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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: SS93/2019

In the matter between:

THE STATE

and

ASHWIN WILLEMSE

Accused 1

WAYLIN ABDULLAH

Accused 2

JUDGMENT DELIVERED ON 15 SEPTEMBER 2020

CORAM:

SALIE-HLOPHE, J

DATE OF HEARING: 9 MARCH 2020

DELIVERED: 15 SEPTEMBER 2020

COUNSEL FOR THE STATE: ADV.L. BADENHORST

COUNSEL FOR ACCUSED 1: ADV.J. BUURMAN

COUNSEL FOR ACCUSED 2: ADV.R. LIDDEL

Instructed by:

Liddell Weeber Van der Merwe Inc.

SALIE-HLOPHE, J:

Introduction:

1] On 18 October 2018 the deceased, Mr. Gregory Carelse and Mr. Prezano Holland were killed in a shooting incident on the corner of Baracuda Crescent and [...]weg, Nooitgedacht, Bishop Lavis. Mr. Carelse was, at the time of his death, employed as a security officer in the Community Safety Department of the City of Cape Town. He also worked as a police reservist, was well known in the community of the Bishop Lavis area and was an active member in the neighbourhood for community safety as well as crime prevention. On 17 June 2017 he observed a drive-by shooting in F Street, Valhalla Park ("the F incident"), pursued the vehicle in which the assailants were travelling and arrested one of the suspects, Abraham Wilson ("Wilson"), a gangster and member of the 28 Gang. The latter is a notorious prison gang which operates in the surrounding area as "The Firm". After Carelse

handed Wilson over to the police at the scene, he deposed to an affidavit to Warrant Officer Wesley Lombard on 18 June 2017, setting out the sequence of events as he had observed during the shooting including his pursuit of the assailants which resulted in his arrest of Wilson. Three suspects were charged in connection with the triple murder which occurred in the F incident, which included Wilson and one, Mr. Craig Stanfield, the relative of the leader of the 28 Gang in the Valhalla Park area. Carelse was a witness in that trial and which was pending before the Western Cape High Court at the time of his death. It is common cause that another State witness in that trial was also murdered some months ago.

2] In the afternoon of 18th October 2018, at around 15h20, Carelse left his home, situate at [...] Street, Bishop Lavis, passing his son, Dale,¹ outside and walked up the road. He was the registered licensee of a .38 special revolver with serial number 29356.² The fire-arm was tucked in the side of his pants. Shortly after 17h00 he was shot on the corner about a block away from his home.³ The revolver and holster was not in his possession immediately after the shooting. His son,⁴ approached the scene during the shooting whilst two perpetrators were shooting at Carelse. He died as a result of multiple gunshot wounds to the body which included 16 gunshot wounds with 8 fired bullets and one bullet core retrieved from his body.⁵ Five (5) of the fired bullets were from a .38/357 revolver. It is not known if the revolver which fired these 5 gunshots were from Carelse's own .38 revolver.

¹ Dale Carelse will be referred to as "Dale" in this judgment to avoid confusion with his father, the deceased, referred to as Carelse.

² Exhibit F

³ The cellphone of the deceased was retrieved from his pocket after the shooting, with last activity a whatsapp message at 16h42.

⁴ State witness, Mr. Dale Carelse, aged 27 at the time of the incident

⁵ Two bullet jackets were collected from the area nearby the shooting, one fired bullet from inside the house situate on the house on the corner where the shooting happened. It could not be determined whether the bullet jackets and the bullet were fired from the cartridges found on the crime scene.

3] On the ground, on the opposite side of the road, was Mr. Prezano Holland (“Holland”), fatally shot in his abdomen. Both Carelse and Holland succumbed to their wounds at the scene. Holland died as a result of one bullet wound caused by a 9mm calibre pistol. The hands of both deceased tested negative for gunshot residue.⁶

4] The two perpetrators who were shooting at Carelse ran into the passage way between the houses and [...] Avenue, Valhalla Park. No firearms linked to this incident were retrieved, including Carelse’s revolver.

5] Dale, the only eye witness for the State, made a police statement 18 days after the incident incriminating the persons “Krag” and “Wena”. During a photo identity parade conducted on the day after he gave his statement, he identified both the accused as the persons who had shot his father, accused 1 as Krag and accused 2 as Wena. Both accused were represented throughout the trial and pleaded not guilty.

Charges:

6] Both accused were charged with two counts of murder as contemplated by section 51(1) read with part I of Schedule 2 of Act 105 of 1997; robbery with aggravated circumstances as contemplated by section 51(2) read with part II of schedule 2 of Act 105 of 1997; unlawful possession of firearms and unlawful

⁶ Admitted as Section 212 reports, Exhibit S. Statement by Warrant Officer Mehlape

possession of ammunition. It was also the case for the State that the offences of murder were planned or premeditated and that it were committed by persons or a syndicate acting in the execution of a furtherance of a common purpose or conspiracy, which was to eliminate Carelse as a witness for the State in the pending trial relating to the F Street triple murders.

7] They both pleaded not guilty to all the charges. Only accused 2 gave a plea explanation in terms of Section 115⁷ in which he denied causing the death of the two deceased or that he knew that Gregory Carelse was a witness for the State, he denied robbing anyone on the date of the incident or that he was in possession of a firearm or ammunition on that date. He had no personal knowledge of the commission of the offences and he denied being a member of the Firm gang.

Formal Admissions:⁸

8] During the trial formal admissions were made on behalf both accused in terms of Section 220 formally admitting the crime scene key and photograph album, the identity and post-mortem reports in respect of both deceased, that the bodies of the deceased had not sustained any further injuries after death until an autopsy was performed and that the bullet fragments and projectiles removed from the body of the deceased were properly sealed.

Inspection in Loco:⁹

⁷ Exhibit A – plea in terms of Section 115 of the Criminal Procedure Act 51 of 1977 (“the CPA”)

⁸ Exhibit H

9] An inspection in loco was conducted on 16 March 2020, after the testimony of the second state witness, Dale Carelse, was concluded.

SUMMARIES OF WITNESSES TESTIMONIES:

10] The State called 12 witnesses to prove the charges against both accused. These witnesses were made up on a single eye witness to the incident, the son of the deceased, Dale Carelse, and his mother, Mrs Rezone Carelse. The remaining witnesses were professional witnesses in the form police officers inter alia attending at the scene, the ballistics officer, arresting officer, the officer and administrative clerk involved in the photo identification parade and the investigating officer who conducted a 2017 incident in respect of which Carelse, had been a witness for the State and the investigating officer of this matter.

11] Accused 1, Mr Ashwin Willemse, testified in his own defence and called no further witnesses. Accused 2 elected not to testify and did not call any witnesses.

Warrant Officer Wesley Lombard:¹⁰

12] Lombard was the first witness for the State. He testified that he has been a member of the SAPS for 17 years. He is the investigating officer assigned to the murders which transpired in F Street in which three charges of murder as well as a charge of possession of an unlicensed firearm and unlawful possession of ammunition had been subject to police investigation. The matter arose from the F

⁹ Exhibit N was a recording of various points as A1 to A9 on the scene, distances between the said points and the running time between the respective points.

¹⁰ Testimony from record page 14 - 38

incident which happened on the afternoon of Saturday, 17 June 2017 in the Nooitgedacht area, adjacent to Valhalla Park. The trial which was to be heard before the Western Cape High Court and in respect of which Carelse was a witness for the State is linked to gang affiliations between the gang called “The Firm Boys” and a faction of the 28 Gang (“the 28’s”). The latter gang has a number of leaders, including the Stanfield family who control the 28’s in the Valhalla Park area. Craig Stanfield is related to Ralph and Simon Stanfield. Abraham Wilson is affiliated to the 28’s which is known as “The Firm” in the area and outside of prison.

