



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No: CC 19/20P

In the matter between:

THE STATE

and

SIPHO WISEMAN SHANGE/MCHUNU

FIRST ACCUSED

STHEMBISO MICHAEL JESUS ZONDI/MBAMBO

SECOND ACCUSED

SIPHOSIHLE EMMANUEL NTOMBELA/GASA

THIRD ACCUSED

JUDGMENT

Mossop AJ:

The charges

[1] There are three accused in this matter. Accused one faces five charges of murder, three counts of attempted murder, a single count of housebreaking to commit robbery with aggravating circumstances and a charge of malicious injury to property. Accused two faces four counts of murder, two counts of attempted murder and a charge of housebreaking with intent to commit robbery with aggravating circumstances. Accused three faces four counts of murder, two counts of attempted murder, a count of housebreaking with intent to commit robbery with aggravating circumstances and a count of contravening section 3 of the Firearms Control Act, 60 of 2000 in that he unlawfully possessed a firearm and a count of contravening section 90 of that Act in that he unlawfully possessed rounds of ammunition. The state alleges that in respect of those offences where all the accused are charged together, being

the murder and attempted murder charges and the housebreaking charge, that they acted in common purpose with each other.

Representation

[2] At trial, the state was represented by Ms Harrison and Ms Nyakatha and the accused were represented by Mr Mbatha. All counsel are sincerely thanked for the efforts that they brought to bear in this matter.

The pleas

[3] At the commencement of the trial, the accused pleaded not guilty to all charges that they faced and each disclosed the basis of their defence. This was done orally and not by way of a written document. In essence, each accused pleaded an alibi, averring that they were not at the respective crime scenes on the day in question. Accused one and three indicated that they were at the Sikhakhane homestead at Sweetwaters on 24 August 2019 and accused two indicated that he was in the Pietermaritzburg central business district drinking with a friend on that day.

[4] The issue of minimum sentences and competent verdicts was traversed by the court with the accused and each indicated that they understood these concepts. Certain formal admissions were thereafter made by the defence which had the effect of substantially shortening the trial.

Overview

[5] While there are a multitude of charges that the accused collectively face, the events that led to those charges being preferred against them essentially occurred on a single day, namely 24 August 2019. The accused are from an area known as Esigodini. In that area there are two rival taxi associations, namely the Edendale Taxi Association and the Esigodini Taxi Association. The associations appear to be rivals over a taxi route and the state alleges that accused one belonged to, or had an association with, the Esigodini Taxi Association and that he set out to kill certain members of, or people associated with, the Edendale Taxi Association. Accused two and three were to assist him in this regard.

The crime scenes

[6] There were multiple crime scenes, five in all. There was potentially a sixth crime scene but the accused were not charged with a murder that occurred in the same general area as the other offences on the night in question. I shall deal with the evidence by crime scene and not necessarily in the sequence in which witnesses testified. Before so doing it is necessary to consider the evidence relating to the prelude to the crimes.

The prelude to the killings

[7] I mention at this juncture that there are a number of members of the Shange and Makhaye families that feature in the narrative of events. I intend referring to those persons by their first name as if each were referred to as either Mr or Ms Shange, it might become confusing as to which person specific reference is being made. No disrespect is intended, all that is intended is a clear understanding of which member of the clans is being referred to. The accused will be referred to by number.

[8] The prelude to the killings occurred on 15 March 2019 and the events of that day were related by the first state witness, Ms Nqobile Shange (Nqobile). She testified that she was the sister of accused one. Technically she is his half-sister. She indicated that on 15 March 2019 she received a telephone call from accused one, who at the time was in custody. In fact, she received a missed call from him. When she realised she had missed his call, she sent him a 'please call me' message and, in due course, he returned her call. During the course of the conversation that then ensued, accused one indicated that he wanted her to pass a message on to her brother, Khumbulani Shange (Khumbulani). He requested Nqobile to inform her brother that he appeared to be on good terms with accused one's enemies. She was to tell him that he was not to socialise with Roshi Maharaj, Dititi Makhaye, Mthunzi Zuma and Jola Phungula. She was to also indicate to these persons that because they were members of the Edendale Taxi Association, and not the Esigodini Taxi Association, when he was released from custody he was going to 'strike their heads'. Nqobile indicated that this was a well-known Zulu phrase that she understood to mean that accused one was going to kill them.

[9] Nqobile conveyed the message to her brother, Khumbulani. As fate would have it, Roshi Maharaj was later killed, but his death is another murder that the accused are not charged with.

[10] In cross examination, it was put to Nqobile that no such telephone conversation had occurred between accused one and herself. Nqobile was resolute that it had occurred. It was further suggested to her that she had been influenced by the members of the Edendale Taxi Association to give incriminating evidence against accused one, an allegation that she confidently rebuffed, indicating that she had no involvement with the taxi associations. I turn now to deal with the first crime scene.

Evidence relating to the first crime scene

[11] The first crime scene is a place identified as the Dinangwe General Dealer (the store). It is owned by Mr Nthuthuko Zondi (Mr Zondi) and sells groceries to the local community. The state alleged that at approximately 17h45 on 24 August 2019, the three accused went to the store and killed Mr Thamsanqua Golden Shange (Golden), Mr Thabani Gumede (Mr Gumede) and Ms Nobuhle Zondi (Ms Zondi) by shooting them. An attempt was made to murder Mr Sanele Makhaye (Sanele) and before being killed, Ms Zondi, the cashier at the store, was robbed of R800 in aggravating circumstances that involved the use of a firearm.

[12] Ms Ntombizakithi Pearl Shange's (Pearl) evidence was led to begin the time line of events on 24 August 2019. Her evidence also provided a full description of the clothing worn by the accused on that day.

[13] Pearl testified that she, too, was a relative of accused one, being his cousin, he being the son of her uncle. She also knew accused two and three very well. She testified that in 2018 she had received a telephone call from accused one. He had stated that he was unhappy with another of the witnesses brothers, Golden. Accused one indicated to Pearl that Golden was too friendly with accused one's enemies and in this regard named Mthunzi Zuma (Mr Zuma), Boy Mthethwa (Mr Mthethwa) and

Roshi Maharaj as his enemies. Maharaj was the Edendale Taxi Association's rank manager.

[14] On 24 August 2019, Pearl and others were at her boyfriend, Andile's, homestead. The three accused arrived at the homestead. Accused one asked the witness for his identity document and all the accused then joined the occupants of the house in having a drink. She described the first accused as being clad in black trousers, a white T shirt and a brown prison warder's jacket. She recalled that the second accused wore a yellow T-shirt but could not remember the colour of his trousers, whilst she described accused three as wearing a maroon T-shirt and khaki coloured trousers. She testified that the three accused left her boyfriend's homestead at 17h30. When asked why she had remembered what each accused was wearing, Pearl stated that she was very excited to see her brother after a long time. She indicated that she had no difficulties with accused one, and had, in fact, visited him whilst he was previously in detention to deliver cosmetics to him. Later that day, the witness received a telephone call to inform her that Golden had been shot and had died.

[15] Under cross-examination from Mr Mbatha, Pearl admitted that she was related to one Thula Shange, who was involved in the taxi industry, he being the owner of four taxis and being associated with the Edendale Taxi Association. The witness said that she was aware that there was a fight over the taxi rank as the Esigodini Taxi Association did not want to share it with the Edendale Taxi Association, but she denied that she was partial to any of one of those associations. Mr Mbatha put it to her that she was, indeed, biased in her evidence and had been influenced to give false evidence against the accused, a fact that the witness denied. It was put to her that the accused did not go to her boyfriend's homestead on 24 August 2019 and their respective alibis were also put to her. She was adamant that they had been at her boyfriend's homestead as she had testified. As to how she was aware of the time that they had left, she said she looked at her cellular telephone to see what the time was it was starting to get dark and she was thinking about returning to her home. It was further disputed that the witness had handed the identity document to accused one on 24 August 2019, it being put that this had occurred on 20 August 2019, soon after

accused one was released from custody. In amplification of this, it was put that accused one had gone to Standard Bank on 21 August 2019 to draw money and had then used his identity document for that purpose. The witness was adamant that she had only given him the identity document on 24 August 2019. Finally, it was again put to the witness that she was colluding with her boyfriend to give false evidence against the accused. It was then put that she had been influenced by her brother, Thula Shange, to give this type of evidence, which she denied. Under questioning from the court, the witness indicated that her boyfriend was not involved in the taxi industry at all.

[16] Sanele was at Dinangwe General Dealer, the store, on 24 August 2019 at approximately 17h45, fifteen minutes after the three accused left Pearl's boyfriend's home. He was in the company of Golden and Mr Mthethwa and was standing on the veranda of the store. He had just purchased some beer and had placed it on the ground when he saw accused one standing outside the veranda holding a firearm. Without saying anything, accused one started firing at Sanele. He was shot in the right arm below the elbow. Sanele fled into the interior of the store and sought refuge in a back storeroom where, inter alia, bread and cooking utensils were stored. He hid behind crates of bread. Also inside that room was Ms Zondi, who served as the shopkeeper and cashier at the store. She took cover under a table in the storeroom and Mr Gumede, who was also taking refuge. Accused one came into the room and found Ms Zondi and took her to the teller machine and took some cash from it. He then returned her to the storeroom and put her under the table where he had initially found her, then shot and killed her. At this point, accused one changed the firearm's magazine. Sanele could see where Mr Gumede was hiding and made a sign to him by putting his finger over his mouth in an effort to get him to remain silent. It did not work. Mr Gumede panicked, jumped up and started screaming and was immediately shot and killed by accused one. He fell on top of the bread crates.

[17] After the shooting of Mr Gumede, Sanele said that accused one said to accused two and three that they should go and look for Mr Mthethwa. Sanele indicated that he never saw accused three, but heard his voice. He stated that he had grown up with

accused three, had schooled with him and had played in the same soccer team with him over the years and consequently knew him very well. He testified that he heard accused three say to accused two that they should not leave behind any liquor, air time or cash.

