted to them, the Dyna carried on to Hluhluwe later to be joined there by the Hi-Ace again. From Hluhluwe the two Fidelity vehicles accompanied each other up to Petroport plus-minus 10 kilometres south of Hluhluwe on the N2.

At that point the Hi-Ace turned off into Petroport, a filling station, while the Dyna carried on south. Thus, when the attacks upon the vehicles occurred more or less

simultaneously, they were approximately 30 kilometres apart – the Dyna at Penicuik and the Hi-Ace at Charters.

## **CHARTERS – COUNT 9:**

Although the Charters robbery was reported after the Penicuik hold-up I find it convenient to commence with the former.

Sipho Mnguni and Bheki Mnqayi were respectively the driver and crew of the Fidelity Toyota Hi-Ace panel van (Hi-Ace). It is a Combi-type motor vehicle painted green, the typical colour of Fidelity's security vehicles. Both testified covering the same ground. The more detailed account of how the robbery evolved, understandably, came from Mnguni, the driver of the Hi-Ace. His evidence was that early in the morning of 2 October 2006 they had set out from Fidelity's base at Richards Bay to collect and bank monies emanating from various clients, as aforementioned.

On that day they collected money from as far afield as Ingwavuma on the north-western border of KwaZulu Natal and Swaziland, and Emanguzi on the north-eastern border of KwaZulu Natal and Mozambique, and were on their way back along the N2 National road, their last collection point being at Petroport filling station just south of Hluhluwe.

Exhibit K is an inventory of cash and related documents and banking receipts which they as crew dealt with on 2 October 2006. The list is divided into columns, which starting from the left, records: (1) the name of the client and the area in which the business is situate;(2) a numerical code dedicated as specific to the particular client;

(3) the serial number of the receipt furnished by the crew of the Hi-Ace to the client in which receipt of the money or cheques, as the case may be, is acknowledged; (4) “Bag numbers”. That column reflects the client’s money which was placed in various containers which differed widely. The so-called “bag” could be a smart-box, which can only be opened at Fidelity’s offices in Richards Bay; drop-cash bags, four types of “stop-loss bags” with dedicated code numbers which relate to the size of the bag; “P-envelopes” – in which cheques and deposit slips are placed; each container or bag is also coded in such a way that, by reading the code, the reader would know what type of “bag” he is looking at; (5) the amount of money and cheques in the bag.

Exhibit K also tabulates in the remaining four columns – the amount of cash and cheques that were stolen. Only the money was computed in order to determine the amount of cash lost in the robbery; the bags that were found at the scene of crime at Charters – some empty and some with cash in them, together with a note of the deposit books and slips recovered on the scene.

Mnguni testified that they arrived at the Petroport filling station at approximately 18h00 and departed at plus-minus 18h10. That time estimate is also confirmed by the witness, Smalman, the owner/manager of the filling station. Immediately upon entering the N2 from the filling station in a southerly direction Mnguni noticed the headlights of a motor vehicle emerging from the filling station behind him, which thereafter appeared to him to be following the Fidelity vehicle. What held Mnguni’s attention was that the motor vehicle following behind kept the same distance, notwithstanding the fluctuating speed of the Hi-Ace.

After they had passed the Charters Creek turn-off, approximately 15 kilometres

south of the Petroport filling station and plus-minus 20 kilometres north of Mtubatuba, the following headlights disappeared for a while, only to re-appear again, but this time at speed. Being uneasy, he mentioned that to his crew Mnqayi, who was sitting next to him at that stage. The latter suggested that they move to the side of the road to allow the motor vehicle to pass. Mnguni did so, but instead of passing the Hi-Ace, the pursuing motor vehicle moved to the opposite side of the road and then suddenly and violently swerved back to the Hi-Ace deliberately smashing into the right-rear corner of the Fidelity vehicle. That caused Mnguni to lose control of the Hi-Ace, which swerved to the opposite side of the road out of control and overturned off the road on the western side thereof.

The extensive damage to the Hi-Ace which followed included the loss of the windscreen, leaving an opening through which Mnguni and Mnqayi egressed. Mnguni's first awareness at that stage was of gunfire in the dark and the rain. At that stage he did not know where the shots emanated from or what the target was. However, subsequently he found bullet damage to the roof of the Hi-Ace.

Both Mnguni and Mnqayi sustained collision injuries including lacerations to the scalp which bled profusely.

The assailants repeatedly shouted "down". Mnguni prostrated face-down with a gun to his head. He was forcibly deprived of his wedding ring, money and the Fidelity revolver, a Rossi .38 special. Whilst face-down on the ground, Mnguni heard a multitude of voices and sounds emanating from the stricken Hi-Ace. He was under the impression that the sounds emanated from the plundering of the vehicle. Mnguni's limited observation, further hampered by the dark and rain, is substantiated by the photographic material placed before us, considered in conjunction with the

evidence of the police's Forensic Unit. That served before us in the form of a plan of the scene of crime and the descriptive key thereto. The photo exhibits reveal extensive damage to the vehicle and in particular, its roof. The nature of the damages to the latter suggests that it was hacked rather than cut open. This inference is strengthened by the presence of a heavy hammer and a large axe discovered next to the capsized vehicle afterwards.

It would seem that the plundering of the Hi-Ace took place in great haste. Understandably, given that it was taking place on the N2 in the dark and rain with traffic heaping up on both sides of the crime scene.

Mnguni lay face-down listening, because he could not see what was happening. Someone shouted that the police had arrived and shooting immediately erupted. From the shouted conversation and sounds of increased activity at the Hi-Ace Mnguni deduced that some of the assailants were asking to hand over "things", being taken from the capsized vehicle. Thereafter the assailants appeared to have departed in a hurry.

That piece of evidence dove-tails perfectly with the evidence in relation to counts 12, 13 and 14, arising from the shots fired at the police, who had chanced upon the scene at about 18h30, during which one of the robbers, said to be accused 25, was shot and injured. That that occurrence had, in a sense, cut short the looting is supported by the evidence of what was found by the police at the scene of crime in the vicinity of the Hi-Ace.

In their haste the assailants left behind a number of stop-loss bags containing some R350 000-00 in cash, retrieved from in and outside the vehicle. What appears to

have been stolen is the amount of R1 118 413-00. The individual items belonging to the Fidelity customers, which were conveyed in the Hi-Ace at the time, are listed and described in Exhibit K and confirmed in the evidence of Mnguni and, particularly Mngayi. Mngayi testified concerning the assignments regarding banking and collecting of customer-money undertaken by the crews of the Dyna and the Hi-Ace respectively on 2 October 2006. Briefly, the Dyna collected cash only and was on its way back to the Fidelity office at Richards Bay when they were ambushed. The Hi-Ace on its way out, banked at FNB, Mkuze, the money held overnight at the Fidelity base at Richards Bay and obtained the relevant deposit slips on the way back. Having visited the areas and collected the money from Fidelity customers and having collected the deposit slips from Mkuze, the Hi-Ace was on its way back when the Charters robbery occurred.

We hold that, save for the identity and criminal responsibility of the perpetrators, the robbery of the Hi-Ace (count 9) had been proved beyond a reasonable doubt.

## **SECONDARY OFFENCES AT CHARTERS**

### **ATTEMPTED MURDER OF THE HI-ACE CREW – COUNTS 10 AND 11**

There appears to be insufficient evidence that the shooting that emanated contemporaneously to the capsizing of the Hi-Ace was aimed directly at Mnguni and Mngayi. In our view the shots were rather fired *in terrorem*, directed at subduing the crew of the Hi-Ace and convey notice that resistance would be futile. Accordingly, those actions on the part of the assailants did not constitute an attempt upon the crew's lives. Having said that, however, we are left in no doubt that the act of deliberately smashing into a relatively fast-moving motor vehicle with a view to



causing the driver to lose control thereof so that it would run off the road and possibly overturn, as happened in the instance, does amount to an unlawful and malicious attempt to murder the driver and the crew or whoever else was in their company. There can be little doubt and we have none, but that the actor engaged in smashing his motor vehicle into another with the aforementioned purpose, subjectively foresees the possibility that the targeted vehicle might capsize and cause the death of the occupants.

Where, as here, the assailant, alive to that possibility, nonetheless causes such a collision, acts with reckless disregard to the possible fatal consequences and renders himself and all others who share his purpose in that regard, guilty of murder, where death of the occupants ensues and, where not, guilty of attempted murder. All that remains to be established is the identity and criminal liability of the assailants, to which we shall return anon.

#### **ATTEMPTED MURDER – COUNTS 12, 13 AND 14**

The incident which gave rise to those charges sprang from the traffic stoppage engineered by the robbers to keep the ordinary road traffic away from the scene of the actual robbery as described earlier. Three policemen, stationed at Kwamsane at Mtubatuba, had been engaged in a routine patrol at Shikishela, a rural hamlet just off the N2 in the vicinity of the Charters scene of crime. They were on their way back to their station, using the N2, when they encountered motor vehicles with their hazard lights on, stationary in their lane and facing the same way – south. That, according to Biyela, the driver of the police vehicle, was at 18h30 and it was deep dusk with rain. He had been driving with his van's headlights full on. They were in a properly

marked Isuzu four by four double cab bakkie.

The vehicle was immediately identifiable as a police vehicle. Inspector Khoza was a front-seat passenger and Constable Mthembu was seated in the rear. They stopped their vehicle believing that there had been an accident at some point on the road ahead of them. Biyela brought his vehicle to a stop behind a “Clover” truck which blocked their view beyond it. Inspector Khoza was busy trying to engage the official blue light, when a Mercedes Benz pulled up behind them. In his rear-view mirror Biyela observed a man exiting from the driver’s door and approaching the police vehicle on his, the driver’s side. The man was next to his window. He shouted at Biyela to get out, adding the usual expletive with reference to the maternal anatomy, whilst pointing a rifle at him through the driver’s window. The assailant presented as an adult black male. Biyela, it would seem, instinctively ducked to his left away from the threatening firearm. At the same time his assailant started shooting. Biyela heard other firearms also joining in.

He was aware that his motor vehicle was struck by a number of bullets and later found that there were bullet holes in the backrest of his seat. Whilst in the process of still ducking towards his left, Biyela returned fire at the man shooting at him and believed that he had struck the latter in the upper body. The wounded man went to his knees and started crawling away screaming “the dog shot me”. At that point Inspector Khoza had already departed the police vehicle through the left passenger door and into the bush. So, apparently, had Constable Mthethwa. With the assailant

outside his window out of the way, Constable Biyela jumped out of the front door of his vehicle, ran across the road and into the bush – all the way being pursued by bullets, clipping the shrubbery around him. As he fled from his vehicle Biyela saw the person he had shot being assisted away into a dark “old shape” BMW without registration plates. Biyela took refuge in a nearby homestead and later returned to the scene, where he found other policemen present. He then noticed that he had happened upon a cash-in-transit robbery. He found his police vehicle where he had left it, the engine still running.

The Mercedes Benz that had parked him in was still behind his vehicle. The dark BMW, into which the wounded assailant had been assisted, was no longer on the scene. However, that vehicle appears to have been recovered some 1 kilometre removed from the scene of crime with evidence of blood in and on it and the relevance thereof will be discussed *anon*.

Photographs collected in Exhibit E reveal substantial bullet damage to the police van in question at a level and position on it that makes the inference inescapable that the occupants of the police vehicle were directly targeted by the gunfire directed at it.

The two policemen who accompanied Biyela in the police vehicle did not testify. Indeed, there appeared to be no need for that, given that the cross-examination of Biyela, apart from questions directed at testing the veracity and reliability of his account of the events, did not effectually place in dispute any of the material facts testified to by him. Nor was it suggested on behalf of the accused that an adverse inference is to be drawn from the absence of their evidence.

In the light of Biyela's uncontested evidence, particularly dealing with the way the police vehicle and its occupants were shot at by the attackers and the gunshots that followed Biyela in his flight in and through the bush, leaves us with no doubt but that the assailants were possessed of the requisite *dolus*, intention to kill and murder the complainants referred to in counts 12, 13 and 14. All the elements of the respective offences of attempted murder have been proved beyond reasonable doubt.

What remains to be established is the identity and liability of the assailants. That comes up for consideration later.

## **THEFT OF THE BMW – COUNT 2**

W A Mans, the owner of the motor vehicle, which forms the subject-matter of this charge testified that on Saturday 26 August 2006 he had dropped his daughter at school at Roodekranz, Johannesburg, Gauteng Province, when the vehicle, a dark blue 7 series BMW was stolen from where it was parked in the street. He actually saw it being driven away. With the help of a security guard they gave chase in the latter's vehicle. However, they were unsuccessful. He reported the theft to the police without success.

Sometime later, during October 2006, after the Charters robbery, he identified his vehicle at the Police Station at Mtubatuba. The identification was positively made in that the engine and chassis numbers on the motor vehicle corresponded with the registration papers which he had with him and, further, with reference to scratches and marks on the vehicle, which only an owner would have known of. He testified that the vehicle had been damaged after the theft thereof. To him it appeared that his vehicle had been involved in a collision and sustained damage to the front-left corner

and side. He was however able to drive his vehicle away from the Police Station.

Tangential to this evidence is the testimony of Constable Xulu, who discovered the BMW in the plantation on a gravel road off the N2 at bridge L on the same night. The bridge in question crosses the N2 from east to west with glide-offs on the western side. The bridge is close to the Charters scene of crime. The vehicle was taken to the Mtubatuba police station. The photographic evidence placed before us depicts the BMW in question. The collision damage described by Mans is clearly evident in those.

Upon examination of the retrieved BMW there was found what appeared to be blood on the seat and the wheel rim of the vehicle. Samples taken from the relevant areas revealed that it was indeed blood and the DNA comparative tests revealed that the blood on the vehicle matches the samples taken from accused number 25 to a degree beyond any question. The blood on the vehicle was that of accused 25. Given the circumstances described above the presence of the BMW at the Charters scene of crime and the damage thereto, is consistent with it having been used to smash the Hi-Ace out of control which resulted in it capsizing off the road as already described. The BMW also played a pivotal role in the evidence of one, Sithole, to be mentioned later.

The photographic evidence before us depicts the BMW in question, identified by the witness Sithole, from photograph 31 in album "E" and which is also depicted in photograph 101 in album "L". The photograph "E" 31 shows the rear of the vehicle with a drawn blind over the back window. Photograph "E" 29 depicts damage to the left front and side thereof.

The aforementioned Sithole, as will appear, saw the rear blind of the BMW which he was following on the R34 being drawn when he stopped behind it at a robot in Empangeni. It appears significant that the photographs he identified it from show a blind across the rear window, whilst the photograph of the BMW used at Penicuik to upend the Dyna do not show a drawn blind. Accordingly Sithole's identification of the BMW recovered at Charters appears to be accurate.

#### **THEFT OF THE WHITE MERCEDES BENZ C180 WITH REGISTRATION NUMBER RZF 712 GP – COUNT 1.**

This motor vehicle belonged to Avis, a car rental company. According to the evidence of J Venter, a Regional Manager of the company, the vehicle was robbed from the Centurion branch of Avis at Pretoria on 7 February 2006. At the time it had done 317 kilometres as shown on the odometer. On 24 November 2006 he identified the vehicle then in the custody of the police, as the one which had been robbed. His evidence of the identification was detailed and beyond question. At that stage the odometer reading was 40 173 kilometres.

The vehicle in question was identified by Constable Biyela as the white Mercedes Benz that stopped behind him and whence came the person who shot at him and whom he injured in return fire. Afterwards the vehicle was recovered by the police from where it was still parked behind Biyela's police van.

Like the BMW this Mercedes Benz was used in execution of the Charters robbery and abandoned afterwards.

As will appear later in the Judgment, the Mercedes Benz also was one of the motor vehicles encountered by a certain Sithole on the R34 to Empangeni and from there

on to the house of accused number 24 at Mzingazi, Richards Bay. Sithole identified both the BMW (from a photograph as similar), and the Mercedes (conclusively on sight), at the Charters scene after the robbery, when, as an official of Fidelity, he visited the scenes of crime.

As in regard to the other counts dealt with thusfar, the theft of the Mercedes Benz has been established beyond reasonable doubt. What is outstanding at this point is the identity of the thief or thieves, as the case may be, bearing in mind that theft is a continuing offence.

#### **PENICUIK – COUNT 6:**

##### **RELATING TO THE ATTEMPTED ROBBERY OF THE DYNA**

The Fidelity vehicle involved in this charge was a green Toyota Dyna armoured truck. The unique composition of this vehicle is also the key to the failure of this cash-in-transit robbery. The vehicle comprises a driver's cab and an enclosed bin at the back thereof. The cab and the bin are totally separated from one another. The driver's cab has the usual appointments found in an ordinary driver's cab of a truck of this nature. However, the panelling, side windows and the windscreen are re-inforced so as to be bullet-proof. Likewise the side walls and roof and the back door of the bin – being the only access to the rear of the Dyna – together with two small glazed windows are re-inforced so as to be impregnable to tools usually employed by robbers to gain access to the cash.

On the day in question, 2 October 2006, which followed shortly upon the month-end when a lot of cash changed hands, the Dyna's crew collected cash takings from the

Fidelity clients spread throughout the north eastern reaches of KwaZulu Natal. Unlike the Hi-Ace, the Dyna's crew did no banking.

It collected cash only which was destined to be taken to the Fidelity base at Richards Bay, to be held overnight for banking the next day. Having completed its collection rounds, the Dyna was on its way back to Richards Bay, when it was beset by robbers on the N2 at Penicuik.

The Dyna was at all times driven by one Thring, who was on his own in the cab. His crew, a certain Ncwane, was locked into the bin. The only form of communication between driver and crew was through an intercom system. As they approached the Penicuik scene of crime, Thring saw in his rear-view mirror the headlights of a fast-approaching motor vehicle, which he saw later was what he described as a "silver" 7- series BMW, apparently on a collision course with the Dyna. Practically immediately after that a violent impact occurred to the right-rear of the Dyna. Later that evening after the event, Thring saw the BMW on the scene exhibiting impact damage to its left-front corner, which corresponded with the damage of a similar nature to the rear corner of the Dyna.

The BMW's impact caused Thring to lose control of the Dyna, which spun around across the road and off it, where it overturned and ended up on its left side facing, after a fashion, in the opposite direction whence it came. Contemporaneously Thring heard gunfire which he believed was directed at the Dyna. Due thereto that the Dyna came to rest on its left side, Thring had fallen to the passenger side of the cab, where he lay prone on the passenger window, which was resting on the ground. In



the headlights of the BMW or some other vehicle behind the Dyna, Thring could see a man armed with a rifle. That man tapped on the windscreen with the rifle barrel, shouting to him in Zulu to get out. Thring pretended that he was unconscious, believing that he was relatively safe behind the bullet-proof windscreen. He did not respond, but the demands to open and get out continued. At the same time he heard what he considered to be gunfire from an automatic rifle. The shots coincided with the sounds of bullets hitting the bin of the motor vehicle. During all of this Thring managed to call his Richards Bay base informing them that he was under attack.

He used the spoken code intended for such an emergency – “opskud Penicuik” – thus furnishing knowledge of the robbery as well as the location. Such alerts are noted by the recipient at the base, who makes a note of the report as also the time it was received. In the instance it appears uncontested that the recorded time of Thring’s alert was at 18h38, bearing in mind that at this time the Charters robbery was also in progress. As Thring lay there he took note of bits and pieces of the events. His impression, judging from the raised voices outside, was that there were quite a number of assailants gathered around the vehicle on the scene. He heard the shouting directed at his crew, Ncwane, in the rear to open the door and the latter’s response that he was unable to – that the keys were held at the Fidelity offices. After a time the robbers appeared to give up their efforts at accessing the cash. Sometime later the police arrived and Thring was assisted out of the Dyna. Ncwane’s position in the Dyna was not conducive to detailed observation. Locked into the rear of the vehicle he could see nothing. He could only hear and feel.

Thus his testimony that he heard and felt the impact on the rear of the Dyna and experiencing the vehicle spinning around and capsizing, he must have been flung about like a rag doll. After the vehicle had come to a rest he heard and felt the impact of bullets being fired at the back of the vehicle. Voices outside the door demanded that he open the door and come out. He became aware of attempts on the outside to force open the bin door. Significantly, for reasons to follow, he heard the sound of “a generator used for cutting”. He was taxed on this observation in cross-examination but persisted that the sound likened the sound of a generator used for cutting, which he heard when he was working at “Springbok”, although he was unable to explain the workings thereof. Whatever one chooses to make of the lack of detail, which accompanied Ncwane’s inference that a cutting tool had been used on the bin door, photographic material (Exhibit D and OO), clearly evidence signs of tampering at the hinges of the door in question. All three hinges on the door show signs of scouring around each, where the paintwork was destroyed and the underlying scoured metal laid bare. The scouring marks appear consistent with the use of a cutting tool of sorts.

As will appear later in the Judgment a large motorised petrol-driven angle grinder was found in a white Combi driven by accused number 24 upon arrest of the latter during the same night at Mvoti Toll Plaza on the N2. Ncwane confirmed Thring’s evidence that after a while the robbers left the scene and the police arrived about fifteen to twenty minutes later.

After his emergence from the Dyna, Thring observed the silver BMW which had rammed his truck. It appeared to have been abandoned where it had come to a stop

after the collision. Photographs D8 and D9 reveal the extent of the damage to the left-front of the BMW, which was manifestly extensive. That is understandable, given the mass and size of the truck it smashed into, causing it to spin out of control and capsize.

The evidence as outlined suffices to prove beyond any doubt that the attempted cash heist charged under count 6 was committed. Only the identity and liability of the assailants remain outstanding.

## **SECONDARY OFFENCES – PENICUIK:**

### **ATTEMPTED MURDER – COUNTS 7 AND 8**

Under these two charges it is claimed that the gunfire, which the assailants subjected the Dyna to constituted an attempt to kill and murder Thring and Ncwane, the driver and the crew of the vehicle.

Both Thring and Ncwane testified that the perpetrators fired at the Dyna with automatic rifles. Indeed, the forensic examination of the scene of crime subsequently undertaken by Inspector Mthiyane of the Mtubatuba Local Criminal Record Centre, revealed a substantial number of spent bullet casings in the vicinity of the Dyna. Thring testified that a bullet scar was visible on the outside of the door of the cab, which did not penetrate the reinforced panel. He also found a bullet hole in the front right side of the bin, which passed through the panel into the interior of the bin, where Ncwane was.

However, it does not end there. As in the engineered collision with the Hi-Ace at Charters, the collision of the Dyna at Penicuik carried with it the very real possibility of fatal injury to the crew. We entertain no doubt that the driver of the BMW subjectively foresaw the risk that the crew of the Dyna might die in the accident which he manufactured, when he smashed his vehicle into the back of the truck with a view to sending it out of control and possibly capsizing. By deliberately creating the collision with the Dyna, notwithstanding his appreciation of the risk to the crew, the driver of the BMW demonstrably reconciled himself with the possible fatal outcome of his actions. Accordingly, that driver, whoever he may prove to be, and all those who shared that purpose in common with him, whoever they may be, is/are guilty of the crime of attempted murder of both Thring and Ncwane.

### **MOTOR VEHICLE THEFT – COUNT 3**

This count deals with the theft of an Isuzu bakkie from the possession of one Daniel de Bruin. This vehicle was found abandoned in the forest at Penicuik. De Bruin testified and identified the vehicle as his property at the Police Station at Isipingo, his vehicle having been stolen at Scottsville – Pietermaritzburg on 12 September 2006. His evidence was uncontested and we found that the State has proved this count beyond a reasonable doubt.

### **MOTORVEHICLE THEFT – COUNT 4**

This count relates to the theft of a Nissan bakkie from the lawful possession of one Devenand Sarjoo in Durban. Sarjoo testified that the vehicle was stolen in Nicholson road on 13 September 2006. He later identified the vehicle at Cato Manor Police Station on 16 October 2006. His evidence was uncontested. This vehicle was found

abandoned in the forest at Penicuik. We find that the state has proved this charge beyond reasonable doubt.

### **MOTOR VEHICLE THEFT – COUNT 5**

This count deals with the theft of a White BMW that was abandoned after the Penicuik attempted robbery in the nearby forest together with the vehicles referred to in count 3 and 4 above.

The state alleged that the theft of the BMW was from the possession or ownership of a person or persons to the State unknown.

In the nature of things, whether the BMW in question was stolen or not, is a matter for inference from all the available facts. The paucity of evidence of the actual theft of the vehicle and the absence of established *animus furandi* in relation to this alleged theft leaves this count unproved.

### **THE BMW USED TO RAM THE DYNA AT PENICUIK**

This BMW did not form the basis of any charge brought by the State, but it is important to mention it at this stage of the judgment. This BMW was left abandoned on the grass verge of the road at Penicuik in close proximity to the capsized Dyna. This vehicle in the photographic material before us in photographs 8 and 9 in album “D” depicts extensive damage to the left front thereof, probably rendering it immobile after the collision with the Dyna.

## **ROBBERY AND KIDNAPPING – COUNTS 15, 16 AND 17**

These charges concern the alleged robbery and kidnapping of a certain Msweli at the Penicuik scene of crime. The complainant, Msweli, testified that at about 18:30 on 2 October 2006, he approached the scene of crime from the north along the N2 in an Opel Corsa vehicle, when he came upon a white Nissan bakkie which was slowly driving ahead of him. Msweli tried to pass the Nissan on the latter's correct side, when it moved to the right also, cutting him off. Msweli then tried to pass on the Nissan's left side, using the emergency lane for that purpose. Again the Nissan moved across and cut him off and came to a stop in front of him, thereby forcing Msweli to stop also. Two men armed with rifles came from the Nissan and, pointing the firearms at him, instructed Msweli to hand over his vehicles keys and to lie prone in the vehicle. Msweli complied with alacrity. It would seem that Msweli's was the first vehicle to approach the scene of crime at Penicuik on the N2 from the north. When next Msweli "peeped" to see what was happening, he observed the Nissan leave at speed on the incorrect side of the road and turn off to its right into the plantation.

Given the layout of the terrain at the Penicuik scene of crime, as it appears from the police plan and key, the gravel road into which the Nissan turned, is a plantation road which crosses the N2 from east to west. To the east the gravel road continues across a railway line, which runs parallel to the N2 at that point and from there heads into the plantation. To the west the gravel road enters a plantation and continues on to the small town of Kwambonambi. With that picture in mind, I turn to Msweli's evidence. He saw the Nissan turn into the bush and "a lot of people" at that point,

who were stopping motor vehicles which approached the scene of crime from the Empangeni side, i.e. from the south on the N2. He also saw the Fidelity truck lying on its side off the road and near it the BMW mentioned earlier. Whilst still prone in his vehicle, Msweli heard the sound of a generator which emanated from the direction of the Dyna, although he only saw the vehicle itself sometime later. When he eventually got out of his vehicle, he encountered other motorists who had apparently approached the scene of crime from the Empangeni side and who were also forced to stop.

The circumstances in which Msweli was deprived of his vehicle's ignition keys although patently intended to immobilise the vehicle, constitutes robbery. All the elements of that crime are present.

Whether his being forced to prostrate himself in his vehicle amounts to kidnapping him, is another matter. The crime of kidnapping, in general terms, is constituted by the unlawful and intentional deprivation of the complainant's freedom of movement. Although, again generally speaking, the gunmen acted unlawfully by instructing Msweli at gunpoint to hand over the vehicle's ignition keys and to lie down in it, I doubt that the requisite intent to deprive him of his freedom of movement on the part of his assailants was present. The action of Msweli's protagonists by seizing his keys and instructing him to lie down in his vehicle is consonant with an intention to immobilise the vehicle and warning Msweli to stay out of it and not to look or interfere with the robbery which was under way. At the end of the day we entertain some doubt that Msweli was criminally kidnapped and hold that the offence charged under count 16 was not proved.

**Count 17** relates to the alleged kidnapping of Mkhize, who was Msweli's passenger in the Corsa vehicle, when they were confronted by the two armed assailants and the vehicle keys were forcibly taken. Mkhize did not testify and the only reference to his presence in the vehicle came from Msweli and then only in passing. There is no indication anywhere in the evidence that could possibly support a charge of kidnapping involving Mkhize and we hold that the charge fails.

**HI-JACKING OF MASANGO'S MOTOR VEHICLE, ATTEMPTED MURDER INVOLVING HIM AND THE KIDNAPPING OF HIS DAUGHTER NOTHILE – COUNTS 18, 19 AND 20**

One Masango and his daughter worked for Bay Brick, Empangeni. During the early evening of 2 October 2006 they were on their way home in Masango's double cab Ford Ranger travelling north on the N2, when they came across traffic ahead of them which had come to a stop. Masango joined the line of stationary vehicles, believing that the hold-up was due to an accident which had happened ahead.

In fact the traffic was brought to a stop on both sides of the scene of robbery by the perpetrators thereof. It appears that most of the road users believed that the interruption of the traffic flow was due to an accident. In fact, Inspector Herbst, who was a member of the Empangeni Flying Squad on patrol, was informed that a motor vehicle accident had occurred on the N2 and it later transpired that in reality it was a cash-in-transit robbery which took place at Penicuik. When Masango was forced to stop it was about 18h45 according to his estimate. His daughter, Nothile, put the time as "going on to 7pm". One of the stationary motor vehicles in front of Masango pulled



out of the queue and made a U-turn. When it came next to him the driver spoke to Masango and he recognised his neighbour, who informed him that there was no way “through there” and suggested that they turn around to look for a “short cut”. When his neighbour had driven off, Masango too turned about and headed back in the direction of Empangeni. Ahead of him he saw the tail-lights of a motor vehicle turn to the right into a gravel road which led into the plantation. Believing that that was his neighbour’s motor vehicle, Masango followed suit.

As he drove onto the gravel road, he noticed a number of motor vehicles facing the same direction with their doors open and their hazard lights on. He stopped and his daughter told him that there was blood on the rear of the nearest bakkie. Believing that he had stumbled upon a crime scene, Masango backed towards the N2. As he was about to enter upon the tar, he had to stop for approaching traffic on the N2. At that point his daughter drew his attention to two men who appeared in front of his vehicle approaching with rifles pointing at him. His first impression was that they were policemen as they had typical reflective vests on. He got out of his vehicle with his arms raised above his head. His daughter remained inside. The armed men instructed Masango to leave and he fled, at times on hands and knees because he heard what he thought were shots, which he believed was fired at him. Masango’s path of flight was parallel to the N2 heading for the safety of the line of stationary vehicles which he had left earlier.

At this point I move away from the narrative of Masango’s evidence and turn to that

of his daughter, Nothile, which corresponded with his up to that point. She said that when her father got out of the vehicle she locked its doors from the inside. That caused the assailants to smash the left front passenger window. Nothile then unlocked the door. They pulled her out of the vehicle but one of them suggested that they take her along. As a result they pushed her into the back seat and drove off. There were two assailants in the cab and a substantial number of them in the bin of the motor vehicle. She estimated that number of men to be between 10 and 12. The activity associated with the forcible taking over of Masango's motor vehicle corresponds with the evidence of what the witness, Msweli, saw and described at the entrance into the plantation road into which the Nissan bakkie had turned. Indeed, a white Nissan was found abandoned together with two other vehicles in the plantation a short distance into the gravel road in question. Nothile testified that the assailants conveyed her in the direction of Empangeni but turned off to Nseleni, some 8 kilometres from the Penicuik scene of crime in her estimate.

After a short distance they let her out of the vehicle from where she made her way to a nearby homestead. Her father's double cab was abandoned within sight of that house.

Returning to Masango's continued account of the events which befell him – he reached the apparent safety of the line of waiting motor vehicles and there came across a police bakkie with two policemen in it. He told them what had happened and they turned their vehicle about and departed, saying they were going to assist. He never saw or heard from them again. Proceeding on from there Masango encountered a "Venture" vehicle full of policemen and a policewoman. When he approached them the police informed him that an armed robbery was in progress,

that it was dangerous and said they were afraid as the robbers were heavily armed! Masango eventually was assisted by a security guard who took him to the Kwambonambi Police Station. He managed to contact his daughter on her cellphone, who informed him that she was safe and unharmed and that his double cab had been left by the hi-jackers nearby.

Thus it came to pass that Masango was re-united with his daughter and his double cab, also unharmed but for the broken window. Applying the prerequisites of the crimes alleged in counts 18, 19 and 20, we have no hesitation in holding the hi-jacking of Masango's vehicle and the kidnapping of his daughter had been proved beyond all reasonable doubt. However, the identity of the perpetrators and their liability remains to be dealt with.

We are satisfied however that the evidence regarding the attempted murder involving Masango fell far short of proof of the commission of such an offence.

#### **THE MURDER OF SECURITY GUARD GUMEDE – COUNT 21:**

This charge arises from the death of one Gumede, who, during the early evening of 2 October 2006, was shot to death at the closing stages of the abortive attempt to rob the Dyna at Penicuik. Although the testimony of the witnesses Ntombela and Nkabinde was somewhat disjointed, they appeared to be honest and reliable witnesses and their account of the facts was not effectually challenged and certainly not countervailed. What follows is what we believe to be an accurate summary of what transpired.

Gumede (the deceased) was a security guard in the employ of Maxim Security

operating from Kwambonambi. On the day in question (2 October 2006) the deceased was on duty at the sawmill guarding a heavy duty machine used in the timber industry. At about 18h15 to 18h20 two other guards were dispatched to fetch the deceased, whose shift had ended. They left in a bakkie driven by Ntombela, accompanied by Oscar Nkabinde. They travelled from Kwambonambi which lies to the south of Penicuik, on the N2 to Penicuik and turned onto the eastern leg of the gravel road described earlier in dealing with the evidence of Msweli and the two Masangos. Just as their vehicle left the tar surface onto the gravel, they came across a white Combi with what appeared to be police registration plates, but with no police markings. The driver of the Combi cautioned Ntombela not to drive about in that area, a peculiar admonishment, considering that they were obviously security guards in a security vehicle. This was at dusk and at about 18h15 to 18h20. They continued driving and encountered another vehicle on the gravel road – this time a Telkom Colt bakkie with the Telkom emblem on its side. The driver was outside the vehicle apparently busy with his cellphone.

Having picked up the deceased, Ntombela returned along the same route, again passing the two vehicles. Ntombela had decided not to use the N2, but instead crossed over it onto the gravel road leading west, also referred to earlier. They had just crossed over the N2 when the deceased asked Ntombela to turn around and go back to the equipment he had been guarding, as he had forgotten his two-way radio there. Ntombela complied. They went back the same route, collected the radio and returned the same way. On both occasions they passed the Combi and the Telkom vehicles. On their return trip they reached the N2 but had to stop before crossing over it, as there were fast-approaching vehicles with their indicator lights on,

signifying a turn to the right, which would place them on the gravel road west of the N2, which Ntombela was intent upon taking to Kwambonambi. At that stage he observed that the Combi with the police registration on it had moved on to the N2, effectually blocking off the traffic from the south. The Telkom Colt was also in the vicinity. When the last of the three approaching vehicles had turned into the gravel road, Ntombela followed them. He drove over the N2 and entered the gravel road.

They had just done so when they found their way blocked by the three vehicles that preceded them. The stationary vehicles' doors were open and the occupants were outside. There were many and they were armed with rifles and immediately opened fire on the security vehicle. It would not be an overstatement to say that the security vehicle was riddled with bullets. The testimony of Ntombela and Nkabinde in that regard is supported by the photographic material placed before us, which shows substantial damage to the windscreen, the windows and bodywork of the security vehicle. The deceased was fatally injured during the fusillade directed at the security vehicle and the occupants. On the scene of the shooting the deceased had bled profusely in the back of the bakkie and the ground next to it before he died, which explained why Nothile Masango was able to discern it immediately upon seeing the back of the vehicle. Ntombela managed to flee into the plantation, whilst Nkabinde, who was with the injured deceased, took shelter behind the security vehicle. When the shooting was over he tried to assist the deceased but to no avail.

Ntombela at that stage observed the bogus police Combi and the Telkom Colt leaving at high speed, fleeing to the south on the N2. Policemen later arrived on the

scene where the deceased was shot. While they were there, the headlights of other vehicles suddenly entered the dirt road on which they were. Nkabinde and the police with him fled into the plantation. It transpired that the arriving motor vehicles were driven by the Flying Squad, who had been called to the scene.

An autopsy subsequently performed on the body of the deceased confirmed that the cause of his death was a gunshot wound. As in the case of Biyela, the policeman at Charters, the barrage of rifle fire directed at the security guards was not fired *in terrorem*. The direction, position of the bullet damage on the vehicle, coupled with Nkabinde's evidence, leaves no room for any reasonable doubt as to the intention of the assailants. They shot to kill. As in the case of Biyela at Charters, the security officers at Penicuik were obviously perceived to pose a threat to the robbers. The shooting at Biyela and the security guards are in sharp contrast to the other encounters between accidental bystanders and the robbers at, for example, Penicuik.

The Masangos and Msweli and his passenger were not summarily fired upon by the robbers, who confronted them. So too the enfilade of gunfire from the robbers preparatory to robbing the Fidelity vehicles at Charters and Penicuik. The many shots fired there were clearly *in terrorem* and not directly intended to kill the occupants of the Hi-Ace.

We are accordingly satisfied that the State has succeeded in proving beyond all reasonable doubt that Gumede had been murdered by persons who were part of the attempted robbery at Penicuik.

**THE ATTEMPTED MURDER OF SECURITY GUARDS NKABINDE AND**

**NTOMBELA – COUNTS 22 AND 23:**

These counts arise from the barrage of rifle fire directed at the Maxim security vehicle in which the two guards Nkabinde and Ntombela, as well as the deceased, Gumede, were occupants. As found in the case of Gumede, dealt with above, the fire directed at the vehicle was done with the intent to kill and consequently the State has succeeded in proving beyond all reasonable doubt that the perpetrators of the attempted robbery at Penicuik attempted to murder both Nkabinde and Ntombela.

**CONCLUSION**

On a conspectus of the evidence led by the Prosecution, as summarised, and correlated with the Indictment thusfar, we conclude that the State has succeeded in proving beyond reasonable doubt that, save for those charges in the counts singled out earlier, the commission of the individual crimes, which form the subject-matter of the charges dealt with relating to the primary and secondary offences at Charters and Penicuik – in the sense that the pre-requisite *actus reus* or criminal conduct which constitutes each relevant offence, has been proved. What remains to be considered is, as mentioned, the identity and criminal liability of the perpetrators of those offences.

That is what we turn to in the next phase of this Judgment.

## **THE IDENTITY OF THE PERPETRATORS**

As pointed out earlier, the evidence relied upon by the State to prove that the accused were the perpetrators of the crimes found to have been committed as analysed and collated in the preceding phase of the Judgment, is entirely circumstantial. No so-called direct evidence was placed before us identifying or implicating any of the accused as a perpetrator in any particular offence.

Direct, as opposed to circumstantial evidence, is evidence which a person gives relating to what he perceived through his senses, the accused person did relating to the crime charged to him. In that case the witness relates what he saw, heard and felt the accused person do, as one would expect, for example, in the testimony of the complainant in a rape case. I have had occasion to entertain evidence of a complainant, who claimed that, apart from hearing, seeing and feeling the accused, she smelled him. I confess I have yet to hear evidence where the witness claims to have tasted the accused.

On the other hand, circumstantial, as opposed to direct evidence, is evidence of the surrounding facts from which a Court may, within certain parameters, infer the guilt of the accused person in respect of the offence charged to him.

The examples used by the Roman Dutch writers, whose writings constitute the fount of our Common Law, graphically demonstrate the difference between direct evidence and circumstantial evidence. Somewhat liberally paraphrased it amounts to this:- In a murder case a witness would testify that he saw the accused run the unarmed deceased through with a sword withdraw the sword, now stained with blood, and



wipe the blade on the clothes of his victim for good measure. That is direct evidence of murder. Where, however, the witness testified that he stood outside the only door of a room and heard a heated argument inside. He identified the voices of the deceased and the accused, both raised in anger. He heard the deceased scream and immediately after, the accused emerged with a sword in his hand dripping blood. The deceased staggers out clutching his blood-covered chest. He collapsed and died. That constitutes circumstantial evidence.

The witness did not see the accused stab the deceased, but that the accused did so, may be inferred from the circumstances described by the witness.

The parameters within which circumstantial evidence is applied and evaluated, will come up for consideration later.

## **SUSPECT MOTOR VEHICLES**

The first touchstone in the chain of circumstantial evidence arose at about 4am on 2 October 2006, when a pivotal witness in the State's case encountered four "suspicious looking" motor vehicles driving towards Empangeni on the provincial road R34. Sithole was a tactical support officer employed by Fidelity at its base office at Richards Bay. He lived at Eshowe and travelled daily from home to work and back in an unmarked company vehicle. On this day he departed from home at 3.30am using the R66, and at Nkwaleni, a well-known mountain pass, he turned onto the R34 which routes through Empangeni and from there becomes the John Ross Highway which passes under the National road N2, known as the John Ross bridge, just east of Empangeni and leads on to Richards Bay.

Whilst on the R34 in the vicinity of a place called Jabulani, some 25 kilometres from Nkweleni, he came across a 7-series BMW, described by the witness as the “old model”, greyish in colour, bearing a Gauteng registration and which was travelling in the same direction as he. He passed it and found himself behind a white Nissan bakkie. His impression was that the BMW and the Nissan were travelling in tandem. As will appear later, the relevant area is close to and within the cellphone reception boundaries of the Horseshoe Sugar Estate cellphone tower.

His suspicions were aroused because the occupants were only adult males – eight of them – together with the fact that three weeks earlier a cash-in-transit heist involving a Fidelity vehicle occurred in that area, in which a similar type of BMW was used in capsizing the Fidelity vehicle transporting the cash. We have the impression that Sithole was alert to anything out of the ordinary and naturally suspicious, given his job description. It was his function, *inter alia*, to plan the routes to be taken by the Fidelity vehicles conveying cash and was required to do so with the safety of the crew and the security of the cash-in-transit in mind.

Whatever the cause, Sithole recorded the registration number of the Nissan on a piece of paper and later transferred it to his diary as NRB 32980. He did not record the number of the BMW, as he had passed it before his suspicions were aroused.

About one kilometre on Sithole caught up with two further motor vehicles apparently travelling together – a white Mercedes Benz C class and another BMW similar in type, appearance and colour as the one first encountered. Both had Gauteng registration numbers and between the two vehicles carried six adult male occupants. His suspicions doubly aroused, Sithole recorded the registration numbers of both vehicles; the Mercedes Benz as RZF 712 GP and the second BMW as KRY 631 GP.

Other distinctive features of the vehicles were that one of the rear tyres of the Mercedes Benz intermittently emitted sparks on the road as if the tyre was worn down to the steel mesh underlying the rubber outer surface. The BMW had a white material cover over the petrol inlet – as if the protecting flap usually found there was missing or broken.

Sithole passed those vehicles also, but kept them in sight in his rear-view mirror. At the outskirts of Empangeni he pulled into a side-street and allowed the vehicles to pass. The four motor vehicles were now travelling together, closely following each other. Sithole turned in behind the vehicles and followed the cavalcade into Empangeni. At the first robot-controlled intersection the leading three vehicles in front passed through, but the fourth, a BMW, pulled up as the traffic light had turned red. When the light changed the BMW sped away until it caught up with the other vehicles. In the meantime Sithole had phoned the South African Police Control Centre, Empangeni and furnished the lady, who took his call, with details of the motor vehicles. She responded that none of the registration numbers were those of motor vehicles that had been reported stolen, but that one of the registration numbers furnished to her by Sithole belonged on a Fiat Uno vehicle. That vehicle cannot, by any stretch of imagination, be confused with a BMW, a Mercedes Benz or a Nissan bakkie and Sithole's suspicions were confirmed.

In the meantime also, Sithole had informed a colleague at the Richards Bay Fidelity base of his observations and requested him to contact the police station at Empangeni as the R34 passes right in front of it, and to convey all the information to them. The idea was to cause the police to stop the vehicles as they passed in front of the police station. Nothing came of that however. Sithole was informed by his colleague that no one at the Police Station answered the telephone.

Sithole continued to follow the motorcade and at an intersection further on, the hindmost BMW was forced again to stop at the red robot, while the others drove on. Sithole stopped behind that vehicle and noticed a back-seat passenger close the rear window's blind. Once more the BMW sped away and caught up with the suspect convoy. Sithole followed at an appropriate distance. Thus the convoy continued through Empangeni onto the John Ross highway towards Richards Bay, followed by Sithole. On the way Sithole tried to phone a certain Kevin Govender, a Fidelity "investigator" but received no answer. That was at plus-minus 04:25, he estimated.

In this way Sithole followed the convoy through Richards Bay to Meerensee, a suburb, and eventually to Mzingazi, another suburb of Richards Bay, with Sithole, still following, exercising fitting circumspection. Thus he discovered that the vehicles had all turned into a homestead which turned out to be that of accused 24. The vehicles in question were parked in the yard of the premises. Sithole withdrew and phoned the Richards Bay Police Station. He explained what had transpired, but was told that they were changing shifts and could not send assistance. Sithole gave up and went to his office.

From there he once again contacted the Richards Bay Police Station and explained the reasons for the call. He was told that the Police had only two members available to assist. He agreed a place to meet with those and did so. Sithole explained everything to the two policemen. When Sithole informed the police members of the number of persons in the suspect vehicles, they refused to go to accused 24's house, saying that they were afraid as there were "a lot of people there". The police left saying that they would "fetch back-up". Needless to say, nothing came of that and Sithole returned to his base. It was now about 07:30.

At about 08:30 Sithole, from his workplace, once again sought help from the Company Investigator, Govender. The outcome of that communication was that, through Govender, Sithole got in touch with a certain Inspector Fourie, said to be stationed at Richards Bay Police Station. He told the inspector what he knew. Fourie, in turn, informed Sithole that the police had information that a Fidelity vehicle might be robbed at the Richards Bay Post Office and that they were on the look-out for motor vehicles similar to those described by Sithole to them, adding that he believed he knew the homestead that Sithole referred to.

On that note Sithole returned to work at the Fidelity base. However later that day, not being satisfied with the way things were turning out, Sithole drove to Empangeni and from there along the R34 to the area where a Fidelity vehicle had been robbed previously. He had just passed through Empangeni on his way, when he received a report of the robbery at Penicuik on the N2. He hastened there, arriving at the scene of crime at approximately 19:15. There he observed the capsized Dyna and the scene as described earlier.

The BMW with which the Dyna had manifestly been rammed, he recognised as one of the motor vehicles he had encountered on the R34 during the early hours of that morning. Sithole's identification of the relevant BMW is unquestionable and includes a reference the white cover over the petrol inlet. He also discovered that the registration plates of the vehicle had been changed and found a registration plate, the number of which he had recorded, on the rear seat inside the vehicle. While still at the robbery scene Sithole was informed of the abandoned motor vehicles at the murder scene on the gravel road in the plantation referred to earlier. When he arrived there he saw the the Nissan bakkie, which he had encountered on the R34. Here too his identification of the vehicle was indisputable, the Nissan bakkie still bore the registration numbers which he had recorded. At that point he also observed the blood on the ground where the deceased had died.

Whilst still at the Penicuik scene of crime, Sithole received a report of the robbery at Charters and proceeded there. Sithole arrived at Charters at about 19:25. It would appear that it took him 10 to 15 minutes to drive to Charters from Penicuik.

He was met by the sight already described in this Judgment. There he also identified the white C Class Mercedes Benz, stationary behind the police bakkie which, according to the evidence, was where the exchange of gunshots occurred between Constable Biyela and the robbers. He identified the Mercedes Benz as the one he had encountered on the R37 as part of the convoy. It had the same worn right-rear tyre, which caused the sparks on the road surface that he had observed. The steel mesh was indeed exposed. The registration plate had been changed, but upon inspection, it was found that the "new" registration plate had been adheased over the number plate which he had observed and recorded. The Fidelity Inspector,

Govender, arrived at Charters also. He introduced Sithole to Captain Mncube of the South African Police. Sithole related to him all he knew of up to that stage. Captain Mncube and Govender requested him to take them to the house at Mzingazi where the suspect vehicles had gone. Sithole duly took them there. Having been shown the house in question Captain Mncube and Govender dropped Sithole at an arranged spot at Meerensee and returned to the house again.

The time then was about 22:30. Sithole returned to the Fidelity office to await reports on any further development and in order to arrange for breakdown vehicles to remove the disabled Fidelity vehicles from the respective scenes of crime. Well after midnight, during the early hours of 3 October 2006, Sithole was informed of the arrest of the suspects at the tollgate at Mvoti Plaza on the N2 at Stanger. Govender, who was at the scene of arrest requested Sithole to come there and collect three “smart” boxes which could only be opened with dedicated electronic equipment at the Fidelity base at Richards Bay. Accompanied by a colleague, Sithole in due course collected the boxes and returned to his offices at Richards Bay. There the money from the boxes was counted and found to be in the sum of R136 170-00. The cash was locked in a safe at the base, but could not be exhibited to the Court as it was subsequently stolen from there.

## **PURSUIT AND ARREST**

Govender's evidence echoes that of Sithole up to the point where Sithole had shown them accused number 24's house at Mzingazi. Govender was in a Corsa bakkie with Captain Mncube as passenger. On approach to the house in question, a dark BMW came from the front from the direction of accused 24's homestead. It had bluish/white (bixenon) headlights. The road was too narrow and Govender turned off to allow the approaching BMW to pass. After that Govender continued towards the homestead. Before reaching the driveway to the premises, a white Toyota Hi-Ace Combi came out of it and turned into the road in the same direction as Govender was facing. It was raining at the time. As Govender drove by slowly he observed motor vehicles in the yard, apparently readying to leave. A dark coloured BMW was reversing out of the yard and yielded for Govender to pass and a blue Hyundai sedan parked in the yard, appeared to be idling. Govender also observed a red Toyota Hi-Ace Combi parked further into the yard. He testified further that a large number of black males stood around the vehicles. He estimated that there were between twenty to thirty men.

There were three men at the gate of the premises, one of whom appeared to be observing the Corsa closely. One of the men near the gate was distinctive in appearance. He sported dreadlocks and was wearing jeans. This was about 23:00.

During this time Mncube was "frantically" trying to reach the police emergency call centre at telephone number 10111, but received no answer. Contemporaneously Govender kept the white Combi in sight. The white Combi stopped at a T-junction and Govender followed suit. When that vehicle turned to the left, Govender followed it. By then he and Captain Mncube had noticed that the Combi was crammed with adult males. Though he kept on trying, Mncube could not get the police to answer



their phones. Mncube succeeded in alerting the “flying squad”, then on patrol, and arranged to meet them at a garage in Empangeni, as the white Combi they followed appeared to be going that way on the John Ross highway. At a point on that road shortly before the N2, which crosses over it on the John Ross bridge, and, ostensibly to avoid alerting those in the Combi, Govender overtook it but kept sight of the vehicle in his rear-view mirror. He saw the Combi turn towards the south onto the N2 – in the direction of Durban.

Govender proceeded to meet up with the flying squad at the Caltex garage at Empangeni, plus-minus 2 kilometres from the N2. At the garage a flying squad vehicle arrived, shortly thereafter followed by another flying squad vehicle. The situation was briefly explained to the police manning the squad cars. Captain Mncube transferred to one of the squad cars and a high speed pursuit followed. The squad cars turned onto the N2 south, being the direction the white Combi had taken. Eventually on the N2 he contacted the Durban Police and requested their help. Govender followed with his bakkie, keeping in constant touch with Captain Mncube, both using cellphones.

At the Mtunzini Tollgate, south of Empangeni on the N2, they were informed that the white Combi had already passed through. They continued and at Zinkwazi, just south of the Tugela river, they caught up with the white Combi they were pursuing and from that point followed behind it as it continued south on the N2. It was decided that the best place to stop the Combi would be at the Mvoti Toll Plaza just south of Stanger.

At the tollgate only one lane was in use and a petrol tanker, which was about to pass

through, was instructed to remain where it was, thus effectually barring the gate.

The Combi came to a stop behind the tanker. The police vehicles activated their sirens and police lights and stopped right behind the Combi, thereby efficiently corralling it. The police, armed with assault rifles and handguns surrounded the cornered vehicle. The occupants were ordered to get out one at a time with their hands raised. A minute or more passed without any response in what Govender described as a “stand-off of 2 to 3 minutes”. Then the driver of the white Combi, accused number 24, emerged with his hands raised. He was followed by 13 others who stepped from that vehicle one by one with arms aloft. As the occupants came out they were first searched “patted down” for any hidden firearms and were then made to lie prone on the ground where their hands were cuffed behind their backs. More police vehicles arrived on the scene.

What descriptively follows is a composite of the evidence of a considerable number of chiefly police witnesses, each testifying according to his own perspective in intense and dynamic circumstances, rendered even more difficult by the pouring rain, which intermittently inundated the scene of arrest. What we find heartening, in the light of the inert incompetence of the police in response to the desperately needed help by Sithole to begin with and later Mncube and Govender, as recounted earlier, was the thoroughness and commendable competence with which the arrests, search and collection and recording of exhibits carried out on the scene of arrest and, later, at the offices of the Organised Crime Unit at Cato Manor, Durban. The

professionalism displayed at the scene of arrest is of the highest order, more so, given the extremely difficult circumstances in which the police had to work.

I now turn to the evidence of Captain Mncube, an officer in the Organised Crime Unit, Richards Bay. As mentioned earlier, his testimony parallels that of Govender. His role began when, within a relatively brief period of time he received consecutive reports of the Penicuik and Charters robberies respectively.

He went to Penicuik first and there came upon the scene detailed earlier in the Judgment. There he was joined by Govender and together they proceeded to the Charters scene of crime. The Forensic Field examiners were already busy mapping the scene. He confirmed that money bags, some empty and some with money in it were recovered in and around the Fidelity Hi-Ace, indicative of the haste with which the robbery ended, as remarked upon earlier. Govender introduced Sithole to him. The latter recounted his encounter with the suspicious looking motor vehicles on the R34, one of which was apparently abandoned at the Charters scene of crime, which he pointed out to Captain Mncube, concluding with Sithole's shadowing and observing the vehicles in question, ending up at accused 24's homestead at Mzingazi.

It was arranged that Sithole would point out the house to them. From this point on his testimony mirrored that of Govender, adding that he recorded the registration of the BMW which was in the proximity of the gate of accused 24's house.

As testified to by Govender, Captain Mncube confirmed the arranged meeting with the flying squad vehicles at the garage at Empangeni. Captain Mncube joined the vehicle driven by Inspector Herbst and the three vehicles departed in pursuit of the white Combi. They caught up with the Combi in the Mandini area on the N2 and thereafter followed it to the Mvoti Tollgate, where they had decided would be the best place to stop the pursued vehicle. At the Tollgate Inspector Herbst used a loudspeaker to order the Combi to stop. The Combi came to a halt. Captain Mncube observed the occupants seated in the back discarding money back over the seat and onto the floor of the vehicle. Indeed, later some R80 000-00 in R100 notes were found on the floor of the Combi after the occupants were evacuated from the vehicle. Captain Mncube claimed that he identified accused number 3 as one of the persons, who discarded money in that fashion. However, given the circumstances in which the purported identification of accused number 3 took place, which were hardly conducive to a reliable snap identification, no reliance can be placed thereon.

Captain Mncube confirms Govender's evidence relating to the securing of the occupants of the Combi face down on the ground. Captain Mncube assumed control of the scene of arrest. Speaking in Zulu, he informed the erstwhile occupants of the Combi that they were under arrest for the robberies which occurred in the Mtubatuba area and thereafter explained their constitutional rights to them.

At about this time members of the Dog Unit operating from Durban arrived on the scene, having been summoned to assist by Captain Mncube while still under way to

the Mvoti Toll Plaza. Captain Mncube instructed the Flying Squad and Dog Unit members to be on the lookout for the BMW which he and Govender had encountered at accused 24's homestead, the registration number whereof he had recorded. The next motor vehicle, a blue Hyundai sedan, to arrive on the scene, was stopped by those members. They called Captain Mncube to the vehicle and pointed out to him 3 fidelity "smart boxes" in the rear, which Govender identified as Fidelity property.

Captain Mncube also recognized the Hyundai as one of the motor vehicles he had seen in the premises of accused 24's homestead when he and Govender drove by, as mentioned before. Accused 14 was the driver of the Hyundai and accused 19 the only passenger. He recognized accused 19 because of his "dreadlocks" and dress, which he had observed in the vicinity of the gate of accused 24's house when they drove past it. On the floor of the vehicle the Rossi .38 revolver, which had been robbed from the crew of the Hi-Ace at Charters, was discovered and in the cubbyhole in front of the passenger seat an ABSA money bag with money in it. The third motor vehicle to be stopped and detained on the scene of arrest was a red Toyota Hi-Ace Combi driven by accused number 12. There were 4 passengers in it – accused 5, 7, 16 and 22. A search of the interior revealed "money bags" and "money all over the floor". When counted later, it was found that the money totalled the sum of R30 296-00.