13] In the course of investigation he had obtained a statement from Gregory Carelse, dated 18 June 2017.¹¹In the statement he stated that around 14h35 on 17 June 2017 he was outside of his residence on the corners of T. and B. Street, Nooitgedacht, Bishop Lavis, when a gold coloured VW Polo (“VW”) drove pass and made a U-turn on further down the road and drove back in his direction. There were three occupants inside the vehicle. He identified the person seated behind the driver as Abraham Wilson. About 10 seconds later he heard gunshots. With the aid of a male person driving another vehicle, he pursued the VW. During pursuit, the driver of the VW jumped a red traffic light and he called radio control for assistance. After some time he saw Wilson and two others walking close to E. Road when he called at Wilson to come to him. Wilson responded that he did nothing wrong and the three ran away into different directions. Carelse pursued Wilson, caught up with him and after a struggle Carelse succeeded to place him under arrest. Wilson told him that it was the other guy who had fired the shots that he went into the Nyanga area to buy a sheep head, but after a bodily search, it was apparent that he had no money on

¹¹ Exhibit B – the statement was provisionally admitted into evidence as an exception to the hearsay rule

him. He could not explain how he would have managed to make the purchase. Carelse returned him to the scene at F Street and upon arriving there handed him over to Captain van der Berg of the SAPS. He gave a description of the other suspect who had run away and stated that he had seen his face and would be able to point him out. The shooting was linked to gangster activities.

14] ***Under cross-examination*** the witness testified that if one is a member of a gang in prison, it is inevitable that such member belongs to a gang after release from prison. He also testified that Carelse was a well-known figure in the area and that he had worked closely with the police, had assisted with crime prevention and that Carelse arrested and handed Wilson over to the police. Carelse's apprehension of Wilson was also stated during the proceedings of the bail application of the accused in the F incident. A few months after Wilson's arrest, three additional accused were arrested. Wilson was the first accused to be granted bail during 2017. In response to a question by the Court, he explained that Carelse was a uniformed law enforcement officer and that Community Safety members work with the SAPS in the prevention of crime and conduct operations together.¹² He got to know Carelse in the course of assisting the police in gang-related matters.

Dale Carelse.¹³

15] Dale testified that he had been born in the area, initially they lived with his grandmother, but since the age of 8 they had been staying at the present residence on the corners of Tuna and Baracuda Crescent, Nooitgedacht, Bishop Lavis. He

¹² Record page 37, lines 12 - 15

¹³ For the purposes of this judgment, this state witness is referred to as "Dale"

attended primary school close by in the Montana area followed by high school situated in Valhalla Park known as Beauvallon Secondary. His father was employed by the City of Cape Town, Community Safety Department as a chief security officer and also assisted as a reservist in the police force operating in the Bishop Lavis area for over 20 years. His father was well known in the community for his service to advance the safety of community members and the prevention of crime in the area.

16] Dale indicated that he knew accused 1 by the nickname as "Krag" from the Valhalla Park area which he had frequented regularly, had many friends there as well as a girlfriend. Accused 1 had occasion to approach for money whilst he was walking in the area. They were not friends however he had occasion to greet and talk with accused 1. He is familiar with the area and the gangster activities therein. He testified that accused 1 was a member of the gang which operated in the area as The Firm. As at the date of the incident, he had known accused 1 for approximately 15 years. He had no problems with accused 1 and he knew accused 1 to attend Bishop Lavis High.

17] He testified that he knew accused 2 as "Krag", when they had been hanging out and socialising with mutual friends in the area. He explained that he had a friend in H. Street in Valhalla Park, known as Ederees, who also knew and socialised with accused 2. He denied that he ever had occasion to converse with accused 2 but that he was aware that accused 2 was also a member of The Firm. This he understood from accused 2's socializing with the members of The Firm and being in control of the Valhalla Park area as the territory or safe-haven of that gang. He testified other members of the same gang as Thello, Noah and Keaton who was

often in the company of accused 2. Whilst he is not familiar with all the members' names, he was familiar with their faces. Ralph Stanfield is the leader of The Firm, who frequented the area and in particular the home of Noah and alleyways which was known for selling drugs. He knew Abraham Wilson to also be a member of The Firm. Rival members of a gang cannot enter into the Valhalla Park area as this would exclusively be for the entry and stay of gang members only. Ralph and Keaton were related and referred to as cousins. When asked whether he born knowledge whether accused 1 and 2 used gangster lingo, he indicated that he only has personal knowledge of accused 2 speaking in that lingo when he was in his presence at Ederees' place in H. Street. He understood that accused 2 did not like him as he the son of Carelse. Whenever he would come into the company of mutual friends where accused 2 was present, he would give the witness an unwelcoming facial expression and after accused 2 would leave, then other friends would caution him about accused 2.¹⁴

18] He knew Mr. Prezano Holland, as "Junior", whom he had seen socializing with members of The Firm. They had attended High School together and often played X-box at the same place, drank and smoked together.

19] At approximately 15h20 on 18 October 2018 he was at the home he shared with his father. As his father passed him outside the house, he told him that he was going to Valhalla Park as he was informed of an incident that happened there. His father was armed with his .38 special revolver tucked in his waist holster. He walked up Barracuda Crescent, into the direction of Valhalla Park. Later that same day,

¹⁴ Record page 54, lines 9 - 15

Dale's sister left the home for work. He was in the doorway in the house, when approximately two minutes later he heard a gunshot followed by a short break and then a series of further gunshots. He jumped over the wall after the first shot as the close proximity of the sound cause him concern for the safety of his sister. As he crossed over the wall, facing Barracuda Crescent, he ran upwards on the left hand side of the road. The bus stop was diagonally across the road. As he advanced up the road, he called on his sister to return to the house and he continued running as the shots were being fired. She called upon him to return, but he saw two persons firing shots on the opposite side of the right. The shooters were not stagnant, they came out of the [...] avenue area to shoot the person on the opposite side or the road.

20] After accused 2 directed shots, he searched the person whom he shot at. Accused 1 thereafter also fiddled into the waist of the person and at some point looked back over his left shoulder to the road. The witness testified that accused 1 must have heard him shouting and looked back either to see if there was an oncoming car so that he could cross back over the road and run into the opposite avenue. The person whom had been shot was lying on his back with him one hand on his stomach and the other hand on the ground. Initially he did not know it was his father but as he got closer, he recognised the clothing as that which his father had worn at the time when he left the house earlier. It was approximately between 17h00 and 18h00, it was a hot and bright day.¹⁵ It was before sunset, the sun was still up and shining bright. He estimated that he was approximately 15 – 25 metres away when he identified the shooters as the two accused. The shooters approached and

¹⁵ Record page 58, line13 & record page 62, lines 9 - 14

started shooting from the left hand side of the road, the same side where he was, and they moved in closer to the deceased as they proceeded shooting at him. They moved slowly whilst busy shooting.¹⁶ They were about 5 to 6 metres apart,¹⁷ but as they moved in towards the deceased, they came closer to each other. They had not worn anything over their faces. There were other people in the street, running into [...] Avenue, some into Valhalla Park and others into [...]weg.¹⁸ During the time when the shots were being fired, he did not see Holland in the vicinity.¹⁹