[18] Sanele testified that the store was well lit with electric lighting. Accused one had been about 2 metres from him when he commenced firing. He stated that accused one wore a brown jacket, similar to those worn by prison warders. After it appeared to him that the accused had left, he emerged from his hiding place and found Golden lying on the veranda, dead. Sanele was later treated at the local hospital for his wounds and discharged the same day.

[19] Under cross examination, Sanele indicated that he had been at the store for less than an hour when the shooting started. He estimated that the time between seeing accused one until he came out of hiding, approximately half an hour had elapsed. He confirmed that at the time he was shocked by what was happening but denied that such shock prevented him from making a proper identification of the persons involved in the shooting spree. It was put to him by Mr Mbatha that he was either mistaken in his identification or that he had been influenced to give false evidence against the accused, which was denied by the witness. It was then suggested to Sanele that he was substituting accused one for the identity of the real shooter. The court clarified whether this was the case with the witness, who denied that it was so. Sanele confirmed that his uncle, Dumisani Makhaye, is involved in the taxi industry but did not know to which association he was affiliated. He stated that after the shooting, his uncle was appointed as a rank manager but he, again, did not know which association's rank he was appointed to manage.

[20] Under questioning from the court, Sanele was asked how he knew that accused three was giving instructions to accused two, because he did not see accused two either. He gave a variety of answers: because accused two and accused three are friends, because they were both arrested but accused two was released from custody first, because he is certain that accused two was there. Ultimately, he stated that he

assumed that accused two was there. Re-examined by the state, the witness said that accused three had said 'Jesus, don't forget the money, air time and beer'. Jesus is one of the names by which accused two is known: indeed, the indictment reflects that name as his third name. The witness then said that he should have indicated that accused three called accused two by his name.

[21] As previously stated, the owner of the store is Mr Zondi. He was on his way to the store at about 18h20 on that day when he received a telephone call reporting that shots had been fired at the store. He arrived there at 18h30. The store was empty. On the veranda, he observed the body of Golden. The lights to the store were on, both within and without. He entered the store calling out his sister's name but received no response. Whilst shouting, he heard a voice coming from under the pool table in the public area of the store. It was Mr Mthethwa. Mr Mthethwa extricated himself from under the pool table. Mr Zondi then made his way to the storeroom where he found the body of Mr Gumede in the storeroom. He noticed that the electric pot used for cooking chips and vetkoek was still on and was boiling. He switched it off by unplugging it. The plug was at floor level and in bending down to pull it out he came upon the body of his sister lying in what he described as 'a hiding position' under a table. Photographs revealed her to be in a crouched position, with her forehead resting on the floor. Mr Zondi did not touch her because after shouting her name he realised that she was dead. Mr Mthethwa, having emerged from under the pool table, then telephoned the South African Police Services (SAPS). Mr Mthethwa mentioned to Mr Zondi the name of one of those involved as being 'Sipho', which is the name of accused one. Mr Zondi confirmed that about R800 was missing from the store.

[22] Mr Mthethwa is the boyfriend of the first state witness, Nqobile. At about 17h45 on 24 August 2019 he was at the store, in the company of Golden. He and Golden had both attended a funeral service at the Mdlalose homestead earlier in the day. At the store, they were joined by Mr Gumede and Sanele. Having purchased some beer, Mr Mthethwa returned to the interior of the store in order to purchase some cigarettes. He could not immediately be attended to as two young girls were then being attended to by the shopkeeper, Ms Zondi. Mr Mthethwa was sitting on the pool table, watching

a television, awaiting his turn to be served when he heard shots being fired outside. He turned and saw three men outside the store, about nine metres away. He confirmed that the lights to the store were on and he recognised accused one and accused two. Both had hand guns and both were firing them. Realising he could not leave the interior of the store, Mr Mthethwa took cover under the pool table with one of the small girls who was being attended to by Ms Zondi. From his position, he had a restricted view of what was going on. The men then came into the shop and he heard another gunshot and then further gunshots. He heard them taking the money and the till falling to the ground.

[23] After the shooting stopped, he saw the owner of the store, Mr Zondi, arrive. He then came out from his hiding place and informed Mr Zondi that accused one had fired shots. Mr Mthethwa went with Mr Zondi to the store room where they came across the bodies of Ms Zondi and Mr Gumede, the former under a table and the latter slumped over some bread crates. Outside the store, Mr Mthethwa saw the body of Golden lying on the veranda. The SAPS were summoned and thereafter Mr Mthethwa testified that he heard a further gunshot in the distance. He testified that accused one was wearing a brown jacket and striped shirt and green pants and accused two wore a black jacket and green pants normally worn by workmen. He was later referred to exhibit F1, photograph 12, and identified therein the brown jacket that he said accused one wore.

[24] Mr Mthethwa testified that he knew accused one very well, having grown up with him, and he said that he knew him 'as I know myself'. He had grown up with accused two as well and had known accused three for about 15 years. Mr Mthethwa indicated that at the time of the shooting he had been unemployed, bore no animosity to the accused and personally had no links to the taxi industry. He indicated that he had knowledge of the message that Nqobile received from accused one in respect of Khumbelane.

[25] Under cross examination, Mr Mthethwa said that he had been shocked by what happened but that this was not the first time that he had endured such an experience. He testified that on the day, his mind had been working well and he immediately

conceived of a plan to hide himself. To a suggestion that he was mistaken in his identification of the culprits, he denied this and in response to being told of the alibis of the accused, he said that perhaps accused one and three had gone to Sweetwaters after the shooting. It was put to him that he was either mistaken or had been improperly influenced to falsely implicate the accused by the members of the SAPS at Edendale and the Edendale Taxi Association. He denied this.

[26] Questioned by the court, Mr Mthethwa indicated that he did not see accused three on the day of the shooting. He consequently never saw him with a firearm or discharging a firearm. The only basis that he could say that accused three was involved was because of things that he had heard subsequent to the shooting. He confirmed that he was in a witness protection plan.

Evidence relating to the second crime scene

[27] The second crime scene was at the Mdlalose homestead. On 24 August 2019 the funeral of the father of the homestead was being held there. During the early evening that day, Mr Mziwakhe Michael Mdlalose (Mr Mdlalose) was shot and killed by an assailant. The state alleged that his killer was accused one. Accused one is the only one of the three accused charged for this offence.

[28] Mr Sphelele Mthunzi Zuma (Mr Zuma) testified that he was presently under witness protection as a consequence of the events of 24 August 2019. He indicated that he knew accused one very well although accused one was older than him. He explained that he had had some dealings with the warring taxi factions when he helped arrange, and spoke at, meetings convened with the purpose of regularising transport to and from Esigodini. According to him, the Edendale Taxi Association had permits for the routes to and from Esigodini whereas the Esigodini Taxi Association did not.

[29] He testified that he attended the funeral held at the Mdlalose homestead. He was in the company of Khumbulani, the brother of Nqobile, the first state witness. At one stage, he was at an outside toilet at the Mdlalose homestead, which was lit by electric light. The homestead also had electric lighting and, in fact, extra lighting had

been installed for the night vigil associated with the funeral held the previous night. Whilst in the toilet he heard gunshots and got off the toilet to see accused one running in the opposite direction from where he was. Accused one was about 20 metres away. Accused one was wearing a brown jacket. He then saw that Mr Mdlalose had fallen to the ground. He estimated that there were two to three shots but could not be certain of the number. He was, however, certain that there was more than one shot fired. Accused one carried a firearm in his right hand. He confirmed that Mr Mdlalose was involved in the taxi industry and was the rank manager for the Edendale Taxi Association.

[30] Regarding his relationship with accused one, Mr Zuma indicated that there was a time when accused one was in detention when he, accused one, telephoned accused one's younger brother. Mr Zuma was at the time of the telephone call at accused one's homestead for a marriage ceremony. During the course of the telephone conversation, accused one inquired from his brother whether Mr Zuma was at their homestead. When told that he was, accused one asked to speak to Mr Zuma. He then proceeded to tell Mr Zuma that he was taking accused one for granted and inquired why he was at accused one's homestead. He stated further that Mr Zuma was the cause of his arrest and that when he got out of detention he would shoot him.

[31] Mr Mbatha denied in cross examination that accused one had spoken to Mr Zuma on the telephone or that he had made any threats to him. It was asked of Mr Zuma if according to him, it was the Edendale Taxi Association's taxis that were coming under attack. He confirmed this and was then asked if he knew who was behind these attacks. Mr Zuma said that he believed the person behind this was one Mluleki Mshengu. He confirmed that he also believed that accused one and two were assisting Mluleki Mshengu. He indicated, however, that he could not be sure about accused one, as he had been in detention. It was then put to him that accused one had not been at the Mdlalose homestead and had not shot Mr Mdlalose and that Mr Zuma had been 'paid to come and give evidence against them'. This was denied. It was also put to Mr Zuma that he was being factional because he was in favour of the

attacks on the Edendale Taxi Association taxis stopping because they were the taxis that possessed the necessary permits.

[32] Regarding his identification of accused one on the evening of 24 August 2019, and regard being had to the fact that accused one was running away from him, Mr Zuma said that he knew accused one very well. They had played soccer together and he claimed that he was able to identify accused one 'in all positions'. Importantly, he went on further and said that they had grown up in a small rural community and there were no new people that had come into the area. If strangers came into the area they would be noticed.

[33] Mr Zuma did, however, concede that approximately three years before the shooting, he had owned a taxi but he would have applied for a permit to operate that taxi under the aegis of the Esigodini Taxi Association and not the Edendale Taxi Association. He had, however, abandoned his interest in the taxi industry. It was put to him that he was biased and that he had been told by the Edendale SAPS and the Edendale Taxi Association to implicate accused one, which was denied by Mr Zuma.