The BMW, which Captain Mncube had been expecting, was the final motor vehicle to arrive. Accused 8 was the driver and accused 1 and 20 the passengers. The BMW was searched and accused 1 had in his possession a Fidelity drop-safe bag, which was subsequently properly identified as having been a bag utilized by Baobab Service Station and which was in the Fidelity Hi-Ace when it was robbed at Charters. In the cubbyhole a 9mm pistol and license thereto was found, together with an identity document, later established as being the property of accused 14. After the BMW was stopped and while its occupants were being arrested, the police, who were awaiting the possible arrival of further vehicles associated with those in arrest, observed a VW Golf vehicle on approach to the scene of arrest. It came to an abrupt stop, turned around and sped away at high speed. It disappeared out of sight before the police could mount a chase. Govender testified that he saw the lights of that vehicle in the process of turning and leaving the scene.

In all 24 of the 26 accused were apprehended and arrested at the Mvoti Toll Plaza. As they were taken from the various motor vehicles, they were superficially searched for weapons, as were the vehicles. This was followed by a full search of each of the accused and the respective vehicles in which they were. That took place later. However, during the "pat down" search large quantities of money were found in the clothes of some of the accused, but left in place, awaiting the arrival and tasking of the investigation team from the Organised Crime Unit, Durban, who were on the way.

After the arrival of sufficient numbers of the investigation team, a proper and methodical search of the erstwhile occupants and their vehicles followed. Whatever items the search of the persons of the accused yielded, were described and recorded on the scene by, inter alia, Inspectors Mostert and de Bruyn, Captain van Tonder, Captain Mncube and Inspector Dean. Comparison of the relevant notes during the course of cross-examination, revealed that they were basically the same.

The items found in possession of each of the accused were placed in a transparent “exhibit” bag with the name of the accused on a label that was part of the material of the bag itself. Each exhibit bag had its own designated serial number. Each bag was sealed and thereafter placed in Inspector de Bruyn’s vehicle. All of that took place in the presence of the accused, albeit that they were face down on the ground next to the vehicle which they had arrived in.

Likewise, except for the bags with the firearm and angle grinder, all items found in each of the captured motor vehicles were described and recorded and placed in exhibit bags relating to each particular motor vehicle. These too were placed in Inspector de Bruyn’s vehicle.

Upon completion of the searches and processing of the exhibits found, the accused and the motor vehicles in which they had travelled, together with the police vehicles were driven in convoy to the Cato Manor Offices of the Organised Crime Unit. By then it was already daylight on 3 October 2006.

On 4 October 2006 Captain Mncube, Inspector Ntombela and others were dispatched to conduct a search of accused 24's homestead at Mzingazi. In a bucket in one of the toilets in the house they discovered a substantial number of empty stop loss bags, P- bags, First National Bank (FNB) deposit slips and a "bulk receipt" from the same bank. In all some 51 separate items of the nature described, were thus found. As mentioned,subject to a few exceptions,during the trial, no piece of evidence however small or formal in nature was admitted or allowed onto the record as common cause between the accused and the State. As a consequence, every receipt, deposit slip, P-bag or Stop Loss Bag found in the house of accused 24, was proved in evidence by employees of the Fidelity client to which the items in question belonged. It was accordingly labouriouslyproved that the mentioned bags and money in it and the deposit slips and receipts relating thereto had been handed to Fidelity and were in the Fidelity Hi-Ace, when it was capsized and robbed at Charters. Those items were exhibited to the court and inclusively marked SS1 to SS51.

Also discovered at accused 24's house, was a bullet-proof vest and an assortment of motor vehicle registration plates.The latter appears significant; bearing in mind the number of false registration plates found at Penicuik and Charters.

It is common cause that accused 25 was shot and injured during the early evening of 2 October 2006. However, the circumstances in which that occurred is in issue and will be addressed in due course. While he was in the hospital being treated for the gunshot wound, he was duly arrested and charged by the Investigating Officer,Lt-Colonel van Rensburg on 5 October 2006.

On 14 October 2006 accused 26 was arrested by Captain Mncube and Inspector Ntombela at Ngwelezane near Empangeni. During the course of the arrest accused



26 fled and was pursued by the officers. While giving chase, Captain Mncube and Inspector Ntombela became separated. After a long chase, Inspector Ntombela fired a warning shot, calling upon accused 26 to stop.

The accused did not heed, but seemed to tire and then stop. Inspector Ntombela kept his service firearm pointed at accused 26, who started advancing upon him and continued to do so notwithstanding repeated warnings to stop. At that stage a motor vehicle pulled up behind Ntombela, which caused him to turn to look behind. When he did so, accused 26 continued to come at him. Ntombela then fired a shot at the lower body of accused number 26. At the same time the occupant of the vehicle also shot at the accused. In this shooting accused 26 was injured, but not seriously. Captain Mncube, who had by then arrived, again formally arrested accused 26 and explained his Constitutional rights to him. As he was handcuffing accused 26 Inspector Ntombela noticed grazes on the former's wrists. He enquired about those and accused 26 responded by saying that he had paid an "Inyanga" who promised him that he would not be arrested "for this particular case". Thereafter accused 26 was removed to hospital by ambulance. It appears that the motor vehicle, which came up behind Ntombela, was driven by another policeman, who happened on the scene and tried to assist. Between Ntombela and the other policeman it was uncertain who shot and injured the accused.

## **THE PHYSICAL EXHIBITS RECOVERED**

Where, as here, the case sought to be made out against the accused, is based on circumstantial evidence, the various items found on the persons of the accused on

arrest and in their vehicles, play a revealing role and, in a sense, tell their own story.

Concerning items recovered from the persons of the accused, it would be appropriate to deal with the groups of accused who were travelling together in the same vehicle, when they were stopped and arrested, followed by what was found in the relevant vehicle.

**The White Combi – The 14 occupants had the following in their possession:**

Accused 24 (the driver) – 2 cellphones and R4 040-00 in cash.

Accused 9 (the front seat passenger) – 1 cellphone and R28 640-00 in cash.

Accused 2 (rear passenger) – 1 cellphone and R44 300-00 in cash and a drop-safe bag which was identified by the witness, Mr Smalman, as a Petroport filling station bag handed to the crew of the Fidelity Hi-Ace, which was robbed at Charters shortly thereafter.

Accused 3 (rear passenger) – 1 cellphone and R23 550-00 in cash.

Accused 4 (rear seat passenger) – 2 cellphones and R2 770-00 in cash.

Accused 6 (rear seat passenger) – 1 cellphone and R7440-00 cash.

Accused 10 (rear seat passenger) – 1 golf glove and R23 030-00 cash.

Accused 11 (rear seat passenger) – 1 cellphone, one pair of woolen gloves and R34 450-00 cash.

Accused 13 (rear seat passenger) – R1 250-00 in cash.

Accused 15 (rear seat passenger) 1 cellphone, a balaclava cap and R3 710-00 in

cash.

Accused 17 (rear seat passenger) – 2 cellphones, one pair of gloves and R22 230-00 in cash.

Accused 18 (rear seat passenger) – 2 cellphones and R4 350-00 in cash.

Accused 21 (rear seat passenger) – 1 cellphone and R370-00 in cash.

Accused 23 – 1 cellphone and R3 650-00 in cash.

**In the white Combi itself was found:-**

- A large black bag with a heavy petrol driven angle grinder in it.
- A large black bag with 3 automatic assault rifles in it – two AK 47's and one LM5.
- 2 Pistols with the serial numbers erased – one found under the driver's seat and the other lying loose behind the driver's seat on a type of console.
- 5 Single gloves. One of those had blood on it. A properly performed DNA comparison test established beyond any doubt that the blood stains on one glove came from accused 25, who by that time was already in the Prince Mshiyeni Hospital at Durban.
- Another glove established through DNA comparative tests as belonged to accused 23.
- Apart from the 2 pairs of gloves found on the persons of accused 11 and 17 respectively, 4 further pairs of gloves were found loose in the vehicle.

- 2 balaclavas, one of which was through DNA tests established to have sweat, emanating from accused 25, on it.
- A black cap, towel and cloth.
- In the rear passenger area cash in the form of notes was found strewn all over the floor totalling R79 990-00.
- **Notably not a single piece of luggage was found in the vehicle.**

**The Blue Hyundai – the two occupants had the following on their persons:**

- Accused 14 (the driver) – 1 cellphone and R13 400-00 in cash.
- Accused 19 (left front passenger) – 1 cellphone and in the cubbyhole in the panel in the front of the seat, where he had been sitting, an ABSA Bank Arboretum bag containing R28 430-00 in notes, which the police assumed was his and included it into the exhibit bag assigned to accused 19 on the scene of arrest. On his person was also found a FNB deposit slip, which accompanied the money handed to Fidelity by the Spar Grocer at Ingwavuma and which was in the Hi-Ace when it was robbed at Charters.

**In the Hyundai itself–**

- 3 unopened (and charged) Fidelity smart boxes with money in them and which had been robbed from the Hi-Ace at Charters. On one of the “smart” boxes, the palm-print of accused 17 was properly lifted and proved, although

accused 17 himself was a passenger in the white Combi at the time of his arrest.

- About R2 500-00 in cash on the floor of the vehicle.
- The .38 Rossi revolver belonging to Fidelity and which was taken during the course of the robbery in the Hi-Ace at Charters
- 2 pairs of gloves.
- A grey bag with anti-biotics, a toothbrush and toothpaste. The toothbrush was shown through DNA tests, as being that of accused 19.
- A shirt, jacket and black cap, lying loose in the vehicle
- **Not a single piece of luggage was found in the vehicle.**

### **The Red Combi-the 5 occupants had the following on their persons**

Accused 12 (the driver) – R2 530-00 in cash.

- 3 cellphones, one of which belonged to accused number 7, who was in the same vehicle.

Accused 5 – 1 cellphone and R23 100-00 in cash.

Accused 7 – 1 cellphone and R42 550-00 in cash.

Accused 16 – a cellphone and R22 900-00 in cash.

Accused 22, also known as “Fono” – a cellphone and R710-00 in cash.

**In the red Combi itself was found** – R30 296-00 loose on the floor of the vehicle – a blanket, black hat and a blue beanie, together with a toothbrush and toothpaste.

**Again not a single piece of luggage was found in the vehicle.**

**The Blue BMW – The three occupants had the following on their persons:**

Accused 1 – 1 cellphone, a drop-safe bag, which eventuated from the Baobab service station and which was in the Hi-Ace, when it was robbed at Charters.

- R56 000-00 in cash.

Accused 8 – 1 cellphone and R21 000-00 in cash.

- 1 pair of gloves.

Accused 20 – 1 cellphone and R35 890-00 in cash.

**In the Blue BMW itself was found:**

- A Standard Bank and Stop-card card with the name of accused 5 on it, although accused 5 himself was arrested in the red Combi.
- A pistol licenced to accused 14, together with the firearm licence and accused 14's Identity book, although accused number 14 was arrested in the blue Hyundai.

- 1 black and 1 purple woollen cap.
- 1 pair of gloves.

**Again, as in the case of all the other vehicles, not a single piece of luggage was found in the BMW.**

#### **THE OFFICE OF THE ORGANISED CRIME UNIT AT CATO MANOR**

As mentioned earlier when the necessary investigation at the scene of arrest at Mvoti Tollgate Plaza, which included the police forensic fieldwork, e.g. looking for fingerprints and taking of photographs, the whole collective of the arrested accused, their motor vehicles and exhibits recovered, were removed to the offices of the Organised Crime Unit at Cato Manor, Durban.

There the sealed exhibit bags were opened in the presence of the accused, one at a time, with no particular sequence in mind and the contents thereof taken out and recorded. The money found on the respective accused, as aforementioned, were counted and each accused was requested to sign a so-called SAP 299 – whereby he consented to the money found in his possession, as noted earlier, being handed to Fidelity Cash Management Services, represented by the said Govender, to be kept and produced as exhibits, if called upon to do so. Those forms serve before us as the “Exhibit PP” series.

Accordingly, all the cash found in possession of the accused at the scene of arrest, was dealt with in this way. Whilst some of the accused testified that they were simply told to sign the mentioned forms and did so, without realizing the purport thereof, we are satisfied that each accused signed Exhibit PP applicable to him, freely and

voluntarily and without being unduly influenced thereto and with full knowledge of his Constitutional rights and the import of their signed consents. Throughout these drawn-out proceedings and in testimony, the accused have presented as intelligent and sophisticated and we are satisfied that they knew exactly what they were doing. In this regard it is to be noted that none of the accused objected to “his money” being handed to Fidelity. In turn, the items found in the respective vehicles, i.e. the white Combi, the Hyundai, the red Combi and the BMW, were taken out of the exhibit bags in which they were sealed on the scene of arrest and displayed to the accused and the contents thereof noted.

When the import of the exhibits discovered, as aforementioned, is considered, it is to be borne in mind also that Fidelity Drop-cash and P-Bags, together with deposit slips, etc. directly linked to the Charters robbery, were found in the house of accused 24 at Mzingazi.

The next step is to consider the significance of the arrests and recovery of the exhibits in relation to the two Fidelity robberies and associated offences.

**Were the four vehicles in which the accused were travelling, travelling independently of each other and without knowledge of the occupants in any given vehicle of the other vehicles and their occupants, as claimed by all of the accused?**

In our view there can be no doubt that the four vehicles and their occupants were travelling in concert and collaboratively, although not in convoy.



The accused in the motor vehicles had some collective destination in mind in Durban or its vicinity, bearing in mind that the three smart boxes in the Hyundai were armed and had to be opened within a particular period of time, lest an internal explosive device be set off, which would stain the money in it, rendering it commercially useless, as explained by Govender in his testimony.

We base our conclusion on the following.

- a) The evidence clearly establishes that the four vehicles in question and all the accused who travelled in them, were gathered at and departed from the house of accused 24 at Mzingazi. Govender saw the vehicles at the premises and described them. Captain Mncube who was with him recorded the registration number of the BMW and alerted the police at the Mvoti Tollgate Plaza to be on the lookout for that vehicle. Govender and Mncube followed the white Combi from accused 24's house up to the N2 south and later caught up with it on the same road and followed it to the Plaza. The certainty accompanying the identification of the white Combi and the BMW lends added credence to Captain Mncube's claim that the blue Hyundai and the red Combi were in the premises of accused 24's homestead when they drove by and commenced following the white Combi.
- b) In the four vehicles themselves evidence was found, which interlinked the vehicles and occupants. The palm print of accused 17, who was in the white

Combi, was found on one of the smart boxes in the blue Hyundai; the bank and stop-cards belonging to accused 5, who was a passenger in the red Combi, was found in the blue BMW; accused 14's pistol, licence and identification book were found in the blue BMW, whilst he was in the blue Hyundai when he was arrested; apart from the money, other items that were robbed from the Hi-Ace at Charters were found in the white Combi, the blue Hyundai and the BMW. Thus accused 1 in the BMW had in his possession a Fidelity drop-safe bag emanating from the Baobab filling station; accused 2 (in the white Combi) had in his possession a Fidelity drop-safe bag emanating from Petroport Filling Station; in addition to the Fidelity "smart" boxes in the vehicle with them, accused 19 (in the Hyundai) had in his possession a FNB deposit slip emanating from the Spar grocer at Ingwavuma.

- c) In the context of the afore going the angle grinder found in the white Combi assumes some significance. It will be recalled that a sound similar to that of a motorized angle grinder emanated from the capsized armoured Fidelity vehicle at Penicuik, whilst the hinges of the rear door thereof showed very clear signs of scouring consistent with the use of some sort of cutting tool. In the absence of a plausible innocent explanation of the presence of the grinder in the white Combi, which was not furnished or suggested, everything points to the grinder having been used at the Penicuik scene of crime; three unopened Fidelity smart boxes were found in the Hyundai, with accused 17's palm print on one of them; accused 25's glove and balaclava were found in the white Combi. In this regard we are left in no doubt that accused 25 was shot and injured by Constable Biyela at the scene of crime at Charters. It will

be recalled that the assailant whom Constable Biyela had shot, was bundled into a blue BMW and removed from the scene of the shooting. Inspector Xulu found a similar BMW abandoned plus-minus 1 kilometre from the Charters scene of crime. Blood on and in the vehicle was properly DNA- analysed and compared with a blood sample obtained from accused 25 and found to match perfectly. This, however, is a matter that will be fully dealt with *infra*. Bearing in mind that the arrest of the accused and the seizure of the vehicles and contents occurred on 2 October 2006, the extraordinary number of gloves found on the persons of some of the accused and in the vehicles in question, seems to us to be significant. So too the number of black caps and balaclavas. The headgear and gloves would obviously be very handy for use in a robbery of this nature. The gloves would leave no fingerprints and the headgear makes identification difficult.

- d) The money found on the accused and in the motor vehicles, including the smart boxes totals R661 055-00. On an overview of the evidence summarized *supra*, there can be no doubt but that the money constituted part of the unlawful proceeds of the robbery of the Fidelity vehicle at Charters and, save for accused 12, was collectively possessed by the 24 accused arrested at the Tollgate. To be sure, in the case of accused 12 and 22 in the red Combi, each was found in possession of a relatively small amount of money. But, there again R30 296-00 was found on the floor of the Combi. Considering that accused 5, 7 and 16 in the same vehicle, was each possessed of a substantial amount of cash, the inference is irresistible that accused 22 jettisoned the money discovered on the floor of the red Combi, when arrest

was imminent. As appears later, accused 12 was hired to provide conveyance only.

- e) The same reasoning applies with equal force to accused 4, 6, 13, 15, 18 and 23 in the white Combi who had modest amounts of cash on them, but with R80 000-00 spread, in a sense, at their feet all over the floor in the rear of the vehicle, where they were seated.

It is also to be noted that the remaining two motor vehicles, the Hyundai and the BMW, had, save for R2 500-00 no apparently jettisoned money on the floors, but each of the accused in them was laden with cash. For reasons to follow accused 24 appears to be in a different position *vis-a vis* his passengers in the white Combi.

When the journey of the arrested motor vehicles is backtracked to the point of departure at the homestead of accused 24, the inference is equally irresistible that the proceeds of the robbery at Charters were divided in that house, particularly bearing in mind that on the following day, the empty drop-cash and P-bags and the deposit slips, which had been robbed from the Fidelity vehicle at Charters, were found in a toilet in accused number 24's house. It stands to reason that accused 24 will have received his share and kept it at his home.

As to the exact nature and reach of the inferences to be drawn from the money and related exhibits found in possession of the accused, the remainder of the evidence presented by the State in support of the charges has to be considered.

- f) The data directly obtained for the handsets from the cellphones of the accused, is highly relevant and informative at this point, bearing in mind that

all the accused, who testified, claimed that the vehicles in which they were arrested, had done so up to that point independently of each other and that their being stopped at the tollgate together was purely fortuitous.

From the “phonebooks” contained in the handsets of the cellphones belonging to the accused and found in their possession on arrest, it appears with a clarity which admits of no doubt, that the accused who claimed that they, together with the motor vehicles in which they were arrested, had been travelling up to the Mvoti tollgate independently of each other and without knowledge that they were on the same road at the same time and place, were, on the contrary, travelling together as a group with full knowledge of each other.

A brief word concerning the phonebook in a cellphone. It is a facility on the cellphone/handset in which the user may enter and capture for future use, the cellphone – or telephone number of any person or instance he might wish to call. Numbers may also be stored in the SIM card in a handset. In this instance the numbers in both the SIM card and the handset were consolidated to provide the information which follows. *In casu*, the accused, who had the numbers of co-accused and possible accomplices stored in their phonebooks, did so under a name, nickname, pseudonym or the like. That, we believe, would indicate some sort of special relationship rather than one en/passant.

There was no other plausible reason advanced or suggested in the evidence or argument for the storage of such information in the phonebook of a cellphone and none occurs to us.

A comparative analysis of the phonebooks of the accused and the evidence of the accused who testified, reveals the following :

**Accused 1**, was in the BMW and accused 8, who was in the vehicle with him, had reciprocally stored each other's numbers in their respective phonebooks. The same reciprocity is found between accused 1 and accused 19 (in the Hyundai). In accused 1's phonebook were stored the numbers of accused 22 (in the red Combi), accused 7 (in the red Combi), accused 14 (in the Hyundai) and accused 18 in the white Combi.

When accused 1 testified concerning his co-accused whom he knew prior to their arrest on 2 October 2006 he said he knew accused 5 and 7 (in the red Combi).

Accused 8 and 20 (with him in the BMW), accused 14 (in the Hyundai), accused 24 (driver of the white Combi) and accused 26 (arrested later). *He omitted* to mention accused 19 (in the Hyundai) whose name was in his phonebook and vice versa and accused 18 (in the white Combi) whose name was in his (accused 1's) phonebook.

**Accused 2** was in the white Combi. The number of accused 22 (in the red Combi) was stored in his (accused 2's) phonebook. In turn, accused 2's number was stored in the phonebooks of accused 16 (in the red Combi) and also in the phonebooks of accused 9, 21 and 23 (all in the white Combi).

Accused 2 (in the white Combi) testified that he knew accused 7, 16 and 22 (in the red Combi) and accused 9, 11, 15, 21 and 23 (in the white Combi).

**Accused 3** was in the white Combi. He and accused 19 (in the Hyundai) and accused 17 (in the white Combi) had reciprocally stored each other's numbers on their respective phonebooks. The number of accused 6 (also in the white Combi) was stored in accused 3's phonebook.

**Accused 3 did not testify.**

**Accused 4** – his phonebook revealed no names of relevance and he did not testify.

**Accused 5** was in the red Combi. The numbers of accused 7 and 22 (in the red Combi also) were stored on his (accused 5's) phonebook.

Accused 5 (in the red Combi) said that he knew accused 1 (in the BMW), accused 22 (with him in the red Combi) and accused 25 (arrested later). He omitted to mention accused 7 (in the red Combi) whose name was in his phonebook.

**Accused 6** was in the white Combi. The number of accused 17 (also in the white Combi) was stored in his (accused 6's) phonebook.

Accused 6 testified that he knew accused 3 and 17 (in the white Combi with him).

**Accused 7** was in the red Combi. On his phonebook was stored the number of

accused 13, also known as “Kehla”, (in the white Combi).

Accused 7's number was stored in the phonebooks of accused 1 (in the BMW), accused 5 (also in the red Combi), and accused 22 (also in the red Combi), accused 19 (in the Hyundai) and accused 11 (in the white Combi). Accused 7 (in the red Combi) testified that he knew accused 12 (in the red Combi with him). He **omitted** to mention that accused 1 (in the BMW), accused 5 and 22 (in the red Combi with him), accused 19 (in the Hyundai) and accused 11 (in the white Combi), all of whom had his (accused 7's) number stored on their phonebooks and accused 18 (in the white Combi) whose number was stored on his phonebook.

**Accused 8** was in the BMW. He and accused 1 (also in the BMW) and accused 19 (in the Hyundai) had reciprocally stored each other's numbers on their respective phones. On accused 8's phone was stored the numbers of accused 22 (in the red Combi) and accused 26 (who was arrested later). In turn, accused 8's number was stored on the phonebook of accused 20 (also in the BMW).

**Accused 8 did not testify.**

**Accused 9** was in the white Combi. On his phonebook was stored the numbers of accused 22 (in the red Combi), accused 11 and 15 (who were also in the white Combi) and accused 25 (arrested later).

Accused 9's number was stored on the phonebook of accused 16 (in the red Combi).

**Accused 9 did not testify.**

**Accused 10** was in the white Combi. He had no cellphone on his person at the time



of arrest. Accused 10 passed away during the trial.

**Accused 11** was in the white Combi. He (accused 11) and accused 9 (also in the white Combi) and accused 8 (in the BMW), as well as accused 25 (arrested later) had reciprocally stored each other's numbers in their respective phonebooks. On accused 11's phonebook were stored the numbers of accused 7 and 22 (both in the red Combi) and accused 2, 13 and 23 (in the white Combi).

Accused 11 (in the white Combi) testified that he knew accused 2, 9, 18, 21 and 23 (in the white Combi with him), accused 22 (in the red Combi) and accused 25 (arrested later). He **omitted** to mention accused 7 (in the red Combi) and accused 13 (in the white Combi) whose names were stored on his phonebook, and accused 8 (in the BMW) whose number was stored on his (accused 11's) phonebook and vice versa.

**Accused 12** was in the red Combi. He had 3 cellphones on him, one of which belonged to accused 7. On his phonebooks no relevant names or numbers appear. In turn, his number does not appear in the phonebooks of any of the other accused. However, he testified that he knew accused 7 (in the red Combi with him).

**Accused 13** (Kehla) was in the white Combi. We have already held, for reasons to be elaborated upon later, that he was in fact "Kehla", whose cellphone records were placed before the Court under that name. His number was stored in the phonebooks of accused 7 (in the red Combi) and accused 9, 11 and 23 (in the white Combi).

Accused 13 (in the white Combi) in evidence maintained that he had no cellphone on

him when he was arrested. Among his co-accused he knew only accused 10 (deceased), a statement belied by the fact that his number was stored on the phones of accused 7, 9, 11 and 23 as aforementioned.

**Accused 14** was in the Hyundai. His number was stored on the phonebooks of accused 1 (in the BMW) and 19 (also in the Hyundai)

During his testimony accused 14 (in the Hyundai) said that he knew accused 1, 8 and 20 (in the BMW), accused 19 (in the Hyundai with him) and accused 26 (arrested later).

**Accused 15** was in the white Combi. He and accused 9 and 21 (both in the white Combi) had reciprocally stored their numbers on their respective phonebooks. On his (accused 15's) phonebook was saved the numbers of accused 22 (in the red Combi) and accused 19 (in the Hyundai) and his number was on the phonebook of accused 19.

**Accused 15 did not testify.**

**Accused 16** was in the red Combi. He and accused 17 (in the white Combi) had reciprocally stored each other's numbers on their respective phonebooks. On his (accused 16's) phonebook was saved the number of accused 22 (also in the red Combi). In turn, his number was saved in the phonebook of accused 9 (in the white Combi).

Accused 16 (in the red Combi) testified that he knew accused 22 (in the red Combi with him) and accused 2 and 4 (in the white Combi). He **omitted** accused 17 (in the

white Combi) whose name was stored in his phonebook and vice versa, and accused 9 (in the white Combi) who had his (accused 16's) phone number stored in his phonebook.

**Accused 17** was in the white Combi. He and accused 3 (in the white Combi) and accused 16 (in the red Combi) had reciprocally stored each other's numbers in their respective phonebooks. On his (accused 17's) phonebook was saved the number of accused 22 (in the red Combi). His number was saved on the phonebook of accused 9 (in the white Combi).

**Accused 17 did not testify.**

**Accused 18** was in the white Combi. He and accused 11 and 21 (both in the white Combi) had reciprocally stored each other's numbers on their respective phonebooks. On the phonebook of accused 18 was stored the numbers of accused 1 (in the BMW), accused 19 (in the Hyundai), accused 22 (in the red Combi) and accused 2, 9 and 23 (all in the white Combi) and also accused 25 (arrested later).

Accused 18 (in the white Combi) stated that he knew accused 2, 9, 11 and 23 (in the white Combi), accused 22 (in the red Combi) and accused 25 (arrested later). He **omitted** accused 21 (in the white Combi) whose number was stored on his phonebook and vice versa, and also accused 1 (in the BMW) and accused 19 (in the Hyundai) whose numbers were on his phonebook.

**Accused 19** was in the Hyundai. He and accused 1 and 8 (both in the BMW) had reciprocally stored each other's numbers on their respective phonebooks. Accused 19 had saved on his phonebook the numbers of accused 7 (in the red

Combi), accused 13 and 15 (both in the white Combi) and accused 14 (also in the Hyundai), together with the numbers of accused 25 and 26 (both arrested later). The number of accused 19 was saved on the phonebooks of accused 3 and 18 (both in the white Combi).

Accused 19 (in the Hyundai) testified that he knew accused 14 (in the Hyundai with him). He **omitted** accused 1 and 8 (in the BMW) who had his number stored on their phonebooks and vice versa, and accused 7 (in the red Combi), accused 13 and 15 (in the white Combi), accused 25 and 26 (arrested later) whose numbers appear on his (accused 19's) phonebook and accused 3 and 18 (in the white Combi) who had his name on their phonebooks.

**Accused 20** was in the BMW. On his phonebook were saved the numbers of accused 14 (in the Hyundai) and accused 8 (also in the BMW), together with the number of accused 26 (arrested later).

Accused 20 (in the BMW) testified that he knew accused 8 (in the BMW with him)

He **omitted** accused 14 (in the Hyundai) and 26 (arrested later) whose numbers were stored on his phonebook.

**Accused 21** was in the white Combi. He and accused 15 and 18 (both in the white Combi) had reciprocally stored each other's numbers on their respective phonebooks. Accused 21 had stored on his phonebook the numbers of accused 2, 9 and 11 (all in the white Combi). The number of accused 21 was stored on the phonebook of accused 23 (also in the white Combi) and accused 25 (arrested later).

Accused 21 (in the white Combi) testified that he knew accused 2, 9, 11, 15, 18 and 23 (also in the white Combi) but **omitted** mention of accused 25 (arrested later) on whose phonebook his (accused 21's) number appears.

**Accused 22** was in the red Combi. He had stored in his phonebook the number of accused 7 (also in the red Combi). Accused 22's number was stored in the phonebooks of accused 1 and 8 (both in the BMW) and accused 5 and 16 (both in the red Combi) and accused 2, 9, 11, 15 and 18 (all in the white Combi), and accused 25 (arrested later).

Accused 22 (in the red Combi) stated that he knew accused 2, 9, 11, 18 and 21 (in the white Combi) and accused 5 and 16 (in the red Combi with him). He **omitted** accused 7 (in the red Combi) whose number appears on his (accused 22's) phonebook and accused 1 and 8 (in the BMW) and accused 15 and 21 (in the white Combi) who had his number saved on their phonebooks.

**Accused 23** was in the white Combi. He had stored on his phonebook the numbers of accused 2, 11, 13, 18 and 21 (all in the white Combi).

Accused 23 (in the white Combi) stated that he knew accused 17, 18 and 21 (in the white Combi with him) and accused 22 (in the red Combi). He omitted accused 2, 11 and 13 (in the white Combi) whose numbers appear on his phonebook.

**Accused 24** was the driver of the white Combi. On his phonebook was stored the number of accused 26 (arrested later).

Accused 24 (driver of the white Combi) testified that he knew accused 1 (in the BMW) and accused 26 (arrested later).

**Accused 25** was arrested later. He and accused 9 and 11 (both in the white Combi) had reciprocally stored each other's numbers on their respective phonebooks. Accused 25 had stored on his phonebook the numbers of accused 2 and 21 (both in the white Combi), accused 8 (in the BMW) and accused 22 (in the red Combi). In turn, the number of accused 25 was stored in the phonebooks of accused 5 (in the red Combi), accused 18 (in the white Combi) and, accused 19 (in the Hyundai).

Accused 25 (arrested later) testified that he knew accused 2, 9, 17, 18 and 21 (in the white Combi) and accused 5 and 22 (in the red Combi). He **omitted** accused 11 (in the white Combi) whose number appears on his phonebook and vice versa; accused 8 (in the BMW) whose number was stored on his phonebook, and accused 19 (in the Hyundai) on whose phonebook his (accused 25's) number is saved.

**Accused 26** was also arrested later. He had the number of accused 7 (in the red Combi) saved on his phonebook. The number of accused 26 was saved on the phonebooks of accused 24 (driver of the white Combi), accused 19 (in the Hyundai), accused 1, 8 and 20 (all in the BMW).

Accused 26 (arrested later) testified that he knew accused 24 (in the white

Combi),accused 7 (in the red Combi),accused 14 and 19 (in the Hyundai) and accused 1, 8 and 20 (in the BMW).

## **CONCLUSION :**

As mentioned before, it seems to us that, in the ordinary course, a person would store the name and number of another person in the phonebook of his cellphone if such other person is a relative, friend or someone he might need to phone for a specific reason or purpose. Seen from that perspective, in conjunction with testimony of the accused, supra, and subject to a contrary plausible explanation, everything seems to point to an inevitable conclusion that the four vehicles in question and the accused in them were travelling on the N2 collaboratively south in concert and with full knowledge of each other. In the absence of a plausible explanation, it follows that the claim by the accused who testified, that they were travelling independently, is an outright lie.

## **EVIDENCE OF THE CELLPHONE RECORDS**

The next phase of the Judgment is devoted to the use of their cellphones by the accused, and other accomplices in the commission of the offences, who are not arraigned before us.

The cellphone records reflecting the calls made and received by the accused to or from each other and to or from related associates, require a detailed discussion of the workings of a cellphone, the technology behind it and the mechanisms by which calls are forwarded and received and how the records of such are preserved.

Earlier in the judgment we mentioned that, save for accused 10 and 13 in the white Combi, all 24 accused were arrested with their cellphones on their persons – a number of them had two cellphones. When accused 25 and 26 were subsequently arrested they too had cellphones in their possession.

In the case of accused 10 and 13, the notes made by the police, as alluded to earlier in the Judgment, do not reflect that cellphones were obtained from either of them. However, the name “Kehla” or phonetic variations thereof appear against the same cellphone number (0766352808) in the phonebooks of accused 7, 9, 11, 19 and 23.

Although the mechanism and function of cellphones are addressed *infra*, suffice it at this stage to mention that in a cellphone the phone number is not allocated to the handset, but to the SIM-card in it furnished by the Service Provider, in this instance Vodacom. The cellphone record relating to the calls made to the aforementioned number and the calls made from the cellphone in which the SIM-card with that number, reveals that the cellphone was activated through cellphone towers at times



and at places which are highly relevant to the issues before us.

The question is who is “Kehla”? On a conspectus of the relevant evidence, we are satisfied that it was accused 13.

Our reasons are:

- a) Accused 13's common name is Kehla. It is the name by which he is known by his family and friends.
- b) Whilst accused 13 admitted in his evidence during these proceedings that he was known as Kehla, he emphatically denied that he had a cellphone with him at the time of arrest at the Mvoti Plaza tollgate. This denial flies in the face of directly contradictory evidence in the affidavit submitted by accused 13 during his application to be admitted to bail pending the outcome of this trial. There he said that he was in possession of a cellphone at the time of arrest, but that it had been taken by the Police.
- c) He was arrested in the company of accused 9, 11 and 23 in whose phonebooks his number was recorded. He was arrested in the white Combi with highly incriminating evidential material in it – e.g. some R80 000-00 in cash on the floor of the vehicle, literally at his feet where he was seated in the rear, together with the automatic rifles protruding from a bag on one of the rear seats of the vehicle.

- d) The reliable evidence in point emanating from Captain Mncube, is that the white combi left from accused 24's house at Mzingazi with a full complement on board. They followed the white Combi, which proceeded, without stopping, from accused 24's house directly to the John Ross Highway and from there on to the N2 south, from where the vehicle continued up to the point of arrest at the tollgate.
- e) Accused 13 was not a fare-paying passenger in the Combi as he claimed. It defies all imagination that a vehicle in which, on the face of it, the divided proceeds of a robbery was being conveyed would pick up an outsider as a fare-paying passenger. The fact that the Police have no record of a cellphone found in possession of accused 13 is not dispositive of the question whether he had one on him at the time of his arrest. Given the extreme circumstances in which the arrests and processing of the exhibits took place, as described *supra*, accused 13, could have jettisoned the cellphone unnoticed or it could have been missed or mislaid by the Police.
- f) Finally, the puzzle is completed by accused 13's mendacity, when questioned about the cellphone and his affidavit evidence aforementioned and as to how he happened to be in the white Combi at the time. The matter of accused 13's credibility is something which will be fully and appropriately addressed in due course.

## **CELLPHONE TELEPHONY**

What follows is derived from the collective wisdom of the expert witnesses, Mrs Heyneke from Vodacom, Mrs du Plessis from MTN and Mr Prinsloo, an engineer

attached to Vodacom, experienced in the setting up and maintenance of a cellphone network. The qualifications and expertise of the witnesses was not placed in dispute, as was their testimony.

In lay terms a cellular telephone (cellphone), not unlike a handheld 2-way radio/transceiver, is a handheld mobile instrument which is capable of receiving or transmitting radio signals through a cellphone network operated by service providers, such as Vodacom and MTN, the only two relevant to these proceedings.

When a cellphone is turned on it automatically logs onto the Vodacom or MTN network, depending on the SIM-card installed in the hand piece (handset). A “SIM”-card is the acronym for Subscriber Identity Module. It also carries the cellphone number assigned to the user who inserts the SIM-card into the handset. Technically the SIM-card securely stores the Service Subscriber Key (IMSI) used to identify the subscriber on a cellphone telephony device once it is turned on. The relevant network immediately authenticates the validity of the SIM-card and the handset. The former establishes that the subscriber is in credit in terms of a so-called contract with the network or has “airtime” available in terms of a prepaid purchase of such time from the Service Provider. The purpose of the authentication of the handset is to establish whether it has been “blacklisted” in the case of theft.

The authentication is made by the network’s Central Data Base or “Core Network”.

The communication between the cellphone and the core network takes place

through a network of cellphone towers usually found some considerable distance apart alongside major roads in rural areas and relatively closely spaced and widely spread in urban areas – the purpose being to effect cellphone service coverage as fully as possible.

In rural areas the radio signal or beam usually has a 360 degrees spread. In other words, all round or omni-directional. In urban areas the towers are usually sectorised. In that case the radio beams are directed in a specific compass direction at a spread of 120 degrees, i.e. the signal spread is in the direction where cellphone signal coverage is required for a specific urban area. One such tower, relevant to the instance, is the Richards Bay Lighthouse tower, which according to the expert testimony, serves only Mzingazi, a suburb of Richards Bay – in the sense that cellphone calls made and received in that suburb are picked up by that tower and no other.

The signal power of towers in rural areas is generally stronger and the reach further than the towers in urban areas. The signal or beam reach of the former can be up to 32 kilometres as the crow flies. Where the caller or receiver is within the signal spread or reach of two cellphone towers, the closest will pick up and process the call.

When the cellphone is switched on and authentication takes place or a call is made, radio signals pass between the cellphone and the cellphone tower which carries the strongest signal, usually the tower closest to the location of the cellphone and the person using it. In turn, the tower transfers the signal to the central data base of the

network by means of landline cables. The reverse occurs between the base and the cellphone during the authentication process. In the case of a call being made, the central data base forwards the call signal to the tower closest to the cellphone being called. Where the latter is on the move, for example in a motor vehicle on the road, the tower through which the call signal is received and transmitted to the cellphone being called, will continue to transmit the signal and the receiving cellphone will continue to receive the call until the outer limit of the towers' range is reached.

At that point the call is immediately and without interruption "handed over" or transferred to the next closest tower further along the road. Exchange of signal between the central data base and the call transmitting cellphone and the call receiving cellphone is constant. In a sense the central data base of the network will constantly "know" the location of both the cellphone caller and the cellphone called, provided they are within signal range of a cellphone tower.

The area where one tower's radio signal spread and reach ends and another tower's spread and reach begins, is called the "equal power boundary". Those boundaries may overlap, in which case any cellphone call made or received in that area will be picked up by the tower which is the closer and has the stronger signal. Where the caller or receiver is on the move, the call is handed over to the next tower, which then has the stronger signal. However the record of the call reflects the detail and location of the tower through which the call was initiated. Where the caller (and his cellphone) moves out of the signal range of a tower before the signal range of the next tower is entered, the call will end.

To re-connect with the cellphone he was in communication with when the signal

ended, a new call will have to be made. The record of the reconnection will reflect the location and detail of the tower through which it is again initiated.

Generally Vodacom and MTN have their own towers. Occasionally a cellphone tower is shared between the two networks, but as each network has its own designated radio frequency range, the call data of each remains its own and cannot at all be mingled with the data of the other network. All calls made and received through the Vodacom and MTN networks, are separately recorded and stored by the core network of each. All particulars pertaining to the caller and receiver, the location of each, the time and duration (to the nearest second) of each and every cellphone call, are recorded and stored. The main objective of such a detailed and exact record is for billing purposes. Someone has to pay for the service. Ironically, herein lies the guarantee of accuracy and reliability of the cellphone records.

## **DATA OBTAINED FROM THE ACCUSED'S HANDSETS**

The cellphone handsets confiscated from the accused were hand-delivered to Captain Moller from the Pretoria High-Tech Centre of the South African Police Services, who, with specialised equipment extracted from the cellphone handsets all information applicable to and stored in each. Captain Moller's evidence with regard to his qualifications and expertise, and the suitability of the equipment he employed were not placed in issue and are accepted.

Using the relevant information and data from the individual handsets, as aforementioned, the record of the calls made from and received on each such

cellphone/handset during the period 1 September 2006 to 3 October 2006, both dates inclusive, was obtained from the Service Provider with whose cellphone network the cellphone was linked. In the instance only two Service Providers are involved – Vodacom and MTN

The cellphone records of the accused were obtained and placed before the Court by appropriate court orders and subpoenae. After a period of time, the Service providers transfer the cellphone records to their “archives”, seemingly to maintain the storage capacity of their current records at a manageable level. Before the network, whether Vodacom or MTN, may disclose the relevant information stored in the archives of its central data base, a court order directing such disclosure first has to be obtained in terms of the provisions of section 19 of the Regulation of Interception of Communications and the Provision of Communication-related Information Act, 70 of 2002. *In casu* the requisite directives were issued by the Honourable Mr Justice Seriti, a Judge of the Transvaal Provincial Division of the High Court. Thereafter a *subpoena duces tecum* was obtained and served on each of the Service Providers under the provisions of section 205 of the Criminal Procedure Act. Acting under direction of those measures Mrs Heyneke, on behalf of Vodacom, and Mrs du Plessis, on behalf of MTN, made the relevant cellphone records available to counsel for the State to use in evidence.

The record of all the calls from and received on the relevant cellphones which were in the possession of the individual accused, as aforementioned, during the said period, were proved and handed in as Exhibit “Z1” (in respect of accused 1) to

“Z26” (in respect of accused 26) – the numbers following the letter “Z” on the exhibits signifying the numbers allocated to the accused during the trial. That the record of the calls listed in Exhibit Z applicable to each accused, correctly reflected the nature, time, place and duration of the calls made and received, together with the cellphone number of the person called or calling, were not placed in issue and was noted as common cause between the State and the accused.

At this point it would be instructive to include as part hereof a glossary of terms and abbreviations which would assist in understanding the information contained in the exhibits in question.

#### VODACOM :

Col 1 : MSISDN : Mobile Subscriber Integrated Services Digital Network.

(The SIM card number 082 ...)

Col 2 : IMSI : International Mobile Subscriber Identity.

(An electronically allocated serial number of a SIM card)

Col 3 : IMEI : International Mobile Equipment Identity.

(This is the serial number of the handset)



Col 4 : CALL DATE : The date calls were received or made.

CALL TIME : The time calls were received or made.

Col 5 : MTC : Mobile Terminated Call. (Incoming call received)

MOC : Mobile Originating Call. (Outgoing call made)

CF : Call Forward. (The cell phone was not answered and the call went through to voicemail, or the phone was switched off and the call went directly to voicemail, or the phone could be diverted)

MTSMS : Short Message Service Terminating. (Incoming Message)

MOSMS : Short Message Service Originating. (Outgoing Message)

Col 6 : DURATION : The duration of received or made calls.(measured in seconds)

Col 7 : OTHER PARTY : Number of other party when making or receiving calls.

Col 8 : CELL ID : The Base station's code reference.

Col 9 : CELL NAME : The Base station when receiving or making calls.

MTN

Col 1 : CALL DATE : The date calls were received or made.

Col 2 : CALL TIME : The time calls were received or made.

Col 3 : CALLED : Outgoing call

Col 4 :CALLING : Incoming call

Col 5 : I or O as indicated in the column labelled “Call Direction” – “I” for incoming calls and “O” for outgoing calls.

Col 6 : In the column labelled as “Service Code” “T11” should be interpreted as a successful call, “T22” means a outgoing SMS, and “T23” is indicated in the instance of an incoming SMS.

Col 7 : CALL DURATION (Measured in seconds)

Col 8 :IMEI : International Mobile Equipment Identity.

(This is the serial number of the handset)

Col 9 : CELL ID : The Base station’s code reference.

Col 10 : The column labelled as “Site Location” indicates the name of the base station whereas the column labelled as “Site Suburb” indicates the greater region of where the “Site Location” is situated.

Col 11 : The name of the base station is often derived from the area where the base station is situated.

As appears from Exhibit “Z1” to “Z26”, each exhibit reflects every call made and received by the accused on the relevant handsets from 1 September 2006 to 3 October 2006. In all some 72 126 individual calls are involved and the analyst, Mrs Botha, had to analyse them all in order to extract the calls relevant to the issues raised in these proceedings. It took months of painstaking effort to be in a position to place all the calls, said to have been made and received by the accused through their cellphones during the relevant period, before the Court.

The correctness and accuracy of the analyses made by Mrs Botha, was tested over and over again during the course of these protracted proceedings in which the cellphone records of the accused played a major, if not definitive, role. In all, the witness spent 14 days in the witness stand. The evidence given by Mrs Botha is not based on expert opinion, but on facts in the form of calls made and received on the respective cellphones, to be searched for and extracted from the myriad of call data furnished by the Service Providers (Vodacom and MTN), in exhibits Z1 to Z26. To confirm the correctness of any call thus singled out, all one need do is to find the call where it is reflected in the relevant exhibit “Z” – readily done once the date, time (exact to a second), together with the number of the caller or called is furnished by the witness.

After she gave her evidence, Mrs Botha was requested by the Court, at the behest of counsel for the State and the accused and, for that matter, itself, to remain on and be available to the State and defence and from time to time by the Court, when the need arose to establish where a particular accused was, when he made and received calls, as indicated by the location of the towers through which the calls were routed. Accordingly Mrs Botha was throughout available to assist all counsel and the court. The assistance in that context, sought from the witness by the Court, occurred

with the full knowledge and consent of counsel for both the State and the accused. Without that continued assistance, counsel, and for that matter the Court, would have had to spend endless hours going through 72 000-odd calls to extract the required information. When, as here, the case sought to be made out against the accused, is substantially based on cellphone information concerning the movements and location relative to the time and place of the occurrence of the crimes charged to the accused, the services of an analyst such as Mrs Botha is indispensable to a proper and fair hearing and the Administration of Justice. As far as I am aware this is the first case in which cellphone evidence of this magnitude has been dealt with.

### **THE USE OF CELLPHONES BY THE ACCUSED**

As all the primary and secondary offences, save those relating to the Firearms Control Act, were committed on or about the N2 in the vicinity of Charters and Penicuik on 2 October 2006, and as the cellphone records of a substantial number of the accused, including accused 25 and 26, who were arrested later, activated a number of cellphone towers, which serve the areas through which the N2 runs, it became important to determine what stretch of the N2 is served by a particular tower or towers.

That was done by Inspector Kruger. He is suitably qualified in the use of specialised equipment designed for that purpose, called Geographical Information Systems (GIS). His qualifications, expertise and the suitability of the equipment he employed, were not placed in issue.

So too his evidence and the findings which he made. Using satellite photographs of the relevant areas through which the N2 meanders, he marked the relevant towers and physically determined the position of each with reference to its exact longitude and latitude by applying a system called Global Positioning Systems (GPS), which determines a position on the ground to within 50 millimetres of accuracy. The satellite photographs were handed in as Exhibit "JJ". By travelling along the N2 all roads pointed out to him by the Investigating Officer, Inspector Kruger determined the length of each stretch of road, mostly the N2, which was served by a particular cellphone tower. In that fashion the witness depicted on Exhibit JJ, by colouring in, in different hues, the section of road served by each particular tower along the N2. By measuring in millimetres any given colour-coded section of the road on exhibit "JJ", the distance over which the tower coverage extends on that section is represented in the ratio 10 millimetres equals 0.7 kilometres. A simple exercise proving the accuracy of the length of the colour-coded sections depicted on Exhibit JJ, is to measure the distance expressed in millimetres and applying the furnished ratio.

This was done in order to obtain the distance so calculated between Charters and Penicuik. The answer obtained, is within a kilometre or so, the same as the known distance between the two points measured by road, namely 33 kilometres.

Another aspect about the evidence of Inspector Kruger becomes significant when one analyses the location on the N2 where certain of the accused made and received cellphone calls. Certain of those calls occurred in an area referred to as "the Equal Power Boundary". At the Equal Power Boundaries some overlapping may

occur. Those are areas where the reach of one cellphone tower ends and another begins. Such areas are reflected on Exhibit JJ where the differently coloured sections of the N2 meet.

## **THE MIGRATION OF THE ACCUSED ON 1 AND 2 OCTOBER 2006 TO RICHARDS BAY AND MZINGAZI**

Accused 1, 8, 14, 20 and 26 are from the Durban area.

Accused 24 lives at Mzingazi, Richards Bay.

Accused 2, 3, 4, 5, 6, 7, 9, 10 (deceased), 11, 12, 13, 15, 16, 17, 18, 19, 21, 22, 23 and 25 all reside in the greater Johannesburg area.

## **INTRODUCTION**

Whilst it is common cause that all the accused were in the Empangeni-Richards Bay area on 1-2 October 2006, they all deny complicity in any of the offences which form the subject-matter of these proceedings or that their presence in the area related to any of the offences.

Accused 2 and 21 testified that the two of them, together with accused 15, who did not testify, travelled together in one vehicle from Johannesburg to Richards Bay. Accused 6 testified that he and accused 3 and 17, neither of whom testified, travelled

to Richards Bay in one motor vehicle from Johannesburg.

Accused 18 and 23 both testified that they travelled to Richards Bay in one vehicle from Johannesburg.

The remainder of the accused, who testified, claimed that each had travelled on his own from Johannesburg to the Empangeni-Richards Bay area, quite unaware that any of his co-accused had undertaken similar journeys. Thus accused 7, 11, 12, 13, 16, 22 and 25 testified that each travelled on his own and independently of the others. Accused 5 testified that he had travelled by air from Johannesburg to Durban to buy stock and from there to Stanger to buy cheaper stock and from there on to Richards Bay for love.

From the accused who hailed from Durban, who travelled to Richards Bay during 2 October 2006, accused 1 testified that he travelled on his own; accused 20 and 8 travelled together in one vehicle and so did accused 14 and 19, who, although he resides in Johannesburg, was in Durban at the time; accused 26 testified that he travelled on his own, but was in the Empangeni-Richards Bay region on 2 October 2006, as he had a business there.

Accused 3, 4, 8, 9, 15 and 17 did not testify, but all ended up in Richards Bay on 2 October 2006. Notably, save for the accused who travelled together in the same motor vehicle, the common thread that runs through the testimony of all the accused, is that they had travelled to Richards Bay independently, and without knowledge of any of the others or their movements.

That claim by the accused of individual and independent trips to Richards Bay from Johannesburg and Durban respectively, is graphically belied by the record of the cellphone calls made by the accused on the way.

## **THE ACCUSED WHO TRAVELLED FROM JOHANNESBURG**

### **The route taken:**

Judging from the cellphone records of the accused and the towers they activated along the way as they travelled, they all followed the same route from the greater Johannesburg area to the Empangeni-Richards Bay region. From Vosloorust, which is adjacent to the National road N3, they travelled on the N3 to Heidelberg (23 kilometres). From Heidelberg on the Provincial road, via Balfour (32 kilometres) Standerton (74 kilometres), Volksrust (83 kilometres) to Ingogo – plus minus 10 kilometres from the Newcastle tower. From Ingogo the R34 runs via Utrecht to an area called Bembaskop, served by a cellphone tower with the same name, (75 kilometres). At that point the R34 joins the R33 which runs between Dundee and Vryheid. The route then followed was along the R33 to Vryheid (26 kilometres).

From that point the R34 via Melmoth to Mandawe Cross was taken. The latter is a well-known landmark at Nkweleni (156 kilometres from Vryheid). At Mandawe Cross the R34 meets the R66 coming from Eshowe head-on, forming a T-junction. From there the R34 proceeds along the “long leg” of the T-junction. That is the route which the accused followed from that point on. Coming from the direction of Vryheid, as did the accused, the road user coming to that T-junction, has two routes to Empangeni-Richards Bay to choose from – to continue straight on along the R66 past Eshowe or to turn into the long-leg of the T-junction on the R34 and from there



go on to Empangeni (44 kilometres) further on to Mzingazi, Richards Bay (27 kilometres). According to the relevant tower activation, it appears that the accused from Johannesburg used the latter road from Mandawe Cross (Nkwaleni).

An analysis of the cellphone records of the accused, who set out from Johannesburg to journey to Richards Bay, enables one to determine the route taken; the points of departure and the approximate time thereof; the identity of the persons the accused communicated with by cellphone along the way from Johannesburg to Richards Bay; together with the location of the caller and called and the exact time of such communications.

The relevant cellphone records reveal the following:

1. ***The Vosloorust tower*** was activated by cellphone calls made or received (hereinafter referred to as “calls made”) by accused 4, 16, 22, 25, all claiming that they had travelled solo; a certain “Spiwet”, an accomplice about who more will be said later, and accused 15 and 21, who were travelling together. The calls were made or received between 21h44 (accused 21) and 22h22 (accused 22). Accused 4’s call was considerably earlier – 19h49.

During the calls made at Vosloorust accused 22 spoke with Spiwet (22h22) and with accused 16 (22h05); accused 4 spoke with accused 16 (19h49); Spiwet spoke with accused 11, who was at that time at Steynskraal (between Heidelberg and Balfour) (22h04). It appears that accused 11 remained there,

for his next cellphone communication, this time with accused 18, who was with accused 23, (22h24) also took place while accused 11 was still at Steynskraal. Thereafter accused 11's movements paralleled that of the other accused from tower to tower along the way.

2. **Koppieskraal Tower** (situate between Vosloorust and Heidelberg on the N3) was activated by calls made by accused 22 (22h32) and accused 18 (21h52). Accused 22's call was to accused 26 (then at Empangeni). Accused 18's call was to accused 11 (then at Steynskraal).
3. **The Heidelberg tower** was activated by calls made by accused 9 in communication with accused 22 (22h25); accused 22 also communicating with accused 9 (22h40); Spiwet in communication with accused 11 (22h16) and accused 15, who was with accused 2 and 21 (22h40) and also with accused 23, who had accused 18 with him (22h18).
4. **The Steynskraal tower** (between Heidelberg and Balfour) was activated by calls made by accused 13 (22h21) and accused 18, accompanied by accused 23 (22h24).
5. **The Balfour tower** was activated by calls made by accused 11 communicating with accused 23 (with accused 18) (22h34); accused 16 communicated with accused 22 (23h07); accused 22 communicated with accused 19, then in Durban (22h56).
6. **The Sunnymeade tower** (between Balfour and Standerton) was activated by calls made by accused 11 when he communicated with accused 23, who was with accused 18 (22h59), accused 22 communicated with accused 5, then still

in Johannesburg (23h09) and accused 1, who was in Durban (23h14).

7. ***At Standerton the R23 runs through the town and is within signal reach of 5 towers, Holmdene, Kosmospark, Standerton tower, Sakhile and Platrand.*** When the calls made by the accused at Standerton are analysed they reveal a plethora of communications between the accused, between 23h27 and 23h52 – a time-frame of 25 minutes, very much as if they were taking a break.

Accused 11 spoke with accused 22 (23h27) and with accused 23 (in the company of accused 18) (23h29) and again with accused 22 (23h38) and once more with accused 22 (23h51); accused 22 communicated with Spiwet (23h30) and again at 23h35, and with accused 25 (23h37) and accused 9 (23h50); accused 9 communicated with accused 16 (23h48); accused 23 received 2 sms's (cellphone messages) (23h34 and 23h35); accused 21 (who was with accused 2 and 15) made a call to an unknown person (23h55); accused 23 communicated with accused 18 (23h36). When questioned about that call the explanation was that accused 18 had gone to buy "Kentucky Fried Chicken".

The record shows that accused 9 and 25 called accused 22 at exactly the same time. Accused's 25's call was fractionally earlier and was received whilst accused 9's call went to "voicemail", resulting in a missed call. This type of co-incidence recurred a number of times in the cellphone records relating to this trip by the accused. It appears to convey a need on the part of the accused to make contact or stay in contact constantly – a notion supported by the sheer frequency of communication between the accused.

8. ***The Volksrust tower*** was activated by calls made when accused 22 and accused 9 communicated with each other at 00h27 and 00h35.
9. ***The Krieglersholm tower*** (between Volksrust and Ingogo) was activated by a call made by accused 9 to 22, who at that point in time was in the signal reach of the Newcastle tower (00h59) close to Ingogo.
10. ***The Ingogo turn-off from the R23 onto the R34 falls within the signal range of the Newcastle tower.*** That tower was activated by calls made when accused 9 and 23 communicated with each other at 01h07 and again at 01h11; accused 16 communicated with accused 9 (01h14) – the latter then receiving the call through the Madadeni Tower, a neighbouring tower to Newcastle tower; accused 16 communicated also with accused 22 (01h15); accused number 22 communicated with Spiwet 01h12 and also accused 23, (who was with accused 18) at 01h13.
11. ***The Madadeni tower*** (between Ingogo turn-off and Utrecht) was activated by calls made when accused 9 communicated with accused 16, who received

the call through the Newcastle tower (01h14); accused 9 was in communication with accused 22 (also at 01h14)- the two calls were made within a minute; accused 21,(with accused 2 and 15) called an unknown number (01h17).