21] When he identified accused 1, he saw the side of his face. When accused 1 looked around he saw his face when he was busy searching the deceased and *“readying himself to run away”*.²⁰ At that time he saw accused 1 was on the right hand side of the deceased and accused 2 on the left-hand side. Accused 2 stood pointing the fire-arm at the victim as if ready to shoot, with his arms stretched out holding the fire-arm clutching it with both hands. Accused 1 was busy searching in the side-waist area of the person on the ground whilst accused 2 stood pointing the firearm in the direction of the victim. As the back of accused 1 was facing the witness, he could not see exactly what he was busy doing with his hands, but when the person turned around, he saw it was accused 1. He estimated that he looked at the face of accused 1 for about 3 seconds as he turned around and then a further 3 or 4 seconds as he was running across the road.²¹

¹⁶ Record page 66, line 24

¹⁷ Record page 67, line 5

¹⁸ Record page 76, lines 5 - 12

¹⁹ Record page 77, line 15 - 18

²⁰ Record page 63, lines 10 to 13

²¹ Record page 66, lines 14 - 16

22] He identified accused 2 as he was moving closer and whilst accused 2 was standing aiming at the deceased, at a distance of approximately 3 metres. He saw accused 2 with a hand pistol but he did not focus on the hands of accused 1 as he mostly focused on his face. Both accused 1 and 2 ran into [...] Avenue, Valhalla Park. As he was advancing towards the scene, he first recognised the shooters and then identified the person whom they were shooting at as being his father. He went over to his father, diagonally crossing from the left-hand side of the road, and bent down. His father was lying on his back, his right hand on his stomach, left hand on the ground, with his head to the right hand side. He checked his pulse and shouted his name. His father was dead. His father's firearm and holster was missing.²² Dale testified that he did not see who took the firearm but his cellphone was still in his pocket.²³ People were coming out of [...] Avenue on the opposite side and some moved over to the other side of [...]weg because there was another person lying there. Shortly thereafter someone shouted that: "*here they come again*",²⁴ people ran away again but he did not see the shooters returning. No shots were fired again.²⁵ The person lying across the road was Holland, whom he knew as Junior. He crossed over to Holland after about five minutes from the time he kneeled down over his father's body. It seemed as if Holland was still breathing. He did not have any firearms or weapons near him. The witness asked Holland who had shot him, however, Holland did not respond.

23] He did not speak with anyone at the scene. He left shortly before it became dark. He only gave his first police statement on 9 November 2018, though the

²² Record page 82, lines 18 - 19

²³ Record page 85, line 16 – last cellphone activity at 16h53

²⁴ Record page 79, line 15

²⁵ There were two incidents where bystanders shouted that the shooters were coming again – Record page 80

incident happened on 18 October 2018. He explained that he was shocked and could not trust anyone. The Bishop Lavis police officers arrived about 20 minutes after the shooting. He was scared and feared for his life. To him it was as if persons came the scene to check if they had accomplished the mission. To illustrate this concern, he referred to a person who was at the scene by the name of Mujahid whom was frequently in the company of accused 2. From the time of the incident until he gave his first police statement, 18 days later, he had spoken to four persons. He spoke with his mother later in the evening, but he did not tell her everything as she was crying as was heartsore. He mentioned to her that he saw the persons known to him as "Wena" and "Krag" shooting his father and he told her that his father was shot because he had arrested Wilson in 2017. He also spoke with his sister, his uncle and a good friend of his father by the name of Michael who is also a police reservist. He enquired from Michael if he could trust one Charl Kinnear ("Kinnear") is he did not know him at that time and that he had been investigating the matter. He was scared after his father's shooting and remained indoors. He eventually went with Kinnear to make a statement at the Bishop Lavis police station on 9 November 2017. The following day he attended a photo identification parade that was held at the same police station by Sergeant Henderson. He identified two persons at the photo parade, accused 1 and 2, as Krag and Wena.²⁶ He signed on the photographs in the line-up which depicted accused 1 and 2.

24] **Under cross-examination by counsel for accused 1**, the witness testified that he was 27 years old at the time of the incident. His father carried a fire-arm daily. It was not unusual to hear gunshots in the area especially during times of

²⁶ Exhibit E – photo identification parade

gang wars. The gang war at the time of the incident started with the shooting incident in F Way in 2017 where his father arrested Wilson. People would generally run away when they heard gunshots but when he heard the first shot on the date in question he immediately ran towards his sister by jumping over the front wall of their house. As he got over the wall he heard a series of further shots. He continued to run towards the scene though he had managed to get his sister to go back into the house as he had a feeling that he should get to the place of the shooting. He saw the shooters coming out of [...] avenue towards the person they were shooting on the opposite corner. When he testified in chief that accused 1 must have heard him shouting, he was referring to him calling out at his sister that he was coming now.²⁷ He discounted the possibility that his father had been shooting back at the persons who shot at him. The version of accused 1 put to him that he was not at school with the witness, that he does not know the witness, that accused 1 was not at the scene, that his parole conditions only allow him to walk around between 10 and 12 during the day and that accused 1 was at this family home on that particularly day as the sister of accused 1 would testify to. The witness maintained that accused 1 was present at the scene as he had testified in his evidence in chief.

25] **Under cross-examination by counsel for accused 2**, the witness testified that he does not make issues of things where he can avoid it as one could easily get into trouble or hurt.²⁸ At the point where he got to his sister, he did not recognise the two shooters. He explained that he ran past his sister towards the shooting as it was a time of gang war and he had a feeling that the person that they are shooting are

²⁷ Record page 111, lines 9 - 10

²⁸ Record page 121, lines 21 – 22 “...*but I do not step on other people’s toes where I need not to step*”

from Bishop Lavis or Nooitgedacht area.²⁹ He testified that accused 2 was dressed in a greyish tracksuit trousers and a T-shirt with maroon and orange shades. Whilst the clothing description is not in the statement, he gave it to the investigating officer, but he had not written it down in the statement. He testified that when he stated in his statement that he saw the faces of the accused, he meant that he had identified them as persons whom he knew and that he did not deem it necessary to relay identifying facial features. He did not see who shot Holland, however, he had not seen anyone else with firearms at the time of the shooting. He saw accused 2 from the right side of his face, as he was standing pointing with a firearm at the deceased.³⁰ He testified that he told the investigating officer how he saw accused 2 from the side of his face, but it is not contained in the statement. After Accused 1 had fiddled on deceased and before both fled the scene, there was a “hiccup” and that he saw the face of accused 2 for about 2 or 3 seconds.³¹ He was probed that this is a very fleeting period. The record at page 144, lines 15 to 24 reads:

“COUNSEL: You will agree, Sir, that two or three seconds is not a long time.

WITNESS: Yes, but if you know someone very well, then it’s a long time.

COUNSEL: But in that same three to four seconds, you still had to take at the same time the opportunity who is searching your father.

WITNESS: They are in the same distance, I could see both persons at

²⁹ Record page 125, lines 15 - 20

³⁰ Record page 136, lines 2 - 24

³¹ Record page 144, lines 12 - 15

the same. It's not like the other one was on that side and the other one was on the other side of the road.

26] It was put to the witness that he did not include in his statement that he looked at accused 2's face for three to four seconds, to which the witness replied:³²

"I answered the questions according to how he asked me the questions"

27] In response a statement put to the witness by counsel for accused 2 that he had waited 18 days to implicate accused 2 instead of making a statement immediately, the witness replied that he was afraid, that he feared for his life and at the time he did not know who to trust. He denied that he was shown photos of the accused before the identification parade or that he provided photos of the accused. When the accused fled after the shooting, they ran over the road to [...] avenue, passing the line his line of vision during which time he had further opportunity to observe them. He testified further that he saw accused 2 daily, would frequent the same places and he recognised him at the scene. The instructions of accused 2 was that he is not a member of the firm and that he would testify that he was not at the crime scene, that he would also testify that he was at home at the time of the incident to which the witness responded:³³

"Definitely at the crime scene. Definitely at the crime scene, M'Lady and he was definitely one of the shooters, M'Lady."