[34] In re-examination, Mr Zuma indicated that the distance between the Mdlalose homestead and the store was not great: one could be heard if one shouted from the homestead to the store.

[35] Mr Nkosinathi Shange (Nkosinathi) is the cousin of accused one. He testified that during 2019, his brother had got married and there was a function at their homestead. He confirmed that Mr Zuma had attended the function. Nkosinathi was helping prepare food when his cellular telephone rang. He did not immediately recognise the number that appeared on his cellular telephone but when he answered he realised that the call was from accused one. During the conversation, accused one asked if Mr Zuma was present at the homestead. When told that he was present, Nkosinathi handed the cellular telephone to Mr Zuma and they had a conversation that he did not hear. At the end of the conversation, Mr Zuma brought the telephone back and left the homestead.

[36] Mr Mbatha asked Nkosinathi whether he was sure that the telephone call had come from accused one. He replied that he was sure. It was put to him that accused one would deny making the call to him. Asked how accused one would have known that Mr Zuma was present, Nkosinathi indicated that he did not know. It was put to him that he had been influenced by Mr Mthethwa and other members of the Edendale Taxi Association to give false evidence, a fact that Nkosinathi denied.

[37] Mr Khumbelane Shange testified that Ngobile, the first state witness, was his cousin. He said that he was not involved in the taxi industry and, in fact, had never even owned a motor vehicle. At approximately 18h15 on 24 August 2019 he was at his neighbour's homestead, being the Mdlalose homestead. He described the Mdlalose homestead as being about five minutes' walk to the store. On that day, Mr Zuma, who he was with, received a telephone call that Roshni Maharaj (who he referred to as 'Christopher') had been shot and killed. Khumbelane indicated that he had initially gone to the Mdlalose homestead because he had heard gunshots in the area and he believed that he would be safer there. Whilst at the Mdlalose homestead, Mr Zuma felt the urge to relieve himself and Khumbelane went with him to the outside toilet, as both were afraid of what was going on. Whilst Mr Zuma entered the toilet, he remained outside, near the toilet door. In response to a question from the court, Khumbelane testified that he believed the shots that he had previously heard were coming from the store. Whilst standing outside the toilet, he observed accused one walk down what he described as a 'passage' outside the Mdlalose home. The electric lights at the homestead were blazing. Because he was standing on the dark side, he believed that accused one did not see him. We understand that to mean that he was standing in the shadows. Accused one had a firearm in his hand and was wearing a brown jacket and dark pants. Accused one proceeded to the house of Mr Mdlalose, watched all the way by Khumbelane. Mr Mdlalose stood up and tried to flee but was felled by a fusillade of bullets. Khumbelane estimated that accused one was approximately 20 metres from him but that accused one and Mr Mdlalose were not far apart when Mr Mdlalose was shot.

[38] Khumbelane confirmed that accused one and he were brothers, indicating that they shared the same father. Khumbelane further confirmed that his sister had given him a message from accused one indicating that he should not be friendly with certain people, who included Mr Zuma and Sifiso Jola Phungula. Accused one had allegedly said that when he got out, if Khumbelane did not listen to him, he would kill all of them one by one and would end up with Khumbelane. Khumbelane was shocked by what he was told and informed his parents and the people that he was admonished to stay away from. Two of the persons named were subsequently killed, namely Roshi Maharaj and Sifiso Jola Phungula. Neither of these deaths were the subject matter of this trial. At the relevant time, Khumbelane said that he was unemployed. He had no links to the taxi industry. He, however, stated that accused one was linked to the taxi industry as a guard that worked for the Emgodini Taxi Association. The deceased, Mr Mdlalose, was a rank manager for the Edendale Taxi Association, as was the deceased Mr Maharaj.

[39] Mr Mbatha in cross examination put it to Khumbelane that there was, indeed, bad blood between him and accused one. This was denied. The reason for the bad blood was that Khumbelane's side of the family believed that accused one wanted to be the sole heir of their common father. In addition, it was believed that Mr Shange's side of the family believed that accused one was jealous that his father had decided to marry Khumbelane's mother. A further cause of complaint put by Mr Mbatha was that when Khumbelane drank liquor he was disrespectful to accused one. All of these propositions were denied by Khumbelane. It was further put that accused one would deny being at the Mdlalose homestead. Khumbelane could not be persuaded to change his evidence regarding what he saw. Khumbelane agreed that Thula Shange was involved in the taxi industry, being affiliated to the Edendale Taxi Association. It was suggested to him by Mr Mbatha that he was part of a bigger conspiracy involving the Edendale Taxi Association and the Edendale SAPS. This was denied. As regards whether he mentioned the alleged threat made by accused one to anyone else, Khumbelane indicated that he had spoken to those that he resided with that were contactable. This had included Nqobile. It was pointed out that Nqobile had testified that there was no family meeting.

[40] Mr Mandlenkosi Royal Makhaye has the nickname 'Dititi' (Dititi). He was unable to tell the court what the nickname meant. He confirmed that before August 2019 he had worked as a taxi driver for Thula Shange. Thula Shange was affiliated to the Edendale-Isigodini Taxi Association. Dititi indicated that he was now a rank marshal for that association. He indicated that he knew accused one as he had grown up with him. He and accused one, together with accused one's cousins, Wandile Shange and Lucky Shelembe, had formed a friendship group. Dititi also knew accused two. They were from the same area but he was not close to accused two. Accused two had, however, dated his sister, Khanyisile Makhaye. Accused three was also known to him from the area and had grown up in front of him. Dititi had served with accused three's father in the community policing forum and accused three called him 'uncle'. In addition, Dititi had a daughter born out of accused three's family. Dititi also indicated that Golden was his brother in law.

[41] On 24 August 2019, Dititi indicated that he attended the funeral at the Mdlalose homestead. He was there the whole day, until 17h00. However, at about 18h20, he found himself at the Bhengu residence. Whilst there he received a telephone call from his niece. As a consequence of that call, he urged those that were present at the Bhengu homestead to proceed with him to the store. No-one, however, was interested in accompanying him, so he set out alone even though he confessed to being 'terrified'. As he approached the store, he received another telephone call. He then called Mr Zuma and asked where he was. On being told that he was at the Mdlalose homestead, Mr Zuma urged Dititi to go there rather than to the store. Dititi accepted this advice and proceeded to the Mdlalose homestead.

[42] He testified further that there is foot path past the Mdlalose homestead. A tent had been erected next to the footpath for the funeral proceedings at the homestead. Affixed to the tent were lights which were on. As Dititi was about to get to the tent, accused one emerged from between the tent and the Mdlalose House. He was carrying a hand gun. He fired a shot and Dititi made a U-turn and fled. Before doing so, he was face to face with accused one. Whilst fleeing, he heard a further three shots

being discharged. He described accused one as wearing dark clothing, having on a brown jacket usually worn by correctional officials. The witness drew the scene on a whiteboard, which was later photographed and marked as exhibit C3. The person who had been shot was Mr Mdlalose, who had been at the front of the dwelling with other people. When the first shot struck Mr Mdlalose, he cried out 'What have I done?'. At this point, Dititi was already fleeing.

[43] Dititi rejected the notion that he could be mistaken in his identification of accused one or that accused one was not at the scene but was at Sweetwaters. He stated that he could never mistake accused one, whom he could recognise even if he was facing away from him. He confirmed that he knew of the threat that had been delivered by accused one to Nqobile and then relayed to Khumbelane. He knew that his name was on the list of people that Khumbelane was required to desist from associating with.

[44] Mr Mbatha asked Dititi whether he had driven a taxi for Thula Shange, which Dititi admitted he had. He indicated that there was but a single taxi association: Edendale Taxi Association and Esigodini Taxi Association allegedly joined together in 2007. He confirmed that he was a rank marshal for the Edendale-Esigodini Taxi Association. He would not be swayed that there two taxi associations. He indicated that he and accused one grew up together and he denied that he was part of a conspiracy that involved the Edendale SAPS and the Edendale Taxi Association.

Evidence relating to the third crime scene

[45] This crime scene apparently involved a charge of attempted murder of one Lloyd Zondi and the malicious damage inflicted to his motor vehicle. Only accused one was charged with this offence. Unfortunately for the State, Lloyd Zondi was reluctant to appear and testify. No evidence was consequently led on these charges and in due course the inevitable outcome of this fact will occur.

Evidence relating to the fourth crime scene

[46] This crime scene was the private residence of Mr Siphesihle Bright Kheswa (Mr Kheswa). The state alleged that he was at home with his girlfriend, Yolanda Azola Mzekandaba (Ms Mzekandaba). It was alleged that the three accused entered the home, demanded that he hand over certain firearms, shot Bright twice and then killed Ms Mzekandaba after Bright fled.

[47] Mr Kheswa is presently in a witness protection scheme as a consequence of events that he observed on 24 August 2019. Around 19h00 on that day, he was at home with his girlfriend, Ms Mzekandaba. He had just returned from a local shop where he had purchased some cigarettes. On his return, he was looking for a light to ignite a cigarette when the three accused came into the residence. The door to his residence was closed but not locked. To enter, the three accused had opened the door. He had known accused one for two years, he had known accused two for many years and had worked with him in a construction company for a period of approximately three years and he was a peer of accused 3 and at one stage they were in the same grade at primary school.

[48] Mr Kheswa stated that accused one had pushed open the door to his house. The electric lights were on in the house. Accused one told him to sit down. His girlfriend remained seated on the sofa. He complied with the instruction of accused one. Accused two was standing in front of the door and accused three stood in front of Mr Kheswa with accused one. Accused one wanted to know from Mr Kheswa where Mr Kheswa's late brother's firearms were. Accused one discharged a shot near Mr Kheswa's foot, but did not hit his foot. The question was repeated by accused one. This time, accused one shot him above the left knee. Accused one and accused three simultaneously asked him where the firearms were. Mr Kheswa repeatedly told them that he did not know. He was then shot again, this time in his groin. Accused one then clicked his tongue and aimed the firearm at Mr Kheswa's head and fired. Mr Kheswa moved his head and the bullet missed. Mr Kheswa leapt to his feet, struggled with accused two at the door and fled out of the house into the night. As he bolted from the house, he heard four gunshots from inside the house. He ran headlong into the night,

passing by two homesteads until he came to a third homestead with an outside building. He entered the outside building and took refuge under a bed. After a while, he emerged and removed his pants and tried to tie off the areas of his body where he had been shot. He also removed his shirt for this purpose.