12. **The Utrecht tower** was activated by a call made when accused 22 communicated with Spiwet (01h36).

13. **The Bembaskop tower** was activated by a call when accused 22 communicated with accused 9 (01h55).

14. **The Vryheid tower** was activated by calls when accused 9 communicated with accused 22 (02h16); accused 25 received two sms's (02h13 and 02h14).

15. **The Jordaan Witrand tower** (between Vryheid and Melmoth) was activated by a call made when accused 16 communicated with accused 22 (02h52).

16. **The Melmoth tower** was activated by calls made when accused 22 communicated with Spiwet (03h38) and also with accused 16, who at that time was receiving signal from the neighbouring Merino tower (03h38).

17. On this occasion also the two calls were made within a minute. As mentioned earlier the cellphone records furnish any given time up to the nearest second. Thus a comparison of the two calls in question is shown to have been made in the same minute.

18. ***The Mandawe Cross tower*** where the R34 joins the R66 coming from the opposite direction, as described earlier, accommodated a flurry of cellphone activity, which, considering the persons called and the fact that the junction provides alternative routes to Empangeni-Richards Bay, also as described earlier, gives the impression that enquiries were being made concerning what road to take, i.e. the R66 past Eshowe or the R34 through Empangeni. Whatever the reason, that tower was activated by calls made when accused 9 communicated with accused 22 (03h58 and 04h02 and 04h05 and 04h09); accused 22 communicated with Spiwet (03h58 and 04h00) and also with accused 26 (04h01); Spiwet communicated with accused 26 (03h59 and 04h00) and also with accused 24 (04h02). Accused 26 was in the Empangeni region and accused 24 at home in Mzingazi when Spiwet's calls were received.

It seems significant that at 04h32, when Spiwet next called accused 24 the latter was at Meerensee, while Spiwet was at Empangeni. It appears that accused 24 probably arranged to meet Spiwet and guide him home, as Spiwet's next communication was through the Richards Bay Lighthouse tower at 05h03 followed by a call made by accused 24 through the same tower at 05h07.

19. ***The Horseshoe Sugar Estate tower*** (which is in the vicinity of Jabulani) and provides radio signal to that stretch of the R34. It will be recalled that the State

witness (Sithole), came across the four motor vehicles in that area, which aroused his suspicion. Sithole testified that he left his residence at Eshowe at about 03h30 and travelled to work at Fidelity's main base at Richards Bay. He travelled on the R66 to Nkwaleni (Mandawe Cross) and at the junction turned on to the R34 towards Empangeni. Jabulani is about 40 kilometres or so removed from Eshowe. The Horseshoe Sugar Estate tower was activated by calls made when accused 22 communicated with accused 9 (04h04) and with Spiwet (04h09).

Sithole estimated that his time of contact with the suspicious vehicles occurred at about 03h45. In our view that estimate is questionable, considering the distance which he had to travel to get to Jabulani. For reasons to be elaborated upon, we find the probabilities overwhelming that the 4 vehicles which Sithole encountered were among the vehicles in which the accused that have been mentioned thus-far, were travelling in at the time. Bear in mind at this point, the history of the movements of the four vehicles in question, which has already been recounted earlier in the Judgment.

20. ***The Chorley Park tower*** is a neighbouring tower to the Horseshoe Sugar Estate tower and closer to Empangeni, was activated by calls made when accused 22 communicated with accused 16 (04h20) and also with accused 9 (04h36).

21. ***The Empangeni tower*** was activated by calls made when accused 22 communicated with accused 9 (04h41) and with accused 25 (05h06). When the latter call was made accused 22 was at Mzingazi.
22. ***The Fairview tower***, a neighbouring tower in Empangeni, was activated by a call made when accused 22 communicated with accused 16 (04h30) who was also at Fairview tower.
23. ***The Umhlatuze Canal tower*** next to the John Ross highway on the way to Meerensee was activated when accused 22 communicated with accused 9 who had reception through the Chorley Park tower at Empangeni (04h36).
24. ***The Ricardia Primary tower***, also providing reception to the John Ross highway, was activated by a call made when accused 22 again communicated with accused 9 (04h42) who was at Empangeni.
25. ***The Tuzi Gazi tower***, at the Small Craft Harbour which provides signal to that section of the John Ross highway, was activated by a call made when accused 22 communicated with accused 16 (04h43), who was also at Tuzi Gazi.
26. ***The Richards Bay Lighthouse tower***, which provides cellphone signal only to the Mzingazi suburb of Richards Bay, was activated at 04h52 by a call from accused 22 to accused 9, who was receiving through the Bayside Aluminum tower on the John Ross highway and a neighbouring tower to the Tuzi Gazi tower.



Accused 9 and apparently with him accused 25, appeared to have missed their destination at Mzingazi. They seemed to have driven on along the **Dune road** to **Richards Bay Minerals**. At 05h07 accused 22, through the Richards Bay Lighthouse tower communicated with accused 9 who was at the **Richards Bay Minerals tower**. Contemporaneously accused 25 received two sms's while at Richards Bay Minerals tower at 05h07. As subsequent calls made by accused 9 and 25 were made and received by them at Mzingazi, it would appear that they finally reached their destination. During the time that accused 9 and 25 had apparently strayed past their destination at Mzingazi and turned around at Richards Bay Minerals, accused 22 attempted to call accused 25 and 9 at 05:05, 05:06 and 05:07.

**WHAT FOLLOWS IS A LIST OF FIRST CALLS MADE OR RECEIVED BY THE**

## **ACCUSED ATMZINGAZI THROUGH RICHARDS BAY LIGHTHOUSE TOWER**

- Accused 22 – 04h52
- Spiwet – 05h30
- Accused 2 (accompanied by accused 15 and 21) – 06h00
- Accused 16 – 06h02
- Accused 11 – 07h15
- Accused 25 (who appeared to have been in the company of accused 9 at Richards Bay Minerals – 07h18)
- Accused 13 – 07h34
- Accused 26 – 08h33
- Accused 23 (accompanied by accused 18) – 08h48
- Accused 9 – 08h57
- Accused 4 – 09h06.

The only calls made by accused 4 were at Vosloorust at 19h49 on 1 October 2006 and the next one at Mzingazi at 09h06 on 2 October 2006.

- Accused 21 (accompanied by accused 2 and 15) – 09h38
- Accused 18 (who was accompanied by accused 23) at 11h05
- Accused 15 (who was accompanied by accused 2 and 21) – 12h01.

The times listed above, should not be understood to point to the arrival time of the accused. What it does mean is that the caller was at Mzingazi at that time.

Sithole had shadowed the four suspect motor vehicles from Jabulani along the R34. As the vehicles progressed, the accused's cellphone activities sequentially activated the towers along the way until Mzingazi was reached. Sithole saw all four vehicles enter the premises of accused number 24's house. The timeframe, within which the cellphone calls were made and registered in relation to the various towers from the Horseshoe Sugar Estate onward up to Mzingazi, coincides broadly with the time estimates made by Sithole while he was tailing the suspect vehicles.

In the absence of a plausible explanation consistent with innocence, arising from the explanations given by the accused in evidence, which comes up for consideration later in the Judgment, the picture that distinctly emerges from a study of the movements of each of the accused from Vosloorust to Mzingazi, leads us to conclude:

- a) That the accused undoubtedly travelled to Richards Bay in a group following the same route for a distance of 586 kilometres. It was a planned expedition, rather than a trip undertaken by persons travelling independently.
- b) They stayed in constant contact with each other throughout the night of 1-2 October 2006, while under way.
- c) The accused were travelling in five motor vehicles at least. As commented earlier, accused 9 and 25 drove past their apparent destination at Mzingazi and obviously were not among the four vehicles followed by Sithole. That inference

that at least five vehicles were involved is founded upon our view of ordinary human conduct and natural logic – a person in a motor vehicle will not use a cellphone to communicate with a fellow passenger. Save for one explained incident, this observation is demonstrated by the accused who were, on their own version, travelling together in the same motor vehicle. – accused 2, 15, 25 and accused 18 and 23, who did not telephone each other during the journey to Richards Bay, except when accused 18 left accused 23 to buy Kentucky Fried Chicken at Standerton – here the exception does seem to prove the rule.

- d) The accused made and received cellphone calls inter se, mostly through the same towers and when not, a neighbouring tower, where one of them had obviously moved across the equal power boundary between the towers, as explained earlier. The time and location of their calls conform to the average motor vehicle travelling time over the distances involved.
- e) At Standerton and Mandawe Cross the concentration of calls appears to indicate that the accused had come to a stop for a while, and that they did so together, given the times of the calls and the numbers of the callers involved. The undeniable impression one gets is that the accused had stopped at Standerton to get refreshments and at Mandawe Crossing to get road directions or together before moving on. Hence the calls to accused 24 at Richards Bay and accused 26 at Empangeni.

On an overview of the preceding resumé and observations, subject to

aplausible explanation, as mentioned before, everything appears to indicate that, on the face of it, accused 22, 9, 2 (and with him accused 15 and 21), accused 4, 11, 13, 16, 18 (and with him accused 23, 25 and Spiwet) had travelled from the Johannesburg region to Mzingazi in concert and had with them the four suspect vehicles, which Sithole encountered and followed to the house of accused 24. In addition, the number of persons observed by Sithole in the suspect motor vehicles, as aforementioned, generally conforms to the numbers of the above accused.

To be sure, in the case of accused 4 the cellphone records show only two calls made by him – the one at the beginning and the other at the end of the trip from Vosloorust to Mzingazi.

The paucity of cellphone use by accused 4 during the trip, is supplemented by the fact that he was arrested in the white Combi which was observed leaving accused 24's house, which gives rise to the inference that his last-mentioned call made from Mzingazi made at 09h06, was, indeed made from accused 24's house.

- f) Without finding it as a fact at this stage, the abovementioned facts and observations, it seems to us, emphatically puts paid to the claims by accused 22, 11, 13 and 16 that they had travelled to Empangeni-Richards Bay on their own. It also puts paid to the collective claims by accused 2, 15, 21, 18 and 23, that they too had not accompanied any other accused or motor vehicle to Richards Bay. Judging from the two calls made by accused 4 at the commencement and the end of the trip and related to the calls of the other

accused, it would seem that he was amongst them.

- g) Accused 7, on the one hand, and accused 3,6 and 17, (together in one vehicle), on the other, travelled from the Johannesburg region somewhat later than the other accused. Both accused 7 and the group (accused 3, 6 and 17) activated the Koppieskraal tower between Volksrust and Heidelberg at 05h02.

Along the way from there members of the group activated a number of towers, indicating that they followed the same route as the other accused, who preceded them. At 08h21 accused 7 made a call through the Todden Farm tower, which is situated between Vryheid and Melmoth some 35 kilometres from Vryheid. At 08h25 (4 minutes later) accused 17 (with the group) received a call through the same tower. At 09h43 accused 7 made a call through the Horseshoe Sugar Estate tower and four minutes later at 09h42, accused 17 received a call through the same tower. At Mzingazi accused 7 made his first call through the Richards Bay Lighthouse tower at 10h27, followed by accused 17 at 10h42. Accused 3 and 6 also made calls from there subsequently. The inference seems inescapable that accused 7 and the group formed by accused 3,6 and 17, travelled together, probably in the same motor vehicle.

- h) Accused 12 left the Johannesburg area even later on 2 October 2006. He first appears at Standerton when he made a call through the Holmdene tower at 12h37. Thereafter at Krieglersholm (near the Ingogo turn-off) when he made

two consecutive calls at 14h02 and 14h03. Thereafter at Vryheid he made a call through that tower at 15h25.

At Melmoth he made a call through the Melmoth tower at 16h51 and again at Mandawe Cross at 17h18. Finally, at Empangeni he made three calls to unknown numbers at 17h58, 18h26 and 22h06. At 22h14 accused 7 called accused 12 at Empangeni from Mzingazi.

On the face of it it would seem that accused 12 waited at Empangeni until summoned by accused 7 to come to accused 24's house at Mzingazi, hence the presence there of the red Combi, driven by accused 12 at the time of his arrest; being noticed by Captain Mncube when he and Govender drove by.

**The outcome:**

In conjunction with the comment we made at the outset concerning the trek to Richards Bay by the accused, and the apparent lack of veracity to their claims that they had, whether as a group or individually, undertaken their trips without knowledge of the other accused travelling the same way, the outcome of the analysis of their cellphone communications, supra, shows, in our view unquestionably so, that all of the accused had travelled to Richards Bay collaboratively and with full knowledge of each other's' intended destination. In the result, testimony of the accused explaining the reason and individuality of their journeys to Richards Bay, is open to serious doubt, and, prima facie, appears disingenuous and will be properly evaluated later.

## **THE ACCUSED WHO TRAVELLED FROM DURBAN**

**The accused involved are accused 1, 5, 8, 14, 19, 20 and 26.**

Accused 1 testified that on 2 October 2006 he travelled to Richards Bay to collect money from, one Mbuyazi to whom he had sold a motor vehicle. His cellphone records confirm that he did go to Richards Bay.

Accused 8 did not testify, but accused 20's evidence was that accused 8 was in the motor vehicle with him when he travelled to Richards Bay on the day in question – they were in his BMW. The purpose of accused No 8 was to look at a “Venture” vehicle with the view to buying it from a certain Simelane at Richards Bay. Accused 20 was to meet a certain Zulu at Petroport, a filling station near Hluhluwe, where he would be repaid a loan, which he had made to Zulu. The meeting was to take place at 18h00 on 2 October 2006 (that time happens to coincide exactly with the time the Hi-Ace entered Petroport to make the last pick-up). Petroport receives reception from the Medham tower and is situated on the N2 plus-minus 10 kilometers south of Hluhluwe and some 23 kilometers north of Charters scene of crime. The phone records of both accused 8 and 20 show the trip from Durban to Richards Bay and, on the part accused 20, he went further north and was in the vicinity of the Umfolozi High School, at 19h12 that evening.

Accused 14 and 19 testified that on that day they had travelled together in the Hyundai in which they were arrested at Mvoti Plaza later that night. The purpose of the journey on the part of accused 14 was to see the “mother of his child”, as the child was ill. Her name was Sibongile Mkhwanazi, who lived at Mtubatuba.

Accused 19, accompanied accused 14 in order to visit a friend, Mabhiza, at



Meerensee, Richardsbay. The cellphone records of accused 14 and 19 confirmed that they travelled from Durban to Richards Bay and later north on the N2, to the area which received reception from the Harrison Farm and The Nyalazi Towers.

Accused 5 testified that he flew from Johannesburg to Durban to buy stock for his business from traders at the Durban station. When he got there he was not satisfied with the available goods and the prices and was directed to Asmall's, a trader at Stanger, north of Durban, close to the N2. There too accused 5 found the prices too high and decided to go to Richards Bay to look there and to visit his girlfriend. During this journey he was conveyed in a motor vehicle belonging to accused 1, who made the vehicle and driver available for accused's 5 business purchases, as he had done in the past.

Accused 26 resided in Durban, but at the time (1 – 3 October 2006) he was in the Empangeni area where he had a taxi business at Ngwelezane.

As in the case of the accused who travelled from Johannesburg, the route taken by the accused who travelled from Durban, is evidenced by the cellphone towers that were activated by cellphone calls made and received by them along the way.

The towers, activated accordingly, are situated in Durban, close to the N2 and north along the N2 to Richards Bay and the Empangeni off-ramp (John Ross bridge) and from there along the John Ross/R34 highway into Richards Bay and Mzingazi.

The towers activated from Amanzimtoti, where accused 1 resides, south of Durban to Mzingazi at Richards Bay from the north, are the following:

## **SOUTH OF THE DURBAN CENTRAL BUSINESS DISTRICT (CBD)**

***Amanzimtoti Residential Tower***- at Amanzimtoti.

***Athlone Park Tower***- situated between Amanzimtoti and the Durban Airport (the “old” airport).

***Durban Airport Tower*** – at the then Durban International Airport, south of Durban.

***Pendlebury Road Tower*** – on the N2 just to the north of the airport, but south of the Durban CBD.

## **North of the Durban CBD**

***Kenville Tower*** – in Durban North.

***Avoca Reservoir Tower*** – Durban North.

***Corovoca Tower*** – Durban North.

***Glen Anil Tower*** – Durban North.

***Glen Hills Tower*** – Durban North.

***Ntuzuma Depot Tower*** – situated in the Kwa Mashu area more or less opposite Durban North and across the N2 from it.

***Siyathuthuka*** – Kwa Mashu area.

## **North of Umhlanga Rocks**

***Shakas Kraal Tower*** – at Ballito.

***Groutville Tower*** – near the Mvoti Toll Plaza.

***Addington Sugar Farm Tower*** – between Mvoti and Stanger.

***New Guelderland Tower*** – between Stanger and Mandini.

***Mangeti Tower*** at Mandini.

***Ngulule Tower*** – between Mandini and Ginginglovu.

***Ginginglovu Tower*** – at Ginginglovu.

**Blackburn Tower** – situated between Ginginglovu and Mtunzini in an area called Fairbreeze.

**Mtunzini Tower** – at the Mtunzini Tollgate.

**Waterloo Tower** – between Mtunzini and Esikhawini.

**Esikhawini Tower** – at Esikhawini.

**Mzingwenya Tower** – approximately 11 kilometers before the N2 crosses the R34/John Ross Highway where the turn-off from the N2 to Richardsbay is situated.

**Harbour Lights Caravan Tower** – approximately 5 kilometers from the John Ross Bridge.

**Kuleka Tower** – approximately 2 kilometers from the John Ross Bridge.

#### **From the John Ross Bridge to Mzingazi:**

First, the layout of the roads:

The lay-out of the roads from this point on, has assumed some importance and is described. The John Ross Highway/R34 leads to the east into Richards Bay to a point close to the harbour and from there turns north past Meerensee and then through Mzingazi and on to Richards Bay Minerals (RBM). The latter part of the road is referred to as the Dune Road. From RBM the road continues on until it again reaches the N2 at Mposa a few kilometers south of Kwambonambi.

Another road of relevance is known as the M231. That road turns out of the John Ross Highway/R34 at an area known as Arboretum Extension, a suburb. From that point the M231 leads north and passes through residential areas to the Richards Bay CBD. From there it continues North between the residential areas known as Veld and Vlei and Aquadene, on one side, and the Richards Bay Industrial area on the other. The M231 then passes over the N2 and carries on to Nseleni. At that bridge

one can either turn south towards Durban or north towards Mkuze along the N2.

Second, the towers along the John Ross/R34 from the John Ross Bridge to Tuzi Gazi near the harbour area:

The first is **Mhlatuze Canal tower**

**Bayside Aliminuim tower**

**John Ross Highway tower**

**Ricardia Primary School tower**

**Tuzi Gazi Tower** – in Richards Bay in the area where the John Ross/R34 turns north towards Meerensee.

***Meerensee Tower***

***Richards Bay Lighthouse Tower*** at Mzingazi.

**Towers encountered on the M231 are:**

**Ricardia Primary School Tower**

***Richards Bay Central Tower*** in the CBD.

**ABSA Bank Arboretum – Arboretum Tower** in the CBD

**Arboretum tower** across the Richards Bay Police Station

***Super Scaff*** – in the industrial area.

**Veld and Vlei** on the residential side.

**Aquadene Tower** – the last tower in the Richards Bay residential area towards Nseleni.

***Mvubu Tower*** – where the M231 joins the N2.

## **CELLPHONE COMMUNICATIONS OF THE “DURBAN” ACCUSED EN ROUTE FROM DURBAN TO RICHARDS BAY**

Before accused No 1 and 19 departed separately from Durban to Richards Bay on 2

October 2006, they communicated with each other at **01h32**, both receiving signal through the Glen Anil Tower. It appears to be a strange time for a social call.

**Accused 1** appears to have commenced his journey to Richards Bay at about **08h00**, as his first communication en route was with accused 26 at **08h18**. At that time accused 1 communicated through the Athlone Park Tower and accused 26 through the Ricardia Primary School Tower in Richards Bay. For ease of reference I shall, from this point on, refer only to the name of the tower.

At **08h20** accused 1 communicated with accused 20. Accused 1 was at Prospecton and accused 20 at Siyathuthuka, in the Kwa Mashu area.

At **08h54** at Shakas Kraal accused 1 communicated with an unknown person.

At **08h57** and at Groutville accused 1 unsuccessfully tried to communicate with “Xha” an apparent accomplice, about whom more will be said in due course.

At **09h26** and at Ngulule accused 1 communicated with accused 20, who was then at Glen Anil.

At **09h27**, one minute later, accused 1 communicated with accused 5. Accused 1 was at Ngulule and accused 5 at the Johannesburg International Airport.

It is common cause that accused 5 travelled by air to Durban.

At **09h31** (4 minutes later) accused 1 communicated with accused 20. Accused 1 was at Ginginglovu and accused 20 at Glen Anil.

At **09h33** accused 1 communicated with “Xha”. Accused 1 was at Blackburn and “Xha” at Glen Anil.

At **09h35** accused 1 communicated with accused 5. Accused 1 was at Mtunzini and accused 5 at Johannesburg International Airport.

At **09h39** accused 1 communicated with accused 5. Accused 1 was at Waterloo and

accused 5 still at the Johannesburg Airport.

At **09h44** accused 1 communicated with accused 26. Accused 1 was at Mzingwenya and accused 26 at Aquadene.

At **09h46** accused 1 communicated with “Spiwet”, another accomplice, who had travelled to Richards Bay with the other accused from Johannesburg. Accused 1 was at Mzingwenya and “Spiwet” at Richards Bay Lighthouse Tower, Mzingazi.

At **09h47** accused 1 communicated with accused 22. Accused 1 was at Arboretum and accused 22 at Richards Bay Lighthouse.

At **09h49** accused 1 communicated with accused 26. Accused 1 was still at Arboretum and accused 26 at Aquadene.

At **09h52** accused 1 communicated with an unknown person. Accused 1 at that stage was at Harbour Lights Caravan Park.

At **10h36** accused 1 communicated with “Xha”. Accused 1 was at Richards Bay Lighthouse at Mzingazi and “Xha” at Umhlanga Rocks W/tower. (Durban North).

At **10h39** accused 1 communicated with accused 14. Accused 1 was at Richards Bay Lighthouse, Mzingazi and accused 14 at Kenville.

At **11h12** accused 14 communicated with accused 26. Accused 14, who was with accused 19, was at Groutville and accused 26 at Richards Bay Lighthouse.

At **11h30** accused 1 communicated with accused 20. Accused 1 was at Richards Bay Lighthouse and accused 20 at Glen Anil.

At **11h48** accused 19 communicated with accused 26. Accused 19 was at Mzingwenya and accused 26 at Richards Bay Lighthouse.

At **11h54** accused 19 again communicated with accused 26. Accused 19 was at Harbour Lights Caravan Park and accused 26 at Richards Bay Lighthouse.

At **12h07** accused 19 again communicated with accused 26. Accused 19 was at

Bayside Aluminium and accused 26 at Meerensee.

At **12h17** accused 19 communicated with accused 26. Accused 19 was at Meerensee and accused 26 at Richards Bay Central.

At **12h33** accused 19 once more communicated with accused 26. Accused 19 was still at Meerensee and accused 26 still at Richards Bay Central.

At **12h41** accused 1 communicated with accused 20. Accused 1 was at Meerensee and accused 20 at Avoca Reservoir (north of Durban).

At **12h42** accused 1 communicated with accused 5. Accused 1 was at Meerensee and accused 5 at the Durban Airport (the “old” airport).

At **12h57** accused 14 communicated with an unknown person. Accused 14 was at Richards Bay Lighthouse.

The two calls following hereunder are significant:

At **12h59** accused 5 communicated with an unknown person. Accused 5 was at Pendlebury road which is close to the airport.

At **12h59** accused 1 communicated with accused 20. Accused 1 was at Richards Bay Lighthouse and accused 20 at Pendlebury road also.

At **13h49** accused 5 communicated with an unknown person. Accused 5 was at Ginginglovu.

At **14h01** accused 20 communicated with accused 1. Accused 20 was at Mtunzini and accused 1 at Umfolozi High School. As will appear later, certain of the accused conducted what may be described as a reconnaissance mission to the Penicuik and Charter areas.

At **14h27** accused 1 communicated with accused 20. Accused 1 was at Nyalazi and accused 20 at Richards Bay Central.

At **15h00** accused 5 communicated with accused 1. Accused 5 was at the ABSA Bank Arboretum tower.

At **15h01** accused 5 received a call while at the Veld en Vlei tower, a neighbouring tower to the ABSA Bank Arboretum tower. Accused 5 had obviously moved across the equal power boundary.

At **15h14** the accomplice, Xha, received a call from accused 26 through the ABSA Bank Arboretum tower. Accused 26 was at the Umfolozi High School tower.

At **15h15** Xha received a call through the Veld and Vlei tower from accused 26, then at Umfolozi High School tower. Again it appears that both accused 5 and 8 and Xha were making and receiving calls from the vicinity of the equal power boundary between the ABSA Bank Arboretum and Veld and Vlei towers.

At **15h16** accused 8 made a call through the ABSA Bank Arboretum tower.

At **15h16** accused 5 made a call through the ABSA Bank Arboretum tower.

At **15h18** accused 8 made a call through the Veld en Vlei tower.

At **15h26** accused 5 made a call through the ABSA Bank Arboretum tower.

At **15h44** Xha received a call through the ABSA Bank Arboretum tower from accused 1, who was at Richards Bay Central. It appears; accordingly, that at that stage Xha and accused 1 were both in the Richards Bay CBD. The communication has the appearance of two people in the same area, each trying to establish where the other was.

At **15h49** accused 5 communicated with an unknown person. Accused 5 was then at Meerensee.

A careful scrutiny of the communications between the accused as reflected above



show:

- a) That accused 1 set out from his home at 08h00 for Richards Bay. He arrived at Mzingazi at about 10h15, as he made his first call through the Richards Bay Lighthouse Tower at 10h36 to the said "Xha". Bearing in mind that he was on a trip to collect money owed to him by one Mbuyazi, he made the journey in very good time. However, on the way he made and received 16 cellphone calls. Ten of those were to and from certain of his co-accused and four from alleged accomplices, none of whom, on his own version, had any relevance to the purpose of his trip, which was "to collect money". Not a single call appears to have been made to Mbuyazi, the one person who was relevant to his journey. Thus he communicated with accused 20 (three times); accused 5 (three times); accused 26 (three times); once with accused 22 (who had travelled from Johannesburg); the said "Xha" (three times) and one with "Spiwet", both alleged accomplices.
- b) Two of the three communications of accused 1 with accused 5 took place while accused 5 was at the Johannesburg International Airport and the final one after accused 5 arrived at the Durban International Airport. It is to be noted that the communication between accused 1 and 20 shows that accused 20 was in the vicinity of Glen Anil and Avoca Reservoir Towers in the Durban North region from about 09h30 until 12h51, when he communicated with accused 1.
- c) At **12h42** accused 5 was in communication with accused 1. Accused 5 was at the Durban International Airport (south of Durban) and accused 1 was at Mzingazi. 18 Minutes later both accused 5 and 20 communicated through the

Pendlebury Road Tower at exactly the same time, namely 12h59 – accused 5 with an unknown person and accused 20 with accused 1. The Pendlebury Road Tower is an immediate neighbouring tower to Durban International Airport Tower, being just to the north of the latter, both next to the N2a distance of 2.8 kilometres apart. The inference seems inescapable that accused 20 (and with him accused 8) had picked up accused 5 at the Durban Airport and was en route to Richards Bay on the N2. That inference is strengthened by the cellphone communications of accused 5 and 20 on the way to Richards Bay.

- d) At **13h49** accused 5 communicated through the Ginginglovu Tower. At 14h01 accused 20 communicated with accused 1 through the Mtunzini Tower, a neighbouring tower to the Ginginglovu Tower– 14 kilometres apart.
- e) Judging from the time and distance between the locations of accused 5's communications by cellphone after he left Durban International Airport and arrived at Richards Bay, his evidence seems highly doubtful that he first called at the Durban Railway Station to buy stock and, when unsuccessful, went to Stanger for the same purpose, which again proved unfruitful and then travelled onto Richards Bay.

Accused 5's call from Pendlebury Road south of the Durban CBD close to the airport was at **12h59**. His first communication at Richards Bay took place at **15h00** – two hours and over 200 kilometers later. There simply was no time for the claimed excursions to the Durban Station and Stanger, before going to Richards Bay.

- f) Accused 20's communications after he reached Richards Bay, where he was to drop accused 8, show that he remained in the Richards Bay CBD in the

reception range of the Richards Bay Central Tower through which he communicated with: accused 1 (at **14h27** and again 1 minute later at **14h28**), and as will be seen many times thereafter – and not only with accused 1.

A perusal of accused 20 and 8's cellphone records show that they were in the Richards Bay CBD the previous day, 1 October 2006 and that accused 20 remained at the vicinity of the Richards Bay CBD on 2 October 2006 from about 14h27 until 15h34. During that time he communicated with a number of the accused and accomplices.

- g) As reflected above accused 5, 8 and Xha made calls from the same towers in the Richards Bay CBD contemporaneously. The perception gained is that accused 5, 8 and Xha remained with accused 20 in the Richards Bay CBD after they arrived there from Durban. The Richards Bay Central and the Absa Bank Arboretum towers are both located on top of the Absa building in Richards Bay CBD.

Judging from their cellphone records, accused 20 and Xha appear to have been in regular contact with each other – on 41 occasions during 1 September 2006 to 30 September 2006 and twice on 1 October 2006. The calls made and received by accused 20, 5, 8 and Xha in the CBD aforementioned, whilst in close proximity of each other. They did not phone each other – one does not phone a person you can talk to directly. The inference seems justified that they were probably together in the Richards Bay CBD when those calls were made.

- h) **Accused 14** communicated with accused 1 and 26 while he was on the N2 to

Richards Bay in the company of accused 19 at: 10h39 with accused 1 through the Kenville Tower (Durban North); 11h26 through the Groutville Tower to the area of Mvoti with accused 26. At Mzingazi accused 14 communicated with an unknown person at 12h57.

**Accused 19** in the same vehicle as accused 14 communicated with accused 26 on five occasions; through the Mzingwenya Tower, plus-minus 10 kilometers from the John Ross Bridge at 11h48 (accused 26 was then at Mzingazi); through the Harbour Lights Caravan Park Tower plus-minus 5 kilometers from the bridge, at 11h54 (accused 26 was at Mzingazi); through the Bayside Aluminium Tower in the Richards Bay Industrial area, at 12h07 (accused 26 was then at Meerensee Tower, which is situated on the John Ross/R32 leading from Mzingazi); through Meerensee Tower at 12h17 (accused 26 was at Richards Bay Central Tower); Meerensee Tower, at 12h33 (accused 26 is still at the Richards Bay Central Tower).

- i) As in the case of the Johannesburg accused, most of the accused who were from Durban, whether singly (accused 1, 5 and 26) or in pairs (accused 8 and 20; accused 14 and 19), ended up in Mzingazi.

In the case of accused 8, after his last communication at 15h00 through the ABSA Bank Arboretum tower in the Richards Bay CBD as aforementioned, his cellphone was not activated again before his arrest later that night. However he was arrested in the BMW in the company of accused 20, with whom he had travelled to Richards Bay, and accused 1, in circumstances already described. That BMW was seen by Captain Mncube leaving accused 24's premises at Mzingazi. In the absence of a plausible explanation to be determined later, it would seem that accused 8, 5 and possibly Xha had been

in accused 20's company through the greater part of the day.

**CATALOGUE OF CELLPHONE COMMUNICATIONS BY THE ACCUSED FROM MZINGAZI (RICHARDS BAY LIGHTHOUSE TOWER)**

The cellphone records of the accused reveal, save in the case of accused 8, 10 and 12, that on 2 October 2006 all the remaining accused all made or received calls through the Richards Bay Lighthouse Tower, which, as made clear during the course of the judgment, is the only tower which serves Mzingazi.

What follows is a catalogue of such calls, which includes SMS's and missed calls.

Per accused	
Acc 1	42
Acc 2	2
	5
Acc 3	7
Acc 4	2
Acc 5	2
Acc 6	1
	5
Acc 7	4
	6
Acc 8	0
Acc 9	2
	6
Acc 10	0
Acc 11	1
	9
Acc 12	0
Acc 13	2
	7
Acc 14	1
	8
Acc 15	2
	6

Acc 16	3 0
Acc 17	9
Acc 18	1 4
Acc 19	7
Acc 20	2 2
Acc 21	2 5
Acc 22	6 0
Acc 23	3 9
Acc 24	9
Acc 25	2 0
Acc 26	6 0
	550

### **Accomplices**

Fana	21
Spiwet	17
Xha	0
Msimango	18
Mzet	33
	89

**TOTAL639**

The sheer volume of the communications, which the accused engaged in, while at Mzingazi and, given the evidence already alluded to showing which of the accused

were acquainted with each other before the gathering of the accused at Mzingazi on 2 October 2006, it appears to us, on the face of it, dispositive of any suggestion that those communications were individual to each of the accused and that the said calls were made or received at some other location in Richards Bay than at Mzingazi. The expert evidence as mentioned *supra* was unambiguous and uncontested that the only location in Richards Bay at which cellphone calls could be made or received through the Richards Bay Lighthouse Tower, was at Mzingazi. No other tower could or did provide signal to that suburb. Where exactly in Mzingazi the calls were made and received is a question which the court has to decide on the evidence, including that of the accused, taken as a whole. That will follow in due time. However, subject to a plausible explanation to the contrary, everything points to the house of accused 24. Suffice it at this stage to hold that, *prima facie*, the calls made and received by the accused and accomplices through the Richards Bay Lighthouse tower, emanated from the house of accused 24. This finding will be finally visited when all the evidence as a whole, is being considered.

#### **MOVEMENTS OF THE ACCUSED AFTER THEIR ARRIVAL AT RICHARDS BAY**

When the myriad cellphone communications by the accused while they were at Mzingazi, as matters stand, from the house of accused 24, Richards Bay, and at the Penicuik and Charters areas, are unravelled, two structured excursions by the accused to the areas in which the attacks on the Fidelity motor vehicles occurred later that day, are revealed. The first thereof took place in the early afternoon and the

second in the late afternoon and early evening of 2 October 2006. The first excursion has the appearance of a scouting expedition. As will be seen, it displays all the hallmarks of a reconnaissance trip. The second excursion coincided with the times and places where the robbery and attempted robbery of the cash-in-transit vehicles took place.

The routes taken by the participants in both excursions are literally signposted by the towers activated by their cellphone communications, on their way there and back.

Analysed in that way, two routes emerged. The first passes in close proximity to accused 24's house at Mzingazi, which, as noted earlier, is the northerly aspect of the John Ross/R34 (that section is known as the Dune road), as viewed from the harbour area of Richards Bay.

From Mzingazi it leads south to the harbour/Tuzi Gazi area and from there turns west towards Empangeni. In the area of Arboretum Extension, a suburb, the M231 branches off to the Richards Bay CBD and, ultimately Nseleni, which lies beyond and to the west of the N2. From the junction between the M231 and the N2, the route taken proceeds north along the N2 past Mposa; Kwambonambi; the scene of the Penicuik primary and secondary offences, 41 kilometres from the house of accused 24; Mtubatuba and Kwamsane which lay on both sides of the N2 at that point; the scene of the Charters robbery and related offences; Petroport (the last cash pick-up point by the Fidelity Hi-Ace); Hluhluwe; Mhlosinga; Baobab Lodge and filling station; Mkuze and end at the junction where the road to Jozini and Northern Zululand turns off the N2, which, from that point leads on to Pongola.

The second route, known as the Dune road, which is said to be a "shortcut" from



Mzingazi to the N2 in the Mposa area, consists of a well-maintained road leading from the proximity of accused 24's house at Mzingazi via the offices of Richards Bay Minerals (RBM tower) to the N2 in the vicinity of Mposa, just south of Kwambonambi, which is a stone's throw from Penicuik. The latter road was not reflected on the relevant maps placed before us. As a consequence I invited counsel for the State and the accused to acquaint themselves as to the existence and condition of the "short-cut". Counsel duly reported back confirming the above.

The distance along that route (short-cut) was agreed at 32 kilometres from accused 24's house to the scene of crime at Penicuik.

With regard to the reconnaissance trip and the subsequent excursion to the areas of the crime scenes at Penicuik and Charters, the cellphone calls made and received by each of the accused and accomplices, had to be extrapolated from their cellphone records, Exhibits Z1 to Z32, both inclusive. That was done and collated in copious schedules which the witness, Mrs Botha, furnished to counsel and the Court. Extensive use was made thereof in both the State and Defence cases. As will be noted in due course, the accused were, in certain instances, hard put to explain their presence in relevant areas and, in others, came up with explanations, which appeared somewhat forced, to say the least.

We include, as part of the Judgment, a record of relevant communications between the accused and the accomplices involved in the excursions, which we hereafter shall refer to as the "log of communications" or "communications log", as the case may be.

The log represents every call, sms, missed call made or received by the accused

and their accomplices from the time the scout group left Mzingazi on reconnaissance to the Penicuik and Charters areas until they returned to Richards Bay. Again from the time the participants in the second excursion left from Mzingazi and Richards Bay CBD to the vicinity of the scenes of crime at Penicuik and Charters, as well as their return to Mzingazi where all the accused and most of the accomplices were shown to have gathered afterwards.

However, before that is done and in order to contextualise the movements of the accused involved in both excursions from the house of accused 24 at Mzingazi and back, the cellphone towers, which were activated by their passage, needs to be identified with reference to the location and time of the cellphone communications between the accused and accomplices. In order to accommodate that need, the following table of towers and relevant distances seems helpful, if not necessary. The table will precede the communication log.

## TABLE OF RELEVANT CELLPHONE TOWERS

UBOMBO SENTECHH (Most Northerly tower, situated on the Lebombo mountain range and serves the N2 North of Mkuze.)		
MKUZE ESTATE (Nearby Mkuze town)		
	14km	
BONZO (8km North of Bayala)		

	18km	
UMBUKWANE (Mhlosinga)		
	16km	
MKONGE FARM (Where the Hluhluwe road joins the N2)		Mkonk e Farm to Medha m = 11km
	5km	
HLUHLUWE (Town)		
MEDHAM (Petroport)		
	11 km	
NYALAZI (North of the crime scene)		Nyalaz i to Harriso n farm = 15km
	11 km	
<b>CHARTERS CREEK CRIME SCENE</b>		
	4km	
HARRISON FARM (South of the crime scene)		
	9km	
MTUBATUBA (Town)		
	4km	
MFOLOZI HIGH SCHOOL (Between KwaMsane and Mtubatuba before the Mfolozi river)		
	6km	
DAY BREAK (South-West of the Mfolozi river)		
	10km	
TRUST FARM (First tower North of the Penicuik crime scene)		
	4km	
<b>CRIME SCENE PENICUIK</b>		
	4km	
KWAMBONAMBI (Town)		
	6km	
MPOSA (Town)		

	2km		
MPOSA ESTATE	(Between Mposa town and Invubu)		
	1km		
RBM ROAD / N2 JUNCTION	(Where the RBM Dune road joins the N2 - back road from Mzingazi)	Distance between the house of accused 24 and where the RBM road joins the N2 = 18km	
	3km		
INVUBU	(Substation)		
	3km		
MANDLAZINI	(Transnet Depot - Industrial area of Richardsbay)		
	2km		
AQUADENE	(First suburb from N2 to Richardsbay CBD via M231)		
	2km		
VELD EN VLEI	(Opposite sports complex)		
	1km		
SUPER SCAFF	(Industrial area - gives reception to the Taxi rank)		
	1km		
ABSA BANK ARBORETUM / RB CENTRAL	(Richardsbay CBD - roof of the ABSA Bank Arboretum Building)		
	2km		
RICARDIA PRIMARY	(Gives coverage to the junction where the M231 joins the R23 (John Ross))		
	1km		
JOHN ROSS HIGH WAY	(On R34)		
	4km		
TUZI GAZI	(Small crafts harbor where the R34 meets Meerensee)		
	2km		
MEERENSEE	(Between the small crafts harbor and Mzingazi)		
	3km		
LIGHTHOUSE	(Mzingazi on Dune road)		
	3km		
HOUSE OF ACC 24	(Mzingazi)		

	9km		
RBM MILLING / HUB	(North on the Dune road past the area of accused 24's house)		
	9km		
RBM ROAD / N2 JUNCTION	(Where the RBM Dune road joins the N2 - back road from Mzingazi)		

As will be seen upon studying the communications log, in the area of the Harrison Farm tower, the name of a tower appears that it is situated inland from the N2, the **Somkhele** tower is reflected. It looks out of place, but is not. That is an overspill onto the N2, which indicates that at that point the signal from the Somkhele tower is stronger than that of the Harrison Farm tower. The witness Prinsloo likened it to an “island”.

### LOG OF RELEVANT CELLPHONE COMMUNICATIONS

#### FIRST EXCURSION - RECONNAISSANCE

#### COMMUNICATIONS INITIATED BY

#### COMMUNICATIONS RECEIVED BY

Acc 1 Goodwill Shange	13:04:49	01-RB_Lighthouse-0		Making a call to an unknown person	
Acc 2 Fox Sithole	13:04:59	01-RB_Lighthouse-0	Acc 2	Acc 2 phoning one of his other phones - location unknown	
Receiving a call from an unknown person	13:05:58			Acc 24 Mbuso Mncube	Richards Bay Min Admin
Acc 26 Thulani Mthethwa	13:06:10	01-RB_Lighthouse-0		Making a call to an unknown person	
Receiving a call from an unknown person	13:07:52			Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Acc 9 Patrick Mpho Tsotetsi	13:10:02	Richards Bay Lighthouse	Acc 22	Acc 22 Ernest Ndlangamandla	01-RB_Lighthouse-0
Acc 24 Mbuso Mncube	13:18:37	Richardia Primary School		Making a call to an unknown person	
Receiving a call from an unknown person	13:20:37			Acc 17 Thabani Zondo	01-RB_Lighthouse-0

Acc 24 Mbuso Mncube	13:20:51	30-RB_Central-2			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	13:21:13	03-Meerensee-3	Acc 1		Acc 1 Goodwill Shange	03-Meerensee-2
Receiving a call from an unknown person	13:22:45				Acc 19 Vusi Njoko	Meerensee Telkom Ex
Acc 1 Goodwill Shange	13:22:57	03-Meerensee-2			Making a call to an unknown person	
Receiving a SMS from an unknown person	13:26:11				Acc 26 Thulani Mthethwa	22-Ricardia_Primary_School-2
Acc 1 Goodwill Shange	13:28:35	03-Meerensee-3			Making a call to an unknown person	
Receiving a SMS from an unknown person	13:29:26				Acc 26 Thulani Mthethwa	22-Ricardia_Primary_School-3
Acc 26 Thulani Mthethwa	13:30:02	22-Ricardia_Primary_School-3	Acc 1		Acc 1 Goodwill Shange	22-Ricardia_Primary_School-3
Acc 24 Mbuso Mncube	13:30:34	Invubu Eskom			Making a call to an unknown person	
Acc 9 Patrick Mpho Tsotetsi	13:32:19	Mposa Forest			Making a call to an unknown person	
Receiving a SMS from an unknown person	13:33:36				Acc 14 Sipho Mhlono	30-RB_Central-2
Acc 9 Patrick Mpho Tsotetsi	13:34:09	Mposa Forest			Making a call to an unknown person	
Acc 2 Fox Sithole	13:34:33	01-RB_Lighthouse-0	Acc 2		Acc 2 phoning one of his other phones - location unknown	
Acc 14 Sipho Mhlono	13:37:48	30-RB_Central-1			Making a call to an unknown person	
Receiving a call from an unknown person	13:40:14				Acc 1 Goodwill Shange	21-Invubu-0
Acc 26 Thulani Mthethwa	13:41:09	10-Aquadene-2			Making a call to an unknown person	
Receiving a call from an unknown person	13:43:51				Acc 19 Vusi Njoko	Super Scaff
Acc 1 Goodwill Shange	13:48:48	36-Trust_Farm_School-0	Acc 26		Acc 26 Thulani Mthethwa	21-Invubu-0
Receiving a call from an unknown person	13:49:39				Acc 5 Fani Mbonani	Mangeti Church VC
Acc 1 Goodwill Shange	13:57:30	19-Daybreak-0	Acc 26		Acc 26 Thulani Mthethwa	36-Trust_Farm_School-0
Acc 2 Fox Sithole	13:59:33	07-Birdswood_Beacon-1	Acc 2		Acc 2 phoning one of his other phones - location unknown	
Receiving a call from an unknown person	14:00:53				Acc 17 Thabani Zondo	01-RB_Lighthouse-0
Receiving a sms from an unknown person	14:01:04				Acc 14 Sipho Mhlono	19-Daybreak-0

Receiving a call from an unknown person	14:01:08				Common link Msimango	01-RB_Lighthouse-0
Acc 20 Sipho Gumede	14:01:10	Mtunzini	acc 1		Acc 1 Goodwill Shange	81-Mfolozi_High_School_2-2
Receiving a call from an unknown person	14:05:47				Acc 25 Eddie Ubisi	01-RB_Lighthouse-0
Acc 26 Thulani Mthethwa	14:07:08	02-Mtubatuba_Town-1	Acc 24		Acc 24 Mbuso Mncube	Harrison Farm
Acc 26 Thulani Mthethwa	14:10:29	03-Mtubatuba-0	Acc 1		Acc 1 Goodwill Shange	03-Mtubatuba-0
Receiving a call from an unknown person	14:10:48				Acc 19 Vusi Njoko	Harrison Farm
Acc 1 Goodwill Shange	14:11:55	04-Harrison_Farm-0			Making a call to an unknown person	
Acc 16 Sipho Percy Kunene	14:12:36	01-RB_Lighthouse-0			Making a call to an unknown person	
Receiving a call from an unknown person	14:15:03				Acc 16 Sipho Percy Kunene	01-RB_Lighthouse-0
Acc 1 Goodwill Shange	14:23:38	14-Nyalazi-0	Acc 26		Acc 26 Thulani Mthethwa	14-Nyalazi-0
Acc 26 Thulani Mthethwa	14:23:38	14-Nyalazi-0			Acc 16 Sipho Percy Kunene	01-RB_Lighthouse-0
Acc 26 Thulani Mthethwa	14:23:38	14-Nyalazi-0			Acc 24 Mbuso Mncube	07-Umbukwane-0
Acc 26 Thulani Mthethwa	14:23:38	14-Nyalazi-0			Acc 24 Mbuso Mncube	Mkonge Farm
Acc 1 Goodwill Shange	14:26:30	14-Nyalazi-0	Fana		Common link Fana	01-RB_Lighthouse-0
Acc 1 Goodwill Shange	14:27:32	14-Nyalazi-0	Acc 24		Acc 24 Mbuso Mncube	Umbukwane
Acc 20 Sipho Gumede	14:28:00	30-RB_Central-1	Acc 1		Acc 1 Goodwill Shange	14-Nyalazi-0
Common link Fana	14:28:56	01-RB_Lighthouse-0			Sent SMS to unknown number	
Received sms from unknown person	14:29:10				Common link Fana	01-RB_Lighthouse-0
Received a call from an unknown person	14:29:57				Spiwet	Medham
Acc 26 Thulani Mthethwa	14:32:00	14-Nyalazi-0			Making a call to an unknown person	
Acc 11 Flavio Louis	14:32:06	14-Nyalazi-0			Making a call to an unknown person	
Common link Fana	14:32:38	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 11 Flavio Louis	14:33:03	14-Nyalazi-0	Acc 11		Phoning one of his own numbers - location unkown	



Receiving a call from an unknown person	14:33:41				Acc 26 Thulani Mthethwa	14-Nyalazi-0
Acc 1 Goodwill Shange	14:34:11	14-Nyalazi-0	Acc 26		Acc 26 Thulani Mthethwa	14-Nyalazi-0
Receiving a call from an unknown number	14:35:42				Acc 24 Mbuso Mncube	08-Bonzo-0
Acc 26 Thulani Mthethwa	14:36:02	14-Nyalazi-0	Acc 1		Acc 1 Goodwill Shange	14-Nyalazi-0
Receiving a call from an unknown number	14:40:09				Acc 3 Zofania Mthethwa	Richards Bay Lighthouse
Acc 9 Patrick Mpho Tsotetsi	14:41:03	Ubombo Sentechh			Making a call to an unknown person	
Receiving a call from an unknown number	14:41:44				Common link Msimango	01-RB_Lighthouse-0
Acc 9 Patrick Mpho Tsotetsi	14:44:04	Mkuzi Estate			Making a call to an unknown person	
Receiving a call from an unknown number	14:44:41				Acc 1 Goodwill Shange	04-Harrison_Farm-0
Receiving an sms from unknown person	14:47:31				Acc 26 Thulani Mthethwa	04-Harrison_Farm-0
Acc 26 Thulani Mthethwa	14:48:43	12-Ntondweni-0	Acc 24		Acc 24 Mbuso Mncube	Mkuzi Estate
Receiving call from unknown person	14:50:25				Common link Msimango	01-RB_Lighthouse-0
Acc 17 Thabani Zondo	14:51:05	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 20 Sipho Gumede	14:54:18	30-RB_Central-2	Acc 26		Unsuccesful call	
Acc 20 Sipho Gumede	14:54:29	30-RB_Central-2	Acc 26		Acc 26 Thulani Mthethwa	04-Harrison_Farm-0
Acc 24 Mbuso Mncube	14:55:15	Mkuzi Estate	Acc 26		Acc 26 Thulani Mthethwa	04-Harrison_Farm-0
Common link Mzet	14:55:37	01-RB_Lighthouse-0			Making a call to an unknown person	
Common link Mzet	14:56:03	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 24 Mbuso Mncube	14:56:19	Mkuzi Estate	Acc 22		Acc 22 Ernest Ndlangamandla	Harrison Farm
Received call from unknown person	14:56:51				Common link Mzet	01-RB_Lighthouse-0
Received sms from unknown person	14:57:06				Acc 14 Sipho Mhlongo	04-Harrison_Farm-0
Acc 24 Mbuso Mncube	14:59:41	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 5 Fani Mbonani	15:00:56	ABSA Bank Arboretum	Acc 1		Acc 1 Goodwill Shange	04-Harrison_Farm-0

		Arboretum				
Receiving a call from an unknown person	15:01:53				Acc 5 Fani Mbonani	Veld en Vlei
Acc 1 Goodwill Shange	15:04:20	04-Harrison_Farm-0			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	15:04:53	03-Mtubatuba-0	Acc 1		Acc 1 Goodwill Shange	40-Honeydale-0
Received sms from unknown person	15:07:14				Common link Fana	01-RB_Lighthouse-0
Received sms from unknown person	15:07:19				Common link Fana	01-RB_Lighthouse-0
Acc 1 Goodwill Shange	15:08:20	03-Mtubatuba-0	Acc 24		Acc 24 Mbuso Mncube	Mkuzi Estate
Receiving a call from an unknown person	15:09:27				Acc 14 Sipho Mhlongo	03-Mtubatuba-0
Acc 26 Thulani Mthethwa	15:10:38	03-Mtubatuba-0			Making a call to an unknown person	
Receiving a call from an unknown person	15:12:32				Common link Msimango	03-Meerensee-2
Common link Msimango	15:13:29	03-Meerensee-2			Acc 17 Thabani Zondo	03-Meerensee-2
Acc 26 Thulani Mthethwa	15:13:31	02-Mtubatuba_Town-3			Making a call to an unknown person	
Acc 18 Lucky Phasha	15:13:32	Matubatuba Eskom	Acc 9		Acc 9 Patrick Mpho Tsoetsi	Mkuzi Estate
Acc 26 Thulani Mthethwa	15:14:16	80-Mfolozi_High_School_1-1	Xha		Xha	ABSA Bank Arboretum Arboretum
Acc 18 Lucky Phasha	15:14:40	Mfolozi High School	Acc 23		Acc 23 Hamilton Mazibuko	01-RB_Lighthouse-0
Acc 26 Thulani Mthethwa	15:15:19	80-Mfolozi_High_School_1-1	Xha		Xha	Veld en Vlei
Acc 20 Sipho Gumede	15:16:25	30-RB_Central-1	Acc 26		Acc 26 Thulani Mthethwa	81-Mfolozi_High_School_2-2
Themba Kathide	15:16:26	ABSA Bank Arboretum Arboretum			Service number	
Acc 5 Fani Mbonani	15:16:32	ABSA Bank Arboretum Arboretum			Making a call to an unknown person	
Acc 1 Goodwill Shange	15:17:52	19-Daybreak-0			Making a call to an unknown person	
Themba Kathide	15:18:12	Veld en Vlei			Service number	
Acc 26 Thulani Mthethwa	15:18:45	81-Mfolozi_High_School_2-2	Acc 20		Acc 20 Sipho Gumede	30-RB_Central-2

Receiving a call from an unknown person	15:21:23				Acc 16 Sipho Percy Kunene	01-RB_Lighthouse-0
Acc 9 Patrick Mpho Tsotetsi	15:21:33	Mkuzi Estate			Making a call to an unknown person	
Acc 24 Mbuso Mncube	15:21:49	Mkuzi Estate	Acc 26		Acc 26 Thulani Mthethwa	19-Daybreak-0
Receiving a sms from an unknown person	15:22:15				Acc 26 Thulani Mthethwa	19-Daybreak-0
Receiving a call from an unknown person	15:22:36				Acc 14 Sipho Mhlono	19-Daybreak-0
Acc 26 Thulani Mthethwa	15:23:05	36-Trust_Farm_School-0	Acc 24		Acc 24 Mbuso Mncube	Mkuzi Estate
Receiving a sms from an unknown person	15:23:10				Common link Fana	01-RB_Lighthouse-0
Acc 26 Thulani Mthethwa	15:24:50	36-Trust_Farm_School-0			Making a call to an unknown person	
Acc 20 Sipho Gumede	15:26:06	30-RB_Central-1	Acc 26		Acc 26 Thulani Mthethwa	36-Trust_Farm_School-0
Receiving a call from an unknown person	15:26:19				Common link Msimango	01-RB_Lighthouse-0
Receiving a sms from an unknown person	15:26:20				Acc 26 Thulani Mthethwa	17-Kwambonambi-0
Acc 5 Fani Mbonani	15:26:41	ABSA Bank Arboretum Arboretum			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	15:26:42	17-Kwambonambi-0	Acc 20		Acc 20 Sipho Gumede	30-RB_Central-1
Receiving a sms from an unknown person	15:27:45				Common link Fana	01-RB_Lighthouse-0
Receiving a sms from an unknown person	15:27:55				Common link Fana	01-RB_Lighthouse-0
Receiving a sms from an unknown person	15:29:31				Acc 26 Thulani Mthethwa	38-Mposa-0
Acc 26 Thulani Mthethwa	15:29:36	38-Mposa-0	Acc 24		Acc 24 Mbuso Mncube	Mkuzi Estate
Receiving a sms from an unknown person	15:29:56				Acc 26 Thulani Mthethwa	38-Mposa-0
Common link Fana	15:30:01	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	15:30:53	38-Mposa-0			Making a call to an unknown person	
Acc 20 Sipho Gumede	15:31:23	30-RB_Central-1	Acc 26		Acc 26 Thulani Mthethwa	38-Mposa-0
Receiving a sms from an unknown person	15:31:43				Acc 26 Thulani Mthethwa	21-Invubu-0

Common link Fana	15:31:58	01-RB_Lighthouse-0	Acc 1		Acc 1 Goodwill Shange	38-Mposa-0
Acc 20 Sipho Gumede	15:32:15	30-RB_Central-1	Acc 1		Acc 1 Goodwill Shange	21-Invubu-0
Receiving a call from an unknown person	15:33:56				Acc 24 Mbuso Mncube	Mkuzi Estate
Acc 26 Thulani Mthethwa	15:34:37	21-Invubu-0	Acc 20		Acc 20 Sipho Gumede	30-RB_Central-1
Acc 26 Thulani Mthethwa	15:36:26	10-Aquadene-1	Acc 1		Acc 1 Goodwill Shange	10-Aquadene-1
Acc 2 Fox Sithole	15:36:47	01-RB_Lighthouse-0	acc 9		Acc 9 Patrick Mpho Tsoetsi	Mkuzi Estate
Acc 26 Thulani Mthethwa	15:40:05	14-RB_Milling_Silo-1	Acc 1		Acc 1 Goodwill Shange	11-Super_Scaff_MTN-1
Acc 1 Goodwill Shange	15:41:01	10-Aquadene-2	Acc 26		Acc 26 Thulani Mthethwa	10-Aquadene-2
Acc 1 Goodwill Shange	15:44:24	30-RB_Central-1	Xha		Xha	ABSA Bank Arboretum Arboretum
Receiving a call from an unknown person	15:45:49				Common link Msimango	01-RB_Lighthouse-0
Missed call from unknown person	15:46:07				Acc 26 Thulani Mthethwa	30-RB_Central-1
Received sms from unknown person	15:46:14				Acc 26 Thulani Mthethwa	30-RB_Central-1
Acc 1 Goodwill Shange	15:47:16	02-Tuzi_Gazi-0	Acc 24		Acc 24 Mbuso Mncube	Mkuzi Estate
Acc 18 Lucky Phasha	15:49:11	Hillside Aluminium			Making a call to an unknown person	
Receiving a call from an unknown person	15:49:41				Acc 5 Fani Mbonani	Meerensee Telkom Ex
Common link Mzet	15:52:06	01-RB_Lighthouse-0	Acc 24		Acc 24 Mbuso Mncube	Mkuzi Estate
Common link Mzet	15:52:46	01-RB_Lighthouse-0	Acc 24		Acc 24 Mbuso Mncube	Mkuzi Estate
Received sms from unknown person	15:52:46				Acc 26 Thulani Mthethwa	30-RB_Central-2
Acc 1 Goodwill Shange	15:53:13	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	15:53:22	22-Ricardia_Primary_School-3			Making a call to an unknown person	
Acc 7 Xolani Buthelezi	15:55:03	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 1 Goodwill Shange	15:56:49	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	15:58:50	30-RB_Central-2	Acc 24		Acc 24 Mbuso Mncube	Mkuzi Estate