³² Record page 145, lines 3 - 4

³³ Record page 162, lines 14 - 16

28] ***Under re-examination*** the witness testified that he knows the sister of accused 1 and that she had lived in the backyard of his residence including at the time of the incident.

29] In response to a question by the Court as to the exact point at which he identified that the person on the ground is his father, he testified that immediately after recognising the accused, he noticed that the takkies, jeans and shirt of the person on the ground was that of his father and as he came closer he saw his father's face. At this time the accused were still in the process of moving away. They started moving after he had observed and recognised them. In explanation to running towards the shooting which was dangerous, the record reads:³⁴

“COURT: Would you say this was quite a brave effort on your part as you described?”

WITNESS: Yes, I'm not claiming to be Superman now, but I just felt that I needed to go.

COURT: So when you approached...

WITNESS: Without thinking as to what can happen.

COURT: So when you approached them and you saw them, were you scared?

WITNESS: You don't think straight at the time. Your adrenalin rushes or you blood shoots up. You just soldier on, M'Lady.

³⁴ Record page 172, lines 15 - - 25 & record page 173, lines 1 - 3

COURT: *Are you satisfied then that in this time and under this amount of pressure and adrenalin, as you've just indicated, that your observations were reliable?*

WITNESS: *Yes....I was close enough to see everything, M'Lady."*

30] He further replied to question by the Court whether he saw another person lying on the opposite side of the road, at the time of the shooting. He replied:³⁵ *"No....because I wasn't actually, like, looking at that side of the road."* He testified that it was only when he got closer to his father that he noticed that there was another person that was shot and he *"wondered why would Junior"* be shot as well or *"was Junior also shot"*.³⁶ He also indicated to the Court that that he is not good with estimation of distances.³⁷

Warrant Officer Ricardo James:

31] James has been in the SAPS for 28 years. He attended the crime scene as a crime scene investigator around 19h50 on the date of the incident. He took 44 photographs of cartridges and bullet points found at the scene. He took the Court through the photo album³⁸ and he prepared a sketch plan which he drafted at the scene.³⁹ He also took a video of the crime scene which was screened in Court.⁴⁰ Cartridges were found in the street and bullets were found in various locations at the house on the corner where the shooting took place, such as the stoep, one penetrated into a cupboard through a window and the other in the bedroom. He

³⁵ Record page 174, lines 12 - 13

³⁶ Record page 174, lines 21 - 25

³⁷ Record page 173, line 19

³⁸ Record page 256 and Exhibit D

³⁹ Exhibit R

⁴⁰ Exhibit 1

testified that they used lighting to light up the scene during their investigation. He could not say if the position of the cartridges as he had found it on the scene had been as it was ejected from the fire-arms as he as it would be possible for the shooters to disturb the cartridge cases if they were moving. His role was to collect the evidence presence at the scene.⁴¹

32] **Under cross-examination** he testified that when he arrived at the scene, the area was cordoned off already and no persons were allowed on the crime scene. By the time his department is called out, the crime scene and evidence would be preserved by the local crime scene record centres, in this case it was the Bellville LCRC.

Sergeant Wade Henderson:

33] Henderson is a sergeant in the SAPS with 16 years' experience. He conducted a photo identification parade at the request of the investigating officer, Col Kinnear. The parade was conducted at Bishop Lavis police station on 10 November 2018 with the presence and assistance of two colleagues, Constable Tofile who assisted by taking the witness away from the parade and Sergeant Williams who guarded the witness and brought him into the parade. There was also Constable Williams who is affiliated to the Bellville LCRC who captured the proceedings on video camera. The video footage was screened in Court. He indicated to the witness that the photos shown to him may or may not depict persons who were involved in the offences. He was not involved in the investigation of the matter nor

⁴¹ Record page 284, lines 18 - 19

did he know any of the deceased. He was informed of the crime that was committed when he was asked to conduct the identification parade. When he opened the envelope only the photos were contained in it and he requested from Constable Tofile to get the required form from the investigating officer who was attending in the police cells. There were no other persons present during the parade.

34] **Under cross examination** the Henderson testified that when he arrived at the parade, the Dale was already present. He testified that whilst it is an arguable point that the presence of the investing office on the premises at the time of the parade could result in a contamination of the parade he testified in re-examination that from his observation there did not appear anything irregular in the course of the parade nor from the presence of the investigating officer at the premises.

Dr Bjorn Swigelaar:

35] Dr. Swigelaar conducted the post-mortem examination on both deceased. He explained that the number of times that someone has been shot is not merely as easy as counting all the wounds on the body as one projectile could perforate the body twice. Furthermore, projectiles can also break up during the shooting action causing fragments of the projectile to injure the body. Bearing that in mind, the body of the Carelse was shot 10 times with 6 wounds to the face and head, a total of 16 bullet wounds. Bullets which enters through the body can also cause a wound to the face and head as it may pass through another part of the body. Holland had a single shot to the abdomen which was fatal.

Mr. Andrew Johannes:

36] Johannes is an administrative clerk based at Manenberg police station and has been so employed for 17 years. He attended to the compiling of the photos in respect of the photo identification parade. He explained the procedure employed when tasked with a photo line-up. When he obtains the photos of the suspects then he draws photos from a KRIM system where he would get photos with details of other persons which he uses in the compilation. He would not know the suspects. It is usually provided to by him the anti-gang unit. The list of names and addresses of possible suspects as compiled by this witness in the line-up was handed up as Exhibit U.

37] **Under cross examination by counsel for accused 1** he testified that for every one suspect he would take five or seven other suspects to compile the line-up. He would use pictures of persons that looks similar and the background must be clear ideally such as a clear wall. The similarity need not be perfect but it must be more or less the same including skin tone. He maintained that the criteria used in the compilation of the line-up of accused 1 was correct however if some photos appear lighter than others it is most likely that it was captured with a flash which could cause over exposure.

38] **Under cross examination by counsel for accused 2** he explained that photos are obtained from his system in respect of other persons whom had been previously arrested, however, one could also have been a complainant. However, a photo can be obtained in respect of anyone. Once the compilation is done, he

leaves it for the collection of the investigating officer. This process does not involve it being formally sealed. According to his statement he handed the compiled photographs to the investigating officer on 9 November 2018.

Warrant Officer Sibongiseni Sentumetse:

39] Sentumetse testified as the ballistics expert, employed at the ballistics section of the SAPS Forensic Science Laboratory in Platteklouf. Her statement in terms of Section 212(4)(a) and 8(a) of the CPA was handed up as Exhibit V. From the statement of her colleague, Ms. Kowa, two 9 mm firearms were used in the shooting as 7 of the 14 retrieved cartridges were each from two different firearms. A revolver was also used in the commission of the offence so determined by the bullets retrieved which was either a .38 or a 357 revolver in that the bullet of both types of revolvers are the same in weight and diameter. She was able to determine from the layout of the cartridges that the shooters were moving either to or from the position of the deceased, Mr. Carelse. Only the 9mm pistols ejects cartridges, as revolvers retain the cartridges.