[49] Having opened the door of the room where he was hiding, he saw a lady in the main building of the homestead come out to throw water away. He attracted her attention and asked her to go to his house to see what was going on there. Her name was Ms Manini Hlatshwayo. Before going to Mr Kheswa's house, she put him in the main building of the homestead. Upon her return from Mr Kheswa's house, Ms Hlatshwayo reported that it appeared that Ms Mzekandaba was dead. Mr Kheswa went back to his house and found Ms Mzekandaba dead on the floor of the house. The SAPS and an ambulance were summoned. Mr Kheswa was taken to hospital in a critical condition. He was hospitalised for a period of three weeks, underwent surgery to a portion of his intestines and had a stoma fitted, which was still in place.

[50] Mr Kheswa admitted that there had been bad blood between his late brother and accused three and his friends. His late brother believed that accused three had been involved in the murder of a friend of his, one Deon Zondi. Mr Kheswa confirmed that he also believed this to be the case. On the night in question, he described accused one as wearing a brown jacket and black jeans, accused two wore a black jacket and accused three wore a black hoody jacket. All three of them were armed. Mr Kheswa described all of the weapons as being hand guns.

[51] Mr Kheswa was cross examined by Mr Mbatha. On behalf of the accused, Mr Mbatha accepted that Mr Kheswa knew all of them. The defence of the accused was put to Mr Kheswa, who rejected the proposition that the accused were never in his house. The accuseds' alibis were disputed by the witness. Mr Kheswa denied that he had been influenced to give the evidence that he gave and stated that he had no connection to the taxi industry.

[52] Ms Zintle Kheswa (Ms Kheswa) is the sister of Mr Kheswa. She resides at their parent's home, which is directly across the street from Mr Kheswa's residence. At

around 19h00 on 24 August 2019, she was taking a bath when she heard a gunshot. She did not initially believe that it came from her brother's home. She went to his house not because of the gunshot, but because of the fact that she needed money for bread. She knocked on the kitchen door. She heard a noise inside the dwelling and then a gunshot went off. The noise that she heard was people arguing. She moved her position to the corner of the house, then heard another gunshot and the sound of people fighting inside the dwelling. She then ran to an incomplete mud house on the property and hid there. She heard footsteps of people chasing someone. She confirmed that it was dark, but stated that there was a street light at her home that cast light onto the road. The street light is depicted in photographs 9, 11 and 12 in the photograph album E3 and was identified by Ms Kheswa. Whilst she was hiding in the half complete structure, Ms Kheswa heard a firearm go off. Some people moved past her hiding spot and went to stand on the road. From the light of the street light she was able to identify them as the three accused in this matter. She testified that she had known accused one for about five to ten years, she knew accused two as he had been involved in a love relationship with a lady who lived near her home and estimated that she had known him for ten years and she knew accused three for between five and ten years as his father was a security guard at her school and accused three attended the school.

[53] Ms Kheswa testified further that after the accused stood in the road, they moved off down a road that leads to Bobonono. It is worth mentioning that the place that accused one and three indicated that they were at when explaining their alibis was at Bobonono. Ms Kheswa indicated that accused one wore a brown jacket like a prison warder's jacket. Accused two wore black clothing and a hat. She did not see what accused three wore. She confirmed to the court that she had not seen her brother running from his house, but she had heard the sound of someone being chased. She also confirmed going into the home and seeing Ms Mzekandaba dead on the floor, bleeding from her nose and mouth.

[54] Under cross examination, Ms Kheswa admitted that she could only identify the men when they stood on the road. Given that this was a very frightening incident, it was put to her by Mr Mbatha that it was quite unlikely that Ms Kheswa could make a

positive identification of the people involved. This was disputed by Ms Kheswa. The accused's alibi was put to Ms Kheswa, but she said that the accused were at her brother's house.

Evidence relating to the fifth crime scene

[55] This crime scene is located at a homestead referred to as 'the Sikhakhane homestead'. This is the place at which the three accused were ultimately arrested. The arrests occurred on 25 August 2019, the day after all the shootings to which reference has already been made. When all the accused were arrested, accused two was found at the Sikhakhane homestead to be in possession of an unlicensed firearm and three live rounds of ammunition.

[56] The owner of the homestead, Mr Nkosiyezwe Cyprian Sikhakhane (Mr Sikhakhane) confirmed that his home is at Sweetwaters, which is also known as Bobonono. Residing at his homestead is his daughter and her children and a male known as Scelo. Asked to comment on whether he knew any of the accused, he said he only knew accused three. He came to know accused three when he came to the Sikhakhane homestead with his late son Gift Mntandeni Sikhakhane (Gift). He confirmed that he did not see any of the accused at his homestead over the period 22 August 2019 to 25 August 2019. On 25 August 2019, a Sunday, he testified that he awoke and left home at 07h00 to attend a meeting with the local induna. While still at the meeting, he received a telephone call that the SAPS were at his homestead. He hastened home and found a lot of policemen at his home. His son, Gift, was among those that were arrested, but he was later released. He spoke to the police and introduced himself as the head of the household. He was told the police had found people at his homestead that had killed certain people. His home was searched and he confirmed that certain items in photograph 12 of photo album F2 were seized at his homestead. The photograph depicts some clothing lying on the floor. Principle amongst the clothing items depicted is a brown jacket. Mr Sikhakhane testified that he did not see the accused prior to leaving for his meeting with the induna. As to whether they may have been there at his home before his departure, he said that it was possible as his home is quite big and there are four structures on his property.

However, if someone was staying at his home, he would expect them to seek him out and report that they would be staying. He received no such report. Mr Sikhakhane clearly did not know which of the accused was accused one and which was accused two. He had to ask which of the accused was accused one, before confirming that he did not know either accused one or accused two.

[57] Mr Mbatha indicated to Mr Sikhakhane that accused one had been staying at Mr Sikhakhane's homestead since 20 August 2019. Mr Sikhakhane had no knowledge of this. It was put to him that Mr Sikhakhane's late son, Gift, had taken accused one in, as accused one had been in fear of his life when he was released from prison. Mr Sikhakhane stated that he knew nothing of this. It was further put to him that accused one invited his girlfriend to come and stay at the Sikhakhane homestead as well. They had stayed in Gift's room. Mr Mbatha disputed that Mr Sikhakhane did not know accused one, it being put that accused one had spoken to him and Mr Sikhakhane was aware that accused one's girlfriend was on the premises. This was denied by Mr Sikhakhane. It was put to him that he had been influenced to give the evidence that he gave by the Edendale SAPS. Mr Sikhakhane stated in reply that he did not know a single member of the Edendale SAPS. Mr Mbatha stated that accused two had arrived at the homestead on the morning of his arrest whereas accused three would say that he had been staying at the Sikhakhane homestead for three months. This was denied but Mr Sikhakhane did acknowledge that accused three had come home with Gift immediately after the death of Mr Sikhakhane's wife and had helped get the homestead spruced up for the funeral by doing some painting, changing some locks and helping with the installation of some electricity cables. Mr Sikhakhane was not aware of accused three being at his homestead beyond his wife's funeral. As far as he was concerned, he left after the funeral.

[58] Significantly, Mr Mbatha put it to Mr Sikhakhane that he was supposed to be accused one's alibi witness. This was denied by Mr Sikhakhane. The version was developed further when it was put that at a lower court appearance, Mr Sikhakhane had said he would support accused one's alibi. This was vehemently denied by Mr Sikhakhane who said that he never went to the lower court. Mr Sikhakhane said that

he was unemployed and would consequently ordinarily be at home, unless he picked up some piece work. He said that he had picked up some piece work over the period 22 to 25 August 2019.

[59] Eshnanith Mahadave is a warrant officer in the SAPS (WO Mahadave) with 30 years' service. He, together with other SAPS members, was involved in the arrest of the three accused three. After receiving information, they proceeded to the Sikhakhane homestead at about noon on 25 August 2019. The homestead was pointed out by an informer. On arrival, he and Sergeant Nkosi got out of the vehicle they were travelling in and noticed some males sitting outside a dwelling. One of them moved away suddenly and Sgt Nkosi set off after him. In the suspect's possession was found a 9mm Norinco firearm with no discernible serial number. It had a magazine in place with three live rounds. A search of the suspect's pockets revealed an empty magazine. The suspect was asked for a licence to possess the firearm but did not have one. He was arrested.

[60] WO Mahadave indicated that the information that they received indicated that accused two was at the Sikhakhane homestead and it was specifically for him that they were looking. Initially, WO Mahadave pointed out accused one as being accused two. To be fair to him, all the accused were wearing substantial face masks while seated in the dock because of the COVID-19 pandemic. He testified that the person that they were looking for, and who possessed the firearm and ammunition, was named Sibusiso Jesus Zondi. That was not accused one, but was accused two. The warrant officer indicated that accused two was washing his takkies when the police arrived at the Sikhakhane residence. A search of the premises revealed the clothing previously referred to, and photographs were taken thereof.

[61] The second accused, through Mr Mbatha, denied that he ran away or that he possessed the firearm and ammunition. WO Mahadave indicated further in cross examination that the firearm was found in the waistband of accused two's trousers and the empty magazine was in his trouser pocket. The witness confirmed that accused two had a smell of alcohol about him. Mr Mbatha put it to WO Mahadave that he was part of the conspiracy concocted against him by the Edendale SAPS. The witness

retorted that he was not part of any conspiracy and clarified for the court that he was not stationed at Edendale but rather at Oribi.