Receiving a call from an unknown person	15:59:04				Common link Mzet	01-RB_Lighthouse-0
Acc 18 Lucky Phasha	16:01:15	Hillside Aluminium			Making a call to an unknown person	
Receiving a call from an unknown person	16:01:52				Acc 18 Lucky Phasha	ABSA Bank Arboretum Arboretum
Acc 9 Patrick Mpho Tsotetsi	16:01:59	Mkuzi Estate			Making a call to an unknown person	
Receiving a call from an unknown person	16:02:00				Spiwet	Richards Bay Lighthouse
Acc 18 Lucky Phasha	16:02:30	Hillside Aluminium			Making a call to an unknown person	
Receiving a call from an unknown person	16:03:22				Common link Mzet	01-RB_Lighthouse-0
Receiving an sms from an unknown person	16:03:25				Acc 26 Thulani Mthethwa	13-John_Ross_Highway-1
Acc 26 Thulani Mthethwa	16:03:43	13-John_Ross_Highway-1			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	16:05:05	13-John_Ross_Highway-1	Acc 1		Acc 1 Goodwill Shange	01-RB_Lighthouse-0
Acc 26 Thulani Mthethwa	16:06:02	30-RB_Central-2			Making a call to an unknown person	
Acc 11 Flavio Louis	16:07:16	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 15 Thabo Mahoa	16:07:34	01-RB_Lighthouse-0	Acc 22		Acc 22 Ernest Ndlangamandla	RB Central
Receiving an sms from an unknown person	16:07:50				Acc 26 Thulani Mthethwa	13-John_Ross_Highway-1
Acc 26 Thulani Mthethwa	16:08:06	13-John_Ross_Highway-1			Making a call to an unknown person	
Receiving a call from an unknown person	16:10:25				Acc 26 Thulani Mthethwa	13-John_Ross_Highway-1
Receiving an sms from an unknown person	16:11:37				Acc 26 Thulani Mthethwa	30-RB_Central-3
Acc 26 Thulani Mthethwa	16:12:04	13-John_Ross_Highway-1			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	16:13:07	22-Ricardia_Primary_School-3	Acc 24		Unsuccesful call	
Acc 26 Thulani Mthethwa	16:13:18	13-John_Ross_Highway-1	Acc 24		Unsuccesful call	
Acc 26 Thulani Mthethwa	16:13:28	13-John_Ross_Highway-1	Acc 24		Acc 24 Mbuso Mncube	Bonzo
Receiving a call from an unknown person	16:14:53				Acc 26 Thulani Mthethwa	22-Ricardia_Primary_School-3

Acc 14 Sipho Mhlongo	16:15:52	30-RB_Central-3			Making a call to an unknown person	
Receiving an sms from an unknown person	16:18:22				Acc 26 Thulani Mthethwa	30-RB_Central-3
Acc 22 Ernest Ndlangamandla	16:18:29	30-RB_Central-3	Acc 15		Acc 15 Thabo Mahoa	01-RB_Lighthouse-0
Receiving a call from an unknown person	16:19:39				Acc 6 Sibusiso Shabalala	01-RB_Lighthouse-0
Acc 18 Lucky Phasha	16:20:21	ABSA Bank Arboretum	Acc 9		Unsuccesful call	
Acc 18 Lucky Phasha	16:20:33	ABSA Bank Arboretum	Acc 9		Acc 9 Patrick Mpho Tsotetsi	Bonzo
Acc 24 Mbuso Mncube	16:21:02	Bonzo	Acc 26		Acc 26 Thulani Mthethwa	Missed call - no tower
Receiving a sms from an unknown person	16:21:18				Acc 26 Thulani Mthethwa	13-John_Ross_Highway-1
Acc 9 Patrick Mpho Tsotetsi	16:21:30	Ubombo Sentechh	Acc 22		Acc 22 Ernest Ndlangamandla	13-John_Ross_Highway-1
Acc 26 Thulani Mthethwa	16:22:06	13-John_Ross_Highway-1	Acc 24		Acc 24 Mbuso Mncube	Bonzo
Acc 18 Lucky Phasha	16:22:10	ABSA Bank Arboretum	Acc 9		Acc 9 Patrick Mpho Tsotetsi	Bonzo
Acc 26 Thulani Mthethwa	16:22:54	13-John_Ross_Highway-1	Acc 24		Acc 24 Mbuso Mncube	Bonzo
Acc 26 Thulani Mthethwa	16:23:16	30-RB_Central-2			Making a call to an unknown person	
Acc 2 Fox Sithole	16:26:01	01-RB_Lighthouse-0	acc 22		Acc 22 Ernest Ndlangamandla	22-Ricardia_Primary_School-3
Acc 9 Patrick Mpho Tsotetsi	04:31:55	Bonzo	Acc 22		Acc 22 Ernest Ndlangamandla	22-Ricardia_Primary_School-3
Acc 26 Thulani Mthethwa	16:32:30	03-Meerensee-1			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	16:33:57	01-RB_Lighthouse-0			Making a call to an unknown person	

<b>GROUP RETURNED AFTER SCOUTING (NOT 9 &amp; 24)</b>
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Acc 2 Fox Sithole	16:34:14	01-RB_Lighthouse-0	acc 22		Acc 22 Ernest Ndlangamandla	01-RB_Lighthouse-0
Receiving a call from an unknown person	16:36:43				Acc 3 Zofania Mthethwa	Richards Bay Lighthouse
Receiving a call from an unknown person	16:36:56				Acc 14 Sipho Mhlono	01-RB_Lighthouse-0
Acc 23 Hamilton Mazibuko	16:37:21	01-RB_Lighthouse-0	Acc 18		Acc 18 Lucky Phasha	Richards Bay Lighthouse
Receiving a call from an unknown person	16:37:37				Spiwet	Richards Bay Lighthouse
Receiving a call from an unknown person	16:37:58				Common link Fana	01-RB_Lighthouse-0
Common link Mzet	16:43:48	07-Birdswood_Beacon-1			Making a call to an unknown person	
Acc 24 Mbuso Mncube	16:45:29	Umbukwane	Acc 26		Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Acc 23 Hamilton Mazibuko	16:47:00	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	16:48:14	01-RB_Lighthouse-0	Acc 24		Acc 24 Mbuso Mncube	Mkonge Farm
Common link Mzet	16:49:29	01-RB_Lighthouse-0	Msimango		Msimango	01-RB_Lighthouse-0
Common link Mzet	16:50:17	03-Meerensee-1			Making a call to an unknown person	
Receiving a sms from an unknown person	16:51:02				Common link Msimango	01-RB_Lighthouse-0
Acc 1 Goodwill Shange	16:52:15	01-RB_Lighthouse-0	Xha		Xha	03-Meerensee-1
Acc 9 Patrick Mpho Tsotetsi	16:52:17	Mkonge Farm	Acc 21		Acc 21 Bongani Tshabalala	Richards Bay Lighthouse
Receiving a sms from an unknown person	16:52:29				Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Acc 24 Mbuso Mncube	16:52:44	Mkonge Farm	Acc 26		Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Acc 24 Mbuso Mncube	16:52:44	Mkonge Farm	Acc 26		Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Receiving a call from an unknown person	16:53:16				Acc 9 Patrick Mpho Tsotetsi	Mkonge Farm

Acc 9 Patrick Mpho Tsotetsi	16:53:35	Mkonge Farm			Making a call to an unknown person	
Receiving a call from an unknown person	16:55:29				Common link Mzet	03-Meerensee-1
Receiving a sms from an unknown person	16:55:42				Acc 15 Thabo Mahoa	01-RB_Lighthouse-0
Common link Mzet	16:56:20	01-RB_Lighthouse-0	Acc 14		Acc 14 Sipho Mhlongo	01-RB_Lighthouse-0
Acc 18 Lucky Phasha	16:56:57	01-RB_Lighthouse-0	Acc 1		Acc 1 Goodwill Shange	01-RB_Lighthouse-0
Receiving a call from an unknown person	16:57:10				Acc 2 Fox Sithole	01-RB_Lighthouse-0
Receiving a call from an unknown person	16:57:16				Acc 3 Zofania Mthethwa	Richards Bay Lighthouse
Receiving a sms from an unknown person	16:58:47				Acc 1 Goodwill Shange	01-RB_Lighthouse-0
Acc 2 Fox Sithole	16:59:18	01-RB_Lighthouse-0	acc 22		Acc 22 Ernest Ndlangamandla	01-RB_Lighthouse-0
Acc 1 Goodwill Shange	16:59:23	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	17:00:29	01-RB_Lighthouse-0	Acc 24		Acc 24 Mbuso Mncube	Hluhluwe Town VC



<b>GROUP ACTIVATED TO BEGIN MOVING NORTH</b>	
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Acc 3 Zofania Mthethwa	17:01:44	Richards Bay Lighthouse			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	17:02:42	01-RB_Lighthouse-0			Making a call to an unknown person	
Receiving a call from an unknown person	17:02:58				Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Acc 16 Sipho Percy Kunene	17:03:18	03-Meerensee-1			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	17:03:36	01-RB_Lighthouse-0	Msimango		Common link Msimango	01-RB_Lighthouse-0
Acc 26 Thulani Mthethwa	17:04:25	01-RB_Lighthouse-0			Making a call to an unknown person	
Receiving a call from an unknown person	17:04:28				Acc 16 Sipho Percy Kunene	03-Meerensee-1
Acc 24 Mbuso Mncube	17:05:14	Hluhluwe Town VC	MZET		Common link Mzet	03-Meerensee-2
Acc 26 Thulani Mthethwa	17:05:37	01-RB_Lighthouse-0			Acc 1 Goodwill Shange	03-Meerensee-2
Spiwet	17:05:52	Richards Bay Lighthouse	Acc 1		Acc 1 Goodwill Shange	03-Meerensee-2
Receiving a sms from an unknown person	17:06:09				Common link Fana	22-Ricardia_Primary_School-2
Acc 26 Thulani Mthethwa	17:07:33	35-RB_Minerals-0	Msimango		Common link Msimango	01-RB_Lighthouse-0
Acc 26 Thulani Mthethwa	17:08:00	35-RB_Minerals-0			Making a call to an unknown person	
Receiving a sms from an unknown person	17:08:54				Common link Msimango	35-RB_Minerals-0
Receiving a sms from an unknown person	17:08:59				Common link Msimango	35-RB_Minerals-0
Acc 26 Thulani Mthethwa	17:09:14	35-RB_Minerals-0	Spiwet		Spiwet	RBM - Hub1
Acc 26 Thulani Mthethwa	17:10:04	35-RB_Minerals-0	Acc 22		Acc 22 Ernest Ndlangamandla	03-Meerensee-3
Receiving a call from an unknown person	17:10:26				Acc 15 Thabo Mahoa	22-Ricardia_Primary_School

						-1
Common link Mzet	17:10:48	03-Meerensee-2	Acc 24		Acc 24 Mbuso Mncube	Hluhluwe Town VC
Receiving a call from an unknown person	17:11:17				Acc 16 Sipho Percy Kunene	03-Meerensee-2
Acc 22 Ernest Ndlangamandla	17:11:47	22-Ricardia_Primary_School-3	acc 24		Acc 24 Mbuso Mncube	Hluhluwe Town VC
Receiving a call from an unknown person	17:15:03				Acc 14 Sipho Mhlongo	35-RB_Minerals-0
Acc 2 Fox Sithole	17:15:07	30-RB_Central-1	acc 22		Acc 22 Ernest Ndlangamandla	10-Aquadene-2
Receiving a call from an unknown person	17:16:10				Acc 24 Mbuso Mncube	Hluhluwe Town VC
Acc 26 Thulani Mthethwa	17:19:39	38-Mposa-0	Acc 22		Acc 22 Ernest Ndlangamandla	10-Aquadene-3
Acc 26 Thulani Mthethwa	17:20:23	38-Mposa-0	Acc 24		Acc 24 Mbuso Mncube	Hluhluwe Town VC
Receiving a call from an unknown person	17:20:39				Acc 14 Sipho Mhlongo	38-Mposa-0
Receiving a call from an unknown person	17:20:45				Acc 26 Thulani Mthethwa	38-Mposa-0
Receiving a call from an unknown person	17:22:52				Common link Fana	21-Invubu-0
Acc 18 Lucky Phasha	17:23:20	Mposa Forest	Acc 9		Acc 9 Patrick Mpho Tsotetsi	Hluhluwe Town VC
Acc 2 Fox Sithole	17:23:22	10-Aquadene-1	acc 22		Acc 22 Ernest Ndlangamandla	21-Invubu-0
Receiving a call from an unknown person	17:24:59				Acc 26 Thulani Mthethwa	17-Kwambonambi-0
Acc 22 Ernest Ndlangamandla	17:25:47	21-Invubu-0	acc 18		Acc 18 Lucky Phasha	KwaMbonambi Sasko
Receiving a call from an unknown person	17:27:00				Acc 26 Thulani Mthethwa	36-Trust_Farm_School-0
Acc 26 Thulani Mthethwa	17:28:11	36-Trust_Farm_School-0			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	17:28:40	36-Trust_Farm_School-0			Making a call to an unknown person	
Acc 26 Thulani Mthethwa	17:29:23	36-Trust_Farm_School-0			Making a call to an unknown person	
Acc 22 Ernest Ndlangamandla	17:29:33	38-Mposa-0	acc 15		Acc 15 Thabo Mahoa	No tower
Acc 22 Ernest Ndlangamandla	17:29:48	17-Kwambonambi-0	acc 15		Acc 15 Thabo Mahoa	No tower
Acc 26 Thulani Mthethwa	17:29:57	19-Daybreak-0			Making a call to an unknown person	

Acc 26 Thulani Mthethwa	17:31:13	19-Daybreak-0	Acc 24		Acc 24 Mbuso Mncube	Hluhluwe Town VC
Acc 22 Ernest Ndlangamandla	17:31:15	17-Kwambonambi-0	acc 23		Acc 23 Hamilton Mazibuko	17-Kwambonambi-0
Acc 22 Ernest Ndlangamandla	17:32:30	17-Kwambonambi-0	acc 24		Acc 24 Mbuso Mncube	Hluhluwe Town VC
Acc 26 Thulani Mthethwa	17:33:35	81-Mfolozi_High_School_2-2	Acc 22		Acc 22 Ernest Ndlangamandla	17-Kwambonambi-0
Receiving a call from an unknown person	17:35:57				Acc 4 Zakhele Sibisi	Meerensee Telkom Ex
Receiving a sms from unknown person	17:37:05				Acc 1 Goodwill Shange	36-Trust_Farm_School-0
Acc 21 Bongani Tshabalala	17:37:49	Mfolozi High School	ACC 9		Acc 9 Patrick Mpho Tsotetsi	Hluhluwe Town VC
Receiving a call from an unknown person	17:39:09				Acc 1 Goodwill Shange	19-Daybreak-0
Acc 26 Thulani Mthethwa	17:40:14	03-Mtubatuba-0	Spiwet		Spiwet	Matubatuba Eskom
Spiwet	17:41:27	Somkhele VC	Acc 26		Acc 26 Thulani Mthethwa	03-Mtubatuba-0
Acc 14 Sipho Mhlongo	17:41:30	03-Mtubatuba-0			Making a call to an unknown person	
Receiving a call from an unknown person	17:42:56				Acc 1 Goodwill Shange	81-Mfolozi_High_School_2-2
Acc 18 Lucky Phasha	17:43:03	Somkhele VC	Acc 9		Acc 9 Patrick Mpho Tsotetsi	Hluhluwe Town VC
Receiving a call from an unknown person	17:45:00				Acc 23 Hamilton Mazibuko	80-Mfolozi_High_School_1-1

<b>FIRST ARRIVAL AT CHARTERS SCENE</b>	
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Receiving a sms from an unknown person	17:47:15				Common link Fana	04-Harrison_Farm-0
Common link Mzet	17:47:43	03-Meerensee-2	Acc 24		Acc 24 Mbuso Mncube	Hluhluwe Town VC
Acc 26 Thulani Mthethwa	17:47:55	03-Mtubatuba-0	Acc 24		Acc 24 Mbuso Mncube	Hluhluwe Town VC
Acc 21 Bongani Tshabalala	17:49:15	Harrison Farm	ACC 18		Acc 18 Lucky Phasha	Harrison Farm

Common link Fana	17:49:40	04-Harrison_Farm-0	Acc 1		Acc 1 Goodwill Shange	03-Mtubatuba-0
Receiving a sms from an unknown person	17:50:02				Acc 15 Thabo Mahoa	04-Harrison_Farm-0
Spiwet	17:50:02	Harrison Farm	Acc 1		Acc 1 Goodwill Shange	03-Mtubatuba-0
Acc 18 Lucky Phasha	17:50:05	Somkhele VC	Acc 9		Acc 9 Patrick Mpho Tsotetsi	Hluhluwe Town VC
Receiving a sms from an unknown person	17:50:19				Acc 15 Thabo Mahoa	04-Harrison_Farm-0
Acc 21 Bongani Tshabalala	17:50:26	Somkhele VC	ACC 18		Acc 18 Lucky Phasha	Harrison Farm
Receiving a sms from an unknown person	17:50:37				Acc 15 Thabo Mahoa	27-Somkhele-1
Receiving a sms from an unknown person	17:50:43				Acc 15 Thabo Mahoa	04-Harrison_Farm-0
Acc 1 Goodwill Shange	17:51:03	03-Mtubatuba-0	Acc 24		Acc 24 Mbuso Mncube	Hluhluwe Town VC
Spiwet	17:51:17	Harrison Farm	Acc 26		Acc 26 Thulani Mthethwa	03-Mtubatuba-0
Acc 15 Thabo Mahoa	17:51:21	04-Harrison_Farm-0	Acc 22		Acc 22 Ernest Ndlangamandla	03-Mtubatuba-0
Acc 18 Lucky Phasha	17:51:52	Harrison Farm	Acc 9		Acc 9 Patrick Mpho Tsotetsi	Hluhluwe Town VC
Acc 26 Thulani Mthethwa	17:51:55	04-Harrison_Farm-0	Acc 24		Acc 24 Mbuso Mncube	Hluhluwe Town VC
Acc 22 Ernest Ndlangamandla	17:52:20	03-Mtubatuba-0	acc 23		Acc 23 Hamilton Mazibuko	03-Mtubatuba-0
Acc 26 Thulani Mthethwa	17:52:44	03-Mtubatuba-0	Acc 7		Acc 7 Xolani Buthelezi	04-Harrison_Farm-0
Acc 18 Lucky Phasha	17:52:49	Harrison Farm	Acc 22		Acc 22 Ernest Ndlangamandla	03-Mtubatuba-0
Spiwet	17:52:56	Harrison Farm	Acc 26		Acc 26 Thulani Mthethwa	40-Honeydale-0
Acc 26 Thulani Mthethwa	17:53:42	03-Mtubatuba-0	Acc 22		Acc 22 Ernest Ndlangamandla	04-Harrison_Farm-0
Acc 11 Flavio Louis	17:54:01	04-Harrison_Farm-0	Acc 9		Acc 9 Patrick Mpho Tsotetsi	Hluhluwe Town VC
Spiwet	17:54:23	Harrison Farm	Acc 26		Acc 26 Thulani Mthethwa	04-Harrison_Farm-0
Receiving a call from an unknown person	17:54:44				Acc 9 Patrick Mpho Tsotetsi	Mkongé Farm
Common link Fana	17:55:09	04-Harrison_Farm-0	Acc 1		Acc 1 Goodwill Shange	12-Ntondweni-0
Acc 2 Fox Sithole	17:55:26	04-Harrison_Farm-0	acc 22		Acc 22 Ernest Ndlangamandla	04-Harrison_Farm-0

Acc 26 Thulani Mthethwa	17:55:32	04-Harrison_Farm-0	Acc 24		Acc 24 Mbuso Mncube	Mkonge Farm
Acc 14 Sipo Mhlango	17:55:49	04-Harrison_Farm-0			Making a call to an unknown person	
Acc 9 Patrick Mpho Tsoetsi	17:56:51	Mkonge Farm	Acc 21		Acc 21 Bongani Tshabalala	Harrison Farm
Acc 26 Thulani Mthethwa	17:58:08	04-Harrison_Farm-0	Acc 22		Acc 22 Ernest Ndlangamandla	04-Harrison_Farm-0
Acc 26 Thulani Mthethwa	17:59:13	04-Harrison_Farm-0	Acc 24		Unsuccesful call	
Acc 26 Thulani Mthethwa	18:00:14	04-Harrison_Farm-0	Acc 24		Unsuccesful call	
Acc 26 Thulani Mthethwa	18:00:55	04-Harrison_Farm-0	Spiwet		Unsuccesful call	
Acc 24 Mbuso Mncube	18:01:10	Medham	Acc 26		Acc 26 Thulani Mthethwa	04-Harrison_Farm-0
Acc 18 Lucky Phasha	18:01:52	Harrison Farm	Acc 22		Acc 22 Ernest Ndlangamandla	04-Harrison_Farm-0
Acc 9 Patrick Mpho Tsoetsi	18:02:09	Medham	Acc 18		Acc 18 Lucky Phasha	Harrison Farm
Common link Mzet	18:03:00	03-Meerensee-2	Acc 24		Acc 24 Mbuso Mncube	Medham
Receiving a call from an unknown person	18:03:06				Acc 18 Lucky Phasha	14-Nyalazi-0
Receiving a call from an unknown person	18:04:06				Acc 7 Xolani Buthelezi	04-Harrison_Farm-0
Acc 4 Zakhele Sibisi	18:04:08	Meerensee Telkom Ex			Making a call to an unknown person	
Acc 9 Patrick Mpho Tsoetsi	18:04:59	Medham	Acc 21		Acc 21 Bongani Tshabalala	Harrison Farm
Acc 1 Goodwill Shange	18:05:28	04-Harrison_Farm-0	Acc 24		Acc 24 Mbuso Mncube	Medham
Acc 22 Ernest Ndlangamandla	18:06:42	04-Harrison_Farm-0	acc 24		Acc 24 Mbuso Mncube	Medham
Acc 18 Lucky Phasha	18:08:22	Harrison Farm	Acc 9		Acc 9 Patrick Mpho Tsoetsi	Medham
Acc 26 Thulani Mthethwa	18:08:50	40-Honeydale-0	Acc 24		Acc 24 Mbuso Mncube	Medham
Acc 26 Thulani Mthethwa	18:09:25	04-Harrison_Farm-0	Acc 22		Acc 22 Ernest Ndlangamandla	04-Harrison_Farm-0
Acc 26 Thulani Mthethwa	18:11:45	14-Nyalazi-0	Acc 24		Acc 24 Mbuso Mncube	Medham
Acc 1 Goodwill Shange	18:13:19	14-Nyalazi-0			Making a call to an unknown person	
Acc 9 Patrick Mpho Tsoetsi	18:13:25	Medham	Acc 18		Acc 18 Lucky Phasha	Nyalazi Sugar Estate

Receiving a call from an unknown person	18:13:36				Acc 26 Thulani Mthethwa	14-Nyalazi-0
Acc 24 Mbuso Mncube	18:13:57	Medham	Acc 26		Acc 26 Thulani Mthethwa	14-Nyalazi-0
Acc 22 Ernest Ndlangamandla	18:14:25	14-Nyalazi-0	acc 26		Acc 26 Thulani Mthethwa	14-Nyalazi-0
Spiwet	18:14:40	Nyalazi Sugar Estate	Acc 26		Acc 26 Thulani Mthethwa	14-Nyalazi-0
Acc 18 Lucky Phasha	18:14:49	Nyalazi Sugar Estate	Acc 22		Acc 22 Ernest Ndlangamandla	14-Nyalazi-0
Acc 22 Ernest Ndlangamandla	18:15:25	14-Nyalazi-0	acc 26		Acc 26 Thulani Mthethwa	14-Nyalazi-0
Receiving a call from an unknown person	18:15:27				Acc 14 Sipho Mhlongo	14-Nyalazi-0
Acc 2 Fox Sithole	18:15:53	14-Nyalazi-0	acc 22		Acc 22 Ernest Ndlangamandla	14-Nyalazi-0
Acc 24 Mbuso Mncube	18:16:21	Medham	Acc 26		Acc 26 Thulani Mthethwa	14-Nyalazi-0
Receiving a sms from an unknown person	18:16:36				Acc 20 Sipho Gumede	14-Nyalazi-0
Acc 22 Ernest Ndlangamandla	18:17:28	14-Nyalazi-0	acc 24		Acc 24 Mbuso Mncube	Nyalazi Sugar Estate
Acc 18 Lucky Phasha	18:17:35	Nyalazi Sugar Estate	Acc 9		Acc 9 Patrick Mpho Tsotetsi	Nyalazi Sugar Estate
Acc 22 Ernest Ndlangamandla	18:17:52	14-Nyalazi-0	acc 24		Acc 24 Mbuso Mncube	Nyalazi Sugar Estate
Receiving a sms from an unknown person	18:18:39				Acc 20 Sipho Gumede	14-Nyalazi-0
Acc 18 Lucky Phasha	18:18:59	Nyalazi Sugar Estate	Acc 9		Acc 9 Patrick Mpho Tsotetsi	Nyalazi Sugar Estate
Spiwet	18:19:01	Nyalazi Sugar Estate	Acc 26		Acc 26 Thulani Mthethwa	14-Nyalazi-0
Acc 26 Thulani Mthethwa	18:19:42	14-Nyalazi-0	Acc 22		Acc 22 Ernest Ndlangamandla	14-Nyalazi-0
Acc 26 Thulani Mthethwa	18:20:02	14-Nyalazi-0	Spiwet		Spiwet	Nyalazi Sugar Estate
Receiving a sms from an unknown person	18:20:07				Acc 17 Thabani Zondo	03-Meerensee-2
Acc 18 Lucky Phasha	18:20:17	Harrison Farm	Acc 22		Acc 22 Ernest Ndlangamandla	14-Nyalazi-0
Receiving a sms from an unknown person	18:21:25				Acc 26 Thulani Mthethwa	14-Nyalazi-0
Acc 24 Mbuso Mncube	18:21:53	Nyalazi Sugar Estate	Acc 26		Acc 26 Thulani Mthethwa	14-Nyalazi-0
Receiving a call from an unknown person	18:22:00				Acc 23 Hamilton Mazibuko	14-Nyalazi-0

Receiving a call from an unknown person	18:22:09				Acc 26 Thulani Mthethwa	14-Nyalazi-0
Receiving a call from an unknown person	18:22:27				Acc 22 Ernest Ndlangamandla	14-Nyalazi-0
Acc 9 Patrick Mpho Tsoetsi	18:22:35	Nyalazi Sugar Estate	Acc 18		Acc 18 Lucky Phasha	Nyalazi Sugar Estate
Receiving a sms from an unknown person	18:22:42				Acc 26 Thulani Mthethwa	14-Nyalazi-0
Acc 2 Fox Sithole	18:22:48	14-Nyalazi-0	acc 22		Acc 22 Ernest Ndlangamandla	No tower
Spiwet	18:23:40	Nyalazi Sugar Estate	Acc 26		Acc 26 Thulani Mthethwa	14-Nyalazi-0
Acc 18 Lucky Phasha	18:24:14	Harrison Farm	Acc 22		Acc 22 Ernest Ndlangamandla	No tower
Spiwet	18:24:27	Harrison Farm	Acc 1		Acc 1 Goodwill Shange	No tower
Acc 18 Lucky Phasha	18:24:43	Harrison Farm	Acc 22		Acc 22 Ernest Ndlangamandla	No tower
Common link Mzet	18:26:08	03-Meerensee-2	Acc 24		Acc 24 Mbuso Mncube	Harrison Farm
Acc 2 Fox Sithole	18:26:39	04-Harrison_Farm-0	acc 22		Acc 22 Ernest Ndlangamandla	No tower
Acc 21 Bongani Tshabalala	18:27:18	Harrison Farm	ACC 18		Unsuccesful call	
Acc 17 Thabani Zondo	18:28:56	03-Meerensee-2	Acc 3		Acc 3 Zofania Mthethwa	Richards Bay Lighthouse
Receiving a call from an unknown person	18:29:52				Acc 26 Thulani Mthethwa	14-Nyalazi-0
Receiving a sms from an unknown person	18:30:24				Acc 26 Thulani Mthethwa	12-Ntondweni-0
Receiving a call from an unknown person	18:31:06				Acc 26 Thulani Mthethwa	12-Ntondweni-0
Common link Mzet	18:33:03	03-Meerensee-2	Acc 24		Acc 24 Mbuso Mncube	Harrison Farm
Common link Mzet	18:43:17	03-Meerensee-2			Making a call to an unknown person	
Acc 24 Mbuso Mncube	18:44:15	Matubatuba Eskom	Acc 22		Acc 22 Ernest Ndlangamandla	14-Nyalazi-0
Acc 24 Mbuso Mncube	18:48:30	Matubatuba Eskom	Acc 26		Acc 26 Thulani Mthethwa	04-Harrison_Farm-0
Acc 22 Ernest Ndlangamandla	18:50:21	04-Harrison_Farm-0	acc 24		Acc 24 Mbuso Mncube	Matubatuba Station
Acc 9 Patrick Mpho Tsoetsi	18:51:15	Matubatuba Eskom			Making a call to an unknown person	
Acc 22 Ernest Ndlangamandla	18:51:31	04-Harrison_Farm-0	acc 26		Acc 26 Thulani Mthethwa	12-Ntondweni-0

Acc 2 Fox Sithole	18:51:46	03-Mtubatuba-0	acc 22		Unsuccesful call	
Received a call from an unknown person	18:51:47				Acc 18 Lucky Phasha	Harrison Farm
Acc 26 Thulani Mthethwa	18:52:57	27-Somkhele-1	Acc 24		Acc 24 Mbuso Mncube	Matubatuba Station
Acc 26 Thulani Mthethwa	18:55:10	03-Mtubatuba-0	Acc 22		Acc 22 Ernest Ndlangamandla	04-Harrison_Farm-0
Acc 26 Thulani Mthethwa	18:55:10	03-Mtubatuba-0	Acc 22		Acc 22 Ernest Ndlangamandla	Harrison Farm

#### LAST DEPARTURE FROM CHARTERS SCENE

Acc 24 Mbuso Mncube	18:56:49	Matubatuba Eskom	Acc 26		Acc 26 Thulani Mthethwa	27-Somkhele-2
Received a sms from an unknown person	18:56:49				Acc 20 Sipho Gumede	27-Somkhele-2
Acc 9 Patrick Mpho Tsotetsi	18:56:54	Matubatuba Eskom	Acc 21		Acc 21 Bongani Tshabalala	Somkhele VC
Receiving a call from an unknown person	19:00:53				Acc 6 Sibusiso Shabalala	80-Mfolozi_High_School_1-1
Acc 26 Thulani Mthethwa	19:01:50	03-Mtubatuba-0	Acc 24		Acc 24 Mbuso Mncube	Matubatuba Eskom
Acc 24 Mbuso Mncube	19:02:56	Matubatuba Eskom	Acc 26		Acc 26 Thulani Mthethwa	03-Mtubatuba-0
Common link Mzet	19:04:20	01-RB_Lighthouse-0	Acc 24		Acc 24 Mbuso Mncube	Matubatuba Eskom
Received a sms from an unknown person	19:06:51				Acc 20 Sipho Gumede	80-Mfolozi_High_School_1-1
Acc 22 Ernest Ndlangamandla	19:07:08	Day Break Farm	Acc 26		Acc 26 Thulani Mthethwa	80-Mfolozi_High_School_1-1
Acc 9 Patrick Mpho Tsotetsi	19:07:14	Mfolozi High School	Acc 21		Acc 21 Bongani Tshabalala	Mfolozi High School
Acc 22 Ernest Ndlangamandla	19:07:28	19-Daybreak-0	acc 24		Acc 24 Mbuso Mncube	Mfolozi High School
Acc 24 Mbuso Mncube	19:08:48	Mfolozi High School	Acc 26		Acc 26 Thulani Mthethwa	02-Mtubatuba_Town-1

#### FIRST VEHICLE APPROACHES PENICUIK SCENE (TRUST FARM TOWER)



Acc 9 Patrick Mpho Tsotetsi	19:09:02	Mfolozi High School	Acc 22		Acc 22 Ernest Ndlangamandla	36-Trust_Farm_School-0
Receiving a call from an unknown person	19:09:03				Acc 3 Zofania Mthethwa	Richards Bay Lighthouse
Receiving a call from an unknown person	19:09:39				Spiwet	Mfolozi High School
Acc 22 Ernest Ndlangamandla	19:09:46	36-Trust_Farm_School-0	acc 26		Acc 26 Thulani Mthethwa	80-Mfolozi_High_School_1-1
Acc 9 Patrick Mpho Tsotetsi	19:09:59	Mfolozi High School	Acc 2		Acc 2 Fox Sithole	
Common link Msimango	19:10:42	81-Mfolozi_High_School_2-2	Mzet		Common link Mzet	10-Aquadene-2
Acc 16 Sipho Percy Kunene	19:10:57	01-RB_Lighthouse-0			Making a call to an unknown person	
Spiwet	19:10:58	Mfolozi High School	Acc 26		Making a call to an unknown person	
Acc 24 Mbuso Mncube	19:12:03	19-Daybreak-0	Acc 2		Acc 2 Fox Sithole	
Receiving a call from an unknown person	19:12:18				Acc 20 Sipho Gumede	80-Mfolozi_High_School_1-1
Acc 9 Patrick Mpho Tsotetsi	19:13:49	Day Break Farm			Making a call to an unknown person	
Receiving a sms from an unknown person	19:14:45				Acc 17 Thabani Zondo	01-RB_Lighthouse-0
Acc 16 Sipho Percy Kunene	19:16:58	01-RB_Lighthouse-0	Mzet		Common link Mzet	01-RB_Lighthouse-0
Acc 24 Mbuso Mncube	19:17:24	19-Daybreak-0			Acc 21 Bongani Tshabalala	Day Break Farm
Acc 24 Mbuso Mncube	19:18:33	Day Break Farm	Acc 26		Acc 26 Thulani Mthethwa	No tower
Common link Mzet	19:18:53	01-RB_Lighthouse-0	Acc 16		Acc 16 Sipho Percy Kunene	01-RB_Lighthouse-0
Acc 24 Mbuso Mncube	19:19:19	Trust Farm School	Acc 26		Acc 26 Thulani Mthethwa	19-Daybreak-0
Common link Msimango	19:21:27	17-Kwambonambi-0	Acc 26		Acc 26 Thulani Mthethwa	36-Trust_Farm_School-0
Acc 24 Mbuso Mncube	19:23:21	Trust Farm School	Acc 26		Acc 26 Thulani Mthethwa	No tower
Common link Mzet	19:24:09	03-Meerensee-2	Acc 16		Acc 16 Sipho Percy Kunene	01-RB_Lighthouse-0

Acc 9 Patrick Mpho Tsotetsi	19:24:20	KwaMbonambi Sasko	Acc 2		Acc 2 Fox Sithole	
Common link Mzet	19:25:11	03-Meerensee-2	Msimango		Common link Msimango	38-Mposa-0
Acc 24 Mbuso Mncube	19:25:15	KwaMbonambi Sasko	Acc 26		Acc 26 Thulani Mthethwa	17-Kwambonambi-0
Spiwet	19:25:43	KwaMbonambi Sasko	Acc 8		Acc 8 Themba Khathide	
Acc 26 Thulani Mthethwa	19:27:15	17-Kwambonambi-0	Msimango		Common link Msimango	38-Mposa-0
Acc 1 Goodwill Shange	19:27:35	10-Aquadene-2	Spiwet		Spiwet	KwaMbonambi Sasko
Common link Mzet	19:29:05	03-Meerensee-2			Making a call to an unknown person	

**CALLS PROBABLY RELATING TO THE PICKING UP OF THE ASSAILANTS WHO HI-JACKED MASANGO'S MOTOR VEHICLE**

Acc 26 Thulani Mthethwa	19:31:45	38-Mposa-0	Acc 24		Acc 24 Mbuso Mncube	Ubhejane Nseleni
Acc 26 Thulani Mthethwa	19:32:39	21-Invubu-0			Making a call to an unknown person	
Receiving a call from an unknown person	19:32:53				Common link Msimango	10-Aquadene-1
Acc 24 Mbuso Mncube	19:35:10	Mandlazini C.T.C.	Acc 26		Acc 26 Thulani Mthethwa	21-Invubu-0
Acc 15 Thabo Mahoa	19:36:09	21-Invubu-0			Making a call to an unknown person	
Receiving a call from an unknown person	19:40:07				Acc 2 Fox Sithole	10-Aquadene-3

**BACK TO LIGHTHOUSE**

Acc 2 Fox Sithole	19:41:54	10-Aquadene-2	acc 22		Unsuccesful call	
Acc 22 Ernest Ndlangamandla	19:42:24	01-RB_Lighthouse-0	acc 24		Acc 24 Mbuso Mncube	Richardia Primary School
Spiwet	19:43:33	ABSA Bank Arboretum	Acc 1		Acc 1 Goodwill Shange	01-RB_Lighthouse-0
Acc 26 Thulani Mthethwa	19:44:25	30-RB_Central-1	Acc 1		Acc 1 Goodwill Shange	01-RB_Lighthouse-0

Receiving a call from an unknown person	19:45:36			Acc 26 Thulani Mthethwa	22-Ricardia_Primary_School-3
Receiving a call from an unknown person	19:45:37			Spiwet	Richardia Primary School
Acc 26 Thulani Mthethwa	19:46:37	13-John_Ross_Highway-2		Making a call to an unknown person	
Receiving a call from an unknown person	19:47:25			Spiwet	Old Meerensee Water Reservoir
Receiving a sms from an unknown person	19:48:32			Acc 20 Sipho Gumede	03-Meerensee-3
Common link Mzet	19:48:48	01-RB_Lighthouse-0		Making a call to an unknown person	
Receiving a call from an unknown person	19:49:17			Acc 7 Xolani Buthelezi	01-RB_Lighthouse-0
Receiving a call from an unknown person	19:49:37			Acc 14 Sipho Mhlongo	03-Meerensee-2
Acc 22 Ernest Ndlangamandla	19:52:14	01-RB_Lighthouse-0	Acc 18	Acc 18 Lucky Phasha	Richards Bay Lighthouse
Acc 14 Sipho Mhlongo	19:52:19	03-Meerensee-1		Making a call to an unknown person	
Acc 14 Sipho Mhlongo	19:53:50	01-RB_Lighthouse-0	Acc 19	Unsuccesful call	
Acc 11 Flavio Louis	19:54:44	10-Aquadene-2	Acc 2	Acc 2 Fox Sithole	
Receiving a call from an unknown person	20:04:52			Acc 2 Fox Sithole	01-RB_Lighthouse-0
Receiving a call from an unknown person	20:06:20			Acc 20 Sipho Gumede	01-RB_Lighthouse-0
Receiving a call from an unknown person	20:08:01			Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Receiving a call from an unknown person	20:08:06			Common link Mzet	01-RB_Lighthouse-0
Receiving a sms from an unknown person	20:09:08			Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Receiving a sms from an unknown person	20:09:31			Acc 13 Johannes Langa	01-RB_Lighthouse-0
Receiving a sms from an unknown person	20:09:49			Acc 13 Johannes Langa	01-RB_Lighthouse-0
Receiving a call from an unknown person	20:11:23			Acc 11 Flavio Louis	01-RB_Lighthouse-0
Common link Mzet	20:12:07	01-RB_Lighthouse-0		Making a call to an unknown person	
Receiving a call from an unknown person	20:12:38			Acc 13 Johannes Langa	01-RB_Lighthouse-0

Receiving a call from an unknown person	20:14:09				Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Common link Mzet	20:15:12	01-RB_Lighthouse-0			Making a call to an unknown person	
Receiving a call from an unknown person	20:16:02				Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Receiving a call from an unknown person	20:17:59				Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Acc 13 Johannes Langa	20:19:00	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 11 Flavio Louis	20:19:08	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 13 Johannes Langa	20:20:46	01-RB_Lighthouse-0			Making a call to an unknown person	
Common link Mzet	20:21:44	01-RB_Lighthouse-0			Making a call to an unknown person	
Receiving a sms from an unknown person	20:22:14				Common link Msimango	01-RB_Lighthouse-0
Acc 11 Flavio Louis	20:23:51	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 11 Flavio Louis	20:25:18	01-RB_Lighthouse-0			Making a call to an unknown person	
Receiving a call from an unknown person	20:26:21				Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Receiving a call from an unknown person	20:27:14				Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Acc 22 Ernest Ndlangamandla	20:29:50	01-RB_Lighthouse-0	Fana		Common link Fana	22-Ricardia_Primary_School-2
Common link Mzet	20:30:32	01-RB_Lighthouse-0			Making a call to an unknown person	
Receiving a call from an unknown person	20:31:18				Acc 9 Patrick Mpho Tsotetsi	Richards Bay Lighthouse
Receiving a call from an unknown person	20:32:20				Acc 19 Vusi Njoko	Richards Bay Lighthouse
Acc 15 Thabo Mahoa	20:32:27	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 13 Johannes Langa	20:33:01	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 19 Vusi Njoko	20:34:47	Richards Bay Lighthouse			Making a call to an unknown person	
Receiving a call from an unknown person	20:34:52				Acc 3 Zofania Mthethwa	Richards Bay Lighthouse
Receiving a sms from an unknown person	20:35:59				Common link Fana	14-RB_Milling_Silo-3
Common link Fana	20:36:19	14-RB_Milling_Silo-3			Making a call to an unknown person	

Common link Mzet	20:38:45	01-RB_Lighthouse-0			Making a call to an unknown person	
Receiving a call from an unknown person	20:39:15				Acc 19 Vusi Njoko	Richards Bay Lighthouse
Receiving a call from an unknown person	20:39:22				Spiwet	Richards Bay Lighthouse
Acc 19 Vusi Njoko	20:40:31	Richards Bay Lighthouse			Making a call to an unknown person	
Acc 22 Ernest Ndlangamandla	20:42:06	01-RB_Lighthouse-0	Fana		Common link Fana	31-Harbour_Lights_Caravan-1
Common link Fana	20:43:07	31-Harbour_Lights_Caravan-1			Making a call to an unknown person	
Receiving a call from an unknown person	20:43:07				Common link Mzet	01-RB_Lighthouse-0
Receiving a call from an unknown person	20:45:16				Acc 19 Vusi Njoko	Richards Bay Lighthouse
Receiving a call from an unknown person	20:45:21				Common link Mzet	01-RB_Lighthouse-0
Acc 11 Flavio Louis	20:45:53	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 11 Flavio Louis	20:47:06	01-RB_Lighthouse-0			Making a call to an unknown person	
Acc 11 Flavio Louis	20:48:43	01-RB_Lighthouse-0			Making a call to an unknown person	
Receiving a call from an unknown person	20:49:03				Common link Fana	37-Esikhawini_South-1
Receiving a call from an unknown person	20:51:21				Common link Mzet	01-RB_Lighthouse-0
Receiving a call from an unknown person	20:53:00				Acc 23 Hamilton Mazibuko	01-RB_Lighthouse-0
Receiving a call from an unknown person	20:53:58				Common link Mzet	01-RB_Lighthouse-0
Receiving a sms from an unknown person	20:54:05				Acc 26 Thulani Mthethwa	01-RB_Lighthouse-0
Acc 1 Goodwill Shange	19:43:33	01-RB_Lighthouse-0	Spiwet		Spiwet	ABSA BANK ARBORETUM Arboretum
Acc 2 Fox Sithole	No call data available for 829095906				Acc 9 Patrick Mpho Tsotetsi	Mkongwe Farm

Before attempting to deal with the communication log, two matters require elucidation – the determination of the time and duration of the robbery and attempted robbery at Charters and Penicuik, according to the estimates furnished by the witnesses and secondly the identification and apparent roles played by the accomplices.

**Firstly, the time and duration of the robbery and the attempted robbery:**

**Charters** – from approximately 18h25 to approximately 18h40.

**Penicuik** – from about 18h30 to about 18h50

**Secondly, the accomplices:**

The accomplices were traced when it was found that certain numbers were consistently being called by the accused, particularly during times when the accused were said to have been engaged in activities relevant to the issues before us – at times when it would certainly not logically be appropriate for the accused to be calling family or friends. The cellphone numbers which so repeatedly arose, were compared to numbers saved in the phonebooks of the accused, as referred to earlier, and found to have been entered against the names – “Spiwet”, “Fana”, “Xha”, “Mzet” and “Msimango”.

Fana’s cellphone number appeared in the phonebook of accused 8; Spiwet in the phonebooks of accused 1 and 11; Xha in the phonebook of accused 1; Msimango on the phonebooks of accused 7, 15, 17 and 19; Mzet in the phonebooks of accused 1, 7, 11, 16, 17 and 24.

Towards the end of the trial, after both the State and Defence cases were closed, the

Court, considering it in the interests of the Administration of Justice to do so, caused the cellphone records of the apparent accomplices to be placed before it by the relevant Service Providers, Vodacom and MTN, as Exhibits Z27 to Z32. (Including “Kehla” accused 13 (Z29))

In addition to the accomplices aforementioned there were two cellphone numbers, which were called by the accused, and the accomplices with the same regularity as the calls to the accomplices identified above, but whose particulars cannot be traced.

An analysis of the cellphone records of the accomplices, couples them in apparent association with the accused, in regard to the times, location and activities germane to the offences under trial in these proceedings.

**In the case of Spiwet:**

His cellphone records indicate, as mentioned earlier, that he travelled from Johannesburg to Richards Bay with the accused who came from there; is shown to have been on the reconnaissance mission and on the second excursion in the vicinity and in contact with the accused, who were then in the immediate vicinity of the Charters scene of crime when the Hi-Ace was robbed. The lull in cellphone activity evident in the cellphone communications of the accused during the actual occurrence of the robbery, appears also in his cellphone records – from 18h24 to 18h44. He is shown to have returned to the house of accused 24 after the Charters

robbery at the same time as the other accused and accomplices involved and appears to have left there also at about 23h15.

**In the case of Mzet:**

He approached Richards Bay from the north on the N2 and from Hluhluwe to Richards Bay was in cellphone contact with accused 26 (8 times), Msimango (twice) and accused 24 (once), until his first communication through the Richards Bay Lighthouse tower registered at 11h33. He remained there making numerous calls until about 16h49 – about the time the other accused left on the second excursion.

Before that he was involved in calls via the Richards Bay Lighthouse tower with accused 24 on (four occasions), the last one (15h52) whilst accused 24 was communicating through the Mkuze Estate tower. At 17h05 accused 24 called Mzet from Hluhluwe. From then until 18h33 he called accused 24 who had moved from Hluhluwe to Medham (Petroport) and the Charters Creek crime scene. He next called accused 24, who was then at Mtubatuba at 19h04. From 19h10 to 19h25 he called accused 16 (three times) and Msimango (twice). Msimango was receiving through the Umfolozi High School and Mposa towers respectively. Mzet appears to have left accused 24's house at about 22h58 – about the time the accused were leaving also. Throughout the day Mzet made most of his calls from accused 24's house. The reason for his calls to the accused, in particular accused 24 seems obscure.

**In the case of Msimango:**

He appears to have travelled to Richards Bay from the Johannesburg area. On the way he called accused 7 (thirteen times) between Johannesburg and Richards Bay.



He appears to have reached the house of accused 24, when he made his first call through the Richards Bay Lighthouse tower at 15h01.

During his journey from Johannesburg Msimango called accused 17 (three times), 19 (three times), 26 (three times) and Mzet (twice). He appears to have left with the accused on the second excursion. He seemed to have travelled with accused 26 and accused 14 along the “shortcut”, as he received two sms’s at 17h08 through the Richards Bay Mineral tower, being at exactly the same time that accused 26 made a call through the same tower. Msimango also appears to have been at the Charters scene of crime with the other accused, who were there, as on his way back to Richards Bay, he made a call through the Mfolozi High School tower at 19h10, at the same time and through the same tower as Spiwet (19h10), who was returning from the Charters scene of crime. At 19h21 he communicated through the Kwambonambi tower with accused 26, who was then at the Trust Farm tower (in the vicinity of the Penicuik crime scene). At 19h27 he communicated from Mposa with accused 26, who was at Kwambonambi. He appears to have arrived back at accused 24’s house at about the same time as the accused, who had returned from the area of the Charters scene of crime. That is indicated by a call he made from that house at 20h22. He appears to have left from there after 22h05, being his last call through the Richards Bay Lighthouse tower.

### **In the case of Xha:**

As pointed out earlier the probabilities persuasively indicate that accused 20, 5, 8 and Xha travelled together from Durban to Richards Bay CBD. As also shown they made calls from towers in the Richards Bay CBD, the proximity whereof gives rise to the inference that they probably were there together.

Xha's association with accused 1 appears to be a long-standing one. Their respective cellphone records reveal that during the period 1 to 30 September 2006, they communicated 57 times; on 1 October 2006 three times and on 2 October 2006 five times. The same applies to accused 22, who communicated with Xha 17 times during September and once on 2 October 2006. Accused 14 communicated with Xha during September 126 times, on 1 October 2006 six times and once on 2 October 2006. Accused 19 communicated with Xha nine times in September 2006 and once on 1 October 2006. Accused 20 communicated with Xha 41 times during September and twice on 1 October 2006.

In the circumstances, it would seem that Xha's presence at Richards Bay was associated with the accused. What exactly his role was is obscure. However, his last calls at 16h52 and 16h55 to accused 1 and 22 respectively, were made through the Meerensee tower.

Accused 1 and 22 were both communicating through the Richards Bay Lighthouse tower (from the house of accused 24) at the time. From 16h55 Xha's cellphone was not activated again. The same phenomenon appears from the cellphone records of accused 8. Although it cannot be determined with certainty they both could have been at the Penicuik scene of crime – they certainly had enough time for that. This

possibility is to be considered in conjunction with the analysis of the cellphone records of accused 1, 3, 6, 5, 13, 16, 17 and 19, which is reflected elsewhere in the Judgment. Common to most of the aforementioned accused, is that their cellphone records show that for a considerable period of time on 2 October 2006 their phones were not being used – somewhat uncharacteristic, considering the frequency of their calls before and after the commission of the offences.

**In respect of Fana:**

As in the case of Xha, this accomplice appears to have known certain of the accused well. During September, he was in communication with accused 1 one hundred and eight times and on 1 October 2006 ten times. Accused 5 communicated with Fana five times during September 2006. Accused 20 communicated with Fana once in September 2006.

Fana's cellphone records reflect that he was at the Charters scene of crime from where he communicated with accused 1 through the Harrison Farm tower at 17h55 and 17h59 respectively. That is also the scene of crime where Constable Biyela had shot accused 25. Fana's cellphone records reveal that after the robbery and attempted robbery, which occurred at Charters and Penicuik respectively, he went to Durban via Mzingazi. As to the latter, his cellphone was activated through the RBM tower at 20h35 and 20h36 respectively. Thereafter his cellphone communications activated towers all the way from Richards Bay to Durban. After the last seven calls he made from Durban, five were made through the Durban Airport tower. That tower is situated close to Prince Mshiyeni Hospital. The probabilities overwhelmingly

suggest that he was the person who removed accused 25 to hospital after he had been shot. That inference is considerably strengthened by the following: Accused 25, himself, testified that he was taken to the Prince Mshiyeni Hospital by his friend, “Fana”; on the way he was called by accused 22 six times in the space of about three hours; during the same journey he (Fana) was called twice by accused 1; the last two calls, 30 minutes apart, were made by accused 22 and 1 respectively; the calls made through the Durban Airport tower also indicate that he spent about 1 and a half hours there.

#### **THE SCOUTING EXCURSION:**

Treating of the first excursion, identified as a reconnaissance expedition, the participants therein appear to have been accused 1, 9, 11, 14, 18, 19, 22, 24 and 26 and were accompanied by an accomplice, Spiwet; three vehicles appear to have been used – accused 9 and 24 in one, accused 1, 11, 22 and Spiwet in the second and accused 26, 14, 18 and 19 in the third vehicle. The scouts appeared to have visited the areas at Penicuik and Charters, which later that day became the scenes where the robbery and attempted robbery and related crimes took place.

#### **As to the participants:**

##### **In respect of accused 1:**

As shown earlier he arrived at Mzingazi at about 10h36, when his first communication through the Richards Bay Lighthouse tower occurred and he left from there on “reconnaissance” at about 13h04, activating towers on the John Ross/R34, M231 and north on the N2 to Penicuik

and Charters, and returned the same way to be back at Mzingazi at 15h53 when he made a call from there.

**In respect of accused 9:**

As in the case of accused 24, accused 9's trip took him from Mzingazi at about 13h10 (his last communication from there) right up to the Ubombo Sentechh tower which, together with the Mkuze Estate tower provide reception to the junction where the Jozini road joins the N2, north of the town of Mkuze, which happens to coincide with the route followed by the Fidelity motor vehicles on their way back from collecting cash from clients in Northern Zululand. As will be seen he did not return to Richards Bay but continued north on the N2 engaging the towers mentioned.

**In respect of accused 24:**

He resides at Mzingazi and left there at about 13h18. Thereafter his cellphone communications activated towers along the M231, the Richards Bay CBD, Invubu, where the M231 joins the N2, and from there the Harrison Farm tower at 14h07, the tower which provides reception to the area in which the Hi-Ace was robbed at Charters; and all the way north to Mkuze Estate and Ubombo Sentechh. Judging by the times and locations from which calls were made accused 24 and 9

were undoubtedly travelling in the same vehicle together.

**In respect of accused 11:**

He arrived at Mzingazi from Johannesburg at about 07h15. Thereafter he communicated from there a number of times, his last call being at 17h54. His next communication engaged the Nyalazi tower, the other tower that provides reception to the Charters scene of crime at 14h32 and 14h36. From there he appears to have turned back and reached Mzingazi at 16h07.

**In respect of accused 14:**

He arrived at Mzingazi at about 12h57 when he made his first call from there. He left shortly thereafter at 13h33 when his phone activated the Richards Bay Central tower. At 14h01 he received an sms through the Daybreak tower, which is in the vicinity of the scene of crime at Penicuik. At 14h57, some thirty odd kilometres further north, he received another sms through the Harrison Farm tower aforementioned. At 15h09 he received a call through the Mtubatuba tower; at 15h22 he received a call through the Daybreak tower; at 16h15 he received a call through Richards Bay Central tower and at 16h36 he received a call putting him back at Mzingazi.

**In respect of accused 18:**

After he arrived from Johannesburg with the other accused he made his first call from Mzingazi at 11h05. The first indication that he had left there, was when he phoned accused 9 at 15h13 from the Mtubatuba

tower. Accused 9 received the call through the Mkuze Estate tower. Thereafter accused 18 made a call through the Mfolozi High School tower at 15h14. He next made and received calls while he was in the Richards Bay CBD. He returned to Mzingazi, as he received a call there through the Richards Bay Lighthouse tower at 16h27.

**In respect of accused 19:**

The first indication of his location in relation to the scouting trip, was when he received a call through the Meerensee tower, which is three kilometres from the Richards Bay Lighthouse tower and six kilometres away from accused 24's residence, at 13h22. At 13h43 he received a call through the Super Scaff Tower, which inter alia, provides reception on the M231, just outside the Richards Bay CBD in the direction of Nseleni. At 14h10 he received a call through the Harrison Farm tower, which as aforementioned provides reception to the Charters scene of crime. Thereafter he disappeared off the "grid" and re-appeared only at 20h32 when he communicated through the Richards Bay Lighthouse tower.

**In respect of accused 22:**

As shown earlier he arrived at Mzingazi with the other accused from Johannesburg and made his first call from there at 04h52. Relative to the scouting trip, he appears to have left Mzingazi at 13h10 when he communicated from there. His next call was made at 14h56 through the Harrison Farm tower (Charters). Thereafter, between 15h50 and

16h18 accused 22 made numerous calls through the Richards Bay Central and John Ross Highway towers. He was back at Mzingazi at 16h34 when he communicated from there through the Richards Bay Lighthouse tower.