Sergeant Raymond Plaatjies & Constable Nathaniel Sass:

40] Plaatjies attended at the scene after he started nightshift and performed parade. His shift started at 17h45. Upon arrival at the scene there were about 10 police officers and he noted two lifeless bodies lying on the sides of the road across from each other. The bodies were already covered. He took over from Constable Hartzenberg and called upon the ambulance, forensic photographers and the mortuary. Members of the public were behind the cordoned off area. He has been

working in the area for approximately 13 years and it is known for crime, gang violence and robberies.

41] Sass is a uniformed member of the SAPS, doing patrol work in Bonteheuwel sector. He attended at the scene shortly after he started nightshift with the previous witness. He arrested accused 1 on the 8 November 2018 in a house situate at [...] M. Street, Valhalla Park which was not his place of residence. He acted upon the instruction of Warrant Officer Julius who requested of him to attend at the said house to arrest a suspect in a murder case. The property is known for gang activities, drugs and guns and he had on a number of previous occasions conducted searches at that residence. The gang affiliated to the home where he arrested accused 1 was known as The Firm. Accused 1 was with two other males inside the property and no firearms or drugs were found on that date. Warrant Officer Julius was present with them when they effected the arrest.

Mrs. Rezone Carelse:

42] Mrs. Carelse is the widow of deceased, Gregory Carelse, and the mother of the second state witness, Dale Carelse. She is employed as a theatre porter at Netcare, N1 City Hospital, Parow. Her daughter tried to contact her on the day of the incident but she was busy in theatre. She learnt of the shooting when her daughter and a relative fetch her from work and told her that her husband had been shot and that he is deceased. They took her to the scene where her husband's body was. The area was cordoned off and she was allowed on the scene escorted by the pastor. She did not disturb anything at the scene, her husband's body was covered

after her arrival and she made a statement at her home to the police around 23h30 that evening. She testified that she was devastated by the news that her husband had been shot and traumatized by the events and having attended to the scene where her husband's body was lying. Later that evening she was hysterical and in the months which followed she lapsed into a depressive state. Dale spoke with her subsequent to the shooting, though she was unsure if it was on the evening of the incident or on the day following and shared with her that he saw the shooters and that he knew them by their nicknames, Wena and Krag. She did not know who these persons were other than previously seeing them at the inspection in loco during the course of this trial. She explained that she did not go to the police as she was too emotional and does not like to be involved in these type of matters.

43] **Under cross-examination** she indicated that she arrived at the scene shortly after her shift finished at 18h30. She estimate that her conversation with Dale was the following day as it was at a time when they were alone and on the evening of the incident it was very congested with people at their home, hence it was most likely on the following day when the home was quieter. She did not tell the police what her son had shared with her about the incident and in particular the names of the persons who shot her husband.⁴² When probed why she had not shared the information to the police she explained that she does not trust people and that her husband always told her not to trust people especially those at Bishop Lavis police station. She mentioned it to the investigating officer when she saw him when he initially came to investigate the matter. She did not see yellow tape cordoning off the scene however there were no persons on the crime scene as they were kept at

⁴² Record page 191, line10 - 14

about a 5 metre distance. **Under re-examination** she stated that she never shared the information received from her son in a formal or official manner in a statement form.

Captain Althea Nomdoe Jaftha:

44] Jaftha is a captain in the South African Police Service with the anti-gang unit in Faure. She is in the service of the SAPS for 28 years and attended the scene around 19h15 that day. Upon her arrival the area was cordoned off with majority of the police officers were from Bishop Lavis police station. Her duties entail attending to gang-related crime scene, murders and shootings. She also provides assistance and backup to members in respect of crime scene management and control. At around 20h30 that evening and after they left the scene they attended at two houses to follow up on information that was received at the scene, in particular suspects who were named as Waylin Abdullah (alias Wena) and Ashwin Willemse. They searched at [...] H. Street in Valhalla Park, however, only an elderly female was present. The suspect was not present. Whilst at the premises she got information which they followed up by attending at a squatter camp in [...] Avenue, Valhalla Park. As they did not have a shack or house number the team consisting of herself with 16 members just walked in the area and interviewed people. They followed up with a search for Ashwin Willemse at [...] J. Street, Valhalla Park. They did not find the suspect present. She was not involved with subsequent arrests of the suspects, however, they made subsequent searches over the following two weeks for the suspects at the said addresses and in and around the Bishop Lavis area. The

persons whom she interviewed at the scene did not wish to get involved or make a statement and spoke to her in confidence.

45] **Under cross examination by counsel for accused 1** she explained the general police procedure when securing a crime scene. The first responding officer must preserve the evidence on the scene and identify marking as to where the crime scene will be cordoned off, followed by relevant role players who would be called upon via radio control to attend at the scene. Cordoning off is done with tape and in areas where it is difficult to tape off then vehicle or uniformed members facilitates in doing so. She was confident that the area was cordoned off with tape, though the cordoned off area was subsequently broadened off into A. Road with police vehicles parked on the border of the crime scene referred to as being within the perimeter of the crime scene but not on the crime scene.

46] **Under cross examination by counsel for accused 2** the witness testified that she indicated that they had attended at the respective premises looking for suspects and not to search the house for items, hence they did not require a search warrant. At the premises they sought the consent of the occupant to enter the premises. When probed as to why she gave a statement only recently whilst her testimony is that she had done a number of searches for the accused immediate following the incident and in the days thereafter, she explained that it is procedure that only the arresting officer makes a statement. She was never asked to give a statement until two weeks prior to her date of testimony. She is not familiar with either of the accused.

Colonel Charl Kinnear:

47] The last witness testifying for the State was the investigating officer, Col Kinnear. He has been in the police service for 31 years and had lived his entire life in the area. He also lives very close to the scene of the incident. He was the first person from his unit (the anti-gang unit) on the scene, arriving approximately half an hour after the shooting. Officers from the Bishop Lavis police station were in attendance upon his arrival. People at the scene refused to give statements as to what they saw during the shooting. He is familiar with the gangsterism in the area and testified that the predominant ruling gang is the 28's under the leadership of Ralph Stanfield. There are two factions of the 28's within the Nooitgedacht area, whose respective control are bordered at F Street. His role at the crime scene was to preserve the scene and any exhibits. Whilst he obtained a statement from Dale Carelse 18 days after the incident, he explained that he had contact with him after he left the scene that evening. Kinnear mostly communicated with Dale via whatsapp that he needed a statement from him, but Dale was scared. At some state he engaged with Dale's father's brother and explained to him that he required a statement from Dale. When the accused were implicated, he was not familiar with them or by their nicknames. He arranged for a photo line-up sourcing photos of the suspects, Krag and Wena, as there were crime intelligence at Bishop Lavis SAPS that they were the suspects, with their names and nicknames known. Together with members who had attended at the scene, who were from Manenberg SAPS, the photos of the two suspects were left for the management information officer at that police station to look for suitable photos to compile a photo album. Sergeant van der Horst handed the photos to Mr. Johannes, a clerk at the police station. They

returned later in the afternoon to collect the compiled photographs for the photo parade. He had no further contact with Johannes.

48] He arranged for Sergeant Henderson to conduct the photo parade. He sealed the envelope and placed it into a forensic bag. The first time that he looked at the photos was after Sergeant Henderson gave it to him which was after the parade and he placed it in the case docket. He was interviewing a prisoner in the cells when he was asked by an officer sent by Henderson to obtain the photo identification parade form which he had prepared but it was still in his laptop bag. Dale was not collected for the parade and when he enquired as to where he is, Dale said that he would only attend if Kinnear fetches him. He has no reason to suspect anyone of influencing Dale to have pointed out the two accused in the parade as the perpetrators. Accused 1 was arrested a day prior to Dale making his statement on 9 November 2018. Kinnear was not involved in the arrests of either of the accused. The first time he saw accused 1 was when he interviewed and charged him at 10h05 on 10 November 2018. He was not in the province when accused 2 was arrested and charged. The first saw accused 2 after his third court appearance.