[62] The final witness for the state was Colonel Bhekinkosi Bongani Ntshangase (Colonel Ntshangase). He is a detective based at the Organised Crime Unit in Durban and was the investigating officer in all the cases. His evidence served two purposes: he explained that besides his best endeavours he could not get Lloyd Zondi to court to testify about events at the third crime scene and he drew a sketch on a whiteboard that was later photographed and marked as exhibit A2. To describe the sketch, it is necessary to imagine a capital letter 'T' that has fallen from a vertical position to its right so the crossbar at the top of the letter is now on the right, with the body of the letter extending to the left. All of the crime scenes can be plotted on the letter 'T', save for the second one and the fifth one. The first crime scene, that at the store, may be found at the base of the letter 'T'. Away from the letter 'T' and above and to the right of crime scene one, is crime scene two at the Mdlalose homestead. Crime scene three, being that involving Lloyd Zondi, is back on the 'T', roughly half way up the long portion thereof. Crime scene four is at the end of the left side of the crossbar. The purpose behind this evidence was to bring some perspective to the locations of the various crime scenes.

[63] The state closed its case after the evidence of Colonel Ntshangase, who was not cross examined by the defence.

The evidence of accused one

[64] Accused one is currently 45 years of age. On 15 March 2019, he was in prison, that being the date when Nqobile alleged she had been telephoned by accused one and told to pass on his message to Khumbulani. He testified that he had only been released on 20 August 2019. Accused one denied that he had made that telephone call. He indicated that he had been implicated in the matter because of the dispute between the two taxi associations. He indicated that from what he could see, there was a conspiracy against him brought by people unknown to him in respect of which he did not even know their names. He testified further that accused three is not

involved in the taxi industry but insofar as accused two and himself were concerned, they were the only two alive of the Esigodini Taxi Association, the others all having been shot.

[65] Accused one testified that on being released from prison on 20 August 2019, he had proceeded to the Ncwabe homestead where he hoped to see one Andile. He ultimately found him and sat chatting with him for a while. He was advised that it would not be safe for him in the area but he did not have anywhere else to go. After two telephone calls with one Zonke Ngcobo, he was advised that her husband was on the road from Nqutu, and that he should wait for him and he would take accused one to where he resides. While so waiting, Pearl arrived and returned his identity document and bank card to him. It transpired that Zonke's husband was Gift Sikhakhane and he duly uplifted accused one and took him to the Sikhakhane homestead. Upon his arrival there, he found accused three. He met Mr Sikhakhane senior who shook his hand and conversed with him. The next day, he left the Sikhakhane residence with Gift and proceeded to the Standard Bank where he tried to draw money. He returned, via Napierville, with Gift to the Sikhakhane homestead where he remained until he was arrested, save for short excursions to a nearby tuck shop.

[66] Every witness that had placed accused one at any of the crime scenes was dismissed by him with the same epithet, namely that they were all 'blatant liars'

[67] Accused one was cross examined by Ms Harrison. Asked about his relationship with Golden, he said that he had no problem with him. Asked what association Golden was affiliated to, accused one said that he would not answer that question. When the court required him to answer it, his initial response was that he did not know but surmised that perhaps he was not a member of any association. The people that Golden was close to were members of the Edendale Taxi Association. He ultimately agreed that Golden was on a different side to the side he was on. He gave the same type of answer when asked about which taxi association Mr Gumede was associated with. He could not bring himself to state that Mr Gumede was associated with the

Edendale Taxi Association, but acknowledged that the people Mr Gumede lived with were associated with that association.

[68] Accused one agreed that Sanele knew him very well and that the area where they all live is very small. He indicated that accused two was involved with the Esigodini Taxi Association and that he knew him. He also admitted that accused three could favour the Esigodini Taxi Association although accused three had no direct ties to that association. He confirmed that he had made no plans to meet up with accused two when they had both been released on 20 August 2019, nor had he made any such plans with accused three. It was a coincidence that they all ultimately found themselves at the Sikhakhane homestead.

[69] Accused one mentioned further that he had heard that accused three had been hospitalised after an assault by guards of the Edendale Taxi Association. This had been instigated by Mr Zuma and Dititi. He again repeated his belief that the Edendale Taxi Association were involved in laying false charges against him. Why they should do this, he did not know. But he stated that the Plessislaer SAPS were biased against him and that the conspiracy had been cooked up by the community, the taxi association and the SAPS. Explaining why he never ventured out of the room he occupied at the Sikhakhane residence, accused one rather coyly indicated that he was 'shy'. Thus accused three had brought him the food and drink that he needed over the period of his residency at the Sikhakhane homestead. Accused one admitted that the takkies in one of the photos were his. He indicated further that accused two had come to the Sikhakhane residence between 07h30 and 08h00 on the day that they were all arrested. He confirmed further that accused two, after arriving, had washed his shoes at the Sikhakhane residence.

[70] Accused one indicated that there were people at the Sikhakhane homestead who could verify that he had been there at the time of the offences for which he had been charged. Mr Mbatha indicated that there may be some difficulty in getting the witnesses to court and the court accordingly requested the state to assist in this regard. By virtue of the court calendar and the scheduled appearance of former

president Zuma at the court and the occurrence of a long weekend, accused one had four days to arrange for his witnesses attendance. Because the alibi of accused one and that of accused two was based on different facts, accused one's case was provisionally closed and the court proceeded to hear the evidence of accused two with the clear understanding that accused one's case would be reopened once the witnesses he wished to call appeared.

[71] Accused two, Sithembiso Michael Zondi, who is also known as 'Jesus', testified in his defence. He is 43 years of age. He testified that on 24 August 2019, he was in Pietermaritzburg from about 17h00 onwards. He was in the company of a friend, Sanele Khanyile (Mr Khanyile). He had met Mr Khanyile at an establishment known as 'Frasers' in East Street. They had sat drinking there until the establishment closed at about 22h00 to 24h00 and had then moved uptown to a place called 'Skunkani', which is apparently near the train station. They consumed more alcohol there until sunrise. Accused two then telephoned Gift, who indicated that he was at his parental home, namely the Sikhakhane homestead. Notwithstanding that accused two had spent the night drinking, he told Gift that he was thirsty. Gift said that he should come to the Sikhakhane homestead. Accused two agreed and took transport there, arriving at between 08h00 and 08h30. At the Sikhakhane homestead, he found Gift and accused one and three. He testified that he thought that accused one was still in prison. Because he was still thirsty, he took out what liquor he had and they continued drinking. Photographs taken by the SAPS depict two beer bottle lying on the grass outside one of the dwellings at the Sikhakhane homestead. Accused one was inside the house with his girlfriend and accused three was in the toilet when he saw the SAPS approaching. At that stage he was sitting outside with Gift. The SAPS searched everyone and his cellular telephone was taken by the police and it is apparently still with them. Nothing incriminating was found on his person when he was searched and he denied possessing the firearm and magazine that WO Mahadave claimed was found upon him. He did not see a firearm either. As to why a number of witnesses had implicated him in the events of 24 August 2019, he variously attributed this to a witness 'adding on', meaning including him in the events or he attributed it to the dispute between the two taxi associations. He indicated that he worked for the Esigodini Taxi

Association as a rank manager. He and accused one were being falsely implicated because they were the only two people 'left behind', meaning the only two people left alive.

[72] Accused two was cross examined by Ms Nyakatha. He was asked why he had washed his takkies at the Sikhakhane homestead, it being suggested that this was a rather strange thing to do particularly in view of the fact that he had never been to the homestead before. He indicated that he had done so because he had been released from prison without washing them. He indicated that he had arrived at between 08h00 and 08h30. He was asked why he had not washed them after his release from prison, which occurred on 20 August 2019. He could not give a reason but seemed to indicate that it had something to do with the fact that he could not stay at home. He testified that when the police arrived, they had wanted to know which person was Gift. It was pointed out that WO Mahadave had specifically testified that they were looking for him and the policeman's evidence had not been challenged with the suggestion that Gift had actually been their target.

[73] On the question of the firearm, ammunition and magazine allegedly found in his possession by Sgt Nkosi, accused two was asked whether it was just a coincidence that the firearm was positively linked to the shooting at the store. His response was that he could not deny that. He could provide no reason why WO Mahadave would implicate him in the matter. As regards events at the store, he confirmed that Sanele and him were on good terms. Asked why Sanele would implicate him, accused one became extremely evasive and had to be directed to answer the question. Accused one was challenged on whether he was a rank manager for the Esigodini Taxi Association as a previous state witness had indicated that he was a guard for that association. Accused one indicated that he did not understand what guarding meant. As to why the evidence that identified him as a guard was not challenged, accused one indicated that he would not challenge that evidence 'until I could speak for myself'.

[74] Challenged with the evidence of Mr Mthethwa who said that he saw accused two at the gate to the store, accused two again became evasive and had to be

requested to answer the question. Accused one ultimately conceded that he had no previous problems with Mr Mthethwa and could only ascribe his evidence to the fact that he was associated with the Esigodini Taxi Association. Ms Nyakatha drew accused two's attention to the fact that Mr Mthethwa at crime scene one and Mr Kheswa and Ms Kheswa at crime scene four all described him as wearing a black jacket. Accused two denied that he had been so attired. Asked whether it was a coincidence that many of the state witnesses identified the three accused as being involved in the various crimes and that when arrested all three were together, accused two indicated that he had not been with the other accused. That he was mentioned as being a participant in the crimes was part of a conspiracy against him. Asked if the Kheswas were part of that conspiracy, accused one said that they were not. He could not provide an answer as to why they then implicated him. Confronted with the evidence of Mr Kheswa that he struggled with accused two at the door of his home, accused two's only response was that Mr Kheswa was mistaken. Ms Kheswa gave evidence implicating accused one after she was schooled on what to say, according to accused two.