**In respect of accused 26:**

Whilst much more will be said about his cellphone communication during the scouting phase, suffice it to say that he made and received over sixty calls during this phase. He first arrived at Mzingazi at 08h33, when his first call was made through the Richards Bay Lighthouse tower. He appears to have left Mzingazi to scout sometime after 13h06 when he communicated through that tower. His next call was at 13h21 through the Meerensee tower when he called accused 1. Further calls were registered through towers providing reception along the M231 up to Invubu. After that he received a call from accused 1 through the Trust Farm School tower in the vicinity of Penicuik. Subsequently his phone was activated through towers providing coverage to the area where the Charters scene of crime occurred later. He appears to have



been on his way back by about 15h04 when he called accused 1 through the Mtubatuba tower. From there on his communications activated towers along the N2 south through Mpoza, Invubu and from there towers along the M231 – Aquadene, Richards Bay CBD, John Ross Highway and finally the Richards Bay Lighthouse tower at Mzingazi, where he made his first call upon return at 16h33.

**As to the vehicles and their occupants:**

At least three motor vehicles were used. Accused 1, 11, 22 and Spiwet were in the one and accused 26, 14, 18 and 19 in the other, whilst accused 9 and 24 were in another vehicle, they do not appear to have returned to Mzingazi with the other “scouts”. Whilst accused 24 and 9 visited the areas of Penicuik and Charters, they did not turn back, but continued north ending up beyond Mkuze town.

That accused 1 and 26 were in two different motor vehicles during the scouting trip appears from the fact that they communicated with each other on numerous occasions through different towers.

The grouping of the other “scouts” who were in the vehicles with accused 1 and 26 respectively, appears from the fact that the accused and Spiwet in the motor vehicle with accused 1 communicated through the same towers as did he, more or less contemporaneously. As will be observed accused 1, 26 and 22 made and received numerous calls during the scouting phase. The same contemporaneity is found between accused 26 and accused 14, 18 and 19.

We make the following observations:

a)The evidence that the Kwambonambi and the Trust Farm Schooltowers provide reception to the scene of crime at Penicuik and that the Harrison Farm and Nyalazi towers provide reception to the scene of crime at Charters, is conclusive and uncontroverted. The record of the cellphone communications engaged in by the scouts attest to the fact that they spent time at both Penicuik and Charters, where the attempted robbery and robbery and related offences occurred later that afternoon/early evening.

b)The probable selection of the locations at Penicuik and Charters as the areas in which

the attack on the Fidelity vehicles should take place, was either made as a consequence of a report-back by the scouts or they had been generally selected earlier, and the report back by the scouts was treated as confirmation of the suitability of the areas in question.

Whatever the true position may have been, the areas at Penicuik and Charters where the attempted robbery and robbery occurred later during the early evening, coincided exactly with the locations where the “scouts” appeared to have spent some time, judging from the relative stationary positions of their calls through the towers that provide reception to both the scenes of crime.

c) Later in the judgment will appear a comprehensive analysis of the similarities of the areas in which the attacks

occurred on the Fidelity vehicles at Charters and Penicuik respectively. In all probability the mentioned similarities will have influenced the scouts in either selecting the locations or confirming the suitability thereof, more so where regard is had to the remarkable similarity in the *modus operandi* employed by the robbers at both scenes.

## **THE SECOND EXCURSION-**

**The exodus of the accused and accomplices from Mzingazi to the areas where and the time-frame during which the offences at Charters and Penicuik occurred:**

Judging from the frequency, locations and times of the communications between accused 1 and the accomplices whilst they were on their way from Durban, accused 1 appears to be the “co-ordinator” of the “Durban group”, which included accused 5 and 19, who were from the Johannesburg area. By the same token accused 22 appears to be the co-ordinator of the “Johannesburg group”. What emerges from the communications logged above is that accused 26 was what might be termed the “chief co-ordinator” of the two excursions under discussion. Through their respective communications accused 24 and 9 are placed in the region of Penicuik and Charters during the “scouting period”, but did not return with the other “scouts” to Mzingazi. Instead, they carried on north along the N2 as far as the Ubombo Sentechh and Mkuze Estate towers, which provide reception to the area where the road from Jozini joins the N2.

That happens to be the road by which the two Fidelity cash-in-transit vehicles returned from their duties in the region of Northern Zululand, fully canvassed earlier in the Judgment.

As will emerge, their return journey along the N2 south coincides with the movements of the Fidelity vehicles and the time frame thereof, right up to Petroport, (where the Hi-Ace made its last cash pick-up) and from there to the Charters scene of crime. The role fulfilled by accused 24 and 9 appears to be that of what may colloquially be termed, “spotters”. Their communications with their co-accused en route has the appearance of reports on the progress of the Fidelity vehicles.

Bear in mind that accused 9's leg was in a full length plaster cast. Accordingly he was incapable of performing any physical activity which was likely to be required by persons taking part in the robbery. However he was ideally suited to act as a "spotter" with accused 24 and as will be seen was in well nigh continuous telephonic contact with the "Johannesburg" accused who were contemporaneously gathered in the area of the Charters scene of crime.

When accused 24 and 9's "spotting" movements are traced from the Ubombo Sentech tower (activated by accused 9) and the Mkuze Estate Farm (in the case of both), the conclusion appears *prima facie* inescapable that they waited for the Fidelity vehicles to arrive at the junction of the Jozini road and the N2, as mentioned before. From 14h48 until 15h58 accused 24 and 9 made or received calls through the Mkuze Estate tower to or from accused 1 (3 times), accused 26 (6 times), accused 22 (once) and Mzet (thrice). As they appeared to continue south through the Bonzo Umbukwane and Mkhonge Farm towers between 16h13 and 16h52 they were in communication with accused 26 (7 times). Mkhonge Farm tower is situate in the immediate vicinity of the turn-off from the N2 to the Hluhluwe town about 5kms away from the junction. From 17h00 until 17h51 accused 24 was in communication through the Hluhluwe town tower with accused 26 (4 times), Mzet (3 times), accused 22 (twice) and accused 1 (twice). While accused 24 was conducting the aforementioned communication through the Hluhluwe Town tower the two Fidelity vehicles were in that

town doing the collections.

At 17h55 accused 24 again communicated through the Mkhonge Farm tower with accused 26, who was receiving reception through the Harrison Farm tower (Charters crime scene).

Six minutes later, as from about 18h01 to 18h16, accused 24 and 9 communicated through the Medham tower eight times – with 26, 18, 21 and 22. At that time the latter were all at Charters, communicating through the Harrison Farm and Nyalazi towers. That time span coincides exactly with the arrival and departure times of the Fidelity Hi-Ace at and from Petroport as testified to by the crew. The Medham tower provides reception to Petroport. Shortly thereafter the Hi-Ace was capsized and robbed at Charters some twenty kilometres from Petroport at about 18h25.

According to the communications log above, accused 1, 2, 6, 7, 11, 14, 15, 18, 20, 21, 22, 23, 26 and certain accomplices departed from Mzingazi on the second excursion, now under consideration, at more or less the same time between 16h00 and 17h00, derived from the times of their last calls made and received through the Richards Bay Lighthouse tower. Accordingly, accused 26 appears to have left Mzingazi at about 17h05 (his last call from there) and he used the “short cut”, as he made four calls through the Richards Bay Mineral tower (between 17h07 and 17h10). Accused 14 and Msimango also appear to have used the short-cut with accused 26, whether in the same vehicle or separately, is not certain. Accused 14, communicated through the Richards Bay Mineral

tower at 17h15. At 17h08 Msimango received two sms's through the same tower. At 17h19 and 17h20, accused 26 and 14 respectively, activated the Mposa tower where the short-cut joins the N2. At Harrison Farm accused 14 and 26 activated that tower at 17h54 and 17h55 respectively. It appears highly probable that accused 14, 26 and Msimango were travelling together.

When the cellphone activity engaged in by the accused, who, as aforementioned appear to have left Mzingazi at more or less the same time, is extracted from the communication log, it clearly shows that they arrived at more or less the same time in the vicinity of the Charters scene of crime and were communicating with each other and accused 24 and 9 through the Nyalazi and Harrison Farm tower. Whilst accused 6 and 20's cellphones were not activated at Charters, they communicated through the Umfolozi High School tower at respectively 19h00 and 19h12. The time-frame and location of those calls indicate that accused 6 and 20 were on their way back after the robbery at Charters had taken place.

They were back at Mzingazi at 20h06 and 21h22 respectively, when they made calls from there.

Returning to the communications at Charters, the arrival of the abovementioned accused at the Charters scene of crime is heralded by the first communications made by them through the towers serving Charters. An analysis of those times reveals that they all arrived at Charters at more or less the same time and remained there until after the robbery of the Hi-Ace.



An extraction from the communications log and a breakdown of the relevant calls made and received by the accused at Charters in the period before, during and after the robbery of the Hi-Ace, produces a result which is both startling and informative.

**a)** Apart from accused 6 and 20 who, as mentioned before, did not activate their cellphones at the scene, accused 1, 2, 7, 9, 11, 14, 15, 18, 21, 22, 23, 24, 26 and certain accomplices communicated through the Harrison farm and Nyalazi towers, which provide cellphone reception to the Charters scene of crime.

When accused 6 and 20 activated their cellphones, as aforementioned, they were manifestly on their way back from the scene of robbery.

**b)** Most of the calls logged at Charters or in its vicinity, e.g. Medham (24 kilometres north of Nyalazi and the scene of crime at Charters), on the one hand, and Mtubatuba (nine kilometres to the south of Harrison Farm), on the other hand, emanated from accused 26 and 22, the apparent co-ordinators, and accused 24 and 9, the “spotters”.

**c)** As mentioned earlier, accused 24 and 9 appeared to have conveyed to the accused, who, based on their calls, were apparently gathered within the reception range of the Harrison

Farm and Nyalazi towers at Charters, the movements of the Hi-Ace during and after the cash pick-up at Petroport. The concurrence between the evidence of the crew of the Hi-Ace dealing with their arrival and departure from Petroport towards Charters and the relevant calls made by accused 24 and 9 is uncanny.

Those calls appear to have given rise to a burst of calls made and received chiefly by accused 22, 26 and 18, all receiving reception through the Harrison Farm and Nyalazi towers at Charters. Between 18h01 and 18h24, accused 1 was engaged in sixteen cellphone calls with, inter alia, accused 24, 22 and Spiwet; accused 22 was engaged in twelve calls with, inter alia, accused 2, 18, 24 and 26; accused 18 was engaged in eleven calls with, inter alia, accused 9, 21 and 22; Spiwet was engaged in seven calls, inter alia, to accused 26 and 1. Those calls preceded and ended at the approximate time of commencement of the actual robbery of the Hi-Ace at Charters.

**d)**A study of the calls made by the accused who were at Charters, as aforementioned, discloses a highly informative phenomenon. It appears, for example, from the cellphone records of accused 18, 21, 22, 24, 23, 26, Mzet and Spiwet that the high density of cellphone traffic between the accused

gathered at Charters ended abruptly at about 18h25. That was followed by a period of silence, during which no cellphone was activated.

The lull that followed endured for a period of between 25 and 30 minutes. It seems to average out at 25 minutes. Thereafter the cellphone communication between the accused *inter se* involved, resumed, but with noticeably less frequency of calls. It follows, it would seem to us, inevitably, that period of silence aforementioned, represents the time during which the robbery at Charters was commenced and completed. That conclusion conforms, give or take a few minutes, exactly to the time-frame furnished by the various State witnesses, as aforementioned.

(e) Before turning to the attempted robbery at Penicuik and the surrounding events, the further movements of accused 24 and 9 after they reported the progress of the Hi-Ace at and from Petroport, require scrutiny. The times and locations of their progress from the Petroport filling station south to the Charters scene of crime and beyond, demonstrate that they appear to have followed the Hi-Ace towards Charters.

After leaving the Medham Tower coverage range, they communicated through the Nyalazi tower with accused 22 (at

18h17 – twice within the same minute); 18 (at 18h17) – in communication with accused 9); accused 18 (at 18h18; accused 26 (at 18h21); accused 18 (18h22 – in communication with accused 9). Further on, through the Harrison Farm Tower, they communicated with the accomplice Mzet, who had reception through the Richards Bay Lighthouse tower (at 18h26 and again at 18h33). At 18h44 (after the robbery of the Hi-Ace had been completed, accused 24 and 9 communicated through the Mtubatuba tower with accused 22 (still at Nyalazi).

The same lull in communications remarked upon earlier, which suggests that that was the time during which the robbery at Charters was taking place, appears in the communications of accused 24 and 9 also. The communication with Mzet was a call made by him through the Meerensee tower to accused 24 and 9, receiving reception through the Harrison Farm tower. From Mtubatuba further south their communications show that accused 24 and 9 were on their way back from the area where the Charters robbery occurred.

That will come up for scrutiny again. Suffice it at this stage to remark that judging from the calls made and received by accused 24 and 9 as aforementioned, they lingered at the Charters scene of crime but do not appear to have taken an active part in it.

In dealing with the Charters robbery, accused 25 needs special mention. Whilst he had accompanied the accused, who came from the greater Johannesburg area he is placed at the house of accused 24 by the first call he made from there at 07h18, he

did not appear to have used his cellphone at Charters. That he was at Charters as a member of the “stopper” group during the robbery, is in essence unquestionable – he left a trail of blood, as it were. The evidence which, through DNA tests, links him with the BMW found abandoned in the plantation plus-minus one kilometre from the scene of crime, unquestionably identifies accused 25 as the robber who got shot during the exchange of gunfire with Constable Biyela. Biyela’s evidence in point, it will be recalled, was that the wounded robber was evacuated from the scene in a BMW, which answers to that description. It is to be noted too that the evidence was that, regard being had to the impact damage on both vehicles, the BMW in question was used with which to ram the Fidelity Hi-Ace preparatory to its looting.

That accused 25 was associated with the other accused at Charters, is further bolstered by the fact that his DNA was found to match the perspiration found on one of the balaclavas retrieved from accused 24’s white Combi at the scene of arrest that same night at Mvoti Plaza.

Biyela’s evidence was that accused 25 had come out of the driver’s seat of the Mercedes Benz motor vehicle, which had hemmed in the police vehicle behind the Clover truck at the crime scene. The Mercedes Benz was found in the same position where it had apparently been abandoned after the robbery. That appears in sharp contrast to the way in which all the other vehicles which had been abandoned by the robbers, were left out of sight. In this regard, it will be recalled that the witness, Sithole, identified the Mercedes Benz as one of the vehicles he had followed to the house of accused 24 early in the morning of the same day.

## **THE ATTEMPTED ROBBERY AT PENICUIK**

Inasmuch as there is a dearth of cellphone communications at and around the time and location of the attempted robbery at Penicuik, the question whether any of the accused took part in it, is a matter to be determined on a conspectus of the evidence.

**Before proceeding to deal with that, another matter needs to be considered,** namely whether the offences at Charters and Penicuik were committed by members of the same gang of perpetrators or whether the Penicuik attempted robbery was committed by another gang acting independently without knowledge and concurrence of the accused.

Addressing that question during argument, counsel for the accused strenuously contended that the attempted robbery and secondary offences which occurred at Penicuik were unrelated to the robbery at Charters and did not involve any of the accused in it.

We disagree with that. In our view, *prima facie* at this point, the offences at Charters

and Penicuik and the perpetrators thereof are inextricably bound and the offences occurred during the execution of a common purpose between the accused that are before the Court and certain other accomplices who are not.

Our reasons are:

1. The areas where the Fidelity vehicles were rammed and overturned were manifestly chosen with care. At both scenes the road was straight and flat.
2. In each case the terrain on the sides of the road was wide and level with the road surface and free of possible impediments, such as culverts, drainage ditches, rocks or the like, which would make access to the cash in transit vehicle and the extraction of the loot difficult.
3. The relevant stretches of road had plantations on either side or places such as bridges and side-roads, where the vehicles which conveyed the robbers and their firearms, equipment, and tools to break into the capsized vehicle could be kept out of sight. At Penicuik it was the plantation road, fully described earlier, where the stolen vehicles were abandoned and the deceased killed. It is common cause that the distance between the plantation road and the point where the Dyna was capsized is approximately 700 metres. In testimony Sithole estimated this distance at 500 metres. At Charters it was a bridge marked "L" from which the plantation leads to where the BMW, which was used to ram the Hi-Ace was abandoned. We remind that from that BMW blood samples were obtained which matches the blood of accused 25 on DNA analysis.
4. The evidence was that the vehicles, which were abandoned in the plantation

at Penicuik, drove directly to it at speed. The perpetrators knew exactly where the road was, given that it was deep dusk, overcast, and raining intermittently at the time.

5. The areas in which the “stopper groups” and their vehicles to be used in controlling the traffic on both sides of the scene of the crime had to be determined also. At Charters Constable Biyela was hemmed in and shot at by members of such a group. At Penicuik Msweli (in the Opel Corsa) was stopped on the northern side of the crime scene by a “stopper group” using the white Nissan 1 Tonner, subsequently abandoned on the Plantation road where it was identified by Sithole as one of the vehicles which he followed to accused 24’s house. The “Telkom” bakkie and the “police” Combi appear to have fulfilled that role on the southern side of the Penicuik crime scene. Those two bogus vehicles were using the plantation road to keep out of sight. The selection of the two crime scenes in question seems to demonstrate that the robbers were aware of the practice employed by the two vehicles upon their return from their collecting rounds in the northern part of Zululand. Thus they appeared to be aware thereof that the Hi-Ace and Dyna travelled in tandem all the way to Petroport and that the Hi-Ace would turn into Petroport whilst the Dyna continued driving on towards Richards Bay.

The distance of the two vehicles from each other is obviously determined by the distance the Dyna would have travelled from the time that the Hi-Ace turned off into Petroport filling station. Accordingly the perpetrators will have endeavoured to calculate the area in which the Dyna was likely to be, given its probable speed and the time it took to Penicuik. As it happened later, the



attacks on the Hi-Ace and the Dyna took place more or less contemporaneously at Charters and Penicuik respectively.

6. The assailants were well informed of the return routes of the targeted Fidelity vehicles and the expected contents, given that both vehicles were returning from their cash collecting rounds. Clearly the gang as a whole were possessed of extremely accurate and detailed “inside information” in regard to the inner workings at Fidelity and in regard to the large amounts of money carried in their transit vehicles, being on a Monday following a month-end weekend. These vehicles were specifically planned to be targeted as they were both using the same route at the time.
7. The robberies had to take place at more or less the same time. Both were carrying substantial amounts of cash and, for reasons mentioned, driving apart.

The selected ambush sites were along the N2. If, for example, the Charters robbery were to have taken place say, one hour earlier than Penicuik or vice versa, the N2 would have been teeming with police vehicles as happened in reality shortly after the robberies were reported. The risk of any substantial time interval between the robberies was obviously too high and required the contemporaneity found in the instance.

8. Both the Fidelity vehicles were incapacitated and immobilised in exactly the same way. A stolen motor vehicle, a 7-series BMW, was used to smash into the travelling Fidelity motor vehicle in such a way that the driver of the latter

lost control of the vehicle, causing it to leave the road and upend. Thereafter the incapacitated vehicle would be broken into and robbed.

9. Once the Fidelity vehicle was incapacitated in that way, the road on both sides would be closed off by other members of the gang of robbers. The traffic to arrive on the scene first would find a motor vehicle stopped in their way, accompanied by heavily armed men, as in the case of the witness, Msweli. The first arrivals would be forced into submission and the later arrivals would encounter motor vehicles which had come to a stop ahead of them, causing the belief, as some of the evidence placed before us revealed, that they had happened on an accident scene further ahead.
10. For the greater part the motor vehicles used by the robbers to convey them to the scene of crime and to immobilise the Fidelity vehicles were abandoned on or in the vicinity of the scenes of crime. On both crime scenes stolen vehicles were used, which in the nature of things, could not be traced back to the perpetrators. In both instances the scene of crime was located in an area with plantations on both sides of the road and the motor vehicles were abandoned on gravel roads inside the plantations, except for the Mercedes Benz which was abandoned at the spot where it was used to park the police vehicle in at Chartersand where accused 25 was shot. The other vehicle which was not hidden was the 7-series BMW used to ram the Dyna at Penicuik. This vehicle from the photographic material placed before us indicates severe damage to the left front section thereof, caused no doubt by the force of the impact required to upend the heavy armoured Dyna vehicle. This vehicle, which was abandoned on the grass verge off the tar road at the Penicuik scene, was

clearly immobilised by the force of the impact. This vehicle was depicted as point "C" on photo album "D", photograph 8 and bore the registration number NJ 26107. That vehicle was earlier on that day, seen by Sithole on the R34. It bore the number plate KRY 631 GP. That number plate was observed by Sithole on the back seat of this vehicle after it had been abandoned.

11. According to the evidence the scenes of crime were plus-minus 30 kilometres apart, and with approximately 15 minutes travelling time between them. When the respective primary scenes of crime are superimposed on the official Topo Cadastral Chart emanating from the Surveyor General, it becomes immediately apparent that a myriad of back-roads exist, leading on to and away from the N2 at those points, which could be used to reach Mtubatuba, Empangeni and the Richards Bay areas. In fact the Penicuik scene of crime is just plus-minus 13 kilometres removed from a short-cut along a well-maintained back road through the plantation to Mzingazi where accused 24 lives some 18 kilometres away.
12. The use of tools specifically required for the "work" to be done, that is the petrol-driven angle grinder with special blades for cutting steel and hardened steel, suggesting that the perpetrators without doubt knew beforehand that one of the targeted victims was an armoured vehicle. The other tools used were an axe and heavy hammer ideal for penetrating with ease the roof of a fibre-glass vehicle as was the case with the Hi-Ace at Charters. It will be recalled that the Isuzu bakkie abandoned at the Penicuik scene had an axe and a hammer in the bin thereof.

13. The same types of firearms were used at both crime scenes, that is fully automatic assault rifles. The plan was clearly to simply nullify any opposition by sheer fire power. A heavy calibre rifle was also used to penetrate the armour of the Dyna vehicle at Penicuik and although not established by ballistic linking this was probably the .416 Wetherby rifle later found in the abandoned cache of firearms at the bus shelter at Nseleni. Notably some of the rifles found in that cache were, by unchallenged ballistic evidence, found to have been used in the Charters robbery.
14. On both scenes false number plates were used as evidenced by the Mercedes at Charters and the BMW at Penicuik, if one compares the registration plates recorded by Sithole en route on the R34 from Eshowe to accused 24's house. It will also be recalled that during the police search of 24's house a number of loose registration plates were found.
15. Not a single fingerprint was identified amongst all the vehicles involved in this case, numbering some 14. One has to couple this fact with the extraordinary number of gloves found in the arrested motor vehicles and on the accused persons – this during summer in Zululand.
16. "Stopper Groups" were employed as an essential and integral part of the "operation", to allow the actual robbers untrammelled and undisturbed access to the cash vehicles after same had been capsized, and to prevent any

persons or vehicles to access the scenes of the upturned vehicles. The stopper groups were heavily armed and well organised and were prepared to shoot to kill where necessary, as was apparent from the attacks on the police vehicle at Charters and the Maxim vehicle at Penicuik. Where no resistance was offered they simply under the threat of firearms took keys (as in the case of Msweli) and made the occupants lie down, or as in the case of Masango and his daughter, hi-jacked the vehicle, chased the father away at gunpoint and abducted the daughter.

17. In order to erase suspicion, the perpetrators used what appeared to be Telkom and police vehicles, with other paraphernalia, such as reflective jackets, emblems and the like.

18. There can be no doubt but that a larger group than those that were arrested was involved. Simple arithmetic shows that an amount of approximately 1 million rand was stolen at Charters and only R661 000 recovered from the accused possession. This appears clearly from Exhibit K.

Another matter, which should be considered in conjunction with that relates to the hi-jacking of Masango's motor vehicle. The obvious reason for that on the evidence is that there was an apparent shortage of "getaway" vehicles at the conclusion of the abortive robbery of the Dyna. The witness Ntombela testified that after the shooting in which the deceased was killed, he saw the "Telkom" bakkie and the bogus police Combi together with a red vehicle (clearly Masango's) speed away onto the N2. The inference seems inescapable that

Masango's vehicle was commandeered to evacuate the perpetrators from the scene of crime as the bakkie and Combi seemingly did not have enough space. The risk involved in hi-jacking Masango's vehicle, would scarcely have been taken if sufficient space existed in the getaway vehicles that were available. Considering the carrying capacity of the Combi and the Telkom bakkie there must have been a large number of perpetrators – too many to fit into those two vehicles, hence the need for Masango's double cab. Masango's daughter estimated the number of persons in her father's vehicle as it fled the scene at between ten and twelve grown men.

As will appear later, the probabilities are convincing that accused 24 arranged for the picking up of the stranded perpetrators where they dumped Masango's vehicle at Nseleni.

19. It is of importance to remind that the Penicuik and Charters scenes are bound as one unlawful enterprise by the fact that two of the vehicles observed and identified by Sithole and followed by him to number 24's house were abandoned at Charters, that is the Mercedes Benz with the worn tyre and the one BMW with 25's blood on it, abandoned at bridge L. This particular BMW was identified by Sithole in photograph B31 and which BMW is also depicted on photograph L 101. It is interesting to note that this particular BMW was depicted in the photograph with its back windowblind drawn, a fact referred to by Sithole in his following the convoy through Empangeni. He mentioned that the blind had been drawn by a back-seat passenger when the vehicle had stopped at a red robot with him behind it. The other two vehicles likewise identified and followed by Sithole, that is the Nissan 1 Tonner and the other

BMW with the white cloth petrol cover were abandoned at Penicuik. This BMW did not have a drawn rear blind according to the photographic evidence. This above facts inextricably bind as one the two crimes, as well as demonstrating that the robbery and attempted robbery were committed by one gang, operating from accused 24's house.

20. Sight must not be lost of the fact that the probabilities persuasively favour the inference that the four suspect vehicles encountered by the witness, Sithole, on the R34 were driven to accused 24's house by the Johannesburg accused. As mentioned, the cellphone communications between the accused involved, slots in well nigh perfectly with Sithole's evidence as to how he followed the four vehicles from Jabulani (the Horseshoe Sugar Estate tower) right up to accused 24's house.

Collectively the facts above point to the inference that the four vehicles were ferried down from Johannesburg by those accused to be employed in the intended robberies at both Charters and Penicuik.

21. It must also be borne in mind that the Johannesburg group and the Durban group, together with certain accomplices "fused" as it were at 24's house before the scouting excursion, and the second excursion, which placed those involved in to at the Charters scene of crime. Thereafter they again gathered at accused 24's house where the spoils were shared. Bear in mind the fact that only R661 000 was found on the accused, leaving a further R500 000

unaccounted for. Accordingly the number of perpetrators involved substantially exceeded the number of accused on trial before us.

22. The meticulous way in which the robberies were planned and executed guides one to the inevitable conclusion that the participants must have gathered at one place to finally muster their forces and finally assign various roles before departure on the unlawful mission, and this points unerringly at 24's house as being the gathering place.

Accused 24's house was ideally suited for the above purpose, being in a back street in a rural area, but nevertheless easily accessible to the crime scenes and escape routes.

23. The conclusion that one gang was involved in both crimes, is further supported by the number of vehicles apparently available to the perpetrators to return home. The following vehicles appear to have been involved and were available: The bogus white police Combi and the Telkom bakkie; the vehicle used to convey accused 25 to hospital; the vehicle that turned around and sped away from the scene of arrest; Spiwet's vehicle (his cellphone records show that from Richards Bay he travelled to Durban – Hammarisdale – Pietermaritzburg, and from there on to Gauteng); Mzet, who travelled from Richards Bay to the Hluhluwe area (according to his cellphone records); Msimango (who according to his cellphone records) travelled via Melmoth to Gauteng; accused 26, who on 3 October 2006 travelled to Gauteng from accused 24's house.



Compare the afore going with the number of people arrested in the four vehicles stopped at Mvoti Plaza. Sight should also not be lost of the impact on the transport arrangements of the perpetrators by the six vehicles that were dumped at the two scenes of crime.

24. The fact that the robberies were clearly well planned and executed with military type precision, leads one to the inference that planning must have occurred prior to 2 October 2006. The roles of the participants could not have been allotted spontaneously if one has regard to the modus operandi more fully discussed supra
25. Certain of the perpetrators clearly escaped, taking routes other than the N2 south having regard to, as earlier stated, the amount of money stolen and the money recovered from the accused. One assumes some of the other escapees could well have been in the vehicle, which turned around at Mvoti Plaza and sped off away from the scene of arrest.
26. In our view, to suggest that the two scenes were purely coincidental as to time and method by two separate groups or gangs, each unaware of the other, would stretch reason and logic.
27. Finally, if the robbery and attempted robbery were indeed committed by two separate gangs operating independently, then the conduct of the accused who, on the probabilities, were involved in the robbery at Charters, appears

totally at odds with that notion. The cellphone records of the accused involved at Charters reveal that all of them, on their return to accused 24's house, passed the Penicuik scene of crime, at a stage when the attempted robbery had just been aborted and, in respect of some of them, after the police had already arrived. They could not have failed to observe the upended Fidelity Dyna with its distinctive green colour, which was lying in the open. To a man they would have realised that the Dyna which had passed them at Charters, had been robbed at Penicuik by a gang independent and unbeknown to them. Given the accused's penchant for continual cellphonic communication between them as apparent from their cellphone records in point, one would have expected a frantic exchange of calls between the accused who had come across the Penicuik scene of crime. Instead, the expected flurry of calls is tellingly absent. What the cellphone records do show is that the accused appear to have lingered at that scene before travelling on to accused 24's house at Mzingazi.

## **28. Conclusion of accused 24 and 9's trip as "spotters"**

As chronicled earlier, accused 24 and 9 left the area of the Charters robbery at its apparent closing stages and continued south along the N2. By 19h19 they were at or near the Penicuik scene of crime, when he called accused 26 through the Trust Farm School tower, who received a call through the Daybreak tower. Both towers provide cellphone reception close to the Penicuik crime scene. At 19h21 accused

24 again called accused 26 through the Trust Farm School tower. At 19h24 accused 9 activated the Kwambonambi tower (4kilometres from Penicuik) when he called accused 2. At 19h25 accused 24 called accused 26 once more, both receiving reception through the Kwambonambi tower. Both the Trust Farm School tower and the Kwambonambi towers provide reception to the Penicuik scene. As pointed out earlier, at about this time an accumulation of calls were made through the Kwambonambi tower (Msimango in contact with accused 26; accused 9 with accused 2; Msimango with Mzet; Spiwet trying to call accused 8; accused 26 with Msimango; accused 1 from Aquadene, calling Spiwet at Kwambonambi).

The obvious and natural route from Kwambonambi to accused 24's house was on the N2 from Kwambonambi to Invubu and from there on the M231 on to Richards Bay and home, or the shortcut home via RBM.

However, the next call made by accused 26 to accused 24 at 19h31 was through the Mposa tower, while accused 24 received the call through the Ubhejane Nseleni tower. The next communication by accused 24 with accused 26 was through the Ricardia Primary School tower, well on his way home at Mzingazi, while accused 26 had reception from the Richards Bay Lighthouse tower, from accused 24's home.

The relevance of the exchange of calls listed above, lies therein that the Ubhejane tower provides cellphone reception to the area where the witness, Masango's double cab Ford Ranger motor vehicle was abandoned after it had been hi-jacked and his daughter kidnapped at Penicuik after the attempted robbery of the Dyna.

In this regard it will be recalled that the Investigating Officer, Lt. Colonel van Rensburg, pointed out to Inspector Kruger the spot where Masango's motor vehicle

was abandoned by the hi-jackers. Inspector Kruger plotted the cellphone towers which provided cellphone coverage along the roads which were germane to the issues before us. The route leading to and away from the spot in question was included in Kruger's aerial photographic chart, handed in as Exhibit "JJ". It depicts and identifies the relevant spot as being situated at Nseleni at the junction between the D249 road, which leads from the N2 near Mposa tower (6 kilometres from Kwambonambi and 10 kilometres from the Penicuik scene of crime) to that spot and the M231 which leads from the said junction to Richards Bay.

The contemporaneity and location of the two events – the abandonment of Masango's vehicle, which would have left the hi-jackers on foot and the unexpected diversion from his obvious route home by accused 24 to the area where the hi-jackers were stranded, cannot readily be attributed to chance. It is to be noted also that accused 24's digression follows immediately upon his brisk exchange of cellphone calls with accused 26, who was at Kwambonambi and Mposa during that time.

Absent a plausible explanation from accused 24 or 26, the inference seems irresistible that accused 24 deviated from his expected route to the area where Masango's motor vehicle was left by the hi-jackers, in order to pick them up or have them picked up.

#### **THE PRESENCE, IF ANY, OF THE ACCUSED AT THE ATTEMPTED ROBBERY AT PENICUIK:**

It is to be noted that the cellphones of accused 3, 4, 5, 8, 13, 16, 17 and 19 were not activated at or near the Charters scene of crime. In the case of accused 1, he made

two calls at 18h05 and 18h13 from the Harrison Farm and Nyalazi towers respectively. Both those calls preceded the time of the actual robbery of the Hi-Ace. The reasons for his apparent departure from Charters, is a matter that will be dealt with hereunder.

After his last call from the Charters scene of crime at 18h13, accused 1 came on line for the first time thereafter at 19h27 when he communicated through the Aquadene tower. Premised upon the considerations to follow, there is a very real possibility that accused 1 followed the Dyna to Penicuik. Indications thereof are:

- His cellphone records show that he was at Charters. At 17h51 he communicated through the Mtubatuba tower 13 kilometres from Charters and well on his way to the scene of crime. Thereafter follow the two mentioned calls from the Harrison Farm and Nyalazi towers respectively. The last of those at 18h13 coincides with the time the Hi-Ace left Petroport and accused 24 and 9 were at that time apparently communicating its progress to the accused, who by the looks of it, were waiting at the Charters scene of crime. In this regard Mnguni, the driver of the Hi-Ace testified that they arrived at Petroport at 18h00 and left 18h10. That places them 20 kilometres to the north of Charters. The commencement of the robbery at Charters, as indicated by the start of the lull in the cellphone communication between the accused there, as aforementioned, conforms to the approximate time which it would take the Hi-Ace to reach the scene of crime.
- After his last call from the Charters scene of crime accused 1 disappeared

from the grid and re-appeared at 19h27, when he communicated with Spiwet who, at that time, was at Kwambonambi. Considering that Kwambonambi is 70 kilometres from Nyalazi, it took accused 1 seventy four (74) minutes to travel that distance. That seems inordinately slow compared to the time it would take any person to cover that distance, as it signifies an average speed of well below 60 kilometres per hour on a national road such as the N2.

- It appears significant that accused 9 and 24, accused 26, Msimango and Spiwet were at that stage communicating through the Kwambonambi tower 4 kilometres removed from the Penicuik scene of crime and 16 kilometres from Aquadene and accused 1. The cellphone records of Spiwet shows that at that time he tried to communicate with accused 8, although unsuccessfully. That that happened to be a coincidence seems decidedly unlikely.
- The reality of the possibility that accused 1 followed the Dyna from Nyalazi, is strengthened by the consideration that the uncertainty attendant upon the arrival time of the Dyna at Penicuik, would be removed if someone were to follow it from Charters.

The obvious thing to do would be that the person following the Dyna, overtake it at some appropriate stage in order to fore-warn the robbers, who undoubtedly were lying in wait at Penicuik, of the imminent arrival of the Dyna. There can be no doubt also that the robbers had to remain out of sight until the appropriate time when the Dyna reached the predetermined point of attack. Considering the number of vehicles involved, their collective presence

at the Penicuik crime scene on the N2, would have raised suspicion and, most certainly would have warned the driver of the Dyna, Thring, that something was amiss.

I now turn to a consideration of the position of the accused, other than accused 1, who were not placed at Charters through their cellphone use and those are dealt with seriatim.

### **ACCUSED 3**

According to his cellphone records, accused 3 was at Mzingazi on every occasion he used his cellphone on 2 October 2006. When the accused, who were at Charters, left Mzingazi he remained behind, as seen from his communications at 16h36 and 16h57. He was still there when the robbery at Charters took place – *vide* his call at 18h28 through the Richards Bay Lighthouse tower.

It follows that he could not have been at the Penicuik attempted robbery either, in the light of the contemporaneity of the primary offences at Penicuik and Charters.

However, as pointed out when dealing with the accused who came from Johannesburg, accused 3 travelled to Richards Bay in the same vehicle as accused 6 and 17. As with the other mentioned accused, they appear to have gone straight to the house of accused 24 and from there made calls through the Richards Bay Lighthouse tower. When the times and distances they had travelled between towers that were activated by their cellphone use, there appears to be no room in relation to time and distance, which would accommodate a deviation elsewhere, as accused 17, in whose company he had travelled, made his first call from accused 24's house at 10h42.

There can be no doubt, certainly at a prima facie level, that accused 24's house was the gathering place of all the accused. Accordingly, subject to a plausible explanation, reasonably consistent with innocence from the accused or the evidence as a whole, the conclusion is justified that the presence of accused 3 at accused 24's house, did not indicate a social visit.

Whilst there exists no direct evidence that accused 3 was at the scene of crime at Penicuik or Charters, he departed from accused 24's house in the white Combi. Upon his arrest at Mvoti Plaza he was found in possession of R23 550 in cash, together with his co-passengers, who all had inordinately large sums of cash on their persons and the extraordinary sum of R80 000 on the floor in the passenger area in the rear.

After his arrest, accused 3 requested to speak with Captain Mncube and during that discussion informed the witness "the cellphone records which will show that he was not where the robbery was committed, as he felt uneasy about it". That information was not solicited. Accused 3 volunteered that after he had been arrested and duly informed of his Constitutional rights. From that conversation, it cannot be inferred that he had withdrawn from the common purpose to rob, as he appears to have, *ex facto*, shared in the spoils thereof.

The accused did not testify. That is a matter to be considered later.



**ACCUSED 4**

Like the other accused from Johannesburg, accused 4 appeared to have gone straight to accused 24's house at Mzingazi, as he made his first call through the Richards Bay Lighthouse tower at 09h06. The next two calls traced him to Meerensee at 17h35 and 18h04. After the last of those calls his cellphone was silent for 2 hours and 7 minutes.

His call at 18h04 from Meerensee simply rules out the possibility that he was at the Charters scene of robbery. However, his silence for more than 2 hours will have afforded him ample opportunity to have been at the attempted robbery at Penicuik.

Meerensee is 7 kilometres from accused 24's house and 24 kilometres removed from the Penicuik crime scene. The attempted robbery committed there took about 20 to 25 minutes. For reasons mentioned elsewhere, it appears that the attempted robbery commenced at about 18h35 and ended at about 18h50, give or take a few minutes either side. Accused 4 was seen to leave accused 24's house in the latter's Combi at about 10h30 and was followed to the scene of arrest. R2 770-00 was found on his person in circumstances fully described earlier. However, some R80 000-00 carpeted the floor at his feet. There can be no doubt that he jettisoned the remainder of his share on the floor when arrest was imminent.

Whilst it has not been shown that he actively took part in the Charters robbery, as he

could not have been there, he received some of the proceeds thereof. On the available evidence he is not shown to have been at the Penicuik scene of crime, yet he still got a share from the Charters money.

Accused 4 did not testify. No explanation came from him. However, on the face of it, it would seem that he either performed some unknown function in the commission of the Charters robbery or participated in the unsuccessful robbery at Penicuik, and was allowed to share in the success of Charters Creek.

Given that, subject to a plausible explanation to the contrary, convincing reasons appear to exist, that as a matter of fact the robbery and attempted robbery were perpetrated by members of the same gang, of which the accused before us formed the nucleus, there exists a real possibility that he was being rewarded for his participation in the unsuccessful attempt at robbing the Dyna. In this regard accused 4 does not appear to be the only person to have benefited from the success at Charters, without being shown to have been present there.

## **ACCUSED 5**

As mentioned earlier, he appears to have travelled with the Durban accused to Richards Bay, and was in the company of accused 20, 8 and Xha at Richards Bay CBD for the better part of the day. However, his penultimate call from Richards Bay was made through the Meerensee tower at 15h49, close to the departure time from

accused 24's residence of the other accused on their way to Charters. After that his cellphone was totally silent for 7 hours. The silence was broken when he surfaced at the house of accused 24 at 22h40, from where he left in the red Combi driven by accused 12 and was arrested at the Mvoti Plaza together with others.

During the 7 hours of cellphone silence on the part of accused 5 he could well have been at either Charters or Penicuik but not both, as the two primary offences were committed more or less contemporaneously.

There can be little doubt that he shared in the spoils of the Charters robbery. He was arrested with R23 100 on his person in circumstances already fully narrated and which tie him in with the other accused and the motor vehicles in which they were at the time of arrest. He too, appears to have shared in the spoils.

## **ACCUSED 8**

As noted earlier, it would seem that he was in the company of accused 20, 5 and Xha from the time that he arrived in Richards Bay and on the evidence of accused 20, was in the latter's company in Durban for some time before the departure from there.

Accused 8 made a number of calls from the Richards Bay CBD at the same time and places as accused 20, 5, and Xha. Like accused 5, his cellphone fell silent at 15h18 and was never activated thereafter. Also as in the case of accused 5, he could have been at either of the scenes of crime, but not both.

However, based on the evidence fully considered supra, he left the house of accused 24 in the company of accused 1 and 20 and was arrested with them at Mvoti Plaza. R21 000 in cash was found on his person, whilst accused 1 had R56 000 on his person and accused 20 the sum of R35 890. The apparent disproportionate shares is probably due to the fact that accused 1 was a leader or co-ordinator of the Durban accused and accused 20 took part in the successful robbery at Charters, whilst accused 8 did not receive the same sum, possibly because he was not at Charters.

In that regard, although his phone appears to have been turned off or the battery was flat from 15h18 onwards, the accomplice Spiwet tried to contact accused 8 from Kwambonambi at 19h25, which suggests that he expected to find accused 8 in that area. That was the apparent time that Spiwet and others involved in Charters reached the Penicuik area whilst on their way back from Charters. If accused 8 had indeed been at Charters, it might well be considered curious that Spiwet would try to phone him from the vicinity of the Penicuik scene of crime as aforementioned. The relevant cellphone records reveal a marked sparseness of communication between the accused after the Charters robbery and their return from that area, except for accused 24 (and 9), and accused 26.

Accused 8 did not testify. Accordingly his complicity in any of the offences charged to him falls to be decided on the totality of the evidence.

### **ACCUSED 13**

As noted earlier, accused 13 appears to have travelled with the Johannesburg group and at Richards Bay went straight to the house of accused 24. From there he made

his first call at 08h43. After that accused 13 made 5 further calls from there, up to 11h45. He did not appear to use his cellphone thereafter for 10 hours, until that night at 20h09, again from accused 24's house through the Richards Bay Lighthouse tower. thereafter he made 9 further calls at regular intervals until 21h05.

There is no evidence placing accused 13 at any of the crime scenes. However, given the frequency of his calls before and after the 10 hour period of silence, presents as unusual.

He too was in the white Combi when it was seen leaving accused 24's house, which Combi according to Captain Mncube and Govender, did not stop anywhere from there to Mvoti Plaza where the arrests occurred. The white Combi did not pick up accused 13 at the BP garage as claimed by him. The divergent evidence in point emanating from the State witnesses and accused 13 will be addressed in due time. Suffice it to note that the number of calls made by him appears to be at odds with his claim in that regard, for there can be no doubt that the calls referred to earlier were made by him from accused 24's house.

Upon his arrest with the other accused at Mvoti Plaza he had only R1 250 on his person but at his feet lay R80 000 in cash. As addressed earlier there can be very little doubt that he had shed his share of the loot into the pool of money at his feet. His claim to the contrary apparent from his testimony will be evaluated at the appropriate stage.

## **ACCUSED 16**

Accused 16 also travelled Richards Bay with the Johannesburg accused and made his first call from accused 24's house at 14h20, followed by three further calls up to 15h21. Thereafter his cellphone was activated at Meerensee at 17h03; 17h04 and 17h11, when his phone went silent for two hours until activated at accused 24's house at 19h10, and at 19h16, 19h18 and 19h24 - communicating with Mzet consecutively. His last call from there was at 23h34.

Whilst there is no direct evidence of his presence at Penicuik or Charters, he will have had sufficient time to go to Penicuik and back during the period of his cellphone silence of 2 hours. In addition, it would appear also that the accused who had been present at Charters, only arrived back at accused 24's house after him.

Accused 16 left accused 24's house in the red Combi with accused 5, 7 and 22, which was driven by accused 12. He was arrested with his companions in the red Combi with R22 900 on his person.

The evidence given by accused 5, 7, 12, 16 and 22 as to how it happened that they were together in the red Combi, is to be considered *infra*.

## **ACCUSED 17**

Accused 17 also travelled to Richards Bay with the Johannesburg group, who went directly to accused 24's house from where he made his first call at 10h42. There is no cellphone evidence, which places him at either Penicuik or Charters. However, he

made two further relevant calls from there. the first was at 19h14 and the second at 21h10. The first of the aforementioned calls seems to place him out of reach of any suggestion that he was at Charters Creek when the robbery occurred there. There again his call at 19h14 would have left him sufficient time to have been at the Penicuik scene of crime.

He was arrested with the others in the white Combi at Mvoti Plaza with R22 230 in cash on his person. The quantum of this amount is more or less the same as in the case of the other accused who were not shown to have been at Charters.

Accused 17 did not testify, but apart from the money found on him, his palm print also appears on one of the smart boxes recovered from the Hyundai in which accused 14 and 19 were arrested at Mvoti Plaza.

## **ACCUSED 19**

Accused 19 travelled with accused 14 from Durban to Richards Bay in the Hyundai in which they were arrested during the night of the same day. All his calls activated the Meerensee tower. From there he is shown to have taken part in the scouting trip as noted earlier. His first and only call from accused 24's house was at 20h32.

From the time he apparently left Meerensee on the scouting expedition at about 13h22, his next communication was at 13h43 through the Super Scaff tower, which

provides reception to the M231. 27 minutes later he communicated through the Harrison Farm tower at Charters. Thereafter his phone was silent for 6 hours and 20 minutes.

There is no cellphone evidence that he was present at either of the two primary scenes of crime. However, he left accused 24's house in the Hyundai with accused 14 and was arrested with the latter at Mvoti Plaza. In the cubbyhole where he was seated as a passenger the sum of R28 430 in cash was found and on his person a deposit slip which came from the Hi-Ace at Charters. Accused 19's disclaiming evidence will come up for consideration later.

## **CONCLUSION**

All things considered, including the view we take of the accused's evidence, there appears a strong possibility that accused 1, 3, 4, 5, 8, 13, 16, 17 and 19 were at Penicuik during the attempted robbery of the Dyna. Thereagainst, we are unable to find that their presence there had been proved beyond reasonable doubt.

However, the matter does not end there. If we were to find that the accused in question, with the others, shared a common purpose to rob the two Fidelity vehicles on 2 October 2006, a matter with which we shall deal fully herebelow, then the actions of the perpetrators of both the robbery at Charters and the attempted robbery at Penicuik, performed in execution of that purpose, will be imputed to the mentioned accused, together with all of the accused who shared in that objective.



**Schedule of calls made by the accused from Mzingazi after the robbery and attempted robbery had taken place:**

The calls which the accused (except accused 8, 10 and 12) made after the robbery and attempted robbery at Charters and Penicuik, show that all of them ended up at the house of accused 24 at Mzingazi and thereafter made and received a substantial number of calls via the Richards Bay Lighthouse tower. We include hereunder a schedule of those calls.

A perusal of the schedule reveals the approximate times of the arrival at and departure from accused 24's house from Mzingazi; the exchanged calls between accused 7 and 12, during which he summoned accused 12 from Empangeni to Richards Bay and in which accused 7 appears to have met accused 12 at the Richards Bay CBD in order to guide the latter to accused 24's house, where accused 12's red Combi was subsequently observed by Captain Mncube and Govender; that accused 26, Fana and Spiwet unsuccessfully tried to contact accused 1, who was then in arrest – as during those unsuccessful attempts accused 1's cellphone received reception through the Groutville tower, providing reception to the scene of arrest; the last of the unsuccessful attempts at communicating with accused 1, was

transmitted through the Cato Manor tower; that at about the time of departure of the first motor vehicles from accused 24's house, accused 20 was contacting, or endeavouring to contact Xha and accused 8, whose cellphones do not appear to have been re-activated after about 3pm on 2 October 2006.

## THE CALL SCHEDULE

ACCUSED 1 GOODWILL SHANGE					
02 October 2006	21:20:27	MTC	767826491	FANA	01-RB_Lighthouse-0
02 October 2006	21:25:35	MTSMS			01-RB_Lighthouse-0
02 October 2006	21:35:33	MTSMS			01-RB_Lighthouse-0
02 October 2006	22:12:47	CF	825066046		01-RB_Lighthouse-0
02 October 2006	22:14:32	MTSMS			01-RB_Lighthouse-0
02 October 2006	22:15:40	MTSMS			01-RB_Lighthouse-0
02 October 2006	22:39:20	CF	723379995		01-RB_Lighthouse-0
02 October 2006	22:56:05	CF	825066046		01-RB_Lighthouse-0
02 October 2006	23:36:49	CF	723379995		01-RB_Lighthouse-0
02 October 2006	23:37:20	MTSMS			01-RB_Lighthouse-0
02 October 2006	23:38:00	MTSMS			01-RB_Lighthouse-0
02 October 2006	23:47:21	MTC	723379995		01-RB_Lighthouse-0
02 October 2006	23:55:11	MTC	823865916	Acc 22	01-RB_Lighthouse-0
02 October 2006	23:55:55	MTC	823865916	Acc 22	01-RB_Lighthouse-0
02 October 2006	23:57:02	MTC	823865916	Acc 22	01-RB_Lighthouse-0
03 October 2006	00:00:47	MTC	825066046		01-RB_Lighthouse-0
03 October 2006	00:05:21	CF	767826491	FANA	01-RB_Lighthouse-0
03 October 2006	00:17:07	MTC	825066046		01-RB_Lighthouse-0
03 October 2006	04:33:57	MTSMS			18-Groutville-2
03 October 2006	05:30:42	MTSMS			18-Groutville-2
03 October 2006	05:30:58	CF	721367408		18-Groutville-2
03 October 2006	06:41:21	CF	734254725	SPIWET	18-Groutville-2

03 October 2006	06:42:02	CF	734254725	SPIWET	18-Groutville-2
03 October 2006	07:22:34	CF	769771900		18-Groutville-3
03 October 2006	07:28:11	CF	721128890		18-Groutville-3
03 October 2006	08:10:26	MTSMS			28-Umhlali-2
03 October 2006	08:11:42	CF	825066046		32-Frasers_CC-0
03 October 2006	08:19:45	CF	767826491	FANA	32-Isibhedi-1
03 October 2006	08:24:54	MTSMS			01-Campbell_Drive-3
03 October 2006	08:25:03	MTSMS			32-Isibhedi-2
03 October 2006	09:11:17	CF	826732866	Acc 26	12-Cato_Manor-1

**ACCUSED 2 FOX SITHOLE**

02 October 2006	20:04:52	MTC	118632872		01-RB_Lighthouse-0
02 October 2006	21:32:59	MTC	118632872		01-RB_Lighthouse-0
02 October 2006	21:42:28	MOC	731829340		01-RB_Lighthouse-0

**ACCUSED 3 ZOFANIA MTHETHWA**

02 October 2006	18:28:55	I	27729871012	Acc 17	01-RB_Lighthouse-0
02 October 2006	19:09:03	I	27723885069		01-RB_Lighthouse-0
02 October 2006	20:34:52	I	27824202505		01-RB_Lighthouse-0

**ACCUSED 4 ZAKHELE SIBISI**

02 October 2006	18:28:55	I	27729871012	Acc 17	01-RB_Lighthouse-0
02 October 2006	19:09:03	I	27723885069		01-RB_Lighthouse-0
02 October 2006	20:34:52	I	27824202505		01-RB_Lighthouse-0
02 October 2006	09:06:48	O	27824014136		01-RB_Lighthouse-0
02 October 2006	18:04:08	O	27824014136		01-RB_Lighthouse-0

**ACCUSED 5 FANI MBONANI**

02 October 2006	22:40:10	O	27836463602		01-RB_Lighthouse-0
02 October 2006	22:54:01	O	27730771449	Acc 19	01-RB_Lighthouse-0

03 October 2006	01:13:08	O	27736517894		Addington Sugar Farm
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**ACCUSED 6 SIBUSISO SHABALALA**

02 October 2006	21:22:19	MOC	834040419		01-RB_Lighthouse-0
02 October 2006	21:23:21	MTC	834040419		01-RB_Lighthouse-0
02 October 2006	22:23:36	MTC	832564468		01-RB_Lighthouse-0
02 October 2006	22:32:04	MTC	782176721		01-RB_Lighthouse-0
02 October 2006	23:13:09	MOC	734770925		01-RB_Lighthouse-0
02 October 2006	23:13:58	MOC	846109008		01-RB_Lighthouse-0
02 October 2006	23:14:29	MOC	739746181		01-RB_Lighthouse-0

**ACCUSED 7 XOLANI BUTHELEZI**

02 October 2006	19:49:17	MTC	734894481		01-RB_Lighthouse-0
02 October 2006	20:07:25	MTC	721389197		01-RB_Lighthouse-0
02 October 2006	20:36:41	MOC	782250585		01-RB_Lighthouse-0
02 October 2006	20:46:43	MOC	835977309		01-RB_Lighthouse-0
02 October 2006	21:10:47	MOC	835929818		01-RB_Lighthouse-0
02 October 2006	21:10:57	MOC	835929818		01-RB_Lighthouse-0
02 October 2006	21:11:29	MOC	27839299634		01-RB_Lighthouse-0
02 October 2006	21:28:33	MTC	839299634		01-RB_Lighthouse-0
02 October 2006	21:29:28	MOC	835929818		01-RB_Lighthouse-0
02 October 2006	21:30:03	MOC	27835756084		01-RB_Lighthouse-0
02 October 2006	21:32:12	MOC	782250585		01-RB_Lighthouse-0
02 October 2006	21:33:47	MOC	764656928		01-RB_Lighthouse-0
02 October 2006	21:37:43	MOC	27836718023		01-RB_Lighthouse-0
02 October 2006	21:38:56	MTC	839299634		01-RB_Lighthouse-0
02 October 2006	21:40:06	MOC	782250585		01-RB_Lighthouse-0
02 October 2006	21:40:25	MOC	27839299634		01-RB_Lighthouse-0
02 October 2006	21:40:41	MOC	27839299634		01-RB_Lighthouse-0
02 October 2006	21:47:12	MTC	839299634		01-RB_Lighthouse-0

02 October 2006	21:48:36	MOC	27839299634		01-RB_Lighthouse-0
02 October 2006	21:50:06	MOC	825065240	Acc 12	01-RB_Lighthouse-0
02 October 2006	21:51:08	MTC	782250585		01-RB_Lighthouse-0
02 October 2006	22:14:30	MOC	825065240	Acc 12	01-RB_Lighthouse-0
02 October 2006	22:15:29	MTC	782250585		01-RB_Lighthouse-0
02 October 2006	22:22:22	MTC	825065240	Acc 12	01-RB_Lighthouse-0
02 October 2006	22:25:58	MTC	825065240	Acc 12	01-RB_Lighthouse-0
02 October 2006	22:35:16	MTC	731419160		01-RB_Lighthouse-0
02 October 2006	22:35:39	MOC	27825065240	Acc 12	01-RB_Lighthouse-0
02 October 2006	23:03:16	MTC	839299634		01-RB_Lighthouse-0
02 October 2006	23:03:36	MOC	27839299634		01-RB_Lighthouse-0
02 October 2006	23:03:39	MTC	839299634		01-RB_Lighthouse-0
02 October 2006	23:05:03	MOC	825065240	Acc 12	01-RB_Lighthouse-0
02 October 2006	23:07:19	MTC	839299634		01-RB_Lighthouse-0
02 October 2006	23:12:01	MOC	27839299634		01-RB_Lighthouse-0
02 October 2006	23:14:20	MOC	761196713		01-RB_Lighthouse-0
02 October 2006	23:30:34	MOC	825065240	Acc 12	01-RB_Lighthouse-0
02 October 2006	23:52:41	MOC	823865916	Acc 22	30-RB_Central-1
02 October 2006	23:53:59	MOC	27839299634		30-RB_Central-1
03 October 2006	00:34:39	MOC	27728612031	Msimango	11-Mtunzini-0
03 October 2006	01:11:50	MOC	734555688		19-Stanger-2

**ACCUSED 8 THEMBA KATHIDE**

No call data for accused 8 after time of crimes

**ACCUSED 9 MPHO TSOTETSI**

02 October 2006	20:31:18	I	27781279037		01-RB_Lighthouse-0
02 October 2006	20:34:03	I	27781279037		01-RB_Lighthouse-0
02 October 2006	20:50:24	I	27781279037		01-RB_Lighthouse-0