49] None of the 3 fire-arms (revolver and the two 9mm pistols) were retrieved after the shooting however the one 9mm pistol was used in the shooting was linked to 16 other criminal cases, 14 of which are crimes in the Bishop Lavis area.⁴³

⁴³ Exhibit Y – Ballistics report in re 9mm cartridge

50] The addresses provided in the docket by accused 1 and 2 is [...] J. Street and [...] H. Street respectively, both homes situate in Valhalla Park. In the matter involving the shooting in F Street in 2017, only the accused known as Craig Stanfield is remaining. A witness in that matter was also killed in Valhalla Park during March. Carelse was also a witness in that matter, who been killed in the shooting of 18 October 2018.

51] **Under cross examination by counsel for accused 1** Kinnear confirmed that the scene was cordoned off with tape and detailed how the tape was affixed to the surrounding areas.⁴⁴ The members of the community present at the scene would not give statements out of fear for their lives or being killed in retaliation.⁴⁵ When he initially spoke with Dale, he was reluctant as he was scared that he was also going to be killed and that he lives in the area, hence the passage of time. However, with the support of his uncle, Dale gave a statement. Accused 1 was arrested after information was received from crime intelligence.

52] **Under cross examination by counsel for accused 2** Kinnear testified that he writes down everything provided by a witness who deposes to a statement. He confirmed that there was no language or cultural barrier between himself and Dale and that he already understood at the time that he would be the only eye witness to the crime. The record reads:

“KINNEAR: M’Lady, everything that is in the statement is what he has told me.

⁴⁴ Record page 388, lines 10 - 20

⁴⁵ Record page 389, lines 18 - 20

COUNSEL: *...can the Court accept whatever is not in his statement which he says should have been, it couldn't have been mentioned to you, otherwise you would have written it down, correct?*

KINNEAR: *That's correct, yes, M'Lady."*

53] Counsel probed the witness why he did not set out the description of the clothing of accused 2. Kinnear replied that if there is no description of clothing then Dale had not given it to him. He also agreed with counsel that he would have included in the statement any details which Dale would have given him regarding the incident and how the scene had unfolded. After he read the statement to Dale, he was satisfied with the contents and did not indicate that details were omitted. He denied that he spoke with Dale when he fetched him for the purposes of attending to the photo identification parade with Henderson. He had been interviewing accused 1 when the identification parade was conducted. He took a statement from Dale a day prior to the parade and one immediately after the parade. The second statement dealt with the identification parade itself.⁴⁶

54] In answer to a question by Court: ***"Do you recall what questions you asked him to elicit the answer?"*** Kinnear indicated that he could not remember the questions which he had put to Dale, but that as far as the accused 2's clothing is concerned it was only described as dark in colour. Kinnear also conceded that if Dale specified how he had come to recognise one of the shooters as accused 2, he

⁴⁶ Record page 414, lines 10 & 11

would have recorded it in the statement. Kinnear replied to a series of similar questions by counsel as follows:⁴⁷

“M’Lady, I’m going to say again. If it’s not in the statement, then he didn’t tell me in so many words...”

55] Kinnear testified that he is absolutely sure that he had never shown photos to Dale prior to the parade of the two accused and dismissed any suggestion that he had done so.

56] **Under re-examination** Kinnear testified as to the process he employs when taking down a statement for a witness. The record reads:⁴⁸

“You will tell me what happened and then afterwards I’ll try and draft the statement.”

Kinnear further explained that he would not tailor his questions as would be in Court and that he did not go into detail as he is familiar with the area and had frequented it since he was young. He was in a different position to that of the Court, who was required to familiarise itself with the scene by way of an inspection in loco.

STATE CASE CLOSED

DEFENCE CASE:

⁴⁷ Record page 434, lines 18 & 19

⁴⁸ Record page 451, lines 3 - 5

Mr. Ashwin Willemse – Accused 1:

57] Ashwin Willemse testified that he on the day of the incident he was at his home situate situate at [...] J. Street, Valhalla Park. He had been cleaning the yard in the morning, played video games at around lunch time, listened to music in his room in the afternoon and took a nap. He woke up around 2 or 3 o'clock in the morning when he went to the toilet. He returned to bed thereafter. He was at home the entire day as he is under correctional supervision and woke up at around 10 or 11 o'clock the following morning. The first time that he learnt of this incident where Carelse had been shot was when he was arrested by Constable Julius about three weeks later on 8 November 2018. As he is under correctional supervision, he never leaves his house, and had not heard of this incident from members of the community.

58] He denied that police had been attending at his home to look for him as their dogs would have barked had anyone been at his home. He was apprehended in M. Street, Valhalla Park. The arresting officer made use of a photo on his cellphone to assist him in making the arrest. He abandoned an application for bail as sentence in respect of which he had been released on parole had come into effect which he was required to serve. He denied knowing Carelse or knowing accused 2 prior to this matter or that he knew either Dale or accused 2 from high school. He furthermore denied being involved in the shooting incident involving Carelse and Holland.

59] Under cross examination he testified that he was 31 years old and that he was released from prison on parole on 1 October 2018. He confirmed that he was

known by the nickname Krag. Whilst he denied knowing Dale he could not explain how it is that Dale knew at the time of making his statement on 9 November 2018 that he had recently been released from prison or that he knew him by his nickname.⁴⁹ When it was put to him that Dale seems to know however know him, he testified that his sister, Vanessa Lombard, and her daughters had been staying at the home of Carelse and his family. He had however never been there. This could possibly be how Dale had known of his recent release from prison. He heard from them that they were staying by someone known as Kallie. He did not see Vanessa when he was released from prison since there is tension between his two sisters. Vanessa had never been to visit at the home where he had been staying with his eldest sister, Petulia, although Vanessa's daughter who also stayed at the Carelse residence would visit at his home. He heard from Vanessa's daughter that they were staying at Carelse's house, although he did not know who Carelse was. He explained that he would not visit Vanessa as he was on parole and was not allowed to visit around. He could only attend to work if he had employment. He explained that when he said in his evidence in chief that he did not know who Carelse "really" was he in fact do not know Carelse at all. He had not known of the shooting of the 18th of October 2018 until after his arrest, when the investigating officer told him that the charges includes the murder of Carelse. He did not know what time the shooting happened but he said he was at home at the time of the shooting. He could not explain how it was that he know to have been home at the time, whilst not knowing when in fact the shooting had happened.

⁴⁹ Record page 479, lines 10 - 12

60] He testified that he had 2 cellphones after his release from prison but that it did not have sim cards or cell numbers as he only used it for listening to music. He only made use of memory cards in the phone so that he could listen to music. The only reason why he had been at [...] M. Street, Valhalla Park when he was arrested was because he asked John for a cellphone. When it was put to him that he already had two cellphones, he testified that his phone had difficulties when speaking on it.⁵⁰

61] The tattoos that he has on his body brandishing the markings of the 28 Gang is only because he had previously been in prison and had to belong to a gang for protection. The stars tattooed on his shoulders had been made by him and are not indicative of any rank that he holds in the gang. Stars on tattooed on the shoulder would mean that you hold the rank of a captain but his tattoos are fake. He bears no knowledge of the drug dens which Dale had testified of and does not know who is Ralph or Simon Stanfield. He knows of no 28 gang members who lives in the area whom had been in prison with him. He also did not know Holland.⁵¹ He born no knowledge of the F incident and does not know Abraham Wilson. He explained that when the witness or the State testified that the Valhalla Park area is the territory of the 28's, they were not challenged about it by his legal representative as he does not know of the gang politics in the area. He does not know accused 2 and though he had seen the 28 gang tattoos on accused 2, he did not ask him regarding his affiliation with the gang.