[75] As regards where he was before leaving for Pietermaritzburg for his drinking session with Mr Khanyile, accused two had indicated that he had left from his girlfriend's home. Asked further whether she would be called to confirm this, accused one said that she would not be as the police had told his girlfriend never to speak to him again. As to whether the Plessislaer police station was involved in the conspiracy against him accused two said that they were not. Accused one indicated that he could not call Mr Khanyile to testify as he was now dead, having died when accused two was in prison.

[76] The court inquired of accused two whether the police had brought anything to the Sikhakhane residence on 25 August 2019. Accused two said that he saw nothing in this regard. He was then asked how the clothing that was discovered there, which was depicted in several photographs and which included a brown jacket and a black jacket, came to be at that residence. Accused two could provide no answer. In his testimony, accused two had indicated that there were two rank managers in Isigodini

and two at the rank in town. The court asked if he could indicate why he was being implicated in events and not the rank managers in town if the conspiracy existed and had been brought about by the rivalry between taxi associations. Again, no meaningful answer was forthcoming.

[77] The final accused, accused three, is Siphosihle Emmanuel Gasa. He also elected to give evidence in his defence and had no witnesses to call. He testified that he knew accused one and accused two. He indicated that he had no ties to the taxi industry. He repeated the version that had been put to the state witnesses, namely that he had not been at any of the crime scenes but had been at the Sikhakhane homestead at Sweetwaters. He mentioned that others had been there with him, namely accused one, Gift (now deceased), the two sisters of the homestead, Mr Sikhakhane and accused one's girlfriend. None of these people were prepared to testify in support of accused three's alibi. Mr Sikhakhane had earlier testified that he had not seen accused three at his homestead and accused three's explanation for that was that Mr Sikhakhane was trying to protect the integrity of his homestead. He denied leaving the Sikhakhane homestead save to go to a nearby tuck shop.

[78] As to the evidence of Sanele that he had recognised the voice of accused three at the store, accused three stated that this was unlikely if one was traumatised and shocked. He also denied the evidence of Mr Kheswa that he had been in his home when he was shot by accused one and his girlfriend subsequently murdered. As to why he was implicated in this way, he indicated that he remembered that he had been a suspect in the murder of one Bandile Zondi, who was a friend of Mr Kheswa's late brother. He reasoned that Mr Kheswa held a grudge against him as a consequence and further rationalised that this was why he had been implicated by the Kheswas. He admitted, however, that he had no tangible evidence of this but was merely speculating.

[79] Ms Nyakatha cross examined accused three. He had mentioned that he had previously opened a case against Mr Zuma and others but that his complaint had not been properly investigated. He disclosed that this was a case of assault. This had not been put to Mr Zuma and accused three was asked why this had not been done. It

was pointed out that Mr Zuma had never mentioned accused three in his evidence. If the case against him was a fabrication and Mr Zuma had been part of the conspiracy against him, he was asked why Mr Zuma had not mentioned his name and implicated him in the crime at scene two, the Mdlalose homestead. His response was that Mr Zuma had not mentioned him but the community regarded him, accused three, as a bad man. He confirmed that there was no bad blood with Mr Kheswa but stated that he did not know Ms Kheswa and saw her for the first time in court. It was pointed out by Ms Nyakatha that Ms Kheswa had testified that she knew him very well, a fact that had not been denied. He agreed that this had not been denied and ultimately stated that he had forgotten to remind his attorney that he did not know her.

[80] Accused three confirmed that he knew Mr Kheswa but denied that he had been in his home on 24 August 2019. He could only explain Mr Kheswa's conduct in identifying him as one of the participants in the crime committed at his home on the basis that he held a grudge against him due to the rumours surrounding the death of Bandile Zondi. Accused three indicated that while Mr Kheswa may not have planned his denouement of him, he had taken the opportunity to do so when the events complained of occurred. He was asked by the court how he could insist that his version of the grudge held by Mr Kheswa was true in light of the fact that, on his own version, he had no facts to support that theory. The question was repeated but the answer was difficult to comprehend. The best that he could state was that he interpreted Mt Kheswa's evidence as an indication that he bore a grudge towards him. What that interpretation was based upon was not revealed.

[81] Accused three denied that he had been at the store on 24 August 2019. He stated that there was no bad blood between him and Sanele and he could not explain why Sanele had implicated him in the events there. He estimated the distance between the home of Andile, the boyfriend of Pearl, to the store as being 300 metres, a distance that he estimated it would take 15 minutes to walk. He denied that he had been at that homestead on 24 August 2019. He further confirmed that there was no bad blood between him and Pearl either and he could likewise not explain why she had falsely stated that he had been at Andile's home. He was taxed over the fact that he gave a

false surname when arrested and was asked why he had done so. The answer provided was lengthy and complicated but appeared to be that a daughter in law at the Sikhakhane residence, whose surname is Ngcobo, had taken to calling him her son and had caused him to believe that he was an Ngcobo. When asked by the police what his surname was, he replied 'Ngcobo' because of this experience and because it is a popular name in the area and it was the first name that had come to mind.

[82] Finally, in response to his theory of there being a conspiracy hatched against him, the court asked him whether he knew the names of the persons involved in the conspiracy and chose not to reveal them or he could not reveal the names because he did not know them. He replied that it was the former. He indicated that he would not reveal the names unless he was given a guarantee of his safety.

[83] That constituted the evidence heard by the court.

The law

[84] It is trite that the state is required to establish the guilt of an accused person beyond reasonable doubt. An accused person is entitled to be acquitted if there is a reasonable possibility that his version may be true, a fact stressed by Mr Mbatha in his argument at the end of the evidence. In dealing with the relationship between these two concepts, the court in *In S v van der Meyden*,¹ explained that:

'These are not separate and independent tests, but the expression of the same test when viewed from opposite perspectives. In order to convict, the evidence must establish the guilt of the accused beyond reasonable doubt, which will be so only if there is at the same time no reasonable possibility that an innocent explanation which has been put forward might be true. The two are inseparable, each being the logical corollary of the other. In whichever form the test is expressed, it must be satisfied upon a consideration of all the evidence. A court does not look at the evidence implicating the accused in isolation in order to determine whether there is proof beyond reasonable doubt, and so too does it not look at the exculpatory evidence in isolation in order to determine whether it is reasonably possible that it might be true.'

[85] It is acceptable in evaluating the evidence in its totality to consider the inherent

¹ 1999 (2) SACR 79 (W) at 80.

probabilities that exist. In *S v Chabalala*,²¹ Heher AJA explained the correct approach as follows:

'The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt. The result may prove that one scrap of evidence or one defect in the case for either party (such as the failure to call a material witness concerning an identity parade) was decisive but that can only be an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch on to one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence. Once that approach is applied to the evidence in the present matter the solution becomes clear.'

[86] On counts 1 to 5 and counts 7 to 9, the state indicated that it relies on the doctrine of common purpose to seek the conviction of the accused. Reliance on common purpose also has its own requirements which must be proved to exist before a court can return a guilty verdict based on that doctrine. Before the state can rely on the doctrine of common purpose it must first prove the commission of the offence against the accused person. Liability based on common purpose can only be based on one of two possibilities which are liability based on prior agreement and liability based on active association. The leading cases in this regard are *S v Safatsa and Others* 1988 (1) SA 868 (A) and *S v Mgedezi and Others* 1989 (1) SA 687 (A). In *S v Safatsa supra* Botha JA stated the requirements for liability on common purpose as follows:

- '(a) that the accused person must have been present at the scene of the crime when the offence was committed;
- (b) that he or she must have been aware of the commission of the offences;
- (c) that he or she must have intended to make common cause with the person or persons committing the offence;
- (d) that he or she must have manifested his sharing of common purpose by himself or herself performing some act of association with the conduct of others;
- (e) that the accused must have had the requisite *mens rea* to commit the offences.'

[87] The following definition of common purpose appears in Jonathan Burchell – *Principles of Criminal Law*, 3rd ed (2008) at 574 and reads:

‘Where two or more people agree to commit a crime or actively associate in a joint unlawful enterprise each will be responsible for the specific criminal conduct committed by one of their number which falls within their common design.’

[88] In *S v Mzwempi* 2011 (2) SACR 227 (ECM) Alkema J analysed the requirements of common purpose at 248-249 para [51]-[53] as follows:

‘The definition embodies two elements or stages. The first stage refers to the conditions which must be fulfilled before the principle of imputation of conduct can operate; and the second stage refers to the scope and extent of imputing the conduct of one party to the others. The second stage, to repeat, only comes into operation when the conditions of the first stage are fulfilled.

The conditions in the first stage which trigger the principle of imputation are either a prior agreement or an active association in the joint venture. Any one of these conditions must exist.

The second stage of the definition imputes conduct to an accused which “falls with the common design or purpose”. Conduct which falls with the common purpose seems to be any or all conduct in the execution of the common design or purpose. In the case of a prior agreement, therefore, all the parties thereto will be held liable for the act of any one of their members which either falls within the common design or is executed in the course of the implementation of the agreement (provided, however, the other definitional requirements such as *dolus* are also present).”

[89] All three accused rely on an alibi defence to the multiple charges that they face. Accused one and three’s alibi is identical and they allege that they were both at the Sikhakhane homestead at the relevant time. Accused two alleges that he was drinking in the Pietermaritzburg CBD at the relevant time with a friend, since deceased.