02 October 2006	20:53:43	O	27781279037		01-RB_Lighthouse-0
02 October 2006	20:54:11	O	27781279037		01-RB_Lighthouse-0
02 October 2006	20:57:53	O	27782659270		01-RB_Lighthouse-0
02 October 2006	20:58:24	O	27782659270		01-RB_Lighthouse-0
02 October 2006	21:00:39	O	27731829340		01-RB_Lighthouse-0
02 October 2006	21:07:05	O	27769623599	Acc 25	01-RB_Lighthouse-0
02 October 2006	21:09:58	O	27823865916	Acc 22	01-RB_Lighthouse-0
02 October 2006	21:11:03	O	27829095906	Acc 2	01-RB_Lighthouse-0
02 October 2006	21:30:30	I	27765405627		01-RB_Lighthouse-0
02 October 2006	21:31:52	O	27765405627		01-RB_Lighthouse-0
02 October 2006	21:37:18	O	27782659270		01-RB_Lighthouse-0
02 October 2006	21:40:09	I	27829095906	Acc 2	01-RB_Lighthouse-0

#### **ACCUSED 11 JOSE FLAVIO LOUIS**

02 October 2006	20:11:23	MTC	737200035		01-RB_Lighthouse-0
02 October 2006	20:19:08	MOC	27731771717		01-RB_Lighthouse-0
02 October 2006	20:19:32	MOC	121		01-RB_Lighthouse-0
02 October 2006	20:23:51	MOC	27731771717		01-RB_Lighthouse-0
02 October 2006	20:25:18	MOC	782921225		01-RB_Lighthouse-0
02 October 2006	20:26:12	MOC	27760581777		01-RB_Lighthouse-0
02 October 2006	20:45:53	MOC	27731339695		01-RB_Lighthouse-0
02 October 2006	20:47:06	MOC	834968183		01-RB_Lighthouse-0
02 October 2006	20:48:43	MOC	833687259		01-RB_Lighthouse-0
02 October 2006	20:56:03	MOC	27829095906	Acc 2	01-RB_Lighthouse-0
02 October 2006	21:11:30	MTC	838844628		01-RB_Lighthouse-0
02 October 2006	21:38:20	MOC	768585063	Acc 2	01-RB_Lighthouse-0
02 October 2006	21:39:24	MOC	118632872		01-RB_Lighthouse-0

#### **ACCUSED 12 BHEKINKOSI LEONARD KUNENE**

02 October 2006	21:03:33	MOC	726220091		15-Noordrugs-1
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02 October 2006	21:28:04	MOC	27782736726		15-Noordrigs-1
02 October 2006	21:40:04	MOC	826803820		15-Noordrigs-1
02 October 2006	21:50:06	MTC	829736108	Acc 7	15-Noordrigs-1
02 October 2006	21:53:20	MTC	826803820		15-Noordrigs-1
02 October 2006	21:56:42	MOC	27839469656		15-Noordrigs-1
02 October 2006	21:57:50	MOC	836242751		15-Noordrigs-1
02 October 2006	22:06:16	MOC	726220091		01-Empangeni_MW-1
02 October 2006	22:14:30	MTC	829736108	Acc 7	07-Empangeni_Rail-0
02 October 2006	22:22:22	MOC	27829736108	Acc 7	13-John_Ross_Highway-3
02 October 2006	22:25:58	MOC	27829736108	Acc 7	30-RB_Central-1
02 October 2006	22:35:38	MTC	829736108	Acc 7	30-RB_Central-3
02 October 2006	23:05:03	MTC	829736108	Acc 7	30-RB_Central-1
02 October 2006	23:06:32	MOC	839299634		30-RB_Central-1
02 October 2006	23:14:26	MTC	839299634		30-RB_Central-1
02 October 2006	23:15:41	MOC	726220091		30-RB_Central-1
02 October 2006	23:30:34	MTC	829736108	Acc 7	30-RB_Central-1
03 October 2006	04:21:20	CF	723091901		18-Groutville-3

ACCUSED 13 KEHLA JOHANNES LANGA					
02 October 2006	20:09:31	MTSMS			01-RB_Lighthouse-0
02 October 2006	20:09:49	MTSMS			01-RB_Lighthouse-0
02 October 2006	20:12:38	MTC	824736644		01-RB_Lighthouse-0
02 October 2006	20:19:00	MOC	764656928		01-RB_Lighthouse-0
02 October 2006	20:20:46	MOC	839789457		01-RB_Lighthouse-0
02 October 2006	20:22:04	MOC	121		01-RB_Lighthouse-0
02 October 2006	20:33:01	MOC	833687259		01-RB_Lighthouse-0
02 October 2006	20:55:16	MOC	121		01-RB_Lighthouse-0
02 October 2006	21:04:17	MTC	824736644		01-RB_Lighthouse-0
02 October 2006	21:05:31	MTC	824736644		01-RB_Lighthouse-0

02 October 2006	21:53:46	MOC	832540478		01-RB_Lighthouse-0
02 October 2006	21:54:27	MOC	825829102		01-RB_Lighthouse-0
02 October 2006	22:28:45	CF	839736653		01-RB_Lighthouse-0
02 October 2006	22:29:12	MTSMS			01-RB_Lighthouse-0
02 October 2006	22:29:36	MOC	27839736653		01-RB_Lighthouse-0
02 October 2006	23:57:21	MTSMS			39-Ngulule-0

#### **ACCUSED 14 SIPHO MHLONGO**

02 October 2006	19:53:50	MOC	27730771449	Acc 19	01-RB_Lighthouse-0
02 October 2006	20:03:29	MOC	723955200		01-RB_Lighthouse-0
02 October 2006	20:04:03	MOC	723955200		01-RB_Lighthouse-0
02 October 2006	20:12:25	MOC	27736504890		01-RB_Lighthouse-0
02 October 2006	20:16:20	MTC	731941624		01-RB_Lighthouse-0
02 October 2006	20:20:22	MOC	723955200		01-RB_Lighthouse-0
02 October 2006	20:33:43	MOC	723955200		01-RB_Lighthouse-0
02 October 2006	20:36:51	MOC	728290210		01-RB_Lighthouse-0
02 October 2006	20:37:39	MOC	728290210		01-RB_Lighthouse-0
02 October 2006	21:13:08	MOC	737162299		01-RB_Lighthouse-0
02 October 2006	21:15:15	MOC	723955200		01-RB_Lighthouse-0
02 October 2006	21:19:10	MOC	762126362		01-RB_Lighthouse-0
02 October 2006	21:20:20	MOC	728290210		01-RB_Lighthouse-0
02 October 2006	21:24:22	MTC	765609367		01-RB_Lighthouse-0
02 October 2006	22:50:09	MOC	723955200		01-RB_Lighthouse-0

#### **ACCUSED 15 THABO MAHOA**

02 October 2006	20:32:27	MOC	839789457		01-RB_Lighthouse-0
02 October 2006	20:33:07	MOC	764656928		01-RB_Lighthouse-0
02 October 2006	21:00:17	MTC	723639339		01-RB_Lighthouse-0
02 October 2006	21:14:37	MOC	27723907149		01-RB_Lighthouse-0
02 October 2006	21:24:53	MTSMS			01-RB_Lighthouse-0



02 October 2006	21:25:02	MTSMS			01-RB_Lighthouse-0
02 October 2006	21:25:28	MOC	843878474		01-RB_Lighthouse-0
02 October 2006	21:25:40	MOC	843878474		01-RB_Lighthouse-0
02 October 2006	21:48:51	MTSMS			01-RB_Lighthouse-0
02 October 2006	21:52:06	MTSMS			01-RB_Lighthouse-0
02 October 2006	21:52:27	MTSMS			01-RB_Lighthouse-0
02 October 2006	21:53:10	MTSMS			01-RB_Lighthouse-0
02 October 2006	21:53:53	MOC	734295651		01-RB_Lighthouse-0
02 October 2006	23:23:58	MOC	761233999		38-Umhlatuze_Canal-2
02 October 2006	23:37:07	MTSMS			13-Mzingwenya-2
02 October 2006	01:24:53	MTSMS			18-Groutville-2
02 October 2006	01:25:02	MTSMS			18-Groutville-2

**ACCUSED 16 SIPHO PERCY KUNENE**

02 October 2006	19:10:57	MOC	836218141	Mzet	01-RB_Lighthouse-0
02 October 2006	19:16:58	MOC	827042741	Mzet	01-RB_Lighthouse-0
02 October 2006	19:18:53	MTC	827042741	Mzet	01-RB_Lighthouse-0
02 October 2006	19:24:09	MTC	827042741	Mzet	01-RB_Lighthouse-0
02 October 2006	23:34:42	MTC	835830622		01-RB_Lighthouse-0

**ACCUSES 17 THABANI ZONDO**

02 October 2006	19:14:45	MTSMS			01-RB_Lighthouse-0
02 October 2006	21:10:31	I	27723070357		01-RB_Lighthouse-0

**ACCUSED 18 LUCKY PHASHA**

02 October 2006	195214	I	27823865916	Acc 22	01-RB_Lighthouse-0
02 October 2006	195336	O	27730771449	Acc 19	01-RB_Lighthouse-0
02 October 2006	21:33:53	MTC	783951854		01-RB_Lighthouse-0
02 October 2006	21:37:50	MTC	783951854		01-RB_Lighthouse-0
02 October 2006	212211	O	27836114307		01-RB_Lighthouse-0

02 October 2006	230436	O	27836114307		01-RB_Lighthouse-0
02 October 2006	230626	I	27829906262		01-RB_Lighthouse-0
02 October 2006	230758	O	27836114307		01-RB_Lighthouse-0

#### **ACCUSED 19 VUSI NJOKO**

02 October 2006	20:32:20	I	27731878576		01-RB_Lighthouse-0
02 October 2006	20:34:47	O	27725796941		01-RB_Lighthouse-0
02 October 2006	20:39:15	I	27725796941		01-RB_Lighthouse-0
02 October 2006	20:40:31	O	27824079278		01-RB_Lighthouse-0
02 October 2006	20:45:16	I	27783951854		01-RB_Lighthouse-0
02 October 2006	21:18:11	O	27737205719		01-RB_Lighthouse-0
02 October 2006	23:16:14	O	27739491262		01-RB_Lighthouse-0
03 October 2006	00:06:41	O	27739491262		Blackburn VC

#### **ACCUSED 20 SIPHO GUMEDE**

02 October 2006	20:06:20	MTC	761425893		01-RB_Lighthouse-0
02 October 2006	20:08:19	MOC	820661360		01-RB_Lighthouse-0
02 October 2006	20:46:05	MOC	313325398		01-RB_Lighthouse-0
02 October 2006	20:51:43	MOC	768587881		01-RB_Lighthouse-0
02 October 2006	22:18:54	MTSMS			01-RB_Lighthouse-0
02 October 2006	22:23:34	MTSMS			01-RB_Lighthouse-0
02 October 2006	22:24:38	MTSMS			01-RB_Lighthouse-0
02 October 2006	22:53:54	MTC	783354833	Xha	01-RB_Lighthouse-0
02 October 2006	23:21:47	MTSMS			01-RB_Lighthouse-0
02 October 2006	23:27:42	MOC	27736712056	Acc 8	01-RB_Lighthouse-0
02 October 2006	23:28:39	MOC	27736712056	Acc 8	01-RB_Lighthouse-0
02 October 2006	23:33:52	MOC	27736712056	Acc 8	01-RB_Lighthouse-0
02 October 2006	23:47:36	MTC	783354833	Xha	01-RB_Lighthouse-0
02 October 2006	23:51:56	MTC	783354833	Xha	07-Birdswood_Beacon-1
02 October 2006	23:52:27	MOC	27783354833	Xha	01-RB_Lighthouse-0

02 October 2006	23:55:25	MTC	783354833	Xha	01-RB_Lighthouse-0
03 October 2006	00:03:22	MOC	27736712056	Acc 8	01-RB_Lighthouse-0
03 October 2006	00:03:49	MOC	27736712056	Acc 8	01-RB_Lighthouse-0
03 October 2006	00:04:35	MTC	783354833	Xha	10-Aquadene-2
03 October 2006	00:05:58	MOC	736712056	Acc 8	01-RB_Lighthouse-0
03 October 2006	00:06:12	MTC	783354833	Xha	01-RB_Lighthouse-0
03 October 2006	00:09:44	MOC	27736712056	Acc 8	01-RB_Lighthouse-0
03 October 2006	00:10:11	MOC	736712056	Acc 8	01-RB_Lighthouse-0
03 October 2006	00:11:01	MOC	27736712056	Acc 8	01-RB_Lighthouse-0
03 October 2006	00:23:23	MTSMS			03-Meerensee-2
03 October 2006	00:24:07	MOC	27820661360		03-Meerensee-2
03 October 2006	04:32:13	MTSMS			18-Groutville-2

**ACCUSED 21 BONGANI SHABALALA**

02 October 2006	205407	O	27730795887		01-RB_Lighthouse-0
02 October 2006	205433	O	27730795887		01-RB_Lighthouse-0
02 October 2006	210358	O	27739841441		01-RB_Lighthouse-0
02 October 2006	211124	O	173		01-RB_Lighthouse-0
02 October 2006	211514	O	27734474483		01-RB_Lighthouse-0
02 October 2006	211549	O	27734474483		01-RB_Lighthouse-0
02 October 2006	211625	O	27734474483		01-RB_Lighthouse-0

**ACCUSED 22 ERNEST NDLANGAMANDLA**

02 October 2006	19:42:24	MOC	837142218	Acc 24	01-RB_Lighthouse-0
02 October 2006	19:52:15	MOC	730859108	Acc 18	01-RB_Lighthouse-0
02 October 2006	19:53:16	MOC	730771449	Acc 19	01-RB_Lighthouse-0
02 October 2006	19:54:40	MOC	730859108	Acc 18	01-RB_Lighthouse-0
02 October 2006	20:28:54	MOC	7678226491	Fana	01-RB_Lighthouse-0
02 October 2006	20:29:50	MOC	767826491	Fana	01-RB_Lighthouse-0
02 October 2006	20:40:09	MTC	823145606		01-RB_Lighthouse-0

02 October 2006	20:42:06	MOC	767826491	Fana	01-RB_Lighthouse-0
02 October 2006	20:48:28	MTC	762265833		01-RB_Lighthouse-0
02 October 2006	20:50:40	MOC	767826491	Fana	01-RB_Lighthouse-0
02 October 2006	20:55:10	MOC	726190903		01-RB_Lighthouse-0
02 October 2006	21:06:19	MOC	722819682		01-RB_Lighthouse-0
02 October 2006	21:07:17	MOC	313325398		01-RB_Lighthouse-0
02 October 2006	21:09:59	MTC	782643263	Acc 9	01-RB_Lighthouse-0
02 October 2006	21:19:08	MTC	721820422		01-RB_Lighthouse-0
02 October 2006	21:46:05	MOC	767826491	Fana	01-RB_Lighthouse-0
02 October 2006	22:30:08	MOC	722819682		01-RB_Lighthouse-0
02 October 2006	22:31:18	MOC	313325398		01-RB_Lighthouse-0
02 October 2006	22:32:20	MOC	735074810		01-RB_Lighthouse-0
02 October 2006	22:33:09	MOC	313325398		01-RB_Lighthouse-0
02 October 2006	22:48:12	MOC	767826491	Fana	01-RB_Lighthouse-0
02 October 2006	22:59:30	MTSMS			
02 October 2006	23:09:16	MTSMS			
02 October 2006	23:26:16	MOC	738111851		01-RB_Lighthouse-0
02 October 2006	23:35:55	MOC	767826491	Fana	01-RB_Lighthouse-0
02 October 2006	23:39:41	MOC	826732866	Acc 26	01-RB_Lighthouse-0
02 October 2006	23:44:51	MTC	826732866	Acc 26	01-RB_Lighthouse-0
02 October 2006	23:52:41	MTC	829736108	Acc 18	01-RB_Lighthouse-0
02 October 2006	23:55:11	MOC	723632791	Acc 1	03-Meerensee-1
02 October 2006	23:55:55	MOC	723632791	Acc 1	03-Meerensee-3
02 October 2006	23:57:02	MOC	723632791	Acc 1	13-John_Ross_Highway-2
02 October 2006	23:58:06	MTC	734254725	Spiwet	03-Meerensee-3
03 October 2006	00:04:01	MOC	734254725	Spiwet	30-RB_Central-1
03 October 2006	00:04:27	MOC	721290344		30-RB_Central-1
03 October 2006	00:06:57	MTC	767826491	Fana	30-RB_Central-1
03 October 2006	00:15:40	MOC	733699465		38-Umhlatuze_Canal-2

03 October 2006	00:16:14	MOC	733699465		38-Umhlatuze_Canal-2
03 October 2006	00:17:13	MOC	7678226491	Fana	38-Umhlatuze_Canal-3
03 October 2006	00:17:56	MOC	767826491	Fana	38-Umhlatuze_Canal-3
03 October 2006	00:23:34	MOC	730859108	Acc 18	Harbour_Lights_Caravan
03 October 2006	00:24:21	MOC	726235436	Acc 23	Harbour_Lights_Caravan
03 October 2006	00:25:52	MOC	725566818	Acc 11	Harbour_Lights_Caravan
03 October 2006	00:26:43	MOC	782643263	Acc 9	37-Esikhawini_South-1
03 October 2006	00:27:25	MOC	837142218	Acc 24	37-Esikhawini_South-1
03 October 2006	00:32:11	CF	769623599	<b>Acc 25</b>	No
03 October 2006	00:32:45	MTSMS			12-Waterloo-0
03 October 2006	00:32:51	MTSMS			12-Waterloo-0
03 October 2006	01:08:08	CF	767826491	Fana	20-New_Guelderland-0
03 October 2006	07:38:00	CF	721290344		18-Groutville-2
03 October 2006	08:26:05	CF	826732866	Acc 26	03-Illovo_House-1

<b>ACCUSED 23 HAMILTON MAZIBUKO</b>					
02 October 2006	20:53	MTC	825237141		01-RB_Lighthouse-0
02 October 2006	20:53	MTC	825237141		01-RB_Lighthouse-0
02 October 2006	21:00	MTC	839512595		01-RB_Lighthouse-0
02 October 2006	21:14	MOC	824593813		01-RB_Lighthouse-0
02 October 2006	21:38	MOC	791493124		01-RB_Lighthouse-0
02 October 2006	22:41	MTC	826485645		01-RB_Lighthouse-0
03 October 2006	00:12	MTSMS			20-New_Guelderland-0
03 October 2006	00:12	MTSMS			20-New_Guelderland-0
03 October 2006	00:24	CF	823865916	Acc 22	18-Groutville-3

<b>ACCUSED 24 MBUSO MNCUBE</b>					
02 October 2006	19:42:24	I	27823865916	Acc 22	Ricardia Primary
02 October 2006	23:20:38	I	27826732866	Acc 26	Hillside Alluminium
02 October 2006	23:22:03	O	27826732866	Acc 26	Hillside Alluminium

03 October 2006	00:27:25	I	27823865916	Acc 22	Addington Sugar Farm
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**ACCUSED 25 EDDIE UBISI - (TAKEN TO PRINCE MSHIYENI MEMORIAL HOSPITAL)**

02 October 2006	19:39:25	CF	782631856		
02 October 2006	20:19:43	CF	725431577		
02 October 2006	20:47:39	CF	725431577		
02 October 2006	20:47:57	CF	725431577		
02 October 2006	21:05:24	CF	836545729		
02 October 2006	21:07:06	CF	782643263	Acc 9	
02 October 2006	21:14:00	CF	844004506		
02 October 2006	21:27:02	CF	767831033		
02 October 2006	21:50:53	CF	767831033		
02 October 2006	22:19:27	CF	725431577		
02 October 2006	22:30:57	CF	767831033		
03 October 2006	00:31:37	MTSMS			02-Durban_Airport-1
03 October 2006	00:31:45	MTSMS			02-Durban_Airport-1
03 October 2006	00:32:11	MOC	27823865916	Acc 22	02-Durban_Airport-1

**ACCUSED 26 THULANI MTHETHWA**

02 October 2006	20:08:01	MTC	732621665		01-RB_Lighthouse-0
02 October 2006	20:09:08	MTSMS			01-RB_Lighthouse-0
02 October 2006	20:14:09	MTC	725192727		01-RB_Lighthouse-0
02 October 2006	20:16:02	MTC	739697346		01-RB_Lighthouse-0
02 October 2006	20:17:59	MTC	739697346		01-RB_Lighthouse-0
02 October 2006	20:26:21	MTC	724519772		01-RB_Lighthouse-0
02 October 2006	20:27:14	MTC	724519772		01-RB_Lighthouse-0
02 October 2006	20:54:05	MTSMS			01-RB_Lighthouse-0
02 October 2006	21:11:25	MOC	27725192727		01-RB_Lighthouse-0
02 October 2006	21:16:10	MTSMS			01-RB_Lighthouse-0
02 October 2006	21:17:35	MOC	27725192727		01-RB_Lighthouse-0

02 October 2006	21:20:11	MOC	837142218	Acc 24	01-RB_Lighthouse-0
02 October 2006	21:20:48	MOC	837142218	Acc 24	01-RB_Lighthouse-0
02 October 2006	21:22:44	MOC	27739697346		01-RB_Lighthouse-0
02 October 2006	21:25:53	MOC	27739697346		01-RB_Lighthouse-0
02 October 2006	21:26:32	MOC	732621665		01-RB_Lighthouse-0
02 October 2006	21:28:10	MOC	844070176		01-RB_Lighthouse-0
02 October 2006	21:33:44	MTC	<b>727710322</b>		01-RB_Lighthouse-0
02 October 2006	22:11:10	MTSMS			01-RB_Lighthouse-0
02 October 2006	23:09:51	MTC	727690656	Acc 24	01-RB_Lighthouse-0
02 October 2006	23:20:39	MOC	837142218	Acc 24	01-RB_Lighthouse-0
02 October 2006	23:22:04	MTC	837142218	Acc 24	01-RB_Lighthouse-0
02 October 2006	23:23:43	MTC	725192727		01-RB_Lighthouse-0
02 October 2006	23:39:41	MTC	823865916	Acc 22	22- Ricardia_Primary_School-3
02 October 2006	23:44:51	MOC	27823865916	Acc 22	30-RB_Central-1
02 October 2006	23:52:54	MTC	762904299		07-Birdswood_Beacon-2
03 October 2006	00:01:01	MOC	844070176		14-RB_Milling_Silo-1
03 October 2006	00:01:53	MOC	844070176		14-RB_Milling_Silo-1
03 October 2006	00:02:42	MOC	844070176		14-RB_Milling_Silo-1
03 October 2006	00:04:05	MOC	27725192727		14-RB_Milling_Silo-1
03 October 2006	00:04:53	MOC	<b>727710322</b>		14-RB_Milling_Silo-1
03 October 2006	00:08:22	MOC	<b>727710322</b>		14-RB_Milling_Silo-1
03 October 2006	00:10:30	MOC	<b>727710322</b>		14-RB_Milling_Silo-1
03 October 2006	00:13:30	MOC	<b>27727710322</b>		Bayside_Aluminium_II_MT N-1
03 October 2006	00:26:04	MTC	725192727		30-RB_Central-1
03 October 2006	00:37:00	MOC	27725192727		30-RB_Central-2
03 October 2006	00:41:30	MOC	27737944344		30-RB_Central-1
03 October 2006	00:43:49	MOC	761290472		30-RB_Central-1
03 October 2006	00:49:03	MOC	837142218	Acc 24	30-RB_Central-1

03 October 2006	00:49:41	MOC	837142218	Acc 24	13-John_Ross_Highway-1
03 October 2006	00:50:40	MOC	<b>27727710322</b>		30-RB_Central-1
03 October 2006	00:52:36	MOC	<b>27727710322</b>		30-RB_Central-2
03 October 2006	00:57:26	MTSMS			13-John_Ross_Highway-1
03 October 2006	02:59:17	CF	732621665		30-RB_Central-2
03 October 2006	05:22:07	MOC	837142218	Acc 24	03-Meerensee-2
03 October 2006	06:10:45	MOC	839954748		10-Aquadene-2
03 October 2006	06:15:58	MTC	732621665		01-RB_Lighthouse-0
03 October 2006	06:28:32	MTC	844070176		10-Aquadene-2
03 October 2006	06:33:03	MTC	839954748		21-Invubu-0
03 October 2006	06:34:20	MOC	<b>727710322</b>		21-Invubu-0
03 October 2006	06:36:07	MTC	734254725	Spiwet	21-Invubu-0
03 October 2006	06:37:51	CF	839954748		No
03 October 2006	06:38:12	MTSMS			10-Aquadene-1

The planning and collaboration that preceded and followed upon the robbery and attempted robbery did not occur overnight. Many elements necessary for the execution of the intended robberies of the two Fidelity vehicles at the same time, 30 kilometres apart, were, of necessity, required to be gathered well in advance of the execution date. Those include the collection of, inter alia, sufficient stolen motor vehicles, firearms and ammunition thereto, manpower, intelligence regarding the itinerary of the Fidelity vehicles and the like. As noted earlier the robbery and attempted robbery proceeded with military-like precision, which, but for the criminality thereof, would have been admirable.

The cellphone records reveal that during September to 1 October 2006 the accused and accomplices were in regular, even extraordinary contact with each other, which,



in the absence of a plausible explanation for that, something that the accused involved appeared unable to do, the inference seems unavoidable that they were already busy with the necessary planning and preparation for the intended robberies. More so, when the abnormal number of calls during September and 1 October 2006 are considered in conjunction with the evidence of what transpired on 2 October 2006, when the robbery and attempted robbery took place and the apparent presence of the accused in the areas relevant thereto.

Returning to the instance of communication between the accused during that period and to avoid prolixity I propose mentioning only the calls made by the “co-ordinators” - accused 1, 22 and 26.

**Accused 1:**

He was in cellphonic communication with accused 5, 7, 8, 14, 19, 20, 22, 24 and 26 and the accomplices, Fana, Spiwet, Xha and Mzet. It appears that he communicated with accused 22 sixty six times(66); accused 26 two hundred and fifty times(250); the accomplice Fana one hundred and eighteen times(118); Spiwet fifty three times(53); Xha sixty times(60). Accused 1 appears to have communicated with his co-accused and accomplices no less than 695 times during that period.

**Accused 22:**

I have already mentioned the communications shared with accused 1. In addition accused 22 cellphonically communicated with accused 2, 5, 7, 9, 11, 15, 16, 18, 19, 20, 21, 23, 24, 25 and 26. He communicated with accused 2 fourteen times(14); accused 5 fifteen times(15); accused 7 five times(5); accused 9 twenty two times(22); accused 11 seventy seven times(77); accused 16 fourteen times(14); accused 23 seventy times(70); accused 25 forty eight times (48) and twice with accused 26. Accused 22 communicated with the accomplice Xha seventeen times(17).

**Accused 26:**

I have already dealt with the communications shared by accused 26 with accused 1. In addition accused 26 communicated with accused 7, 8, 14, 19, 20, 22, 24 and with all the accomplices.

Accused 26 communicated with accused 7 thirty one times(31); accused 8 ten times(10); accused 14 thirty five times(35); accused 19 three times(3); accused 24 eighty six time(86); Spiwet five times(5); Fana eighteen times(18); Mzet one hundred and thirty three times(133); Xha once and Msimango forty two times (42).

It would also seem that some of the prominent accused were no strangers to Mzingazi and the house of accused 24. Judging from their cellphone records accused 1, 7, 19, 26, Mzet, Fana and Msimango were all gathered in the vicinity of Jabulani on the R34 between Mandawe Cross (Nkweleni) and Empangeni on the 12<sup>th</sup> of September 2006. Their cellphone communications activated the Horseshoe Sugar Estate tower within the same time frame. Shortly after communicating with

accused 24, all their cellphones activated the Richards Bay Lighthouse tower at Mzingazi, no doubt from the house of accused 24.

Considering the number of calls that passed between the accused *inter se* and with the accomplices during September 2006 and 1 October 2006 and, further, considering in conjunction therewith the number of calls that passed between them on 2 October 2006, when the robbery and attempted robbery and related offences occurred, the total number of calls appears staggering, to say the least.

The instances of communication aforementioned, appear to us to be far in excess of what one would expect in normal cellphone traffic between acquaintances, family and business associates. The sheer volume of cellphonic communication between the accused and accomplices during the aforementioned periods, points to something extraordinary in the offing between those involved.

All things considered, the probabilities heavily favour the conclusion that the robberies of the instance were being planned.

**The position at the end of the State case:**

What has preceded this point in the Judgment is the tightest possible resumé of the evidence which the Prosecution placed before us in support of the indictment against the accused.

Before the Defence case is considered, one outstanding matter remains to be dealt with. During the course of the State case, the Prosecuting counsel wished to place before us certain statements which they referred to as “warning statements” made by certain of the accused after their arrest to various police officials.

The statements made by accused 4, 5, 7, 11, 16, 18, 21, 24 and 26 to the police were handed up by consent, coupled with an admission, recorded on behalf of the deposing accused, that each such statement was factually correct and correctly reflected what transpired between the Deponent and the recorder thereof. The mentioned statements were exhibited as KK4, KK5, KK7, KK11, KK16, KK18, KK21, KK24 and KK26 – the number following upon the letters “KK” representing the numbers assigned to the respective accused in this trial as a matter of convenience and to obviate confusion.

The Constitutional propriety and the voluntariness of the statements said to have been made by the remaining accused, were placed in issue. As a consequence, an inner trial followed in the course whereof certain of the accused and certain State witnesses testified.

At the conclusion of the inner trial I admitted certain of the statements as evidence and disallowed others. During my ruling there anent, I stated that I would furnish the reasons for my decision together with this Judgment, as to have done so at the time would have resulted in credibility findings, which might have prejudiced both the State and Defence cases.

Since then events have caught up with the relevance of the statements admitted, as aforesaid, rendering reliance upon those nugatory. The Prosecution has placed such a vast volume of evidence before us, that the statements, which I had admitted in evidence, became limited material for cross-examination only, which produced no material result. I have decided that due to the negligible probative value thereof the relevant statements and the cross-examination based thereon, ought to be ignored and I instructed my learned Assessor accordingly. As a result the only statements

referred to in the Judgment, are those which served before us, by consent.

## THE DEFENCE CASE:

### Introduction:

Save for the charges, which we held had not been proved, as pointed out earlier in the judgment, the case made out by the State in respect of the remainder of the charges, is indeed a formidable one and results in the absence of countervailing evidence, convincing *prima facie* proof of the commission of such offences by the accused, save accused 12; And that calls for an answer on the part of the accused, as contemplated in **ex parte Minister of Justice : in re R vs Jacobson and Levy, 1931 AD 26, at 37, per Stratford JA :**

*“Prima facie* evidence in its usual sense is used to mean *prima facie* proof of an issue, the burden of proving which is upon the party giving that evidence. In the absence of further evidence from the other side, the *prima facie* proof becomes conclusive proof and the party giving it discharges his onus.”

Whilst our case law abounds with pronouncements of the meaning of *prima facie* proof of the charges at the close of the State case, I have yet to encounter a more informative and succinct description than the above.

Before dealing with the evidence of the individual accused who testified, we remind that during the course of the Judgment a number of, call it collective dissimulations on the part of the accused, were exposed:

- a) All the accused who testified claimed that they were travelling independently of each other and that there was no connection or contact with the other vehicles, when they were stopped and arrested at the Mvoti Toll Plaza. For reasons already noted, that claim collectively made by the accused, was demonstrably mendacious.
- b) The assertion by the accused, who travelled from Johannesburg and Durban to Richards Bay, that they did so independently of each other and unassociatively, was thoroughly discredited by their own cellphone communications with each other, whilst on the way.
- c) Each of the accused who testified, disavowed ever being at the house of accused 24 at Mzingazi on 2 October 2006, or that they had gathered there during the day, is repudiated and, indeed, overwhelmed by the sheer volume of the cellphone communications from there. However, that excludes accused 8 and 12.
- d) Whilst it is recognised that they were allowed to do so in terms of their Constitutional Rights, it is nonetheless noticeable that the Prosecution had no inkling of their respective defences until that was disclosed in the witness box. Generally observed, the explanations that were then furnished by them seem to carry with it a distinct air of artificiality reflected in the way their explanations, though not always successful, were designed to accommodate their presence at certain incriminatory locations and times relevant to the commission of the offences with which they are charged, as apparent from

their cellphone communications at the times and locations in question.

We now turn to the evidence of each of the accused who testified:

***Accused 1:***

His explanation was that he travelled from Durban to Richards Bay on 2 October 2006 in order to collect money due to him from a certain Mbuyazi. The latter was not at home then and as he was tired, accused 1 intended to sleep there. Before that happened, he met up with one Ngidi, apparently an old acquaintance. Ngidi wished to visit his girlfriend at Mfekayi beyond Mtubatuba to the North on the N2.

To enable him to do that accused 1 gave Ngidi his motor vehicle and his cellphone, as the latter did not possess one. Ngidi returned from that visit at about 15h53, when, according to accused 1, he himself made a call at that time which went through the Richards Bay Lighthouse tower, where Mbuyazi lived at Mzingazi.

After Ngidi had returned, he again wished to see his girlfriend. This time accused 1 accompanied him. Accused 1 again lent his cellphone to Ngidi to communicate with his girlfriend. He explained that it was not unusual, as he knew that Ngidi did not possess a cellphone. Accordingly, Ngidi made certain calls to his girlfriend and arranged to have her meet them at a point to be picked up and return to Richards Bay with them. Thereafter he went back to Mbuyazi's place and waited for his money. He was aware that accused 20 was in Richards Bay and arranged to have him picked up at an agreed place. Ngidi did that in accused 1's vehicle. Accused 20 informed him that he was waiting for accused 8, who was going back to Durban with

him. They waited until late that night and accused 20 phoned accused 8 who was in Richards Bay. They arranged to meet him at a filling station and from there the three of them left for Durban, only to be arrested at the Mvoti Toll Plaza.

A mere reading of accused 1's testimony reveals that it is shot through with improbability.

Examples are, his handing over his cellphone to Ngidi when he himself was waiting for Mbuyazi and might have needed it; a cellphone is a private commodity and, in general experience, not readily passed on; the fact that shortly after he returned Ngidi requested accused 1 to accompany Ngidi to see his girlfriend again, considering that he had just returned from a visit to her; his statement that accused 20 phoned accused 8 in his presence is belied by the fact that according to his cellphone records accused 8's cellphone was turned off from about 15h00, no calls were made by him or could successfully be made to him until the time of arrest.

In addition, accused 1 was an extremely poor and unconvincing witness. He was wont to fudge and hedge questions. Those he answered were demonstrably evasive. A mere reading of his testimony reveals that. Under cross-examination, he, in a sense, disintegrated. In his evidence in chief, he did not mention Ngidi at all. When counsel for the State taxed him on that, it transpired that he had not mentioned Ngidi to his counsel. When asked why, he was unable to explain that plausibly. Asked whether he had discussed his case with the other accused, the response was he did not, for there was no need to. It is simply not humanly possible to be incarcerated with others for such a length of time, without exchanging grievances and stories.



When he was asked who “Fana” (an accomplice) was, he was unable to recall, yet during the period 1 to 4 September 2006 he and Fana shared 30 calls and on 1 and 2 October 2006, 22 calls. He then appeared to “pass the buck” by saying that Ngidi must have called Fana and he might remember. At that stage the Court had already been informed that Ngidi could not be used as a defence witness, as he had passed away. He was unable, to the point of overt mendacity, to explain why he had no recollection of who Fana was, yet was shown through his cellphone records to have made 182 calls to that person from 1 September to 2 October 2006. Accused 1’s assertion that Ngidi had his cellphone at crucial periods, is belied by the fact that, when Ngidi was supposed to have made the calls, he was communicating with accused 1’s co-accused with whom accused 1 had communicated before and after the time of Ngidi’s alleged custody of the cellphone. The whole explanation concerning Ngidi is exposed as a fabrication.

Accused 1 denied that he had R56 000 on his person at the time of arrest and insisted that the amount was R20 000 and that the police were lying there anent. The police were also lying, he claimed, that a Fidelity drop-safe bag, utilized by Baobab Service Station, was found on his person. We had no hesitation in accepting the relevant testimony, emanating from the police in point, in preference to his.

If accused 1 is correct, then the police will have “planted” the extra money on him at the scene of crime. There appears no reason why the police would have done that. Why select him above any one of the 23 accused arrested with him? Accused 1 was contradictory concerning whether he and accused 5 were in communication concerning accused 5’s presence at Richards Bay. Finally, his evidence foundered when he was confronted with his cellphone records, which did not contain any

indication whatsoever that Ngidi had phoned his girlfriend, as claimed by accused 1.

Petros Mbuyazi was called in support of accused 1's alibi. However, his testimony materially contradicted that of accused 1 to the point of irreconcilability. Under cross examination his testimony disintegrated. He was obviously trying to assist accused 1, but failed lamentably. At the end of the day, he did not advance accused 1's case in any way.

We have no hesitation in finding that accused 1's explanation of his movements on 2 October 2006 and his association with his co-accused was contrived and false beyond all reasonable doubt. We accordingly reject his evidence as false beyond any doubt.

### ***Accused 2:***

From the outset accused 2's explanation amounted to a tattered account, fraught with improbability. He explained that he was principally on his way to Pongola to deliver a taxi to a buyer, one Shabalala, also known as Mshengu, against payment of the outstanding amount due on the purchase price, such amount being in the sum of R50 000. He continued to say, that by then, he had sold all his taxis. His problem then was that in his bail application he had listed his taxis as assets. He proceeded to blame his attorney for the mistake. On that point it is difficult to accept that a "mistake" occurred, as during the bail proceedings he confirmed in answer to a question from the Magistrate, that he had read the affidavit and confirmed that its contents were correct.

Continuing with his evidence, accused 2 explained that on 1 October 2006 he had travelled in the taxi which he had sold, together with accused 15 and 21 from Johannesburg to Pongola. Accused 15 was to assist in the driving and accused 21 went along for the joy of it. They left Volsloorust at 19h30 on Sunday 1 October 2006. It appears that on their way he was contacted by Mshengu, who informed him that he now would pay the balance of the purchase price at Richards Bay. Accordingly he travelled on to Richards Bay, where he met with a certain Vusi or Vuka, who was the contact person at Richards Bay.

He met the latter and went to his home and waited there all day until approximately 17h00 on 2 October 2006. For reasons which remained obscure, accused 2 and his companions decided to drive to Pongola where they had originally arranged to meet Mshengu. On the way to Pongola, somewhere near Mtubatuba he received a call requesting them to turn back to Richards Bay where the money would be handed over to him (accused 2).

On his trip from Gauteng accused 2 made various cellphone calls, inter alia, to accused 22. However, he was quite unaware of accused 22's whereabouts at that particular time – whilst the latter and he were conversing through the same cellphone tower – not once but on many occasions.

When he finally arrived back at Vuka's residence at Richards Bay, the latter handed to him the outstanding balance of R50 000. Thereafter he made arrangements, through Vuka, to secure a taxi to take them to Johannesburg via Durban. In common with all the other accused, who were arrested at Mvoti Plaza on their way to Durban, accused 2's explanation as to why they had to travel to Durban first in order to go to

Johannesburg from there, was grossly improbable and implausible. Nevertheless, before he left for Durban he was in cellphonic contact with accused 9, who needed transport to Gauteng also, the latter having seen a traditional healer in Zululand. That, he said, is how they landed up in accused 24's taxi.

Under cross-examination accused 2's evidence became contradictory, evasive and manifestly contrived to accommodate his cellphone communications at times and places relevant to the commission of the offences under trial. At stages he was exposed as an outright liar. Whilst he had originally said that accused 21 had accompanied him just for the ride, in cross examination he altered that to say that accused 21 came to assist him to close the deal with Mshengu and that he had not joined him for the fun of it.

Accused 2's evidence, and with it his credibility, collapsed, when he was asked about his acquaintance with accused 18 and 23. His answers contradicted various entries in the phonebooks of those accused. In that regard he claimed that his cellphone was used by four of his drivers, his sister, wife, and brother, all using their own SIM cards. That explanation appeared so grossly improbable as to be branded a lie. He seemed to have forgotten that he testified that at the time of his trip to Richards Bay he had already sold all his taxi's and that the trip was being undertaken in the last of his taxi's.

Questioned about whom he saw or recognised among his co-passengers as acquaintances, he started off to say that except for those who were with him, he saw none. Later he conceded that he had seen accused 11.

Yet with him in the white Combi were also accused 4 and 23 and the record of his

cellphone communications revealed that he had spoken to accused 4 six times(6) in September and accused 23 eighteen times (18). It is scarcely believable that he would not have seen and recognised those co-accused during the taxi trip to the scene of arrest.

Accused 2 also denied that he had ever been to Mzingazi and in fact did not know where it was, notwithstanding the fact that his cellphone had been activated through the Richards Bay Lighthouse tower 25 times. In addition he was unable to refer to a single entry in his cellphone record reflecting calls made to Mshengu, who after all, was the reason why he was travelling to Richards Bay. Eventually he acknowledged that he might not have phoned Mshengu.

In the result, we hold that accused 2's evidence in response to the State case cannot reasonably, possibly be true.

In addition, the Prosecution called in rebuttal the chairman of the only taxi association in Pongola, one Muzi Nkosi. He testified that there was no Shabalala, also known as Mshengu who owned or operated a taxi or taxi business in Pongola.

***Accused 3 and 4 – did not testify.***

***Accused 5:***

Accused 5 testified that he is a resident of Gauteng and had worked for Fidelity from 1999 to 2006. When he terminated his employment there he received certain

benefits which enabled him to buy a taxi and to start a clothing business. Prior to his arrest he knew accused 1, 22 and 25. Accused 1 usually provided transport for him when he visited Durban to buy stock. On 2 October 2006 he travelled by air from Johannesburg to Durban to buy stock there. Thereafter he intended to proceed to Richards Bay to visit his girlfriend. He intended to take a bus back home, together with his stock. He was met at the airport by the driver with transport furnished by accused 1. He proceeded to the Durban station, where he intended to buy his stock. He was not satisfied with the stock or the prices and was referred to a certain Asmall's, a business in Stanger. As a result he proceeded to Stanger, but having looked at the stock there he was still not satisfied and decided to go to Richards Bay to see his girlfriend. Later that evening he looked for a lift or transport to Johannesburg and stood under a bridge near the N2 (John Ross Bridge). That is how it happened that he was on board the red Combi when it was stopped and he was arrested. When he entered the red Combi he found that accused 12 was driving and accused 7 was a passenger.

When, as mentioned earlier, the time it took him to travel from the Durban airport to Richards Bay evidenced by his cellphone communications on the way, was such that it simply did not allow sufficient time for his claim to visit the Durban station and thereafter Stanger, before proceeding to Richards Bay.

The upshot of that is that accused 5's explanation in that regard was disingenuous. It also places a question mark over the reasons for his trip to Richards Bay. In addition, it is difficult to conceive that accused 1 would place an income-earning unit, such as a taxi and the driver, at accused 5's disposal to undertake the journeys he testified to without reward. Accused 1 did not strike us as being that samaritarian. Accused 5

ended off his testimony by saying that the money found on his person when he was arrested, represented the money he had taken in order to buy stock.

Under cross-examination accused 5, like the others, stated that he was never at Mzingazi and did not know where it was. He was unable to explain why his cellphone records reflected two calls made through the Richards Bay Lighthouse tower, one of which was to accused 19. As to the latter, he denied that he ever phoned accused 19. Accused 5 contradicts the testimony of accused 22 and 16, as well as his so-called warning statement, Exhibit "KK5".

Accused 22 and 16 were arrested in the red Combi with accused 5. Both asserted in their bail applications that they picked up accused 5 at Stanger on their way to Mvoti Plaza where the arrest occurred. Exhibit KK5 is to the same effect. When questioned about the latter, accused 5 said that the warning statement had been incorrectly recorded. That explanation is in conflict with what was recorded at the time when his statement Exhibit KK5 was handed in by consent. There it was recorded that accused 5 confirmed that the statement correctly reflected that what transpired between him and the recorder thereof.

As to the R30 000 which was found lying loose in the red Combi in which he was a passenger, accused 5 flatly denied that fact and stated that the police were lying in that regard. He was unable to explain why that was not challenged when the relevant testimony was recorded. Accused 5 testified that he had not informed accused 1 of his presence in Richards Bay. In that regard his testimony contradicts that of accused 1. Another contradiction between accused 1 and 5 lies therein that accused

1 claimed that accused 5 had made no arrangements with him concerning his being picked up at the airport and taken to Durban station to buy stock, but that accused 5 had made his own arrangements with accused 1's driver, a certain Bongani. There against accused 5 claims that his arrangements were made with accused 1.

We are in agreement that the testimony of accused 5 stands to be rejected as false beyond all reasonable doubt.

***Accused 6:***

In his evidence in chief accused 6 furnished a long and somewhat convoluted explanation as to how it happened that he drove from Gauteng to Richards Bay. He testified that he, together with accused 3 and 17 left Kwa-Thema in an ordinary taxi in order to deliver traditional women's attire and wooden spoons to accused 17's parental home. They set out at approximately 03h00, although he was not sure of the time. They duly dropped the articles at accused 17's relatives, whereafter he, accused 3 and 17 travelled to Richards Bay in a bakkie driven by one Masilo, a relative of accused 17. They went to a tavern near the taxi rank where they ate and drank liquor. Masilo then asked accused 6 to accompany him to Kwamsane at Mtubatuba. They went to Kwamsane to fetch some Zulu pots and left accused 3 and 17 at the tavern drinking. Masilo and accused 6 left Kwamsane after 18h00. They went back to the tavern and had a brief stay to allow accused 3 and 17 to finish their liquor. Thereafter they went looking for a taxi to take them to Durban. They found a taxi and arranged with accused 24, the driver thereof, to take them to Durban.

Then accused 11 happened to arrive. He joined them and together they paid a fare



of R2 000 for the trip. They left for Durban at between 22h30 and 23h00. That, he testified, was the reason for his being in the white Combi when it was stopped at Mvoti Plaza and he, together with the others, were placed in arrest.

Under cross-examination, he presented as a witness given to vague and evasive answers. When invited to do so, he said he was unable to show the Investigating Officer where Masilo resided, except that it was at Ngwelezane, Empangeni. When asked to explain, if he could, how it could possibly be that accused 17's palmprint could be on one of the smart-boxes in the Hyundai when the police stopped them, whilst the latter was supposed to be in his (accused 6's) company, his testimony became speculative and manifestly untrue.

He denied ever being at Mzingazi on 2 October 2006, notwithstanding that his cellphone records reflect sms's and calls having been made through the Richards Bay Lighthouse tower. He was emphatic that he remained throughout in the Richards Bay CBD and never ventured anywhere else. In fact, his cellphone records reflect that he made or received 15 calls through the Richards Bay Lighthouse tower at Mzingazi.

When he was asked to do so, he stated that he would not be able to point out the tavern where he, accused 3 and 17 and Masilo visited, before he and Masilo left for Kwamsane, adding that it was a long time ago and that he had not been there since. He also denied that accused 3 and 17 could have gone to Mzingazi, notwithstanding that accused 3's cellphone records show that he had made 7 calls through the Richards Bay Lighthouse tower and accused 17 made 9 calls through that tower.

In the final analysis, accused 6 could not provide a plausible explanation for his presence in the white Combi, together with the other accused occupants, when they were arrested at Mvoti Plaza.

We hold that accused 6's testimony is to be rejected as false beyond all reasonable doubt.

***Accused 7:***

Accused 7 testified that he was employed by a certain Vela Mkhize as a taxi driver, but at the time of his arrest he had ceased working for him due to ill health. On 2 October 2006 he travelled to Empangeni in the company of one Bhojozi to take up a loan of R25 000 from Vela Mkhize at Empangeni. He and Bhojozi arrived at Empangeni at about 10h00.

There they met with Vela Mkhize, who suggested that they go to his rented house in the town of Richards Bay. Vela only had R10 000 on him and suggested that they wait at his house for a vehicle coming from Durban with the rest of the money. Accused 7 told Vela that he and Bhojozi were going to meet up with one Doda Ngubane in the Mtubatuba area, as he had requested Doda to obtain cheap goats for him to pay damages to the family of a girl from Hluhluwe, whom he had made pregnant. When they got there Doda told him that there were no goats available, but that he would try to obtain some. Accordingly, he and Bhojozi returned to Vela's house at Richards Bay. There Vela gave him the amount of R15 000. Accused 7 decided to go to Durban to purchase pay-phones for his business in Mhlabatini. Vela and Bhojozi then started drinking until late that night. Accused 7 decided to leave on his own for Durban to buy the phones. When told that, Bhojozi suggested that they

try to hire one of Mvelasi's vehicles. Mvelasi is the employer of accused 12. Mvelasi furnished accused 7 with accused 12's number, which he phoned and arranged with accused 12 to meet him at Empangeni. When he met with accused 12 at Empangeni, accused 7 requested accused 12 to take him back to Vela's home to fetch his cellphone. When they got there Vela informed them that a certain Ndlangamandla, accused 22, was also looking for a lift and that he would meet them under the bridge at the N2 (the John Ross bridge).

When they got to the bridge they found three people hitching a lift, among them accused 22. They left from there and were eventually arrested at Mvoti Toll Plaza.

Under cross-examination, accused 7 presented as surly, argumentative and at times aggressive, particularly when he was confronted with apparent self-contradictions.

Having testified that at the time he had stopped working for Vela Mkhize, due to ill health, it was pointed out to him that in his affidavit in support of his bail application (Exhibit BBB7) he stated that on the day in question (2 October 2006) he was in the employ of Vela Mkhize but had a day off at that time, and was on his way to Durban. His endeavours to explain were vacillatory and manifestly false. Accused 7 blamed his then attorney for the discrepancies in his affidavit compared to his evidence and claimed that he did not understand English. He also blamed the interpreter. He claims that the affidavits were read back to him in English, which he did not understand, yet, in the bail proceedings he confirmed that his affidavit was correctly recorded and understood.

He was also asked to explain why he did not mention Bhojozi, with whom he had spent so much time, in his bail affidavit. His explanations were manifestly contrived

and implausible.

He testified that he had been to accused 19's house in Soweto many times, but when asked whether he could point out that house to the Investigating Officer, he said that he would not be able to do so as he had always gone there with his brother as driver.

Accused 7's warning statement, Exhibit KK7, had been handed in by consent coupled with an admission by accused 7 that it correctly reflected what he had stated to the police. When the substantial difference between that statement and his testimony in Court was pointed out to him, accused 7 responded by saying that he had pointed out the mistakes to his then representative in this Court, Mr Shozi, but that the latter told him that he need not be concerned as he would have an opportunity in the witness box to explain the contradictions. Accused 7's mendacity was quite evident by then.

In addition, his cellphone records reveal that he had made 46 calls through the Richards Bay Lighthouse tower. In the final analysis we emphatically disbelieve accused 7's explanation of his presence in Richards Bay and his movements once he got there. We accordingly reject his evidence as false beyond all reasonable doubt.

***Accused 8 – did not testify.***

***Accused 9 – did not testify.***

As the record of proceedings will reflect, about half-way through the trial accused 9

“refused” to instruct his counsel. It transpired that accused 9 refused or was unable to communicate. As a consequence the Court, acting in terms of section 77(1) of the Criminal Procedure Act, committed the accused for mental observation in terms of section 79 of the Act. Pursuant thereto accused 9 was sent for observation for the prescribed period,whereafter reports were received from the three Psychiatrists who were appointed for that purpose in terms of section 79. Two of the three Psychiatrists reported that accused 9 was malingering and quite able to understand the proceedings so as to make a proper defence, whilst the third concluded that the accused suffered from some “unspecified psychosis”.

As a consequence I instituted an inquiry in terms of section 77(3) of the Act. My ruling and reasons for that is a matter of record. I concluded then that the accused was in fact malingering and directed that the trial proceed as normal.

After that and because of accused 9’s continued refusal to communicate with his counsel and with anyone else in and about the Court, he was again committed for mental observation. That resulted in another inquiry at the end of which I once again ruled that he was able to understand the proceedings and directed that the trial proceed.Again, I refer to my ruling and the reasons therefor as reflected in the record of these proceedings.

At the conclusion of the second inquiry I indicated that before the conclusion of the trial accused 9 will once more be committed for mental observation in terms of the

Act and that my ruling thereafter would be final. In due course accused 9 was finally committed for mental observation in terms of the Act. In the inquiry that followed, I once more ruled that the accused was able to understand the proceedings and quite able to instruct counsel as to his defence.

I am satisfied beyond all doubt that accused 9 is malingering and refer to the Rulings aforementioned which I have made there anent.

As will be appreciated, the committal of accused 9 for mental observation took up a great deal of time and made its own contribution to the extraordinary duration of these proceedings.

***Accused 11:***

Accused 11 testified that he was formerly from Maputo, Mozambique and speaks Portuguese but understands a little English and Zulu. He has been staying in the Republic of South Africa for 18 or 19 years prior to his arrest and is naturalised in the Republic of South Africa.

On 1 October 2006 he and his brother, Mario, left the Johannesburg region in a minibus in order to travel to Pongola. On the way they picked up four passengers destined for Richards Bay and went there first. They arrived at Richards Bay between 05h00 and 06h00 on 2 October 2006. They dropped the passengers at Richards Bay and drove to Pongola. They arrived there at approximately midday. The purpose of going to Pongola was to collect R35 000 from his brother in law, who operates accused 11's three taxis in Maputo. After collecting the money from his brother in law, they returned to Richards Bay and arrived there at about 16h00. They

were presented with the opportunity and picked up six passengers and transported them to the Caltex Garage at Mtubatuba,whereafter they returned to Richards Bay. His brother, Mario, had apparently arranged with passengers from Richards Bay destined for Maputo,and, as a result that is why they agreed to meet him in Richards Bay in the first place. When Mario left with his passengers, accused 11 proceeded to the taxi ranks at Richards Bay on foot in order to find a taxi to take him to Durban.That is how it happened that he found himself a passenger in accused 24's white taxi. There were already three people inside, one of whom was accused 6, who informed him that he had paid for the hire of the taxi to Durban. Accused 11 then paid his share of the fare to accused 6. Other persons also arrived and boarded the taxi, which thereafter proceeded to Mvoti Plaza and their arrest.

As in the case of the other accused, who travelled from Johannesburg on 1-2 October 2006, accused 11's claim that he had travelled from Gauteng to Richards Bay independently is manifestly false. His cellphone communications with the other accused, which he was incapable of properly explaining, places accused 11 in the midst of the convoy of vehicles and his co-accused, who also travelled from Gauteng.

Under cross examination accused 11 emphatically denied that he had been anywhere near Mzingazi – a statement which is glaringly exposed as untrue by the 19 cellphone calls he made through the Richards Bay Lighthouse tower at Mzingazi. During the course of his testimony under cross-examination, a number of contradictions were revealed, concerning his co-accused, who were in the taxi with him when it departed from Richards Bay. Inter alia, accused 11 testified that he did not see or identify any of his co-passengers during the trip to Durban.

Accused 11 could not explain manifest contradictions between his testimony and his warning statement, Exhibit KK11, and Exhibit BBB11, his bail application. Inter alia, in Exhibit KK11 he said that he made cellphone calls whilst in Pongola but during his evidence in these proceedings, he was unable to point to any such calls reflected in his cellphone record, Exhibit Z11.

Accused 11's claim that he and his brother chanced upon passengers in Richards Bay who desired to go to Mtubatuba and that they promptly did so, is so grossly improbable as to be dismissed as untrue. It was manifestly an explanation designed to accommodate the cellphone calls made by accused 11 in the area of the Charters crime scene.

We have no hesitation in rejecting accused 11's evidence as false beyond any doubt.

***Accused 12:***

Accused 12 testified that he was employed as a taxi driver by a certain Madwe Mvelase, Gauteng. On 2 October 2006 he left Gauteng at approximately 12h30 for Empangeni with a load of passengers. He arrived at Empangeni at approximately 19h00. After the passengers alighted, he proceeded to the Richie Ford garage in Empangeni in order to park and sleep.

While there he received a call from his employer, Mvelase, informing him that a person was looking for transport to Durban and that he should provide it. He thereafter received a call from accused 7, who informed him that he was the person who required transport to Durban. He did not remember accused 7 but when the latter arrived at Richie Ford, he then recognised him as Thulani Buthelezi, accused



7, with whom he had been acquainted. Accused 7 paid him an amount of R1 500 for the fare to Durban. Accused 7 boarded the taxi and requested accused 12 to go to Richards Bay to fetch his (accused 7's) cellphone, which he had left with a friend. Accused 7 directed him to Richards Bay Boardwalk Mall, where they were, when accused 7's "friend" brought his cellphone to him. Thereafter they commenced their journey to Durban. On the way, accused 7 informed him that there was another person to be picked up under the John Ross bridge. As they approached the bridge, three people appeared who waved them down. Accused 7 asked whether "Ndlangamandla" was among them. Accused 22 confirmed that it was he and requested that those with him also be given a lift to Durban. They all boarded and he charged them R200 each for the trip, which they paid. Accused 12 gave the money to accused 7, who had already paid for the trip. The others who joined the vehicle were accused 22, 5 and 16. From there they proceeded along the N2 to Mvoti Plaza where they were stopped and arrested.