⁵⁰ Record page 499, lines 25 & record page 500, lines 1 - 5

⁵¹ Record page 513- line 15

62] He testified that his sister, Petulia Petersen and her daughter Tamsyn Petersen, were at home with him on the day of the incident and would confirm that he was at home. When pushed to explain why he raised the alibi only during his evidence in chief and not earlier, he said that he had told his legal representative that his sister was at home with him on the day.⁵² He maintained that she is his alibi witness and would be able to confirm that he was at home at the time of the shooting. Though he stated that he was asleep at the time, he struggled to explain how it is that he would know that his sister was at home to verify that he was at home. He was of the view that if she had gone out whilst he was sleeping that afternoon, she would have woken him up.⁵³

63] Accused 2 did not call any further witnesses after his testimony and proceed to close his case.

Accused 2:

64] Accused elected not to testify in his defence and called no witnesses. He closed his case.

DISCUSSION:

INSPECTION IN LOCO AND APPLICATION TO RECALL STATE WITNESS:

⁵² Record page 518, lines 10 – 20

⁵³ Record page 521, lines 21 - 25

65] An inspection in loco⁵⁴ was conducted at the crime scene on March 2020. Leave was sought on 17 March 2020 by Mr. Botman, counsel as at that time for accused 2, to withdraw on the basis that his mandate had been terminated and that the services of a new counsel had been obtained by him. In these circumstances and for the reasons submitted, leave was accordingly granted and new counsel came on record for accused 2.⁵⁵ A formal application⁵⁶ was thereafter brought to have the state witness, Dale Gregory Carelse, recalled as a witness and that further cross-examination be allowed in respect of his previously presented evidence. The purpose essentially for recalling the witness was to test the state of mind of the witness at the time of the incident and the reasons for only furnishing a statement to the police, implicating accused 2, 18 days later. The conduct of the inspection in loco was not challenged. Accused 2 wished to recall the witness as he had new counsel and sought to have further instructions put to the witness. The grounds for the application was traversed during submissions and ventilated by questions from the Court.

66] The grounds upon which the application was brought and as set out in the application, were that he sought the state witness to be further cross examined as to opportunity to identify the perpetrator at the time of the shooting, including his degree of previous knowledge of accused 2, whether the short period of time had been sufficient to have made an identification that one of the shooters were accused 2, that issues such as accused 2 speaking in “gangster language” had not been adequately traversed as well as the state witness’ evidence that he had heard

⁵⁴ Exhibit N

⁵⁵ Adv. Liddell instructed by attorneys: Liddell Weeber & Van der Merwe Incorporated

⁵⁶ Notice of Motion for application to be made on 1 June 2020

accused 2 had attempted to flee from the police. The application to recall the witness was also on the ground that the state witness' pointing out at the inspection in loco had not been placed on record and that such evidence by Mr. Dale Carelse needed to be testified to and subjected to cross-examination. The application was dismissed, with reasons to follow in the judgment.⁵⁷

67] In terms of Section 35(3)(i) of our Constitution every accused person has the right to a fair trial, which includes the right to adduce and challenge evidence. The Court exercised its discretion to conduct an inspection in loco at the scene in order to gain an orientation and visual of the scene and in particular to the testimonies given during trial and the further record of proceedings, including the formal admissions insofar as it related to the scene. No evidence is led at an inspection in loco. The product of the inspection in loco is real evidence. The observations so made at the inspection is for the presiding officer as the Court to advance the comprehension of the testimonies without adding anything to the evidence already adduced viva voce by the witness. The witness was requested by respective counsel as well as the Court, in the presence of both the accused, to point out various points at the scene or illustrate certain actions only in accordance with the evidence he had given during his testimony in Court. The recorded observations so made were in the course of ventilation by the counsel and the Court and same were recorded in the presence of counsel for the state and defence.

68] In dismissing the application, the Court was satisfied that the issues which were sought to be addressed or re-addressed were in fact already traversed in the

⁵⁷ Record page 253

testimony of the state witness, leaving it for the Court to determine the credibility and reliability of the evidence so given. Furthermore no actions, deeds or beacons were pointed out or illustrate during the inspection in loco which required to be placed under oath through further testimony by the state witness and which would thus have been available to be subjected to cross-examination. In weighing up various applicable fundamental principles and constitutional rights, including trial fairness and the rights of the accused, whether the accused stood to be prejudiced, the Court was satisfied that the interests of justice did not warrant the recalling of the state witness.

APPLICABLE LEGAL PRINCIPLES:

Cautionary rule in respect of single witness and identification:

69] Dale Carelse was the only eye witness to the commission of the offences and as such he is not only a single witness but also gave identification evidence. The Court is therefore required to consider his evidence with caution in both respects.

70] The thrust of the matter turns on the issue of identification. Much has been said by our courts in that regard over the years but perhaps the most oft cited passage is that of Holmes JA in ***S v Mthethwa 1972 (3) SA 766 (A) at 768:***

“Because of the fallibility of human observation, evidence of identification is approached by the courts with some caution. It is not enough for the identifying witness to be honest, the reliability of his

observation must also be tested. This depends on various factors such as lighting, visibility and eyesight, the proximity of the witness, his opportunity for observation, both as to time and situation, the extent of his prior knowledge of the accused, the mobility of the scene, corroboration, suggestibility, the accused's face, voice, build, gait and dress, the result of identification parades, if any and of course, the evidence by or on behalf of the accused. The list is not exhaustive. These factors or such of them as are applicable in a particular case are not individually decisive, but must be weighed up one against the other, in the light of the totality of the evidence and the probabilities..."

71] As a single witness the Court must also be satisfied that his evidence was satisfactory and reliable in all material respects. In terms of section 208 of the CPA an accused can be convicted of any offence on the single evidence of any competent witness. In ***S v Sauls and Ors 1981 (3) SA 172 (A)*** at 180 E – G the Court referred to the cautionary rule and stated as follows:

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

72] It is trite that the exercise of caution must not be allowed to displace the exercise of common sense. The evidence of Dale Carelse must be found to be clear and satisfactory in every material respect before this Court can place reliance thereon. Counsel for accused 2 directed much of the cross-examination of both Dale Carelse as well as Col Kinnear relating to aspects which was argued to be crucial aspects not included in the statement which however was testified to by witness in his evidence before the Court. It was argued that these missing pieces in the statement amounted not to contradictions but rather simply not having been stated by the witness at the time when he made the statement, suggesting that he had invented it during his testimony in Court which ought to discredit the reliability of the evidence. I consider this aspect below.