[90] It is also trite that an accused bears no onus of proof to establish the truthfulness of an alibi defence and, at best, the defence carries only a temporary onus of rebuttal depending upon the quality of the State’s incriminating evidence.² Once a

² *S v Majjani en Andere* 1999 1 SACR 204 (O) at 209G-210B.

court accepts that an alibi defence might reasonably be true it follows that the prosecution's evidence is mistaken or false.³ The alibi should not be considered in isolation from other evidence. The correct approach is to consider the alibi in the light of the totality of the evidence presented before court. In *R v Hlongwane*, Holmes JA stated as follows:

*'At the conclusion of the whole case the issues were: (a) whether the alibi might reasonably be true and (b) whether the denial of complicity might reasonably be true. An affirmative answer to either (a) or (b) would mean that the Crown has failed to prove beyond a reasonable doubt that the accused was one of the robbers.'*⁴

[91] This reasoning is consistent with the approach to alibi evidence laid down by the Appellate Division nearly 70 years ago in *R v Biya*,⁵ where Greenberg JA said:

*'If there is evidence of an accused person's presence at a place and at a time which makes it impossible for him to have committed the crime charged, then if on all the evidence there is a reasonable possibility that this alibi evidence is true it means that there is the same possibility that he has not committed the crime.'*⁶

[92] In *S v Musiker*,⁷ the Supreme Court of Appeal held that once an alibi has been raised, it has to be accepted, unless it can be proven that it is false beyond a reasonable doubt. In *S v Burger and others*,⁸ it was held that where an alibi is presented and it contradicts evidence presented before the court, and the alibi later turns out to be a lie, the lie together with the other evidence of the accused as a whole may point towards his guilt in certain cases.

[93] The court and the state assisted accused one and three to have two alibi witnesses that they wished to call brought to court. After being interviewed by Mr Mbatha, neither of them were called to testify. No such assistance could be offered to accused two as his principal witness was no longer alive and he was no longer

³ *R v Hlongwane* 1959 3 SA 337 (A) at 340 H

⁴ 1959 (3) SA 337 (A) at 339C-D.

⁵ *R v Biya* 1952 (4) SA 514 (A).

⁶ *Ibid* at 521C-D.

⁷ 2013 (1) SACR 517 (SCA) at para 15-16.

⁸ 2010 (2) SACR 1 (SCA) at para 30.

speaking to his girlfriend. The alibis of the accused are accordingly largely to be considered on the evidence of the accused themselves.

[94] Finally, the question of what constitutes housebreaking must be considered. Mr Kheswa testified that the door to his dwelling was closed but not locked when the accused opened the door and entered his dwelling.

[95] Snyman, in *Criminal Law* (6th ed, 2014), said the following at page 547 when dealing with the element of 'breaking':

'The "breaking" consists of the removal or displacement of any obstacle which bars entry to the structure and which forms part of the structure itself. Thus, to push open a closed (though not locked) door or window or even to push open a partially closed door or window will amount to breaking, but there is no breaking if one merely walks through an open door...' ⁹

Assessment of the evidence

[96] From the evidence set out in detail in the first part of this judgment, it is evident that there are two mutually exclusive versions of events on 24 August 2109: the state's version which implicates all the accused (save for those offences in respect of which only a single accused is charged), and the defence version that all the accused were somewhere else on the day in question at the time the crimes detailed in the indictment occurred. Both versions cannot be correct. As Mr Mbatha correctly pointed out on several occasions, the accused could not be in two places at the same time.

[97] During argument, Ms Harrison handed up the case of *Stellenbosch Farmers' Winery Group Limited and another v Martell and Cie SA and others*.¹⁰ Paragraph 5 of that judgment provides a guide to solving disputes of facts those that exist in this matter. The Supreme Court of Appeal found that to resolve such disputes, a court should make findings on:

- (a) the credibility of the witnesses;
- (b) the reliability of the witnesses; and
- (c) the probabilities of the matter.

⁹ *Cele v S* (AR383/18) [2020] ZAKZPHC 14 (14 May 2020) at para 20.

¹⁰ 2003 (1) SA 11 (SCA).

[98] Each of the factors referred to above has its own discrete sub categories. For example, the credibility of a witness would involve a consideration of the veracity of the witness, his candour and demeanour, his bias, both latent and blatant, internal contradictions in his evidence and external contradictions, as well as the probability or improbability of particular aspects of his version. Utilising the guidance of the criteria referred to above, the evidence adduced by both parties must be considered.

[99] As a general proposition, the state witnesses impressed the court. It must have been difficult for the family members of accused one to testify against their kinsman, yet they did so. We are accordingly not here talking about distant relatives: we are dealing with half-brothers and cousins of accused one. Moreover, all of the witnesses lived in the same area and had grown up with, or lived near, the accused. Their association with the accused was not momentary or fleeting, but one of substance built up over a long period. The accused were accordingly not strangers who could be implicated without any qualms or consequences: the accused were real people living amongst them and forming part of the broader community. As Mr Zuma put it, the community was small and had any strangers intruded therein, they would have been noticed.

[100] None of the state witnesses appeared hostile or biased towards the accused. Pearl testified that she had been happy to see accused one after not seeing him for a long time. The opportunity for expanding on their evidence existed in virtually every witnesses testimony. For example:

- (a) Sanele could have testified that he saw accused three in the store, but did not, confining his evidence only to the fact that he heard the voice of accused three;
- (b) Mr Zuma could have testified that he saw accused one in the company of the other accused at the Mdlalose homestead if he had been intent on implicating all the accused instead of only accused one;
- (c) Had Mr Kheswa held a grudge against accused three as suggested by the defence, he could have substituted him for accused one as the person that shot him, but he did not do so.

[101] These are not the only instances where witnesses could have embroidered on their evidence and made the case darker for the accused. There are other instances where this could have been done but was not. That the witnesses did not tailor their evidence or embroider upon it generates confidence that they were prepared to confine their evidence only to that which they actually saw and were not prepared to stray into the realms of speculation or the giving of false evidence.

[102] The state witnesses were by no means perfect witnesses. Sanele did concede that he had made an assumption about the presence of accused two at the Danangwe General Dealership, but he later clarified this by indicating that the name of accused two had been spoken by accused three and that is how he had come to know of his presence at the store. The witness Dititi indicated, contrary to the overwhelming volume of evidence of other witnesses, including the accused, that there were not two taxi associations that were at war with each other. He insisted that there was only one taxi association. Given the ample evidence at odds with his view, it is safe to conclude that his evidence was not correct on that aspect and it is disregarded. It follows that the court accepts that there were two taxi associations and that a relationship of hostility existed between them.

[103] The state witnesses were both credible and reliable.

[104] In view of the finding that there were two warring taxi associations, the court must carefully scrutinise the evidence to detect whether there is any truth in the version of the accused that they are being falsely implicated by the Edendale Taxi Association by virtue of their association with the Esigodini Taxi Association.

[105] This was a central tenet of the accused's defence. Every witness was confronted with an allegation that he formed part of a conspiracy of which the Edendale Taxi Association and the Edenvale SAPS were the guiding forces. At the outset of this line of cross examination with the first witness, I inquired from Mr Mbatha whether there was to be factual evidence of this conspiracy or whether it was merely a theory and speculation. I was told that it was merely a theory. That is what it

remained. No evidence whatsoever was adduced of its existence in fact. Negating any possibility of any truth in the theory, it is worth pointing out that the arresting officers were not part of the Edendale SAPS, being stationed at Oribi, and neither was the investigating officer, who is based in Durban.

[106] The conspiracy theory was expanded to include members of the community who allegedly spoon-fed witness on what to say in their testimony. Many of the witnesses testified that they had no relationship with the Edendale Taxi Association. Examples of this may be found in the evidence of Pearl, Sanele, and Ms Kheswa. Notwithstanding such denials of personal affiliation to a taxi association, attempts were made to link the witnesses to members of the community, or other family members, who might have had an association with the Edendale Taxi Association. This desperate attempt at creating a link to a taxi association to bolster the theory being propounded by the accused had all the strength of a cracked egg. It is very easy to make allegations if one does not have to prove what is being alleged. I indicated to Mr Mbatha that the court could not be expected to make findings based on speculation. Findings are made on facts. The truth of the matter is that there was not a scintilla of evidence led by the defence to demonstrate that the Edendale SAPS or the Edendale Taxi Association or the local community or any other entity or persons played any part in convincing the multitude of state witnesses to pervert their evidence by substituting the identity of the true killers for the accused. No right-thinking person could allow themselves to be so led and there was nothing from the demeanour of any of the state witnesses that demonstrated that they were not right-thinking members of the Esigodeni community. As Ms Harrison put it in argument, would Mr Kheswa, who suffered very serious internal injuries that required surgery and the insertion of a stoma which he still has, conceal the true identity of the person who shot him and substitute that person for accused one? The question merely has to be posed to be rejected. There was no evidence either to establish that the witnesses were 'spoon fed' on what to say in their evidence either.

[107] Whilst the state witnesses did not embroider on their evidence, the accused did. The initial suggestion was that the Edendale SAPS were behind the conspiracy to

implicate the accused. This was later expanded to include the Plessislaer SAPS.

[108] The respective crime scenes were not widely spaced and were within walking distance of each other. The drawing prepared by Colonel Ntshangase helped crystallise the location of the various crime scenes in relation to each other. The locations of the crime scenes were within walking distance of each other. Their proximity to each other is demonstrated by the evidence of Mr Zuma who testified that he had gone to the Mdlalose residence after he heard gunshots that he believed came from the store. Mr Mthethwa likewise testified that that he heard a gunshot at the store after he emerged from under the pool table. This could only have come from the Mdlalose homestead and demonstrates the proximity of the store to the Mdlalose homestead.

[109] The times at which each of the offences occurred at the various crime scenes reveals the following time line on 24 August 2019:

- (a) the accused had been present at Pearl's boyfriend's residence and had departed at 17h30;
- (b) at 17h45 they were seen at the store, approximately 300m from Pearl's boyfriend's residence;
- (c) at 18h15, accused one was seen at the Mdlalose homestead, a five minute walk from the store;
- (d) at around 19h00 all the accused were seen at the home of Mr Kheswa. This was the furthest point from the store.

The time line would appear to be feasible given the compact nature of the area in which the various crime scenes were located.