The evidence of both accused 7 and 12 is at odds with the cellphone calls exchanged between them before accused 7 boarded his (accused 12's) taxi. They communicated with each other at 21h50; 22h14 and 22h22. During those calls, accused 12 was at Empangeni and accused 7 communicated from accused 24's house through the Richards Bay Lighthouse tower. When accused 12 and 7 next spoke to each other, accused 12 communicated through the Richards Bay Central tower in the Richards Bay CBD, whilst accused 7 still communicated through the Richards Bay Lighthouse tower. The communication between accused 7 and 12 continued, with calls being made at 22h35; 23h05 and 23h30. During all those calls, accused 12 communicated through the Richards Bay Central tower and accused 7

through the Richards Bay Lighthouse tower. The conclusion is inescapable that both accused 7 and accused 12 were untruthful in that regard.

Under cross-examination, when confronted with the aforementioned exchange of calls between him and accused 7, accused 12 became manifestly mendacious.

Further blemishes in his testimony under cross-examination, which detracted from his credibility as a witness, emerged. However, that does not need specific mention, as those will appear from a mere reading of his recorded evidence.

In the foregoing premises, accused 12's evidence is dismissed as false beyond all doubt.

***Accused 13:***

In his evidence in chief accused 13 gave a long and convoluted explanation of his travels from Johannesburg, where he resided, to Newcastle and Empangeni, during which he never came close to Richards Bay. It was only Monday, 2 October 2006, after 17h30, that he took a bus to Richards Bay to meet up with accused 10. From Richards Bay he phoned accused 10 from a public phone to the latter's cellphone. It will be recalled that accused 10 was not in possession of a cellphone when he was arrested. According to accused 13, accused 10 told him to wait at the BP garage in Richards Bay, informing him that he would be picked up late that night. Accused 13's uncle, who has passed away since then, dropped him at the garage. He was later picked up in a white Combi driven by accused 24. There were other passengers in the Combi, but he was uncertain as to how many. He did not know any of the occupants, except accused 10. After he boarded the taxi and spoke with accused 10, he dozed off. He believed that he was on his way to Johannesburg. It was only when

he woke up at Mvoti Plaza that he realised that he was in fact on his way to Durban.

The belief that he was actually on his way to Johannesburg is profoundly improbable and when taxed on that during cross-examination, accused 13's attempts at explaining that, presented as implausible and overtly untruthful.

He contended that he was not in possession of a cellphone when he boarded the white Combi. He was confronted with the contents of Exhibit BBB13, his affidavit in the bail application, where he stated on oath that he had a cellphone in his possession on arrest. He endeavoured to explain the discrepancies in Exhibit BBB13, by saying that his attorney had used another affidavit in another bail application in support of the application for bail in question. He claims that he pointed out the discrepancy to his attorney, but the latter refused to rectify it. Thereafter he was confronted with the fact that the Magistrate who heard the bail application asked him whether he knew and confirmed the correctness of his affidavit. He added, mendaciously, that his attorney told him not to tell the Magistrate about the incorrectness of his affidavit.

Another improbability inherent in his testimony concerns his claim that he was picked up as an ordinary passenger by accused 24. As mentioned earlier, that claim was so grossly improbable as to be noted as an outright lie.

Earlier we held that accused 13 was indeed "Kehla", whose cellphone record was placed before the Court. That record places accused 13 squarely amongst the accused who travelled from Johannesburg to Durban, as fully treated of earlier in the Judgment.

Accordingly, we hold that accused 13's evidence falls to be rejected as false beyond all reasonable doubt.

***Accused 14:***

Accused 14's testimony opened with a somewhat unlikely explanation for the presence of his firearm and Identity book in the cubbyhole of the vehicle belonging to accused 20, when they were stopped and arrested at Mvoti Plaza. He testified that he had occasion to borrow accused 20's BMW. Whilst driving, he felt uncomfortable with his licensed firearm on his person and decided to lock it in the cubbyhole, together with his Identity book. The claimed discomfort sounds unlikely. However, when one takes a charitable view of that, there can be no reason consistent with his claimed discomfort in respect of the firearm, which would cause him to place his Identity book and firearm license in the cubbyhole together with the firearm. He returned the BMW to accused 20, whereafter he and a certain Mduduze Zulu proceeded to fetch accused 19 from Newcastle. The prior arrangement was that accused 19 would be taken to Durban for a bus to Johannesburg. In the meantime accused 14 realised that he had to go to Zululand to see the mother of his child, the latter having fallen ill.

It would seem that he was in the process of taking accused 19 to the station at Durban, when the latter heard about his intended trip to Zululand to see to his child. Accused 19, hearing that, appears abruptly to have changed his mind and requested to come along to Richards Bay, as he had a friend who lived at Meerensee. Accordingly, accused 14, Zulu and accused 19 drove to Richards Bay. There they

dropped accused 19 at Meerensee, having arranged with the latter to pick him up later. Accused 14 and Zulu then drove to Mtubatuba where the mother of his child, one, Sibongile Mkwanazi resided. When he met her, she suggested that the child be taken to a certain Makwanazi, a traditional healer, who practiced near Charters Creek. Upon their arrival there, they found that the traditional healer was too busy with other patients to see them then. Accused 14 decided that he needed to buy clothes for the child and consequently they returned to Richards Bay for that purpose. There is some incongruity in that decision. In travelling to Richards Bay, they had to pass Mtubatuba, where all the clothing needs of the child could have been satisfied. As they were intent upon returning to the traditional healer there was no reason whatsoever why they should travel to Richards Bay and from there return to the healer. Without being cynical, it is fair to observe that, if he had gone to Mtubatuba instead of Richards Bay to buy clothing for the child, his movements would not have coincided with tell-tale cellphone communications he was engaged in at Richards Bay.

It will be recalled that, judging from his cellphone calls; he was on both the excursions dealt with earlier in the Judgment. However, be that as it may, accused 14 testified that on their return trip to the healer he had to make use of public transport, as Zulu was no longer available to assist with his vehicle. He stated that after the child's medication had been collected, Sibongile remained to stay with the healer, as he was a relative. He, accused 14, returned to Richards Bay, making use of public transport once more. At Richards Bay he proceeded to the Madunga tavern where he had arranged to meet with accused 19. At the tavern he and accused 19 waited for Zulu, who only arrived there between 22h00 and 23h00. According to

accused 14, Zulu handed him the keys of the Hyundai motor vehicle which stood outside, and which he made available to them to drive to Durban. That, he said, explained how they were in the Hyundai when they were stopped and arrested at the Mvoti Toll Plaza. He said that he had R13 000 on his person, which represented the proceeds of a Taxi Association Stokvel collection. He was unaware of the existence of the three smart boxes in the boot of the vehicle and of the money in the cubbyhole.

The inherent improbabilities manifest in his explanation of how he happened to be in possession of the blue Hyundai with all the money and smart boxes in it, did not escape the attention of counsel for the Prosecution. When taxed on it, accused 14 tried to distance himself from the Hyundai and the implausibility of his answers in point, transferred, what was an apparent improbability, to a transparent lie. Accused 14 presented as an evasive and lying witness: When it was pointed out to him that in his bail application he had listed the Hyundai as an asset, he responded that he did not understand the affidavit as he did not understand English. That too is manifestly disingenuous. On at least three occasions, he answered questions in English before the question had been interpreted to him. It is grossly improbable that a legal representative would place an affidavit before a deponent, well knowing that he could not understand the contents thereof.

With regard to his claimed alibi, Sibongile Makwanazi was also called as a witness on his behalf. His testimony and that of Sibongile contained fundamental differences.

For example, accused 14 testified that after Sibongile collected the child's medicine, she remained to stay with the healer as his residence.

He also said that the child was not with them but remained at Sibongile's residence and not present when the medication was fetched later that night. Sibongile, on the other hand, claimed that the child was with her all the time and that on the second visit accused 14 remained with her in the queue, whilst accused 14 testified that he dropped Sibongile at the healers place and left in a taxi for Richards Bay.

Accused 14 denied knowing where Mzingazi was, but could not explain how his phone was activated through the Richards Bay Lighthouse tower. Again, accused 14 was being manifestly untruthful, as he had made 18 calls from accused 24's house through the Richards Bay Lighthouse tower. Later that evening his vehicle was seen in the premises of accused 24's house, ready to leave, and was later arrested, together with all the accused with the other vehicles observed on the premises.

We are driven to the conclusion and hold that accused 14's testimony is to be rejected as false beyond all reasonable doubt.

To add to accused 14's woes, the son of the traditional healer, a certain ZamukuzenzelaMkhwanazi, testified in rebuttal of accused 14's alibi. He testified that Mkhwanazi, the healer in question, was his father. The healer, Mkhwanazi, did not dispense traditional medicine as claimed by accused 14, he only prayed for people – he was a faith healer. In addition, the son testified that they do not have a relative by

the name of Sibongile Mkhwanazi, as claimed by accused 14.

***Accused 15 – did not testify.***

***Accused 16:***

Accused 16 elected to testify and called two witnesses in his defence, a certain Mrs Zuma and Mr Mokoena. He testified that he was resident in two places in Gauteng, namely Gibson drive, Buccleuch, Sandton and at Portion 51 at Vosloorust. He worked as an events manager specialising in weddings and also owned a garden service as well as being a hawker on the side. At the time of his arrest, he was busy arranging a wedding for Mr and Mrs Mokoena.

On 1 October 2006 he left Gauteng to travel to Durban, between 22h00 and 23h00. He was on his way to meet a Mrs Zuma in Richards Bay, who was helping with the catering service for Mokoena's wedding. He claimed that it was vital that he meet with Mrs Zuma's sister, Zodumo, who was making the traditional garments to be worn by the bride. He had an amount of R11 000 on him and travelled to Richards Bay in a taxi with four other passengers, whom he did not know. At Empangeni Mrs Zuma picked him up and they proceeded to a rural area in Richards Bay to meet Zodumo. That was between 04h30 to 05h00. Zodumo's residence was at Mzingazi. On examining the garments accused 16 was not satisfied with Zodumo's work and requested her to redo it. He waited for the garments and finally left Richards Bay, intending to overnight at Durban.

His purpose was to look for traditional decorations at the Durban station. Mrs Zuma drove him towards Empangeni taxi rank, where she said many taxis were available at that time. On approach to the John Ross Bridge, he noticed two people further



ahead and that one of them was accused 22, whom he knew well. Mrs Zuma stopped the vehicle and he spoke with accused 22, who informed him that they were awaiting transport to Durban. Accused 16 requested Mrs Zuma to leave him there so that he could join accused 22 to Durban. In due course a red Combi arrived from the direction of Richards Bay and they boarded it. In the taxi were present accused 7 and the driver, accused 12. Upon boarding the taxi the occupants were five in number – accused 5, 7, 12, 22 and himself. They proceeded towards Durban on the N2, but were arrested at the Mvoti Toll Plaza. He has since been informed that Zodumo had passed away during 2008.

As detailed earlier, the cellphone evidence places accused 16 squarely within and as a member of the accused from Johannesburg, who collectively travelled to Richards Bay.

Under cross-examination accused 16 presented as everything but a dependable witness. During his evidence in chief, he described the route that they had followed from Gauteng to Richards bay as via Heidelberg, Volksrust, Standerton, Vryheid, Melmoth to Empangeni and Richards Bay. However, under cross-examination he denied mentioning those towns, saying that he simply confirmed what his counsel said. His warning statement, Exhibit KK15, was handed in by consent, coupled with an admission that the statement was a correct reflection of what transpired between himself and Inspector Zungu, the recorder thereof. In that statement, he had said that the red Combi, on its way to Durban, had stopped at Stanger to fill up with

petrol. When questioned about that, he denied that he ever said that the Combi stopped there. He explained that Inspector Zungu made a mistake when he recorded “Stanger”. He claims that the mistake occurred when he wished to say the word “Standerton” but he was stuttering at the time and said “Sta Sta Sta” which caused Inspector Zungu to write “Stanger” instead of “Standerton” as he, accused 16, intended. Whilst that explanation, although seriously made by accused 16, was received in Court with some humour, it did very little to instill faith in accused 16’s credibility. Having rendered that explanation, accused 16 suddenly found himself in deep water.

He was then asked why that mistake was not brought to the attention of Zungu when he read back the statement to accused 16; also why he allowed the mistake to continue when he handed in his statement, KK16, by consent; coupled with the admission that it correctly reflected what he had said to Inspector Zungu, accused 16 was quite unable to provide plausible answers.

It was pointed out to him that on his way from Gauteng to Richards Bay he had communicated throughout the night with accused 22 on six occasions. During that period he claimed that he was unaware that accused 22 was on his way to Richards Bay also. It was only at about 04h30 on 2 October 2006 that he told accused 22 that he was with Mrs Zuma at Richards Bay. That explanation is improbable and, seen in context with the analysis of the cellphone communications of all the accused involved in the trip to Richards Bay, untruthful.

Concerning the amount of R30 000 found on the floor of the Combi, when it was stopped at Mvoti Plaza, accused 16 emphatically denied that there was any money found in the Combi. Yet in his affidavit in support of his bail application, BBB16, he

stated that the police had attempted to attribute all the other monies found in the vicinity and in the vehicle to him.

Mrs Sibongile Zuma testified in his defence. She did her best to support accused 16's explanation. So much so that we gained the impression that she was referring to a true event which took place at another time. Where her testimony became irreconcilable with that of accused 16, related to her dropping him off at the John Ross Bridge. She said she left accused 16 at the bridge at sunset. Accused 16, on the other hand, claimed that it was close to midnight. In other instances too her testimony contradicted that of accused 16. However, in the light of the view we take of accused 16's credibility, there is no need to dwell on those.

Mr Mokoena, who also testified on behalf of accused 16 took the matter no further and lent no support to accused 16's alibi.

Finally, it is to be noted that accused 16 made a total of 30 calls through the Richards Bay Lighthouse tower. On a conspectus of the evidence in point, those could only have emanated from the house of accused 24.

In the result we hold that accused 16's evidence falls to be rejected as false beyond all reasonable doubt.

***Accused 17 – did not testify.***

***Accused 18:***

Accused 18 testified that he travelled in a Combi belonging to a certain Dube from Johannesburg to Richards Bay. With him in the Combi were accused 23, Dube and a person by the name of Sipho. He was in the company of Dube at the time, as Dube had available a Combi which he wished to sell and accused 18 wished to buy. They left Gauteng between 21h30 and 22h00 on 1 October 2006 and arrived at Richards Bay at the Mzingazi taxi rank at about 09h30 on 2 October 2006. They had to wait there as Dube was waiting for his so-called “right hand man”, a certain Mduduzi, called “Mdu”. The latter arrived at about 13h00. It was then discovered that the Combi, which was for sale, would only be arriving later that evening. In the mean time, as there was time to kill, accused 23 and Mdu had decided to go to the beach and were dropped at Meerensee to allow them to do that. Accused 18 and Dube drove on to Mtubatuba, where Dube went to the office of the Taxi Association to leave “the stokvel money”. They then drove back to Richards Bay and arrived there at approximately 15h00. At Richards Bay they picked up Dube’s girlfriend and dropped her at Mzingazi.

Accused 18 then called accused 23 from the vicinity of Dube’s girlfriend’s residence to find out whether accused 23 was still at the beach. They picked up accused 23 and Mdu at the beach and proceeded from there to a place called Madwaleni to view the Combi that was for sale. That was after 17h00. Accused 18 inspected the Combi, found that he liked it but was unwilling to buy it as the engine number and the disc

number on the windscreen did not correspond. Dube said he would correct that – how he did not explain. That caused them to return to Richards Bay where they arrived after 20h00 and went to Dube's girlfriend where they spent some time sitting in the Combi enjoying liquor, whilst Dube was visiting his girlfriend. He and accused 23 left for the taxi rank between 22h00 and 23h00. There they found a taxi which was going to Durban and thereafter to Johannesburg. There were other passengers in it. Accused 18 paid the fare for both accused 23 and himself. That is how they landed up in the taxi driven by accused 24, which was stopped at the Mvoti Plaza later that night.

As will be recalled from the relevant analysis made earlier in the judgment there can be no doubt but that accused 18 and 23 were travelling together with the rest of the accused who departed from Johannesburg for Richards Bay. As will appear from that analysis, there can be no doubt but that that group, including accused 18 and 23, were part of a concerted expedition to Richards Bay.

A mere reading of accused 18's evidence, as summarised above, creates the impression that accused 18 was deliberately tailoring his moves so as to coincide with the cellphone calls which he made in the vicinity of the Charters and Penicuiik scenes of crime, during the "scouting excursion" and the so called "second excursion".

During cross-examination, accused 18 consented to show the Investigating Officer where Madwaleni was situated. After that was done the Investigating Officer Lt Colonel van Rensburg, testified to the outcome of that trip. He said that accused 18 was unable to point out Madwaleni to him and he, the Investigating Officer, was

constrained to ask about the place. Having finally reached Madwaleni, accused 18 was unable to indicate where at Madwaleni the taxi was viewed, notwithstanding that they drove all over the area. The Investigating Officer also added that the only reception to the Madwaleni area was through the Ntondweni tower.

The cellphone records show that accused 18 made seven calls through the Harrison Farm tower and six calls through the Nyalazi tower, both providing reception to the Charters scene of crime. All the calls in question were made and received by accused 18. In our view accused 18's trip to Madwaleni was an invention in an endeavour to explain the calls aforementioned.

From his cellphone records it appears that accused 18 made a call to accused 1 through the Richards Bay Lighthouse tower. When that was put to him he flatly denied that he had made such a call and stated that Dube did that. He claimed that he did not know accused 1, yet it appears that accused 1 was saved on his (accused 18's) phonebook and in turn accused 18's number was saved on accused 1's phone.

In addition accused 18 emphatically denied that the R80 000, the angle grinder and the firearms were in the white Combi or found in it. Based on credible evidence concerning the discovery of those items in the white Combi, his denial is untrue.

According to accused 18 he knew accused 2, 9, 11, 21 and 23, all of whom were in the white Combi with him at the time of arrest, yet he claims that on the day in question he only knew that accused 9 and 22 were in Kwazulu Natal.

In addition, accused 18 denied having made a call to accused 19 at 19h53, yet his cellphone record evidences that call. He denied that he knew accused 19, yet

accused 19's number was saved on his (accused 18's) phonebook against the name "Rasta". That name is certainly descriptive of accused 19's appearance.

In rebuttal, the State called certain evidence, including that of Shepherd Gina, the chairperson of the Mtubatuba Taxi Association. He testified that the Mtubatuba Taxi Association never had a member by the name of Dube from Madwaleni. However, no weight can be attached to that testimony.

In the result we are quite satisfied that accused 18's testimony is false beyond all reasonable doubt and find accordingly.

***Accused 19:***

Accused 19 testified that he resides in Gauteng and that on 26 September 2006 he travelled to Newcastle to visit friends and relatives. At that time, he arranged with accused 14 to take him to Durban station in order to board a bus to Johannesburg. On 2 October 2006, accused 14 duly arrived in Newcastle to pick him up as arranged. A certain Mduduzi Zulu accompanied accused 14. Accused 14 and Zulu informed him that they were intent upon going to Mtubatuba. Accused 19 then decided to take a lift with them to visit his friend, Mabiza, who resided at Meerensee. Prior to that Mabiza had requested him to look at a motor cycle at Kwamsane which he, Mabiza, intended to buy. When they arrived at Richards Bay, he met up with Mabiza at Meerensee.

As he intended to go to Kwamsane with Mabiza to look at the motor cycle, he arranged with accused 14 and Zulu to meet them at 20h00 that night at the Madunga

tavern at Mzingazi. He and Mabiza were taken to Kwamsane by a certain Khuzwayo in the latter's vehicle. There accused 19 had a look at the motor cycle and advised Mabiza not to buy it. They returned to Mabiza's place at Kwamsane. They stayed there until quite late and Mabiza took him to Madunga where he was to meet accused 14 and Zulu. When he got to the tavern, he found accused 14 drinking with other people. He was informed by accused 14 that Zulu was not there and that he had left in a blue Hyundai, but would return later. He and accused 14 stayed there waiting for Zulu to return. Zulu finally arrived very late that night and handed the keys of the Hyundai to accused 14. That is how it transpired that they travelled in the Hyundai to the Mvoti Plaza where they were stopped and arrested.

As in the case of accused 14, accused 19's evidence is somewhat hamstrung by the three smart boxes and the money found in the Hyundai and the deposit slip that emanated from the robbery of the Hi-Ace at Charters, which was found on his (accused 19's) person.

Under cross-examination, accused 19 proved to be evasive and questions had to be repeated before an answer was received. He often gave answers that were not appropriate to the questions asked of him. He testified that at first he thought the money that was found in the cubbyhole of the Hyundai, belonged to accused 14 and was incorrectly attributed to him. Accused 19 was questioned as to why he did not convey that to the police immediately upon the money being found and placed with him where he lay on the ground, as was the case with the other accused,



handcuffed. He begged the question by saying that he could not because the police were assaulting him at the time. When pressed, accused 19 claimed that he did not have an opportunity, because the police did not want him to say a word. Asked why he did not mention that later at Cato Manor, he claimed that the police were not talking to them and did not pay much attention to what they were saying. Not only were those answers contradictory but also obviously evasive. More so, in the light thereof that these propositions were not put to the State witnesses who testified on those aspects.

Where accused 19's evidence really showed signs of faltering, was his total implausibility when it came to explaining how it happened that they ended up in the blue Hyundai. He gave conflicting and unconvincing answers and tried to shift the blame to the said Zulu, who lent the car to accused 14.

Govender testified that he saw accused 19 at the gate of accused 24's residence. Because of that, he was able to recognise him, when accused 19 was arrested at the Tollgate. Whatever might be said about the efficacy of that identification, it was sufficient for accused 19 to counter. It was at that stage when one would have expected his counsel to raise accused 19's alibi for, if were true, Mabiza and Khuzwayo will have supported accused 19. That did not happen and when he was asked about it, accused 19 became thoroughly evasive. He, *inter alia*, stated that he

did not know he had an alibi, but later was constrained to concede that he did have a perfect one, if it were true.

When questioned about the moneyboxes in the boot of the Hyundai accused 19 was referred to his affidavit in the bail application, in which he stated that the boxes belonged to accused 14. When questioned about that accused 19 tried, clumsily, once more to evade the question, and ended up by saying that at the time of the bail application he had not seen the boxes, because they were not in his view.

The question was repeated at least four times and eventually he stated that he did not know that the police discovered those boxes in the boot of the vehicle - another statement so improbable, as to be patently untrue.

Regarding Govender's evidence that he had recognised accused 19, as aforementioned, accused 19 was asked why it was not put to Govender that accused 19 was at the tavern at the relevant time and could not have been there, accused 19's response appeared fatuous. He stated that he did not listen and could not say whether his counsel had challenged that evidence with reference to accused 19 being at the tavern. When it was pointed out to him that it did not happen, he testified that he realised that everything that Govender said was a lie, as he lied about a "lot of things".

When asked about the deposit slip, which was said to have been found in his possession his answer was rambling, and the question had to be repeated. He then denied that he had had such deposit slip in his possession and said that Mostert was lying.

At the end of the day we are satisfied, indeed convinced, that accused 19 was

thoroughly mendacious and that his evidence was false beyond all reasonable doubt.

***Accused 20:***

Accused 20 resides at Ntuzuma, Durban, where he was a taxi owner. He testified that sometime during September 2006 his friend, a certain Zulu, came to his house accompanied by two persons he thought were Nigerians, who had with them a Pajero motor vehicle. Zulu wished to buy the Pajero and borrowed the amount of R20 000 from accused 20. On the same day Zulu returned and asked accused 20 to accompany him on his drive to Empangeni. Accused 20, accompanied by accused 8, followed Zulu to Empangeni in accused 20's BMW. It was then arranged that accused 20 and Zulu would meet at Empangeni on 1 October 2006 so that accused 20 could be repaid the loan. On 1 October 2006 accused 20, again accompanied by accused 8, journeyed to Empangeni and met up with Zulu. The latter requested that accused 20 return the next day, 2 October 2006, as Zulu would have the money ready to repay the loan. They then arranged to meet at Petroport filling station on 2 October 2006 between 18h00 and 19h00. The next day on 2 October 2006, accused 20, once more accompanied by accused 8, who expressed an interest in purchasing a vehicle at Richards Bay, drove to Richards Bay in his BMW. Accused 8 left him at the Richards Bay CBD. There he whiled the time away, waiting for accused 8 to return in order to keep his appointment with Zulu at Petroport.

After he had waited some hours without accused 8 returning, it became time to depart for Petroport, which he did. As mentioned earlier in the Judgment, during the time he spent at the Richards Bay CBD, accused 20 made and received a number of

calls from accused 1 and 26, who were at the time engaged in the “reconnaissance mission”.

Accused 20 was vague about the time of his arrival at Petroport, but stated that he met up with Zulu at about 18h00 and was duly paid. When he testified about his arrival at Petroport he said that there, outside the filling station on the N2, was a stationary blue vehicle and that he stopped behind it. It just so happens that accused 24’s cellphone records reveal that he (accused 24) was also at Petroport from 18h00 to approximately 18h10. In addition, accused 24 testified that he was driving his blue Mercedes Benz at the time.

The amount he received from Zulu was R35 000. Regarding that, it will be recalled that when he was arrested, he had on his person the sum of R35 890. The 35 000 paid to him by Zulu exceeded the amount of the loan. Accused 20 explained that the R35 000 was made up as follows: R20 000 as repayment for the loan and R15 000 as a “bonus”.

That is grossly improbable and has to be considered untrue. Accused 20 manifestly was hard-put to explain the amount, which the police found on his person, compared to the loan he made to Zulu, and his evidence in this regard was tailored to furnish some explanation, albeit so artificial as to present as contrived.

Accused 20 testified that, after he received the money, he returned to Richards Bay. Under cross-examination, he was referred to a communication through the Somkele tower. Accused 20 agreed with counsel for the Prosecution that at that stage he was on his way back from Petroport to Richards Bay. It follows that on his own evidence,

accused 20 drove past the scenes of crime at both Charters and Penicuik, yet he testified that he did not see anything indicating that the Fidelity vehicles had been robbed at either of those places. In the circumstances, we are of the view that his evidence in that regard is simply dishonest. Returning to his evidence, he said he arrived at Richards Bay. By that time, he had already arranged with accused 1 to give the latter a lift to Durban. At about 20h00 accused 20 was fetched and guided to the house of Mbuyazi at Mzingazi, where he met up with accused 1. They waited for accused 8 to arrive and at about midnight they picked up accused 8 at an agreed point in Richards Bay and from there proceeded to Durban along the N2. They were arrested at the Mvoti Plaza.

It transpired that his friend, Zulu, who borrowed the R20 000 from him, was his neighbour. That made nonsense of the convoluted arrangements between Zulu and himself in order to receive repayment of the loan. Being neighbours, all the repayment arrangements could be made and effected from home in Durban. It is difficult to escape the conclusion that the arrangement for repayment and the place thereof, as testified to by accused 20, was fabricated in order to explain his cellphone communications, which placed him at the Charters scene of crime and in order to explain the communications that passed between himself and his co-accused.

In addition, a number of unsatisfactory features for which there is no need for particularisation, marred accused 20's testimony. A mere reading of his recorded evidence will reveal that.

We hold accused 20's testimony as false beyond all doubt.

***Accused 21:***

Accused 21 testified that he lived in Katlehong, Gauteng, and was a taxi owner. Sometime in September 2006, he was in Katlehong in the company of accused 2, when a certain Mshengu came to them, as he was interested in buying a taxi from accused 2.

The sale was agreed and Mshengu paid a deposit of R20 000 towards the purchase. The balance of the purchase price would be paid against delivery of the vehicle. Mshengu arranged with accused 2 that delivery take place at Pongola. On 1 October 2006 Mshengu called accused 21, informing him that accused 2 was reluctant to make delivery of the vehicle at Pongola and requested that he, accused 21, deliver the Combi instead. Accused 21 complained that he was not familiar with Pongola, so Mshengu suggested Richards Bay. Accused 21 protested that he was not familiar with Richards Bay either, and suggested Durban, as he was familiar with that city. Thereafter it was agreed that Mshengu would arrange with another person to meet accused 21 in Durban, who would usher accused 21 to Pongola, as Mshengu would possibly be in Swaziland when accused 21 arrived in Durban. This tangled arrangement in itself seems a highly unlikely one to make. After all, a roadmap or enquiry would reveal the location of Pongola. For accused 21 to travel to Durban and thereafter be guided to Pongola, sounds infantile. After all that, accused 21 met accused 2, who informed him that arrangements had already been made that he (accused 2) and accused 15, who would assist in the driving, were delivering the vehicle to Mshengu. Accused 21 promptly decided to accompany them, as he had already cancelled his commitments for the day and wanted to meet with Mshengu.

Thus, they set out. They left at about 22h00 to 23h00 on 1 October 2006 in the taxi

that was the subjectmatter of the sale. Accused 21 gathered from accused 2 that the taxi would be delivered to Mshengu at Richards Bay. They travelled through the night and arrived at Richards Bay at about 06h00 on 2 October 2006 where they met a certain Vuka, apparently the contact person for Mshengu. He took them to his house at Birdswood, Richards Bay. Vuka contacted Mshengu to tell him that the vehicle was available. There the three of them waited at Vuka's house for almost the entire day. Accused 21 claims that then Vuka received a message from Mshengu that his taxis had broken down in Swaziland and that he would only be at Pongola later. By then they were tired of waiting and decided, for reasons not explained and certainly not apparent, to set out in the direction of Pongola. Accordingly, they left at 17h00. Not surprisingly, they did not reach Pongola, but somewhere along the way decided to turn about and return to Vuka's residence, where they were told the outstanding balance of the purchase price would be paid. They did that and got paid. That was at approximately 20h30 to 21h00. They were conveyed to a taxi rank in order to take a taxi to Johannesburg. That is how they found themselves in the taxi driven by accused 24, which was on its way to Durban and thereafter to Johannesburg. They were stopped and arrested at the Tollgate.

Under cross-examination, accused 21 was immediately in trouble. He had handed up his statement KK21 by consent, coupled with the admission that it correctly reflected what he had told the recorder thereof. In it he stated that he was in Kwazulu Natal, as he had been phoned by his friend, Mshengu, who told him to take a taxi and meet up with him (Mshengu) at the Durban station. Mshengu requested him to accompany him to Pongola in order to sell a motor vehicle. They did not arrive in Pongola, as they were unable to contact the buyer, whose cellphone was apparently

off. As a result they went to Richards Bay where they stayed at the house of Mshengu's friend. The statement happened to be in direct conflict with accused 21's testimony in chief and in trying to explain it, seemed to flounder about. He said that there were mistakes in his statement, but blamed the policeman who recorded it, as the latter spoke only in English, which accused 21 had difficulty in understanding. That explanation, in turn, flies in the face of his admission, which accompanied the handing up of the statement as an Exhibit, that it was correctly recorded.

Accused 21 testified that when they were on their way to Pongola, blindly, as mentioned earlier, they turned around to go back to Richards Bay. That took place at the markets at Zamimpilo, a well-known landmark on the N2 in that area.

He was unable to explain how it happened that he spent more than an hour making and receiving calls while in the vicinity of Harrison Farm and Somkele towers. Those towers, it will be recalled, provide cellphone coverage to the area of the Charters robbery.

Accused 21 could not plausibly explain that his cellphone calls activated the Richards Bay Lighthouse tower, as he claimed that he was at Mshengu's friends place at Birdswood. Whilst accused 21 insisted that they were at Birdswood, his cellphone activated the Harrison Farm and Nyalazi towers. During the evening and before they boarded accused 24's taxi, all his calls were processed through the Richards Bay Lighthouse tower, undoubtedly from accused 24's house. Accused 21's cellphone activated the Richards Bay Lighthouse tower no less than 25 times before he departed from Richards Bay.



Accused 21 was a thoroughly mendacious witness and his testimony is rejected as false beyond all reasonable doubt.

***Accused 22:***

Accused 22 testified that he owned a motor spares shop at Katlehong. On 1 October 2006, and at his shop, a person named Lindani came to him with a suggestion that accused 22 open a spares shop at Mzingazi, Richards Bay. He said that he would think it over and later that evening met with Lindani at his house to discuss the matter further. They agreed to travel to Mzingazi together so that accused 22 could see for himself what the position was at Mzingazi. Lindani had with him two cellphones, but asked to borrow accused 22's cellphone. Accused 22 did not ask about Lindani's two cellphones, but simply assumed that there was something wrong with both. They did not waste much time and at about 22h00 started their trip to Richards Bay. From Vosloorust they used the route through Standerton and Volksrust to Richards Bay. On the way Lindani borrowed accused 22's cellphone then and throughout the night made and received calls through it. They arrived at Lindani's house at Mzingazi at about 05h00. There they lingered until 14h00 when Lindani asked him to accompany him to fetch a person from a place called Mfekayi. That was done and they returned with an unknown woman to Lindani's place.

They remained there waiting for “people” to arrive so that they could discuss the “spares shop”. It would appear than nothing came of that and the “people” never showed up. Late that evening he received a phone call from accused 7 who asked whether he, accused 22, was still looking for transport to Durban, which accused 22 confirmed. Lindani took him to the John Ross Bridge where they found accused 5, who was also looking for transport to Durban. While waiting there accused 16 was dropped off there too. Accused 22 knew both accused 16 and 5 as friends from Johannesburg. This co-incidence is simply too remarkable as not to cause doubt as to its veracity. Later a red Combi arrived and they joined accused 7 and 12, the latter being the driver, in the vehicle. They proceeded along the N2 towards Durban, when they were arrested at the tollgate.

It becomes immediately apparent that accused 22’s account is littered with improbabilities. It will be recalled that earlier in the Judgment the analysis of the communication between the accused, who travelled together from Johannesburg to Richards Bay, reveal that they were travelling in an expedition-like group. In that analysis it appeared that accused 22 fulfilled the role of co-ordinator. In his evidence he seems to have passed that role onto Lindani, who was possessed of and used his (accused 22’s) cellphone throughout the journey.

In doing so accused 22 must of necessity, have overheard enough of the conversations to realise that Lindani was speaking to persons whom he, on his own version, knew well. Those were accused 2, 9, 11, 16, 18, 21, 23 and 25. This is a

transparent effort on the part of accused 22 to distance himself from the calls made from his cellphone on that journey. More so, as Lindani was from Richards Bay, whilst all those called were from Johannesburg. Lindani has since passed on and cannot be called as a witness or corroborate accused 22's version. In any event, the analysis aforementioned, also revealed that all the vehicles appeared to have stopped at Standerton for refreshment. That appeared to include the vehicle in which accused 22's phone was being activated from. It is scarcely conceivable that accused 22 would not have seen one or more of the others on the same journey.

Under cross-examination, accused 22 did not fare well. He denied knowing accused 1 at all, yet his cellphone records (Z22) reflects that during the period 1 September to 1 October 2006 he had called accused 1, sixty six times(66). Accused 22 further said that he never spoke with accused 1, but with the person who used his cellphone, a certain Sbu. Whilst that could have occurred on a number of occasions, which is doubtful, it could not have occurred 66 times.

More so when it shows that on 2 October 2006 four instances (4) of communications between accused 1's phone and that of accused 22 occurred. During that period accused 22 was already at Mzingazi.

In his affidavit in support of his bail application accused 22 made no reference to Lindani, but instead said that he came to Kwazulu Natal to see an old girlfriend. That contradicts his evidence in this Court and he was unable to furnish a plausible reason for that.

With regard to his movements during the morning of 1 October 2006, he said that he was at his shop from 08h00 to 13h00 and alone. When confronted with his cellphone

records (Z22) which demonstrates that he could not have been at his shop, but elsewhere, he then said that his cellphone, at that stage, was in the hands of an employee, one Bellington, who was not at the shop. He denied knowing “Fana”, yet he was in communication with him eight times (8), when both their cellphones activated the towers in the vicinity of the crime scene at Charters.

A reference to the catalogue of calls and communications, which the accused made through the Richards Bay Lighthouse tower, reveals that accused 22 communicated through that tower. We are in no doubt that these communications were made from accused 24’s house at Mzingazi. The reasons for that conclusion will be dealt with more fully shortly.

Finally, accused 22 was unable to explain how it could be that for a period of two hours he communicated with his co-accused on 60 occasions. All calls went through cellphone towers near the crime scene at Charters.

Accused 22 manifested as a fabulist, who had no regard for the truth. We reject his evidence as false beyond all reasonable doubt.

***Accused 23:***

Accused 23’s evidence mirrored the testimony of accused 18 exactly and need not be repeated herein. He confirmed the testimony of accused 18 that the two of them boarded accused 24’s taxi to travel to Johannesburg via Durban. However, he testified that he was a front-seat passenger sitting between accused 24 and 9. That is contrary to the evidence of Inspector Dean, Captain Mncube and Govender, who took part in the arrest of the accused and in particular accused 9, in the white Combi. That evidence was uniform that the only passenger in front with accused 24, was

accused 9, who had a full-length plaster of paris splint on his leg and had next to him his crutches and a bag with the large petrol-driven angle grinder in it. It is to be noted that the evidence of the policemen in question and Govender, was not challenged on that aspect at all.

All things considered, it seems plain that accused 23 in his evidence decided to place himself in the front seat, as that would take him as far as possible from the R80 000 cash spread on the floor in the rear where he undoubtedly was on arrest. Having been with accused 18 on the trip from Johannesburg to Richards Bay and from there on to the place of arrest on the N2, there appears no reason why he would have sat separately from accused 18. Furthermore, given the accused's testimony that accused 13 was, after departure from the taxi rank, picked up at a garage, there would have been space in the rear for accused 23. Why would he have been placed in an obviously cramped space in the front seat with accused 9?

Accused 18 and 23 were part of the expedition from Johannesburg dealt with earlier in the Judgment. His claim to have travelled individually with accused 15 in the vehicle of Dube is manifestly untrue.

Against all indications, he denied that the automatic firearms and the angle grinder were found in the Combi. In that regard the credible evidence presented by the State in respect of the recovery of the grinder and the bag with the automatic firearms from the white Combiis accepted in preference to that of accused 23.

Accused 23 disingenuously shrugged off as pure coincidence the fact that his

cellphone records reflect that he was travelling north of Richards Bay at the same time as other accused; that his cellphone activated the Richards Bay Lighthouse tower within the same time-frame as his co-accused; that he was in the vicinity of the Harrison Farm and Nyalazi towers at the same time as some of his co-accused; that his cellphone activated the Richards Bay Lighthouse tower 39 times. We are satisfied that those calls were made from the house of accused 24.

In the result, we hold that accused 23's evidence is false beyond any doubt.

***Accused 24:***

On 2 October 2006 accused 24 left his home at Mzingazi at approximately 07h30 in his blue Mercedes Benz and went to Richards Bay Town taxi rank, where he remained until approximately 13h30 to 14h00, when he left the rank and proceeded to Mkhuze. The purpose of that trip was to establish whether it was feasible to extend the Richards Bay Association's taxi business to Mkhuze. At 15h50 he left Mkhuze to visit his girlfriend, one Thandazile Nxumalo at the Gazebo Safari Lodge in Hluhluwe. He said that she was his girlfriend at the time. When he left Thandazile, he went straight back to Richards Bay.

On his way he was called by a certain Bheki Makhamu who informed him that there were people looking for transport to Johannesburg, and furnished him with the number of accused 21. He phoned accused 21 and arranged with him to meet at the taxi rank at Richards Bay. At that stage, he said he was in the vicinity of Kwambonambi. He arrived home at about 20h30 to 21h00, took his white Combi and proceeded to the rank, where accused 3, 6 and 17 approached him, also looking for transport to Durban. He agreed to take them. At that stage accused 11, who also

wished to go to Durban, joined them. He charged them collectively a fee of R2 000. Thereafter, whilst at the rank, he was approached by accused 2, 9, 15 and 21, who sought transport to Johannesburg. He informed them that he already had a fare to Durban. Accused 9 told him there was no problem about that, as he could take them to Johannesburg via Durban. That was agreed and he levied a charge of R3 000 for the trip to Johannesburg. In the result he picked up all the passengers who were in the Combi upon arrest, save accused 13. With regard to accused 13, accused 24 testified that he picked him up at a garage in Richards Bay. They entered upon the N2 south and eventually were arrested at the Mvoti Plaza.

Accused 24's testimony will best be remembered for the fact that his girlfriend "shot him in the foot". In rebuttal the State led the evidence of Thandazile Nxumalo, the girlfriend whom accused 24 was supposed to have visited in the afternoon of 2 October 2006, after he left Mkhuze. Her testimony was emphatic that the accused did not visit her during the course of that afternoon, specifically referring to 2 October 2006. As to how she remembered the date this long after the fact, she stated that before the Investigating Officer arrived and questioned her about accused 24, she was expecting him, as accused 24 had phoned her, warning her about that. During that call, accused 24 requested her to inform the police that on 2 October 2006 he was with her. She testified that she informed accused 24 that she was not prepared to adhere to his request. During her testimony, the witness explained that she had a brief sexual affair with accused 24, but that during October 2006 he definitely was

not with her. Cross-examination by accused 24's counsel did nothing to detract from the obvious credibility of the witness. However, where she turned around and shot accused 24 in the foot, was when at the close of her evidence and as she was about to leave the witness stand, she asked the Court whether she was allowed to say something. I allowed that, if it were relevant, and so informed her.

She turned to accused 24 and pointedly looked at him, where he was sitting in the dock with the other accused and said, addressing him by name, that she now had a boyfriend and that if he wanted someone to lie on his behalf, he must find another woman to do so. That evidence, to say the least, caused a severe dent in accused 24's credibility.

Cross-examination appeared to strip accused 24 of all credibility. He could give no plausible account for the numerous calls he made from the vicinity of Petroport to the accused who appeared to have gathered in the vicinity of Charters. The same problem continued, relating to the calls that he had made on his way from the Medham tower, literally at Petroport, to Kwambonambi and further on. He simply could not with any degree of credibility, answer the questions posed in that regard.

On his own version he arrived back at Mzingazi at about 20h30 to 21h00. That accords with his cellphone records. In addition there is simply no way for accused 24 to get around the fact that all of the accused appear to have gathered at his home from about the time of his arrival there, until the witnesses, Govender and Captain Mncube, followed his white Combi all the way to the point of arrest on the N2. With regard to the gathering of vehicles and persons on his premises at the relevant time,



accused 24 served himself, by way of explanation, with a series of totally implausible denials.

We have no hesitation whatsoever in holding that accused 24's evidence falls to be rejected as false beyond all reasonable doubt.

***Accused 25:***

Our evaluation of accused 25's testimony need not occupy much space in this Judgment. Accused 25 testified that on 1 October 2006 at about 22h00 he departed from Johannesburg for Durban, via Richards Bay, there to see his girlfriend, Patricia. He arrived at Richards Bay during the morning of 2 October 2006 and went straight to Patricia. At 05h00 he met and stayed with her in the Formula One Hotel. After a while they went to Mzingazi to Patricia's parental home, where he continued his rest as he was tired. At about 14h00 he left Richards Bay and went to Durban to meet his friend Fana. He and Fana were at Mlazi, standing on a pavement when a 7-series BMW arrived and people started shooting at him. He was struck more than three times in his left arm and shoulder. He fell down and Fana ran away. His assailants picked him up, put him in the BMW and thereafter threw him out again on the pavement and drove off. Fana reappeared and removed accused 25 to the hospital in accused 25's own car. Fana, he said, took him to the Prince Mshiyeni Hospital. A few days later, the Investigating Officer arrested him.

The evidence concerning the BMW discovered at bridge L after the robbery at Charters with accused 25's blood in and outside of it, simply puts paid to accused 25's testimony concerning how, when and where he was wounded.

As mentioned earlier in the Judgment, his “friend”, Fana, is in fact one of the mentioned accomplices in the robberies and related offences. Fana’s cellphone records literally signposted their trip from the scene of crime at Charters to the Prince Mshiyeni Hospital, which is situated in the immediate vicinity of the airport tower mentioned before.

Finally, accused 25’s *tête a tête* with Patricia at the Formula One Hotel was exposed as a flight of accused 25’s own fantasy. A witness, Monique van Wyk, called in rebuttal, testified that she was attached to the Formula One Hotel management and that the room pointed out by accused 25 to the Investigating Officer, as being the place where he spent some time with Patricia on 2 October 2006, was in fact the Manager’s room and not one used by the guests or employees.

We reject accused 25’s testimony as false beyond any reasonable doubt.

**Accused 26:**

Accused 26 resided at Andrew Street, Durban. His parental home was at Nseleni in the Richards Bay area. He was in the taxi industry and on 1 and 2 October 2006 he was in the Empangeni area on visit to his family. At about 18h00 on 1 October 2006 he attended a braai at Hillview, Empangeni. During the course of the braai he went to Esikhawini to fetch his girlfriend, Zanele Mhakanya. At the braai he was, amongst others, in the company of Bheki, his driver. He left before the braai ended as his

girlfriend wanted to go home. When he left the braai, he also left his cellphone with Bheki, who had to make certain arrangements with accused 1 regarding a gearbox. Thus he left his phone with Bheki between 22h30 and 23h00 on 1 October 2006. The cellphone was only returned to him by Bheki on 3 October 2006 between 12h00 and 12h30, as he was leaving for Johannesburg and needed the phone. He testified that he was, accordingly, not in a position to account for the calls that were made or received by his cellphone between 1 October 2006 from about 22h00 to 23h00 to noon on 3 October 2006. As far as his movements on 2 October 2006 were concerned, he testified that he was in Empangeni, Esikhawini and at his parental home at Nseleni. Also on 2 October 2006, he took his girlfriend Zanele to see a traditional healer at Nseleni.

While she was with the traditional healer accused 26 was at his parental home. He later took Zanele back to Esikhawini. On 3 October 2006 he left for Johannesburg between 12h30 and 13h00. He returned from Johannesburg on 4 October 2006.

Accused 26 then turned to his arrest and the circumstances in which it occurred. It differed in certain respects materially from the evidence of Inspector Ntombela. Those need not be dwelled upon, although he was unable to explain why the material part of his version was never put to Inspector Ntombela during the latter's cross-examination.

He contradicted the evidence of accused 1 in a number of relevant respects, inter alia, concerning whether he or accused 24 was involved in the sale of the vehicle by accused 1 to Mbuyazi. It is to be noted that his version was not put to accused 1 during the latter's testimony.

Accused 26 insisted that Bheki was using his cellphone on 2 October 2006 and, therefore, he could not answer when asked why his cellphone was activated at the Charters Creek crime scene. He added, however, that he knew that Bheki was meeting people at Mfekayi, who were selling diesel. When the matter of his handing his cellphone to Bheki was probed in cross-examination, his answers became spurious, saying that it was also for safety reasons.

Due to the fights amongst the taxi groups in Durban, anyone colluding with Bheki to have him (accused 26) killed, would have been informed by Bheki that he was using the same cellphone as accused 26. That reason seems to constitute no reason at all.

Concerning the calls made between accused 1 and himself, accused 26 materially contradicted accused 1's testimony. Accused 1 was asked about the nine calls he made to accused 26 on 1 October 2006 and was asked whether he was talking with accused 26 or Bheki. Accused 1 responded that he spoke to both. Accused 26, notwithstanding the clear contradiction, refused to accept that it was a contradiction, and tried to explain it away. In addition, accused 1 had testified that he had spoken to accused 26 for no less than 179 seconds at 05h39 on 2 October 2006, when Bheki was supposed to have been in possession of accused 26's cellphone. Accused 26 denied that that was possible but could not explain why accused 1's evidence in point was not challenged during cross-examination by accused 26's counsel.

Accused 26 denied knowing Msimango, the accomplice, but his cellphone records show 46 instances of communication with Msimango from 1 September to 3 October 2006. He initially denied knowing any person by the name of Mzet, another accomplice, with whom he had spoken to no less than 126 times. Eventually he

conceded that he knew a Mzet, who had taxis in Johannesburg.

A study of accused 26's cellphone records makes nonsense of his testimony that he had handed his cellphone to Bheki on 1 and 2 October 2006. If he had indeed done so, it is simply unbelievable that Bheki would on 1 and 2 October 2006 just happen to communicate with accused and accomplices with whom he, accused 26, was in regular communication :

For example: During the period 1 to 30 September 2006 accused 26 phoned accused 1, two hundred times (200); accused 7, twenty nine times (29), accused 14, thirty four times (34); accused 20 once (1); accused 19, twice (2); the accomplices Fana, eighteen times (18), Spiwet, thrice (3), Xha, once (1); Mzet, one hundred and six times (106), Msimango, twenty eight times (28).

On 1 October 2006 accused 26 communicated with accused 1 twenty four times (24); accused 7 twice (2), accused 22 twice (2); accused 14 once (1); accused 20 four times (4); Spiwet twice (2); Xha once (1); Mzet thrice (3); Msimango thrice (3).

Whilst accused 26 testified that he went nowhere near Mzingazi on 2 October 2006, his cellphone certainly did, and not only once. His cellphone records show that his phone activated the Richards Bay Lighthouse tower for the first time that day at 08h33.

Thereafter two further calls ensued, the last being at 08h50. By that time most of the (Johannesburg) accused had already arrived at Mzingazi evidenced by calls made through the Richards Bay Lighthouse tower, by accused 2, 4, 9, 11, 13, 16, 22, 23 and 25.

After the three calls emanating from accused 26's cellphone, as aforementioned, his phone activated the towers at Meerensee and Aquadene. It was back again at Mzingazi at 10h11, when the first of ten (10) calls from his cellphone registered through the Richards Bay Lighthouse tower, the last being at 10h39.

After the ten calls, accused 26's phone activated the Meerensee tower. Those calls included calls to and from accused 19, who was on his way to Meerensee; and accused 14 and MZET. Accused 26's phone was back at Mzingazi where his first of another ten calls through the Richards Bay Lighthouse tower was at 11h11 and the last at 11h54. During these calls he communicated with accused 14 and 19.

After those calls accused 26's phone returned to Meerensee and went on to Aquadene. During that period his phone was in communication with accused 14 twice (2), 19 twice (2) and 24 twice (2). His phone thereafter activated the Richards Bay Central tower and further on activated the towers all the way to both the Penicuik and Charters crime scenes and back to Mzingazi.

This aspect was dealt with under the scouting excursion, earlier in the judgment.

At Mzingazi accused 26's cellphone activated the Richards Bay Lighthouse tower at 16h33, when the first of eleven (11) calls from his phone registered through that tower. The last call was at 17h05.

Thereafter his calls were signposted through towers all the way up to Penicuik and Charters crime scenes and back again to Mzingazi, when his first call from there was registered at 20h08. The calls in question were fully analysed and dealt with earlier in relation to the second excursion as described there.

Accused 26's claim that the calls referred to above, emanated from Bheki's use of

his (accused 26's) cellphone is cynical and fatuous and we reject his testimony as false beyond reasonable doubt.

The court, considering it in the interest of justice to do so, called to the witness stand, two of accused 26's girlfriends, Zama Magwaza and Zanele Mkhanya. There is no need to dwell on their evidence. Both tried to support accused 26's alibi, that each of them respectively was with accused 26 on 2 October 2006 and 3 October 2006. The one was in bed with him on 2 October 2006 and the other in his motor vehicle on the way to Johannesburg on 3 October 2006.

The obvious endeavour on the part of the two ladies to support accused 26's alibi failed dismally. A mere reading of the record of the testimony exposed the impossibility of their claims that accused 26 was with them respectively on those days. No reliance whatsoever can be placed on the testimony of these two witnesses.

The point is driven home when one analyses accused 26's calls relevant to the two excursions from accused 24's house at Mzingazi to the crime scenes at Penicuik and Charters. That has already been dealt with at some length during our summation of the state case. Bheki certainly did not make those calls. In the result, we reject the evidence of accused 26 as false beyond all doubt in every material respect thereof.

**The effect of the mendacity of the accused who testified and the silence of those who did not.**

Where, as here, a strong *prima facie* case is proved against the accused, albeit based on circumstantial evidence, and which a reply from an innocent person would

be expected, the fact that an accused did not testify, or having testified, is found to be untruthful in the sense that his answer cannot reasonably possibly be true, the *prima facie* proof becomes conclusive, provided that that conclusion is justified on the evidence taken as a whole. (cf **S v Letsoko, 1964 (4) SA 768(A)** ).

### **Credibility Findings:**

As will have been seen from the assessment of the credibility of the alibi evidence tendered by the accused above, a common thread runs through all of the explanations furnished.

Faced with the damaging array of cellphone communications made by the accused at times and locations which are associated with the times and places of the occurrence of the primary and secondary offences, we are left with the overriding impression that the testimony concerning the movements of the accused was deliberately manipulated by them to furnish a seemingly benign explanation for their locations at times relevant to the issues before us. In most instances those explanations were loaded down by unmanageable improbabilities and coincidences.

Having dealt with the evidence of the accused relating to their alibis, very little need be said about the credibility of the witnesses called by the State compared to the credibility of the accused, who testified. Due thereto that the Defence case is in the nature of alibis advanced by the accused who testified, there are but a few areas in which the testimony of the State witnesses came into direct conflict with the testimony of the accused.

Those areas relate to Sithole's testimony that he followed the four motor vehicles, which were later found abandoned at the crime scenes, along the R34, all the way to



accused 24's house; the presence at the house of accused 24 of the four vehicles in which the accused were subsequently arrested; whether the white Combi driven by accused 24 departed from his house or from the taxi rank; the events at the scene of arrest at Mvoti Plaza and the money and articles found on the persons of the accused and the respective motor vehicles in which they were arrested.

The State witnesses who testified with regard to those areas of controversy were Sithole, Govender, Captain Mncube and a number of police officials.

The mentioned State witnesses were cross-examined comprehensively. During that cross-examination it appeared that the various witnesses were being taxed only in respect of their observations of what transpired at the scene of arrest and their recollection thereof.

Apart from spurious allegations of assaults said to have been made upon some of the accused on arrest, which in itself, was irrelevant to the issues before us and bold denial by some of the accused that the amount of money and other articles found were on his person and in the vehicles, no issues of substance emerged that would require an in depth analysis of the evidence given by the State witnesses in question.

Sithole's testimony that he saw the four motor vehicles which he had followed, enter the premises of accused 24's house, was met with a denial on the part of accused 24. However, Sithole's evidence is supported by that of Captain Mncube and Govender that he showed them the house in question, whence came the motor vehicles in which the accused were subsequently arrested.

The testimony of Captain Mncube and Govender was countered by the evidence of accused 24 and others that the white Combi departed for Durban from the taxi rank in Richards Bay CBD and not from accused 24's house. If that were correct, then there would have been no cause for Captain Mncube and Govender to start following a taxi, which could have been any taxi, from the rank at Richards Bay all the way to Mvoti Plaza.

Concerning the money and articles found on the accused and in the vehicles on arrest, we refer to the testimony of the individual accused, where most of those issues were discussed. For reasons mentioned in our evaluation of the credibility of the evidence of the accused who testified, we most certainly prefer the testimony of the State witnesses in point to that of the accused. In our view the evidence of Sithole, Captain Mncube, Govender and other police officials, who testified in respect of the limited fields of controversy, as aforementioned, was thoroughly tested during cross-examination, without their credibility as witnesses being impinged.

After all, they had no personal interest in any of the accused or exhibits recovered at the scene of arrest – they could only speak to what they saw. As mentioned earlier in the Judgment, notes were kept by a number of police witnesses of the items and money recovered from the various accused – notes that were remarkably accurate when compared, given the extreme circumstances extant at the time and on the scene of arrest.

## **EVALUATION OF THE CASE MADE OUT AGAINST THE ACCUSED:**

### **Introduction:**

I have on a number of occasions during the course of the Judgment referred to the fact that the State's case against the accused is entirely built upon circumstantial evidence. To be sure, the evidence which the State presented to prove the unlawful conduct or *actus reus*, which constitute the various offences contained in the Indictment, was largely based on direct evidence. However, in order to prove the identity and individual liability of the perpetrators, the evidence which was placed before us, was circumstantial. The nature and content of the relevant circumstantial evidence has already been recounted hereinbefore:

That relates to, *inter alia*, the apparent planning that took place in September and 1

October 2006; the journey of the Johannesburg and Durban groups, including their cellphone contact *inter se*, and between the two groups and accused 24 and 26; Sithole's encounter with the suspect motor vehicles on the R34 and what followed upon that; the gathering at the house of accused 24 by the Durban and Johannesburg groups, together with the accomplices; the two apparent excursions – the last whereof coincided with the robbery and the attempted robbery; the regrouping of the accused and accomplices at accused 24's house before departure, giving the impression that that house was used as a base for the unlawful operations; the departure from accused 24's house and the arrest at Mvot Plaza; the exhibits recovered at the scene of arrest and at the home of accused 24.

**Circumstantial evidence:**

Earlier in the Judgment I explained by way of example the difference between direct evidence and circumstantial evidence. There seems to exist a general perception that circumstantial evidence is less compelling than direct evidence, when it comes to proof beyond reasonable doubt of the commission of the offence by the persons accused of it. That is not correct. In certain circumstances circumstantial evidence might be more persuasive than direct evidence.

An example thereof is the evidence of the palm print of accused 17 found on one of the money boxes which was taken during the Charters robbery and which was recovered from the blue Hyundai when it was stopped at the Mvoti tollgate. That evidence, uncontested by accused 17, establishes as a fact beyond any reasonable doubt that he had handled the box in question before it was retrieved from the vehicle. In turn, that fact constitutes circumstantial evidence of accused 17's complicity in the robbery – a question to be decided on a conspectus of the evidence

at the appropriate time.

Much has been said and written about circumstantial evidence and how it should be evaluated by the Courts. However, I have yet to encounter a clearer approach to the appraisal of such evidence than that of Watermeyer, J A in ***R v. Blom, 1939 AD 188, 202-3*** in which the learned Judge referred to what he called the “two cardinal rules of logic” to be applied when deciding the proper inference to be drawn from circumstantial facts.

Those “rules” he explained as follows:

- “1. The inference sought to be drawn must be consistent with all the proved facts. If it is not, then 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.”*

Some authors in this field of the law have been at pains to point out that the formulation of the “rules” as stated by Watermeyer, J A is not entirely original. However, whatever the origins of the idea might be, the “two cardinal rules of logic”

have become embedded in our *jurisprudence*. In endeavouring to apply the “rules” to the evidence before it, a Court should be careful not to fractionalise the process by applying the rules of logic in compartments. As in all cases of inferential reasoning any inference to be drawn, can only be done by considering all the relevant evidence as a whole.

In ***R v. de Villiers***, 1944AD 493, 508, Davis A J A rejected as fallacious the proposition that the Court should take each factor separately, and, if each of them is possibly consistent with innocence, then such factor should be discarded as a fact from which guilt may be inferred.

The court should guard against considering each factor separately and, if found to be possibly consistent with innocence, to discard such factor. The test is not whether each proved fact excludes all other inferences, but whether the facts considered as a whole, did so.

The standard of proof of the facts which form the foundation of circumstantial facts, is explained in ***R v. Mthembu***, 1950(1) SA 670(A) 679-680, per Schreiner JA:

*“I am not satisfied that a trier of fact is obliged to isolate each piece of evidence in a criminal case and test it by the test of reasonable doubt. If the conclusion of guilt can only be reached if certain evidence is accepted or if certain evidence is rejected, then a verdict of guilty means that such evidence must have been accepted or rejected, as the case may be beyond reasonable doubt. Otherwise the verdict could not properly be arrived at. But*

*that does not necessarily mean that every factor bearing on the question of guilt must be treated as if it were a separate issue to which the test of reasonable doubt must be distinctly applied.*

*I am not satisfied that the possibilities as to the existence of facts from which inferences may be drawn are not fit material for consideration in a criminal case on the general issue whether guilt has to be established beyond reasonable doubt, even though, if the existence of each such fact were to be treated by the test of reasonable doubt, mere probabilities in the Crown's favour would have to be excluded from consideration and mere possibilities in favour of the accused would have to be assumed to be certainties. Circumstantial evidence, of course, rests ultimately on direct evidence and there must be a foundation of proved or probable facts from which to work. But the borderline between proof and probability is largely a matter of degree, as is the line between proof by a balance of probabilities and proof beyond reasonable doubt. Just as a number of lines of inference, none of them in itself decisive, may in their total effect lead to a moral certainty ..... So, it may fairly be reasoned, a number of probabilities as to the existence of the facts from which the inferences are to be drawn may suffice, provided in the result there is no reasonable doubt as to the accused's guilt."*

See also **S v. Isaacs** (2010)4 All SA 481 (SCA) 493; **S v. Ntsele**, 1998(2) SACR 178 (SCA) 182.

## **COMMON PURPOSE**

*In casu* the Prosecution relies heavily on the doctrine of common purpose. The reason for that is obvious. In a case such as this, where the evidence shows that the respective offences were committed by more than one person, it is difficult, if not impossible, for the State to prove the necessary causal connection between the individual conduct of each of the perpetrators and the commission of the relevant offence. Such causal connection is normally one of the elements to be proved by the State in order to secure a conviction.

However, where the multiple participants in the commission of the offence are shown to have acted pursuant to and in execution of a common purpose to commit the offence, proof of the causal connection becomes unnecessary. (**S v. Safatsa and Others**, 1988(1) SA 868(A) 900–1). Before 1988 controversy seemed to exist in our courts as to whether or not the need for proof of individual causation was required, particularly in murder cases. That debate was finally settled by the unanimous decision of the Appellate Court in **Safatsa**, *supra*, where Botha JA, referred to a passage from one of his earlier judgments in which he said –

*“Volgens my beskouing is the geldende regsposisie dat, waar een van die deelgenote tot ‘n gesamentlike oogmerk die handeling verrig wat die dood van die oorledene veroorsaak, en daarby die ander deelgenote die nodige mens rea aanwesig is, die handeling van die een wat die dood veroorsaak, as ‘n kwessie van regsbeleid, beskou word as die handeling van al die deelgenote ....”*

The learned Judge continued:

*“I adhere to that view because it seems to me that it is borne out by the cases*



*decided in this court as discussed above. I would add this observation: The approach reflected in the passage just quoted has been applied, in effect, in many cases of common purpose decided in the Provincial and Local Divisions which in recent years have come, and are currently coming, on appeal before this Court, without the validity of the approach being questioned, but which never reach the Law Reports."*

*That being the existing state of the law relating to common purpose, it would constitute a drastic departure from a firmly established practice to hold now that a party to a common purpose cannot be convicted of murder unless a causal connection is proved between his conduct and the death of the deceased. I can see no good reason for warranting such a departure. Many of the authors who are opposed to the practise of the Courts have criticised its origin, both in relation to its realization on the basis of implied mandate and in relation to the fact that it first came to us via the application of English Law.*

*In passing I would say that the much maligned notion of implied mandate seems to me to be without merit, now that it is well recognised that the liability of an individual accused rests on his own ***mens rea*** alone (whether ***dolus directus*** or ***dolus evenutalis***) and that the English origin of the practice is no reason *per se* for rejecting it, if it satisfies the exigencies of the Administration of our own Criminal Law. But that is by the way; for the purposes of this judgment matters of merely historical interest can be left aside. What is more important is that the authors who are critical of the practice of the Courts do not appear to have problems with the actual results achieved in the vast majority of cases. In the main the criticism is based on the argument that*

*causation is a fundamental element in the definition of the crime of murder which cannot be ignored; and it is said also that the concept of active association with the act of killing by another is too vague to serve as a touchstone for liability. In my view, however, in many cases where acceptable (and required) results are achieved by means of imputing the act of killing by one person to another person by virtue of a common purpose, the adherence of the requirement of causal connection between the conduct of the latter person and the death of the deceased would necessitate stretching the concept of causation, inter alia by resorting to the evidence of "psychological causation", to such unrealistic limits as to border on absurdity.*

*In the process there would be present a greater measure of vagueness and uncertainty than in regard to the test of active association with the attainment of a common purpose. In any event, I do not think that the application of the latter test presents unmanageable problems. It simply involves an assessment of the facts of a particular case, and the factual issue to be resolved is no more difficult to resolve than many other factual issues encountered in any criminal case."*

In **S v. Thebus and another**, 2003(2) SACR 319 (CC) the Constitutional Court agreed with the decision in **Safatsa** in respect of causation and, per Moseneke, J, added to the rationale thereof, the following on page 343-4 :

*"[40] Common purpose does not amount to an arbitrary deprivation of freedom. The doctrine is rationally connected to the legitimate objective of limiting and controlling joint enterprise. It serves vital purposes in our Criminal Justice System. Absent the rule of Common*

*Purpose, all but actual perpetrators to a crime and their accomplices will be beyond the reach of our criminal justice system, despite their unlawful and intentional participation in the commission of the crime. Such an outcome would not accord with the considerable societal distaste for crimes by common design.*

*Group, organised or collaborative misdeeds strike more harshly at the fabric of society and the rights of victims than crimes perpetrated by individuals. Effective prosecution of crime is a legitimate “pressing social need”. The need for a strong deterrent to violent crime is well acknowledged because “widespread violent crime is deeply destructive of the fabric of our society”. There is a real and pressing social concern about the high levels of crime. In practice, joint criminal conduct often poses peculiar difficulties of proof of the result of the conduct of each accused, a problem which hardly arises in the case of an individual accused person. Thus there is no objection to this norm of culpability, even though it bypasses the requirement of causation.”*

In order to secure the application of the principles of the common purpose doctrine to the conduct of the accused *in casu*, the State is required to prove beyond reasonable doubt that the accused combined or plotted together or conspired to commit the robberies and the associated offences; or that they actively associated themselves with the common purpose to rob the Fidelity vehicles and to do allthings considered necessary to achieve that purpose. (See e.g.**Snyman, Criminal Law (3<sup>rd</sup> Edition)** page 249 et seq) ;**Burchell and Milton: Principles of Criminal Law (Second Edition)** page 393 et seq).

Once that is established each accused will, subject to his having the requisite *mens rea* be responsible for the specific conduct committed by one of their number, which falls within the common design.

It is not necessary that proof be furnished that each of the accused knew or foresaw the exact detail of how the robberies would be executed or the actions which may be required to help achieve the success of the joint criminal objective. (cf **R v. Mgxwiti**, 1954(1) SA 370(A); **R v. Mataung**, 1961(2) SA 209(A) at 210 H – 215A.

A particular accused can only be held liable for the criminal conduct of a co-accused or other participant in the common purpose, which falls within the ambit of the common objective. If it does not, liability cannot accrue (cf **S v. Robinson**, 1968(1) SA 666(A)). It seems to me that such conduct will fall within the compass of the common purpose, if the possibility of the occurrence thereof was subjectively foreseen by the accused and, reckless as to the eventuation of that possibility, continues to act in accordance with the common design (See e.g. **S v. Maxala**, 1981(1) SA 1148(A) 1156; **S v. Malinga**, 1963(1) SA 692(A) 694-5).

### **Resumé of the findings of fact:**

Whether or not the accused acted pursuant to or in execution of a common purpose to rob the Fidelity vehicles, and, in order to do that successfully, to also commit the secondary offences, is a question of fact and may be inferred from their associative conduct before, during and after the commission of the offences and must be determined on the evidence as a whole.

Without detracting from the detailed factual evidence produced by the Prosecution in

support of the charges against the accused, as dealt with at length during the earlier part of this Judgment, what follows here below are, what we consider to be the salient facts inferred from the multitude of facts placed before us during the trial.

In each instance, the inference that gives rise to those findings of fact is, in our view, consistent with all the proven facts and serve to exclude every reasonable inference other than that which we have drawn.

Accordingly, considering the evidence in its totality, including the mendacity of the accused who testified and the silence of the accused who did not, we hold that, except in the case of accused 12, the State has proved beyond all reasonable doubt that:

1. The accused and the accomplices, acting in concert, collaboratively planned to rob the two Fidelity Cash-in-Transit vehicles on their return from Northern Zululand along the N2 National Road.
2. The general areas on the N2 and the date thereof (Monday 2 October 2006) were predetermined, as the Fidelity vehicles were certain to be conveying substantial amounts of money – being the end of the month and no banking could occur on 1 October 2006 (Sunday) and most probably too little time to do so on 30 September 2006 (Saturday).
3. The participants were chosen and agreed beforehand. That appears, *inter alia* from:
  - a) The striking amplitude of the calls made and received between the accused and accomplices inter se during 1 September 2006 and 1

October 2006, can only relate to the planning, and nothing else, of the robberies of the Fidelity vehicles and the identification of the participants therein, bearing in mind the ordered journeys of the accused and accomplices to Richards Bay; the gathering at the house of accused 24; the two excursions to the Penicuik and Charters scenes of crime and the regrouping thereafter at the house of accused 24.

- b) The gathering of the “Johannesburg accused” in the vicinity of Vosloorust and the ordered expedition to Richards Bay and the constant monitoring by particularly accused 22 as well as the others *inter se* of the position and progress of the vehicles in which the accused and the accomplice Spiwet were travelling to Richards Bay in convoy or, if not, at least coordinately.
  - c) The journey to Richards Bay by the “Durban accused” and the continuous communication between them, particularly by accused 1.
  - d) The communication between the “Johannesburg accused” and the “Durban accused” while both contingents were on their respective journeys to Richards Bay, including the communication in the early hours of the morning on 2 October 2006 between accused 22 (Madawe Cross, Nkweleni) in communication with accused 24 (at his home at Mzingazi) and 26 (at Hillview, Empangeni) on the other.
4. The house of accused 24 at Mzingazi was the pre-arranged destination of the convergent groups from Johannesburg and Durban. Accused 24’s house also served as the base at which the robbers would gather and execute their plans – an operational centre in a sense. Indeed, the house of accused 24 was so

used.

- a) The inordinate number of calls made and received through the Richards Bay Lighthouse tower on 2 October 2006 by the accused were all made from the house of accused 24, which is situated in Mzingazi, which, in turn, receives reception from that tower only.

According to the expert evidence, in point no other tower provides reception to Mzingazi. The sheer number and frequency, together with the times of the communications through the Richards Bay Lighthouse tower, considered in the light of the evidence as a whole, establishes beyond all reasonable doubt that the calls in question emanated from accused 24's house.

- b) There the four "suspect" vehicles were stored from the early hours of the morning (as testified to by Sithole), until they were employed in the robbery and attempted robbery that evening early (as evidenced by their presence at the two primary crime scenes as discovered thereafter).
- c) There the accused concerned gathered in order to plan the robberies. That follows, inasmuch as the two excursions, particularly the second, cannot have taken place without planning the roles that each accused and accomplice had to play in the intended robberies –

Manpower :        The division of the gang had to take place in order to have sufficient manpower at both the primary scenes of the intended robberies. Tasks had to be assigned to individuals and groups eg. drivers of

the ramming vehicles, the vehicles and personnel required for the stopper groups, of the manner in which Msweli, Constable Biyela et al had been confronted by different vehicles and different assailants at the respective scenes of robbery.

**Vehicles :** Starting with the vehicles that Sithole saw driven into accused 24's premises early on the morning of 2 October 2006. Those vehicles were of necessity stored during the day for use during the robberies – which eventuated as testified to by Sithole who found two of that group of vehicles on each of the primary scenes of crime; those vehicles had to be fitted with false number plates – Sithole exposed that when he afterwards inspected the vehicles in question at both the scenes of crime. Sight must not be lost of the false number plates found at accused 24's house two days later;

**Firearms :** The firearms and ammunition thereto had to be available and distributed amongst the stopper groups and the robbers who were to subdue the crew members of the disabled Fidelity vehicles – bearing in mind that a heavy calibre rifle was used in order to penetrate the armoured bin of the Dyna. A rifle of such calibre and capability was found amongst the firearms abandoned at the bus shelter at the the Nseleni turn off from the N2. Some of the firearms from that cache were ballistically linked to the Charters scene of robbery.

**Logistics :** The equipment required to break into or grind open the Fidelity vehicles – bearing in mind the heavy hammers and axes found at



both crime scenes and the large specialized petrol driven angle grinder (used on the Dyna and recovered from accused 24's vehicle on arrest). Bogus Police registration numbers and the Telkom emblem had to be fitted to the Combi and Colt respectively. The reflective jackets seen by the Masango's; the extraordinary number of gloves and headgear found on the accused and in the vehicles in which they were arrested, had to be arranged. Bear in mind here that no fingerprints whatsoever were discovered on any of the numerous vehicles involved.

- d) From there the accused who were involved in it, mounted their reconnaissance mission during the early afternoon of 2 October 2006. From there, and in the case of accused 20 from the Richards Bay Central tower, communications took place with the "scouts"; and that is the place to where the scouts also returned.
- e) From there the assault on the Fidelity vehicles was initiated and executed; After the robbery and attempted robbery took place, all the accused and accomplices again returned to and assembled at accused 24's house.
- f) The money taken in the Charters robbery was divided there – evidenced by the tell-tale exhibits discovered in a toilet at the house of accused 24 and cash and other incriminatory items found on the accused and in the

motor vehicles in which they were arrested.

- g) After the division of the loot the accused collaboratively departed from that house and travelled to the scene of arrest at Mvoti Plaza.

5. The attacks on the cash-in-transit vehicles at Charters and Penicuik did not take place spontaneously. They were meticulously planned and executed with a military-like precision and efficiency. That appears from the following:

- a. The general areas of the intended robberies may well have been chosen beforehand but appear to have been finalised during the reconnaissance excursion undertaken during the early afternoon preceding the robberies.
- b. The contemporaneity of the attacks at Charters and Penicuik was not per chance. It was planned that way for reasons which we mentioned earlier in the Judgment.
- c. The *modus operandi* of the robbers at both scenes of crime was exactly the same. That too, and the advance planning which accompanied it, has been emphasised earlier in the Judgment. However, at the risk of repetition we list below a few focal aspects thereof:
  - The robbers were extremely well informed concerning the movements of the Fidelity vehicles on that route; they obviously knew that the two

vehicles would separate due to the collection stop at Petroport, they knew more or less how far the two Fidelity vehicles would be apart from one another;

- Stolen motor vehicles were acquired beforehand for use during the robberies, for example the ramming of the cash vehicles;
- Stopper groups were deployed on each crime scene to keep the traffic at bay to allow the robberies to proceed without outside interference;
- Firearms and ammunition were obtained and were used identically at both scenes of crime, accompanied by the resolve to use the firearms, fatally if the need arose, as demonstrated by the evidence;
- Equipment suited to the opening of the capsized Hi-Ace and Dyna was brought along – the heavy hammer and axe used on the Hi-Ace and the angle grinder on the Dyna – the availability of those instruments appears to point to the fact that the robbers knew what type of vehicles to expect;
- The remarkable absence of fingerprints on the Fidelity and abandoned motor vehicles – probably explained by the presence of the extraordinary number of gloves found in the vehicles in which the accused were arrested; accused 17 obviously did not keep to the regimen when he left his palm print on one of the smart boxes conveyed in the Hyundai;
- The dumping at the bus shelter at the junction between the N2 and the

road into Nseleni of the traceable firearms used in the robberies and the keeping of the uncompromised arms found in accused 24's motor vehicle on arrest;

- The ferrying away from accused number 24's house of the accused involved, was pre-arranged, particularly the red Combi driven by accused 12 who was on standby at Empangeni until summoned to accused 24's house by accused 7.
- The total absence of any form of luggage in any of the vehicles on arrest, simply confirms that the travels of the accused to Richards Bay from Johannesburg and Durban and also their travels back to Johannesburg and Durban, were not social or lawful business trips; and no doubt conforms to the execution of the robberies and related offences, which would require no personal luggage.

6. In the result, there can be no doubt whatsoever that all the accused and the accomplices, save accused 12, acted collaboratively and concertedly towards the attainment of a single purpose common to all of them to rob the two Fidelity vehicles.

We accordingly hold that the principles of the doctrine of common purpose applies. In the result, the actions of any participant in the execution of the cash-in-transit robberies and the secondary offences to be referred to herebelow, are imputed to all the participants in the common purpose.

## THE POSITION OF THE INDIVIDUAL ACCUSED

### INTRODUCTION

Before applying the facts thus found proved to the question of the individual guilt or innocence of the accused in respect of the offences charged to them, the thrust of Defence counsel's argument in respect of the reach of the doctrine of common purpose, needs to be addressed. Counsel strenuously contended that, in the instance, only those accused, who were proved to have been present at the scene of the commission of the offences, fall within the grasp of the principles of the doctrine of common purpose. Accordingly, so the argument ran, those accused, in the absence of evidence placing them at the scene of crime during the commission thereof, cannot be convicted of the relevant offences.

In support of that contention, counsel relied upon **State v. Mgedezi and Others**, 1989(1) SA 687(A), in which Botha JA stated, with reference to the facts of that case, that the doctrine of common purpose cannot apply, unless it is shown that the accused was present where the offence (in that case, murder) was committed.

With respect to the fervour with which the argument was advanced, that finding, which is undoubtedly correct on the facts before that Court, has no application in the instance, where the doctrine of common purpose is founded upon inferred prior agreement between the accused and others to rob the Fidelity vehicles of their cash in transit. The Court in Mgedezi was dealing with the application of the doctrine of common purpose in the so-called "joining in" cases. In that case the facts were that,

during unrest at the Vaal Reefs Gold Mine, a mob attacked “informers” and stabbed and beat them to death. The accused in that case were seen to be present in the mob, but not seen to have taken part in the assaults. In those circumstances there must be an overt act of association on the part of the accused demonstrating that he had made common purpose with the assailants to kill the deceased. To do that he must be present at the murder scene. The Judgment itself makes it clear that the requirements for the application of the doctrine of common purpose in those circumstances, applied only in the absence of proof of a prior agreement.

In the instance the planning and execution of the robberies of the Fidelity vehicles manifestly arose from a prior agreement to rob the vehicles in question. That such an agreement existed in this case, is evident from the facts considered as a whole, including the mendacity of the accused who testified and the failure to testify on the part of the others.

Again, the inference that such an agreement was extant between the perpetrators, which include the accused, is consistent with all the proven facts and excludes any other reasonable possibility premised upon those facts. Whilst the exact terms of the agreement might not be known, the goal at which it was aimed, namely the robbery of the Fidelity vehicles on 2 October 2006, is established on the evidence beyond all doubt. The planning and execution of the offences charged to the accused, was in turn, aimed at the achievement of that goal.

In the result counsel’s argument that it must be shown that the accused were present at the crime scenes in order for the doctrine of common purpose to apply, fails.

## **THE ROBBERY AND ATTEMPTED ROBBERY AND SECONDARY OFFENCES**

For ease of reference and in the interests of consistency, we propose following the same sequence as earlier in the judgment in respect of the two primary offences and the secondary offences which centre around them.

We remind that at the commencement of the judgment we dealt with the question whether the primary and secondary crimes were indeed committed, in the sense that the unlawful conduct or *actus reus* required to constitute the respective offences, were proved beyond doubt. We concluded that some of the secondary offences charged to the accused were not so proved.

Those related to counts 5, 16, 17 and 19. In respect of the remainder of the charges we held that the State has proved beyond reasonable doubt that the offences were committed and that the only element outstanding in respect of each such offence, was the identity and criminal liability of the perpetrators thereof. That comes up for determination now.

The robbery at Charters was the subject matter of count 9 and the secondary offences clustered around that related to counts 10 & 11 (the attempted murder of the crew of the Hi-Ace); counts 12, 13 & 14 (the attempted murder of policemen Constable Sibiya, Inspector Khoza and Constable Mthembu); counts 1 and 2 (motor vehicle theft);

The attempted robbery at Penicuik was charged under count 6 and the remaining secondary offences were charged under counts 7 and 8 (the attempted murder of the crew of the Dyna); counts 3 and 4 (motor vehicle theft); count 15 (the robbery of

Msweli of this motor vehicle ignition keys); counts 18 and 20 (the hi-jacking of Masango's vehicle and the kidnapping of his daughter); count 21 (the murder of the security officer – Gumede); counts 22 and 23 (the attempted murder of the two security officials who accompanied the deceased, Gumede).

Counts 24 to 31 (charges framed under the Firearms control Act) stands to the close of the judgment.

We deal with the primary and secondary offences at Charters and thereafter with those at Penicuik.

## **COUNT 9 – THE ROBBERY OF THE FIDELITY HI-ACE AT CHARTERS**

As will have been seen from the earlier comprehensive analyses of the cellphone communications relevant to the robbery at Charters, the cellphones of accused 1, 2, 6, 7, 11, 14, 15, 18, 20, 21, 22, 23 and 26 together with accused 9 and 24 were activated at or in the vicinity of the Charters robbery, in a time frame, which in the context of the evidence and relevant circumstances, considered as a whole, leads us to the inescapable conclusion that the mentioned accused committed or were directly complicit in the robbery of the Hi-Ace at Charters on the 2<sup>nd</sup> of October 2006. To that number should be added accused 25, whose role in that robbery is based on a different set of facts which emphatically proves that he took part in that robbery.

As also pointed out earlier, the remainder of the accused that is 3,4,5,8,13,16,17 and 19 were probably at the Penicuik scene of crime, but cannot be placed there as a fact established beyond a reasonable doubt.



However, we hold that all the accused, save accused 12, are, on a conspectus of the evidence shown beyond all reasonable doubt to have been party to the common purpose to commit the robbery at Charters, and, as will be seen herein below, also to commit the robbery at Penicuik, which failed. Accordingly, the actions of those accused who had taken part in that robbery, as aforementioned, are imputed to the accused who were not shown to have been at the Charters scene of crime.

In the result, all the accused, excluding accused 12, are guilty as charged in respect of count 9 (the Charters robbery).

## **THE SECONDARY OFFENCES**

### **Introduction**

- a. In some instances the secondary offences were planned and committed beforehand, as in the case of the theft of motor vehicles and the unlawful acquisition of the firearms and the ammunition thereto, which will be considered shortly.

In the other instances, such as the charges of murder; attempted murder; hi-jacking of Masango's double cab and the abduction of his daughter; and the robbery of Msweli's ignition keys, the offences are tied in and were committed during the execution of the robbery and attempted robbery of the Fidelity motor vehicles.

- b. Before a conviction of any of the accused can properly be returned on any of the secondary charges, certain matters of fact have to be present and proved

beyond reasonable doubt : -

i) that the relevant crimes did in fact occur during the course of the robbery and attempted robbery and were connected thereto. That question was considered in the early part of the judgment, where we held that the majority of those offences, except for the identity and liability of the perpetrators, have been properly proved. In respect of some of the charges we found that the State had failed to prove the relevant crimes. Those were duly noted.

ii & iii) that the secondary offences in question fell within the ambit of the common purpose to rob the Fidelity vehicles and that the requisite mens rea was present in the mind of each accused.

In this regard should be considered : - the methods used to upend the two Fidelity vehicles, namely by crashing into it; the wide use of firearms to subdue the crews and the motorists, who stumbled onto the scene; the willingness to use the firearms to deadly effect in the case of perceived risk of capture or exposure, as experienced by Constable Biyela at Charters and the security guards including the deceased at Penicuik; the need to safely escape from the robbery scenes and, to that end, to unlawfully commandeer a vehicle, in the event of a shortage of “getaway” vehicles, as experienced by the Masango’s at Penicuik.

In our view, all the perpetrators, who in concert with each other, shared the

objective to forcibly rob the Fidelity vehicles by violently crashing into them; by making use of automatic and high powered rifles to subdue and avoid capture; by having to escape from the scenes of crime in “getaway” vehicles, ought to have foreseen with such certainty that the only reasonable inference is that they subjectively did foresee, that during the execution of the robbery by so many armed men a reasonable possibility existed that other offences, peripheral to the robberies, might reasonably occur. By going through with the robberies notwithstanding such appreciation, the perpetrators were reckless as to whether such peripheral crimes became realized in fact.

In the result such offences appear to us to fall within the scope of the common purpose and we so hold.

What remains, is to determine which of the secondary offences fell within the scope of the common purpose. It is, of course, not necessary for the prosecution to prove that the accused foresaw the exact way or detail in which such secondary offences might occur.

Whether each of the accused harboured the necessary *mens rea* required as a pre-requisite element in respect of the secondary offences, is a matter which will be considered, when each of those offences comes up for scrutiny.

### **The secondary offences at Charters**

**The attempted murder of Mnguni, the driver of the Hi-Ace and his crew, Mnqayi – counts 10 and 11.**

To avoid unnecessary repetition, of which there is enough, we refer to pages

22-3 of the judgment in which the relevant facts and our findings there anent appear. We found then and still do, that the attempts on the lives of the complainants have, save for the identity and *mens rea* of the perpetrators, been properly proved as attempted murder, beyond reasonable doubt.

To be sure, the identity of the driver of the vehicle, which smashed into the Hi-Ace is not known. However, we hold that the acts which constitute those offences (attempted murder) fell within the scope and common purpose to rob the Fidelity vehicle. That the driver of the BMW had the requisite *mens rea* in the form of *dolus eventualis* has been established beyond any doubt.

All the accused were party to the common purpose to rob the Hi-Ace and foresaw the risk to life involved in smashing the Fidelity vehicle off the road; And, by continuing to act towards the achievement of the common objective, also entertained the requisite *mens rea*.

In the result all the accused, save accused 12, are guilty as charged in respect of counts 10 and 11.

**The attempted murder of Constable Biyela, Inspector Khoza and Constable Mthembu – counts 12, 13 and 14**

The facts and circumstances relevant to those charges, appear at pp 23 to 27 of the Judgment. As will be seen Constable Biyela, the driver of the marked Police patrol vehicle, stopped behind a “Clover” truck, believing that a road accident had taken place further ahead on the N2. A Mercedes Benz appeared from behind and blocked the Police vehicle in behind the truck. The occupants of the Mercedes came out and immediately without warning,

opened fire on the police with assault rifles. The position of the bullet holes on the Police vehicle, plainly visible on the photographic material placed before us, demonstrate that the Police officials themselves were targeted, rather than their vehicle. Constable Biyela later found bullet holes in the back rest of the driver's seat, where he had sat moments before the shooting erupted. His Police companions fled the moment the attack started, Constable Biyela was the only one to return fire and in the process wounded accused 25. As mentioned in the relevant part of the judgment, there can be no doubt but that the shottists intended to kill the Police officials.

We are also in no doubt but that the accused (save accused 12) were all party to the common purpose to rob the Hi-Ace of its cash and, considering the number of firearms required for the "job", we hold that they all harboured the requisite *mens rea* (in the form of *dolus eventualis*).

Accordingly, all the accused, except accused 12, are guilty as charged in counts 12, 13 and 14.

### **Theft of motor vehicles – counts 1 and 2**

These charges have been dealt with at pages 30 to 31 (count 1) and pages 27 to 30 (count 2). As will be observed, we held that the thefts have been duly proved. However, the basis upon which the perpetrators of the offences in which the motor vehicles were used, are guilty of theft, rests on the principle that theft is a continuing offence. There is no evidence that the perpetrators, who used and thereafter abandoned the stolen vehicles at the scene of the robbery, were themselves the original thieves thereof. Only two possibilities

appear from the facts – the vehicles were either stolen or acquired, knowing that they were stolen. Either way, the perpetrators who used the stolen vehicles at the crime scene, would be guilty of theft of the respective vehicles.

The first of the mentioned possibilities presents no difficulty. The second possibility requires some clarification. That the stolen motor vehicles were used during the execution of the robbery and thereafter dumped, in a manner of speaking, at or near the scene of the robbery, has been established beyond reasonable doubt.

The need for the use of stolen vehicles in those circumstances, is glaringly obvious. The vehicles in question cannot be traced to the perpetrators, who, in addition, left no fingerprints on them. Furthermore, it is quite inconceivable that the perpetrators would have used and jettisoned their own vehicles at the crime scene. That would be too costly and traceable back to them.

In our view the only inference which is consistent with the proven facts and which excludes all other reasonable inferences, is that the vehicles in question were either stolen or acquired for use during the execution of the robbery. As to the latter, there can be no doubt that when the stolen vehicles were acquired, they were known to be stolen. They would, otherwise, have been of no use to the perpetrators, as such vehicles would be traceable back to the person from whom the acquisition was made, who, in turn, could point out the perpetrator. That the vehicles were stolen or acquired, knowing that they were stolen has been established beyond a reasonable doubt.

The principle that theft is a continuing offence, has application in respect of

the second of the aforementioned possibilities. When an object such as a motor vehicle is obtained from the thief or his successor, knowing that it was stolen, the acquirer (*in casu*) has the requisite *animus furandi* and undoubtedly intends to permanently deprive the owner of the vehicle, more so knowing the use to which the vehicle would be put. In the instance the BMW was used to ram the Hi-Ace, while the Mercedes was involved in the attempted murder of the Police officials. (Counts 12, 13 and 14).

The inference is inescapable that all the accused who shared the common purpose to rob the Hi-Ace, knew or subjectively foresaw that stolen motor vehicles were needed for the execution of the robbery and resigned themselves thereto. Accordingly, the actions of the thief or acquirer of the motor vehicles in question are imputed to them also. In the afore going premises we hold that all the accused, save accused 12, are guilty as charged in respect of counts 1 and 2.

### **The attempted robbery at Penicuik – count 6**

The facts and circumstances relating to this charge are fully chronicled at pages 32 to 37 .

As to the identity and criminal liability of the perpetrators, none of the accused was proved beyond doubt to have been present at the primary scene of crime at Penicuik. However, that the offence of attempted robbery occurred was established beyond any doubt.

In the absence of evidence that any of the accused directly took part in or was

present at the scene of the attempted robbery, the Prosecution relies solely on the principles of common purpose to prove that the accused were party to the common design to rob the Dyna on 2 October 2006.

To sustain that contention the State is required to prove beyond reasonable doubt that both the robbery and the attempted robbery were common objectives of the perpetrators of the respective offences. The two offences, the robbery and attempted robbery, occurred contemporaneously, some 31 km apart.

Accordingly the perpetrators of the robbery of the Hi-Ace could not have taken part directly in the attempted robbery of the Dyna and *vice versa*. From that it would follow that the two offences were either unrelated or committed by members of the same gang of perpetrators, who had divided their forces to achieve the same goal, ie the robbery of the Hi-Ace and the Dyna.

That question was thoroughly considered by this court at pages 239 to 253 above. We concluded then that the two primary offences were committed by the same gang, acting in concert to achieve the common objective, namely to rob the Fidelity vehicles at Charters and Penicuik. No countervailing evidence emanated from the accused and, based on the reasoning set out in that part of the judgment - and the evidence considered as a whole - we hold that all the accused (except accused 12) shared in a common purpose to rob the Dyna at Penicuik and that the actions of the perpetrators during that attempted robbery, are imputed to the accused also.

We hold that the accused, excluding accused 12, are guilty as charged under



count 6.

### **The secondary offences at Penicuik**

#### **The attempted murder of the crew of the Dyna – counts 7 and 8.**

The facts and circumstances giving rise to the relevant charges appear on pages 38 to 39 .

There this court found for reasons then noted that the offence of attempted murder had been proved in respect of both counts.

The factual basis remains unchanged. What remains to be determined relates to the identity and liability of the perpetrators.

We have already held that the accused, with the exception of accused 12, shared with the actual perpetrators the common purpose to rob both the Hi-Ace and the Dyna.

In the light of that finding, the question is whether the accused concerned subjectively foresaw that during the execution of the intended robbery of the Dyna it might be smashed off the road in order to immobilize and rob it of the cash; that as a consequence, the crew might be fatally injured; and that the accused continued with the plan to rob the Dyna notwithstanding the risk to the crew.

We hold that the answer to that question is in the affirmative. The *modus operandi* included the use of a ramming vehicle to incapacitate the Dyna. For that matter, so too the use of automatic firearms to subdue the crew or to

flush them out of the armoured Dyna, which carried with it the risk to the lives of the crew. As it is, a bullet of a heavy calibre rifle penetrated into the bin in which Ncwane was locked.

We hold that the accused foresaw the risk and were reckless as to whether such risk could eventuate. Where firearms are an integral part of the robberies, as here, we have no doubt whatsoever that every participant in the common design to rob the Fidelity vehicles, foresaw the risks involved and proceeded with the plan regardless as to whether the risk materialised or not.

We hold that the accused (except accused 12) are guilty as charged in respect of counts 7 and 8.

#### **Motor vehicle thefts – counts 3, 4 and 5**

In considering the facts relevant to these counts in order to determine whether the theft of the vehicles involved, had been proved, we found that count 5 relating to the white BMW that was abandoned by the robbers in the plantation at Penicuik, had not been proved.

However, counts 3 and 4 relating to the two stolen bakkies were proved. The two vehicles that form the subject matter of counts 3 (the Isuzu bakkie) and 4 (the white Nissan bakkie), were in the process of being abandoned in the plantation at Penicuik by the robbers, when the Maxim security vehicle came upon them. The evidence is that the robbers immediately opened fire on the vehicle, resulting in the death of the deceased (count 21), and the attempted murder of the two security officials who accompanied him (counts 22 and 23).

We concluded that, save for the identification of the perpetrators, the theft of

the two bakkies in question, had been properly proved (cf pages –39 to 40 ). As to the reasoning relating to the foresight present in the minds of the perpetrators that stolen vehicles would be used in the execution of the robberies of the Fidelity vehicles and the risk attendant upon the use of some of them to smash the Fidelity vehicle off the road, we invite attention to our reasoning in regard to the motor thefts dealt with under counts 1 and 2, *supra*, which apply in the case of the thefts under consideration.

As it has been proved beyond reasonable doubt that the accused (save accused 12), were all party to the common purpose to rob the Fidelity vehicles; and that the commission of the motor vehicle thefts were seen as germane to the proper execution of the robberies, we hold that the guilt of the accused concerned has been proved beyond reasonable doubt.

Accordingly, we hold that the accused (except accused 12), are guilty as charged in respect of counts 3 and 4 and not guilty in respect of count 5.

**The robbery of Msweli's vehicle ignition keys and the associated kidnapping – counts 15, 16 and 17**

The facts and circumstances upon which these charges are founded appear in pages 42 to 45 of the judgment. As will be observed we there held that, while the robbery of the ignition keys (count 15) was proved beyond reasonable doubt, the alleged kidnappings not.

We are satisfied beyond reasonable doubt that the robbery of the ignition keys at gun point was foreseeable and foreseen and fell within the scope of the

common purpose to rob the Dyna. The purpose of taking the keys and telling the complainants to lie low, was without doubt the function of the stopper group, which the perpetrators of this offence manifestly were part of.

Although the robbery of the keys appears negligible in the greater scheme of things, it is possessed of the requisite elements constituting armed robbery.

On the basis of their common purpose in the Penicuik robbery, we hold that the accused (save accused 12), are all guilty as charged in respect of count 15 but are found not guilty on counts 16 and 17.

**The hi-jacking of Masango's vehicle, his attempted murder and the kidnapping of this daughter, Nothile – counts 18, 19 and 20**

The evidence relating to the incident, which gave rise to these charges, was fully canvassed and appears at pages 45 to 50 of the judgment.

We there held that only the hi-jacking of Masango's vehicle (count 18) and the kidnapping of Nothile (count 20) had properly been proved. In respect of the charge of attempted murder, we held that reasonable doubt remained that the shooting which occurred while Masango fled the scene, was directed at him; and we held that that charge had not been proved.

As the mentioned facts showed beyond doubt that the perpetrators of the attempted robbery at Penicuik robbed Masango of his vehicle and kidnapped his daughter, we held that those offences had been proved beyond reasonable doubt. The reason for the hi-jacking undoubtedly appears to arise from the shortage of "getaway" vehicles experienced by the robbers when the abortive attempt was over. According to Nothile 10 to 12 adult males were

crowded into her father's double cab Ford vehicle. The reason for the kidnapping is less apparent, even obscure.

The robbers initially threw her out of the vehicle and immediately put her back and abducted her, whereafter she was released quite close to where the hi-jacked vehicle was abandoned at a point subsequently plotted by Inspector Kruger as mentioned earlier in the judgment.

Given that we held that the accused had made common purpose with the attempted robbery at Penicuik, the question posed on the relevant facts and circumstances of the hi-jacking and kidnapping is whether these offences were foreseen by the accused involved as a possible occurrence associated with the intended robbery at Penicuik. As a safe "getaway" from the scene of the robbery at its conclusion, is part and parcel of the contemplated robbery, we have no doubt that all the parties to the common purpose to rob the Fidelity vehicles foresaw that a hi-jacking could possibly occur to allow the robbers to escape; and that they were reckless as to the possible occurrence thereof.

However, the same cannot be said about the kidnapping. We entertain some doubt as to the reasonable foreseeability of that event. As a consequence, we find that the kidnapping might, as a reasonably foreseeable possibility, fall outside the mandate of the Penicuik robbers and the scope of the common purpose to rob the Dyna.

In the result we find all the accused (save accused 12) guilty as charged under count 18, but not guilty in respect of the charges in counts 19 and 20.

### **The murder of Gumedde, the Maxim security guard – count 21**

The facts upon which we founded our conclusion that the offence of murder had been proved beyond reasonable doubt appears at pages 50 to 55 of the judgment.

The complicity of all the accused (except accused 12) in the attempted robbery, by virtue of the common purpose they shared with the actual perpetrators, has already been established beyond all doubt.

What remains is to decide whether the fatal shooting, which left the deceased dead, and placed the other guards at risk, was foreseen by the accused concerned as a reasonably possible occurrence during the execution of the intended robbery of the Dyna and that they were reckless as to the eventuation of that possibility.

On a conspectus of the evidence, we have no hesitation in holding that the accused concerned foresaw, as a reasonable possibility the occurrence of such an event occurring; and were at peace with the realisation of that possibility. Where the use of automatic firearms is, as here, part and parcel of the equipment needed for the execution of the robbery and attempted robbery, we have no doubt but that the accused concerned, subjectively foresaw the possibility that the firearms might be used with fatal effect during the execution of the robberies, in which escape afterwards and the evasion of

capture form an integral part; and that they were reckless as to the eventuation of such possibility.

Accordingly, we hold that the accused had the requisite *mens rea*, in the form of *dolus eventualis*, in relation to the murder and attempted murders charged to them. In the result we find all the accused (except accused 12) guilty of murder as charged in count 21.

**The attempted murder of the security guards, Nkabinde and Ntombela – counts 22 and 23**

These charges arise out of the same set of facts as dealt with above in respect of the murder of Gumedde and are visited by the same result.

We find all the accused, save accused 12, guilty as charged under counts 22 and 23.

**CHARGES UNDER THE FIREARMS CONTROL ACT – The unlawful possession of the handguns (counts 24 to 26 inclusive) and the automatic rifles (counts 27 to 29 inclusive) and a variety of ammunition (count 30) and the negligent handling of his handgun by accused 14 (count 31)**

**THE HANDGUNS**

The .38 Rossi with five live rounds of ammunition in it was robbed from the driver of the Fidelity Hi-Ace at Charters and on arrest of the accused recovered from the blue Hyundai. The Z88 and the Luger, both 9mm pistols, fully loaded with live ammunition, were found loose in the white Combi, the one under the driver's seat and the other on a console behind the driver's seat.

A handgun, whether a pistol or a revolver, is by law, required to be secured in a specified safe and, if not, on the possessors person. The law is simply an expression of how a handgun is best secured by the person who has control of it. It seems to us that *in casu*, each of the handguns in question was probably in the physical possession of one of the number of the accused who were in the vehicle in which it was found. When the vehicles were stopped by the police and the accused in them, arrested, the person with a handgun on him would most certainly have discarded it. In the circumstances it is impossible to determine in whose possession the respective handguns had been prior to their recovery from the vehicles in question.

Counsel for the State argued that, applying the principles of common purpose or joint possessor-ship, all the accused were in common possession of the respective handguns, alternatively the unlawful possession of the handguns is imputed to each of the accused under the doctrine of common purpose.

Possession, as contemplated in section 3 of the Firearms Control Act , requires, in my view, proof beyond reasonable doubt that the possessor(s) had the necessary *animus possidendi* in respect of individual handguns and the necessary *detentio* over each i.e. the intention to hold and control such handgun.

In our view there is reason to doubt that each of the accused in the different vehicles had the intention, through the actual possessor of the handgun, to possess or control it as envisaged in section 3 of the Act.

In the circumstances it cannot be said with any degree of certainty that the other accused in the vehicle were aware thereof that the actual possessor had the



handgun with him. In the nature of things a person in possession of a handgun would not carry it in his hand but in all probability will conceal it in his clothes. In the result the charges framed under counts 24, 25 and 26 cannot be sustained and all the accused are found not guilty on those counts.

### **THE AUTOMATIC RIFLES – COUNTS 27, 28 AND 29**

These counts respectively concern the contravention of section 4 of the Act and relate to the unlawful and prohibited possession by the accused of respectively two AK 47's and one LM 6 automatic assault rifles. An automatic firearm possesses the capability of firing continuously until the bullets are spent whilst the trigger is kept depressed. A semi-automatic firearm will fire each time the trigger is pressed and will self-load after each shot. Depending on the appropriate setting, the three rifles in question have both capabilities.

According to the evidence the rifles were observed in the white Combi immediately after the vehicle was stopped by the police at the Mvoti tollgate. They were protruding from the top of an open black bag on one of the seats in the rear of the Combi. The rifles had fully loaded magazines in them and extra loaded magazines in the bag. The Police rendered the rifles safe and left them *in situ*. The firearms were later seized and processed as exhibits and, in due course, displayed to the Court. At the relevant time accused 24 was the driver, accused 9 as front-seat passenger with accused 2, 3, 4, 6, 10 (deceased), 11, 13, 15, 17, 18, 21 and 23 as passengers in the rear of the Combi. It will be recalled that Govender and Captain Mncube had followed this vehicle from the house of accused 24 at Mzingazi to the tollgate where

it was stopped and the accused arrested. There can accordingly, be no doubt but that the rifles had been in the white Combi throughout.

As in the case of the handguns, a contravention of section 4(1) of the Act also turns on the possession of the automatic rifles by the accused. To answer the question whether all the accused, alternatively all 14 of the accused in the white Combi, could be said to have had possession of the rifles at the relevant time, the circumstances which led to the presence of the rifles in the vehicles, needs to be considered.

The use of automatic rifles played a pivotal role in the robbery at Charters and the attempted robbery at Penicuik. In both cases the moment the Fidelity vehicles came to a rest after being capsized, the assailants appeared out of nowhere, as it were, and simultaneously gunfire erupted from the assailants, using rifles. At and around the upended vehicles in both cases the rifle fire was clearly used as a show of force *in terrorem*, presumably to convey to the crew that resistance was futile and potentially fatal. At Penicuik the rifles were only used on the overturned vehicle itself, when the crew refused to open the driver's cab and the bin. So too, in the case of the hi-jacking of Masango's motor vehicle and the kidnapping of his daughter (counts 18 and 20). Aside from pointing the rifles at the Masangos to subdue them the shots fired there were not directed at Masango, but to instill fear. The same pattern manifests in the confrontation of Msweli and the robbery of his car keys (counts 16 and 17). The rifles were pointed at him but no shots were fired.

On the other hand, the rifles were used to deadly effect at Penicuik in the case of the murder of the deceased, Gumede (count 21) and the attempted murder of his co-

security officers (counts 5,22 and 23) , when the robbers appeared to perceive that they were at risk of capture. They opened fire on the security vehicle directly and remorselessly, leaving the deceased dead and the vehicle shot up.

At Charters the Police vehicle driven by Constable Biyela (counts 12, 13 and 14) was blocked in behind the “Clover” truck by the stolen Mercedes Benz, whose occupants immediately released a barrage of rifle fire directed at the occupants of the police vehicle. The police in question were fortunate, indeed, to have escaped unharmed. The bullet damage to the vehicle occurred in a position and elevation that can only mean that the policemen in it were targeted directly and intentionally. For example, Biyela afterwards found bullet holes in the seat back-rest against which he had sat moments before the shots were fired.

Some two weeks after the robberies a batch of rifles was discovered in the bushes behind a bus shelter at the off-ramp from the N2 to Nseleni, where it had apparently been dumped. The batch comprised two AK 47's, one LM 5, two pump-action shotguns, one R1 and one AR 15 , all assault rifles, and a .416 Wetherby hunting rifle. Some of the rifles were linked by expert ballistic evidence, which was received as common cause between the State and the accused, to spent cartridge casings found at the scene of crime at Charters. The Wetherby was also ballistically linked to a cash-in-transit robbery, which occurred at Hammarsdale, KZN. According to the evidence, the Wetherby rifle was the only one capable of penetrating the bin of the Dyna which had been capsized at Penicuik.

It will be recalled that a bullet-hole through the armoured side of the bin, which

penetrated to the inside thereof, was discovered after the attempted robbery was over. The fragments of the bullet were found inside the bin where a crew member was ensconced.

The rifles retrieved from the white Combi were “clean” in that they were not linked with either scene of crime or, for that matter, any other. Yet they were loaded and ready for use in a vehicle with R80 000-00 in notes on the floor and a further R200130-00 on the persons of the accused together with other items found in the vehicle and on the accused which were indisputably linked to the robbery at Charters and probably the attempted robbery at Penicuik, with reference to the angle grinder. The collective way in which the rifles were used at the scenes of crime, evident in the description by the various witnesses and the concentration of spent cartridge casings found, suggests that the rifles were used as tools in the robberies. There is no indication in the evidence or inferences to be drawn from it, that the rifles were individually possessed. In fact everything points the other way. That much is clear from the way in which the “bus shelter rifles” were jettisoned in a batch and the way the three rifles in the Combi were conveyed – all three in one bag, the bag itself being open and the rifles protruding from it. All three rifles were fully loaded and ready for immediate use.

We are in no doubt that, if a single police motor vehicle on ordinary patrol duties had routinely stopped the Combi, the accused would unhesitatingly have used the firearms to avoid arrest. Judging from the way in which Constable Biyela *et al* were fired upon at Charters and the deceased and his fellow security officers at Penicuik, there can be no doubt that the accused would have tried to shoot their way clear. In the latter event it is scarcely conceivable that the individual accused would carefully

have selected his own automatic rifle in order to address the immediate threat and, even if he did so, he would have acted on behalf of himself and his fellow accused in the white Combi. That action would have taken place in execution of the common purpose to rob. A safe “getaway” is as much part of the robbery as the events at the scenes of crime. Besides, the money in the “smart” boxes in the Hyundai still had to be removed from the boxes and shared.

The “clean” rifles were seemingly indispensable tools in robberies of this nature. That would explain why those firearms were not jettisoned in the same way as the batch of firearms behind the bus shelter. In our view the accused, generally, and certainly those in the white Combi, had every reason to retain possession of the three automatic rifles found in the bag for future use, should the opportunity arise.

In the result we hold that the accused in the white Combi were in joint possession of the rifles as envisaged by the prohibition or, whoever was in actual possession of the rifles did so within the ambit of their common purpose to rob and to possess the rifles. Given the position and visibility of the bag with the rifles protruding from it on the seat of the Combi, all the accused in the vehicle will have seen the firearms. After all, there was no ordinary luggage in the vehicle. They were in the vehicle with the firearms in it from the time they left the house of accused number 24 at Mzingazi all the way to the tollgate where they were arrested, about 120 kilometres and a little over one hour apart.

**WERE THE AUTOMATIC RIFLES UNLAWFULLY POSSESSED BY THE ACCUSED JOINTLY OR AS PART OF A COMMON PURPOSE TO POSSESS**

## THEM?

Relevant to the instance section 4(1)(a) of the Firearms Control Act, reads as follows: “*The following firearms and devices are prohibited firearms and may not be possessed or licenced in terms of this Act ... :*

*(a) Any fully automatic firearm.*

*“(b) ... etcetera.”*

When the facts outlined above are collectively considered against the requirements of the doctrine of common purpose, I have no doubt that the possession of the rifles *in casu*, was well within the ambit of the doctrine insofar as those principles are relevant to this case. Furthermore, the related use and possession of the rifles conform to the rationale of the doctrine of common purpose, as stated in ***Thebus***, *supra*, in the excerpt from that Judgment as quoted above. The circumstances simply do not admit of individual and exclusive possession of the rifles as a reasonable possibility.

In my view the proven facts, as referred to above, accommodate also the principles that apply in the legal concept of joint possession by all the accused in the white Combi. In ***S v. Nkosi***, 1998(1) SACR 284(W) 286 the requirements of joint possession in connection with common purpose were stated as follows:

*“The issues which arise in deciding whether the group (and hence the appellant) possessed the guns must be decided with reference to the answer to the question whether the State has established facts from which it can properly be inferred by a*

*Court that :*

*a) The group had the intention (animus) to exercise possession of the guns through the actual detentor and*

*b) The actual detentors had the intention to hold the guns on behalf of the group.*

*Only if both requirements are fulfilled can there be joint possession involving the group as a whole and the detentors, or common purpose between the members of the group to possess all the guns.”*

The element of joint possession as set out in **Nkosi**, supra, has in mind a single “actual detentor” who holds the guns on behalf of the group. *In casu* there appears to have been no such detentor. Anyone in the Combi had unrestricted access to the rifles for use in the case of need – need here being, the need of all. That being the case, all the accused had control over the firearms with the requisite intention, until the journey ended at least.

Counsel for the defence relied strongly on the SCA’s decision in **S v. Mbuli**, 2003(1) SACR 97 (SCA) 115-6. That case concerned the question whether a hand grenade found in a motor vehicle with three occupants in it, in circumstances where it was impossible to determine which individual exercised possession over it. Nugent, J A at page 115-6 dealt with the question as follows:

*“What is prohibited by both those sections is the existence of a state of affairs (i.e.*

*having possession of an armourment, or a firearm, as the case may be) and a conviction will be competent only if that state of affairs is shown to exist. The state of affairs will exist simultaneously in respect of more than one person if they have common (or joint) possession of the offending article. There contravention of the relevant section in those circumstances does not arise from an application of the principles applicable to common purpose (which is concerned with liability for joint activity) but rather from an application of ordinary principles relating to possession. Common purpose and joint possession both require that the parties' concerned share a common state of mind but the nature of that state of mind will differ in each case. Perhaps Olivier J A had in mind the principles of joint possession rather than the doctrine of common purpose, when he said in **S v. Khambule**, 2001(1) SACR 501 (SCA) [at paragraph 10] that there is no reason in principle why a common intention to possess firearms jointly could not be established by inference, but I do not agree with the further suggestion that mere intention on the part of the group to use the weapons for the benefit of them all will suffice for a conviction."*

The learned Judge then proceeded to qualify also the reference in **Nkosi**, *supra*, to "common purpose" in relation to the possession of the firearms dealt with in that case, as "misplaced".

As I understand the reasoning of Nugent, J A in point, the qualification which he placed on the decisions in both **Khambule** and **Nkosi**, is that those Courts in reality were dealing with the question of joint possession of the firearms and not possession as part of a common purpose, as the latter "is concerned with liability for joint activity" and that "a mere intention on the part of the group to use the weapons for



the benefit of all of them”, is insufficient to sustain a finding of common purpose.

The facts in ***Mbuli*** differ fundamentally from the facts *in casu*, as in this case our findings as recorded above in regard to common purpose and joint possession, are not founded on such a narrow compass and are, accordingly distinguishable from the facts outlined in ***Mbuli*** and Nugent, JA’s qualification of the decisions in ***Khambule*** and ***Nkosi***. With regard to the first-mentioned case, a hand grenade, like a handgun, will not be left to roll around loose, but in all probability would be on the person of a single possessor.

The reasoning of this Court as narrated above, cannot, we believe, apply to all the accused, but only to the accused in the white Combi at the relevant time, including accused 24 as driver. In the result we return verdicts of guilty as charged on counts 27, 28 and 29 in respect of accused 2, 3, 4, 6,9, 11, 13, 15, 17, 18, 21, 23 and 24. The remainder of the accused are found not guilty on those counts.

**Count 30 - Unlawfull possession of ammunition to the LM 6 and the two AK47’s.**

All the ammunition under this charge related to ammunition with which the pistols and automatic assault rifles were loaded – in the latter case also loaded magazines in the bag with the assault rifles. As a result of our reasons for holding that the unlawful possessions of the handguns had not been proved, the ammunition in those arms is visited by the same result. As to the ammunition in the AK 47’s, together with the extra loaded magazines and loose AK 47 live rounds in the bag, together with

the ammunition in the LM 6, carry with it the unlawful possession thereof as part of the common purpose, which we have held applicable to the unlawful possession of the assault rifles.

In the result we return a verdict of guilty as charged on count 30 in respect of accused 2, 3, 4, 6, 9, 11, 13, 15, 17, 18, 21, 23 and 24. The remainder of the accused are found not guilty on this count.

**Count 31 – Relates to the unlawful failure by accused 14 to exercise proper control over his licenced 9mm pistol.**

In this matter the facts speak for themselves. Accused 14, it is common cause, left his pistol, a 9mm Luger with serial number 50949 in the cubbyhole of accused 20's BMW, whilst accused 14 himself was travelling in the blue Hyundai when both vehicles were stopped by the Police at Mvoti.

In acting as aforementioned accused 14, unlawfully acted in clear contravention of the provisions of Section 120 (8) (a) of the Firearms Control Act 60 of 2000, which requires that a firearm of that nature be locked into a prescribed safe for safekeeping, when such firearm was not carried on his person or was not under his direct control.

In the result we find accused 14 guilty as charged under count 31.

**The case in respect of accused 12**

As the trial evolved it gradually became clear that his role was restricted to that of providing conveyance for the accused who were arrested in his red Combi, namely

accused 5, 7, 16 and 22, after the offences had been committed. In this regard accused 12's cellphone records read with that of accused 7, makes it clear that accused 7 summoned accused 12 to the house of accused 24 just before all the accused and accomplices, who were gathered there, departed.

The high water mark of the Prosecution's case against accused 12, is that by assisting in the way that he did, he rendered himself guilty as an accessory after the fact of robbery or theft. To unlawfully act as an accessory after the fact, in the sense contended for by the State, requires proof beyond all reasonable doubt that accused 12 provided the transport in question to the accused with full knowledge of the nature of the offence(s) to which he acted as an accessory. No such proof emerged during the evidence as a whole and accused 12 benefits from the resultant doubt.

The fact that he was found to be totally mendacious in his evidence, cannot advance a case, which had not been proved in the first place.

In the result we find accused 12 not guilty of all the charges.

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The Honourable Mr Justice J H Combrink

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The learned Assessor Mr I T Reid