[110] In addition to the accessibility of all the crime scenes within the time line, there was a consistent theme in the state witnesses evidence regarding the clothing worn by the accused. Virtually every witness who saw accused one, testified that he wore a brown jacket similar to that worn by a prison warder. When the accused were ultimately arrested, photographs reveal the presence at the Sikhakhane homestead of a brown jacket similar to that worn by prison warders. Witnesses also described

accused two as wearing a black jacket. A black jacket was also discovered at the scene of the arrests and was photographed.

[111] The proposition that it is impossible to be at two different places at the same time, which is self-evidently true, was put to a number of state witnesses by Mr Mbatha. Accused one and three could not at the same time have both been at Sikhakane's homestead and the store (or any of the other crime scenes for that matter). That all the accused were at that homestead when arrested is beyond question. But that is a different matter altogether. As a number of state witnesses suggested, once the shootings were over, the accused could have retired to the Sikhakhane homestead.

[112] There is a wealth of evidence from the state witnesses that places the accused at the various crime scenes. Could all those persons be mistaken? The answer must be a resounding 'no'. If that was to be accepted by the court, it would mean that each witness that testified about the crime that occurred in their presence, would have had to have been persuaded to substitute the identity of the real criminals for the accused. It is undisputed that all of the crimes for which the accused have been charged did, as a matter of fact, occur. The substitution alluded to would have had to have happened at not one or two crime scenes but at all the crime scenes in respect of which evidence was led. This is improbable and there was no evidence of this having occurred. Together with the knowledge that all of the witnesses testified to having about the accused, and the circumstances under which the identification of the accused occurred with all the crime scenes having electric lighting, the likelihood of mistaken identifications can be ruled out.

[113] The accused were thoroughly unimpressive witnesses. Accused one was a prime example of someone who preferred to use 1000 words when one would suffice. At one instance it was noted that he spoke for eight minutes without interruption or pause. He peppered his evidence with remarkable detail most of which, if not all, related to events before 24 August 2019 and which were accordingly irrelevant to the issues at hand. His only retort to the veritable flood of allegations that identified his

clothing and his presence at all the crime scenes was that the state witnesses were mistaken or that they were complicit in the general conspiracy against him. None of those allegations were backed up by any facts. The likelihood of mistake is, as previously stated, rendered non-existent by virtue of the fact that accused one was a well-known member of the community. All of the witnesses had known him for many years and a number of them were related to him. That all of them, scattered amongst the various crime scenes, could be mistaken merely needs to be mentioned to be rejected. I have already indicated that not a single fact was adduced to demonstrate the existence of the conspiracy that was so heavily relied upon by the defence.

[114] Accused two was equally unimpressive. He was evasive and questions had to be repeatedly put to him before an answer was forthcoming. He had a generally sullen approach to the delivery of his evidence, especially when cross examined. His general demeanour was not impressive. As accused one did, he grasped onto the rubric of mistaken identity and the existence of a conspiracy against him. No evidence of either of these was advanced other than accused two's say so. He posited that the firearm, ammunition and magazine alleged by the state to have been found on him was planted evidence. The question that he could not answer was how the police knew that the firearm allegedly planted on him would be later be forensically linked to the first crime scene at the store. The police could not have known that such a link would be forthcoming as the analysis was only carried out some time later.

[115] Accused three fared no better in his evidence. No better details of those involved in the conspiracy against him emerged from his evidence, this notwithstanding that he claimed to know the names of those people who were behind it. It appeared that he would rather be stoic in his silence than reveal the truth of what he claimed to know. His evidence mimicked the evidence of his co-accused.

[116] Could the respective alibis be reasonably possible true? Mr Mbatha indicated that they could be despite there being no evidence thereof other than the say so of the accused. It was also argued that the accused's' explanations that they were not at the crime scenes was reasonably possibly true. It has already been acknowledged that

the state has the onus of disproving the accused's alibis and the accused do not need to prove their respective alibis. The state produced a plethora of compelling evidence that conclusively established the presence of the accused at the various crime scenes. The sheer weight and volume of this evidence, given by a variety of different persons at each of the crimes scenes is so persuasive as to render the accused's alibis untrue.

[117] As regards the validity of the conspiracy against each accused, Mr Mbatha argued that because it was difficult for the accused to break down the witnesses with contrary factual allegations this meant that the witnesses had been very well schooled on what to say. The argument is fallacious and it is rejected. Because a witness cannot be exposed as a liar it cannot be accepted that he has been taught how to lie properly. There would be no purpose in permitting cross examination then: if a witness was discredited in cross examination his evidence falls to be rejected but on this theory if the witnesses evidence was not discredited it also falls to be rejected because the witness has been properly primed on how to lie without being exposed as a liar.

[118] The fundamental difficulty with the conspiracy theory is when did it come into existence? Accused one was immediately identified by Mr Mthethwa at crime scene one at the store. How were the terms of this conspiracy communicated to the other state witnesses at the various other crime scenes? There simply was no time for this to occur. The conspiracy theory must accordingly founder.

[119] The court finds that there was no conspiracy to falsely implicate the accused by the state witnesses and no evidence to suggest that the state witnesses were influenced to give false evidence against the accused by any person or body of persons, including the SAPS.

[120] The only remaining aspect is to consider the existence of a common purpose between the accused. The telephone call from prison made by accused one to Nqobile predicted that people would be killed upon his release. Accused two was with accused one in prison and it is tempting to consider that there may well have been an agreement in advance to commit the crimes. But that would perhaps be pushing

speculation too far and any such agreement would not include accused three who was not in custody. The common purpose to be considered is accordingly that arising from active participation in the crimes. Having accepted the evidence of the state witnesses as to the identity of those involved at the five crime scenes, it follows that all were present when the respective crimes were committed. All the accused were aware of the commissions of the various offences. They had all gone to the crime scenes armed. At the store, they all played a part in events with, for example, with accused three instructing accused two not to forget to take the money and airtime. The events at the store and the events at the Kheswa residence establishes that they intended to make common cause with each other. After the commission of the crimes at the store, the accused roamed around the area. Had any one of them wished to have withdrawn from the common enterprise there was opportunity to do so. None of them did and they remained together on 24 August 2019 until crime scene four. The next day, they were all found together at crime scene five. At the Kheswa residence, there was again evidence of active participation by all the accused: accused one demanded firearms from Mr Kheswa as did accused three. Accused two guarded the door. Accused one shot Mr Kheswa twice without any objection from the other accused. Accused two and three associated themselves with accused one's conduct. We are accordingly satisfied that the state has established that in respect of those offences in respect of which all the accused are charged, common purpose has been shown to exist.

[121] It follows that the court accepts the evidence of the state that:

- (a) all three accused were at the first crime scene, where they all participated in the murders of Golden, Mr Gumede and Ms Zondi, the attempted murder of Sanele and the robbery of the store. In addition, accused two is linked by forensic evidence, namely the firearm found in his possession at arrest was determined to have fired three cartridges found at that scene.
- (b) accused one shot and killed Mr Mdlose at the second crime scene, the Mdlalose homestead;
- (c) all three accused broke and entered the home of Mr Kheswa, attempted to murder him and did murder his girlfriend, Ms Mzekandaba; and

(d) when arrested at the Sikhakhane homestead, accused two possessed an unlicensed firearm and three rounds of ammunition.

[122] In the circumstances:

(a) Accused one is acquitted on counts 10 and 11 for want of any evidence being led on those two counts but is convicted on:

- (i) count one, being the murder of Thamsanqua Golden Shange;
- (ii) count two, being the murder of Thabani Ernest Gumede;
- (iii) count three, being the murder of Nobuhle Ntombikhona Zondi;
- (iv) count four, being the attempted murder of Sanele Makhaye;
- (v) count five, being the robbery with aggravating circumstances of Nobuhle Ntombikhona Zondi;
- (vi) count six, being the murder of Mziwakhe Michael Mdlalose;
- (vii) count seven being the housebreaking with intent to commit robbery at the home of Siphesihle Kheswa;
- (viii) count eight, being the murder of Yolanda Azola Mzekandaba; and
- (ix) count 9, being the attempted murder of Siphesihle Kheswa.

(b) Accused two is convicted on:

- (i) count one, being the murder of Thamsanqua Golden Shange;
- (ii) count two, being the murder of Thabani Ernest Gumede;
- (iii) count three, being the murder of Nobuhle Ntombikhona Zondi;
- (iv) count four, being the attempted murder of Sanele Makhaye;
- (v) count five, being the robbery with aggravating circumstances of Nobuhle Ntombikhona Zondi;
- (vi) count seven being the housebreaking with intent to commit robbery at the home of Siphesihle Kheswa;
- (vii) count eight, being the murder of Yolanda Azola Mzekandaba;
- (viii) count 9, being the attempted murder of Siphesihle Kheswa;
- (ix) count twelve, being a contravention of section 3 of the Firearms Control Act, 60 of 2000 being found in possession of a Norinco 9mm pistol

without holding a licence, permit or possessing any authorisation in terms of that Act to possess that firearm; and

- (x) count thirteen, being a contravention of section 90 of the Firearms Control Act, 60 of 2000 being found in possession of three rounds of 9 mm ammunition without holding a licence for a firearm capable of discharging that ammunition or a permit to possess that ammunition or any other licence or permit to possess that ammunition in terms of the aforesaid Act or any authorisation to possess that ammunition.
- (c) Accused three is convicted on:
- (i) count one, being the murder of Thamsanqua Golden Shange;
 - (ii) count two, being the murder of Thabani Ernest Gumede;
 - (iii) count three, being the murder of Nobuhle Ntombikhona Zondi;
 - (iv) count four, being the attempted murder of Sanele Makhaye;
 - (v) count five, being the robbery with aggravating circumstances of Nobuhle Ntombikhona Zondi;
 - (vi) count seven being the housebreaking with intent to commit robbery at the home of Siphesihle Kheswa;
 - (vii) count eight, being the murder of Yolanda Azola Mzekandaba;
 - (viii) count nine, being the attempted murder of Siphesihle Kheswa;