Evidence of witness in respect of written statement and viva voce evidence:

73] In ***S v Mafaladiso en Andere 2003 (1) SACR 583*** at 593E – 594H the Court considered the material difference between the statement of the witness and the testimony of the witness. The Court held:

“The juridicial approach to contradictions between two witnesses and contradictions between the versions of the same witness (such as, iner lia, beween her or his viva cove evidence and a previous statement) is, in principle (even if not in degree), identical. Indeed in neither case is the aim to prove which of the versions is correct, but to satisfy oneself that the witness could err, either because of a defective recollection or because of dishonesty. The mere fact that it is evident that there are self-contradictions must be approached with caution by a court. Firstly,

it must be carefully determined what the witnesses actually meant to say on each occasion, in order to determine whether there is an actual contradiction and its precise nature thereof. In this regard the adjudicator of fact must keep in mind that a previous statement is not taken down by means of cross examination, that there may be language and cultural differences between the witness and the person taking down the statement which can stand in the way of what precisely was meant, and that the person giving the statement is seldom, if ever, asked by the police officer to explain their statement in detail. Secondly, it must be kept in mind that not every error by a witness and not every contradiction or deviation affects the credibility of a witness. Non-material deviations are not necessarily relevant. Thirdly, the contradictory versions must be considered and evaluated on a holistic basis. The circumstances under which the versions were made, the proven reasons for the contradictions, the actual effect of the contradictions with regard to the reliability and credibility of the witness, the question whether the witness was given a sufficient opportunity to explain the contradictions – and the quality of the explanations – and the connection between the contradictions and the rest of the witness's evidence, amongst other factors, to be taken into consideration and weighed up. Lastly, there is the final task of the trial Judge, namely to weigh up the previous statement against the viva voce evidence, to consider all the evidence and to decide whether it is reliable or not and to decide whether it is reliable or not and to decide whether the truth has been told despite any shortcomings.”

74] The overwhelming feature of the statement of Dale Carelse, implicating accused 1 and 2, as the shooters on the fateful day was that he knew both the accused. ***“Ek ken hulle lankal”***.⁵⁸ He recognised the shooters prior to realising that the person shot on the ground is his father. In terms of his evidence he had a fleeting few seconds to see both accused. The estimate distance from the time he picked up speed, estimated as 15 – 20 metres, which was measured at the inspection in loco as 39 metres, was covered by him in just around 5 seconds. During this time he saw the face of accused 1 as he turned to look back before crossing around, crouched over next to the deceased as well as the face of accused 2 for a period of around 2 – 3 seconds. Dale conceded that the period for recognising the faces of the shooters as the persons whom he knew as Krag and Wena was very fleetingly in circumstances where everything happened in moments, he was running as he approached a horrific scene. However, notwithstanding the concession, he reiterated that the momentary opportunity to recognise the shooters as the accused was enough in circumstances where he had known their faces for a considerable period of years.

75] Whilst cross examination of both Dale and the Kinnear regarding the taking down of the statement eliminated the language and cultural issues as barriers to properly gauging Dale’s version in specific detail, it is a prominent feature of the investigating officer that he was *au fait* with the area and could without more understand and visualise the setup of the area of the incident that he need not get clarification on that. It was also a significant feature that to the eye witness, the

⁵⁸ Translated from Afrikaans as: *“I already know them for some time”*

shooters were not strangers. His focus was on the fact that he had positively identified who they were, he knew their nicknames and other details relating to them. Kinnear as the interviewer was not focused on the distinguishing features of the shooters, for the eye witness was self-assured as to who they were and recognised them from prior knowledge or history. It is human nature that when one recognises someone from prior knowledge, identification recedes into the background. This fact would have resonated upon both the interviewer and the interviewee. Details as to distinguishing and facial features are generally resorted to when the interviewee has nothing else to go by in describing the assailant. Similarly In recollecting what he or she had looked like in circumstances where the interviewee knew nothing else of the actual identity of the person. It was a reverberating feature of familiarity on the part of Dale that he knew exactly who the shooters were as well as the orientation of the scene and this clearly permeated the interview between Dale and Kinnear. The police statement is not a transcript of the interview between the two: eye witness and investigating officer. Kinnear stated that he would try to tell the story as Dale had told him. In answer as to why certain details are provided which Dale had not mentioned in his statement, his answer was in some respects that he did share that with the investigating officer and he also testified that he answered questions as it was put to him. Kinnear testified that he did not pose questions to Dale as would be the process in Court.

76] The aspects which were set out in the viva voce evidence of Dale Carelse in my view are an elaboration of his observation, illicit by the questions put to him by the legal representatives as well as the Court. These lines of questioning cannot be equated to the product which culminated between himself and the investigating

officer. The benefit that the trial processes have insofar as it relates to viva voce evidence to that of a product of a police statement is that it unfolds in circumstances with the benefit of the written statement and the well-prepared forum of a trial which includes the pre-trial procedures, exchanging of the further particulars and ventilation of the evidence of the witness by leading and challenging thereof including questions by the Court. The statement taken by Col Kinnear are over 3½ handwritten pages divided into 15 paragraphs. The *viva voce* testimony of the eye witness spanned over a period of three court days and was the subject of intense ventilation. Further to that it was the evidence of both Dale and the investigating officer that they could not remember the specific questions put which solicited the answers in the statement. Dale testified that he answered the questions according to how it was framed.⁵⁹ In considering the details provided by the witness during his *viva voce* evidence, weighing up the details not provided for in the written statement, I am not persuaded that it is indicative of a post fabrication by the eye witness and accordingly does not render the evidence so given as unreliable or unsatisfactory.

77] In dealing with a witness who had not dealt with a full description of the observation of an accused, the Court stated in: ***Magadla v State (80/2011) 2011 [2011] ZASCA 195***⁶⁰ the Court held that:

“The fact that a witness failed to provide a description of the accused does not always assist him or her [the accused] in the event where the witness was at a situation where he or she had ample opportunity to make a proper and reliable observation of the perpetrator, especially

⁵⁹ See paragraphs 25 and 53 *supra*

⁶⁰ 16 November 2011

where the witness did not have any reason to falsely implicate the perpetrator.”

Photo line-up identification parade:

78] The use of photo albums as a primary tool in the investigation of crime where identity is in issue has been the subject of judicial comment. The issue was discussed by the SCA in ***S v Moti 1998 (2) SACR 245 (HHA) at 254 G – 255I*** which held that the primary object of a photo line-up was not to gather evidence for later production in a trial court but rather to promote the investigation of crime. For that reason it would be inappropriate to impose upon such a photo identification the strict requirements set out for a regular identification parade. Essentially the purpose of photo identification parades is to facilitate the investigation. It is also significant *in casu* that the photo identification parade conducted by Sergeant Henderson with photo compilation prepared by Mr. Johannes was not the primary tool in the investigation as the accused had been known to be suspects in the offences committed. The eye witness had at that time already positively identified them as persons whom he knew and they were not strangers to him. Their identities in the form of their nicknames known by the eye witness and their full names and details were known through crime intelligence in the course of the investigation.

Circumstantial Evidence:

79] The State relied on circumstantial evidence in the following respects that:

- (i) when Carelse was shot and robbed, he was in possession of his fire-arm,

- a .38 revolver;
- (ii) Carelse was robbed of the said fire-arm during the commission of the offence;
- (iii) Carelse's was murdered in terms of a planned execution to eliminate him as a state witness in a triple murder trial which happened in July 2017 and which was pending before the Cape High Court;
- (iv) Carelse's .38 revolver was used in the execution of the further shots which were fired;
- (v) Prezano Holland was shot and killed when the accused directed shots and killed Carelse.

80] It is a well-established principle that when inferences from evidence are called for, two cardinal rules of logic must be guide the Court: (1) the inference must be consistent with the proven facts; and (2) it must be the only reasonable inference sought to be drawn.⁶¹ The nature of the evidence led by the State *in casu* was both direct and circumstantial and the approach of the Court in this regard has been set out with reference to cardinal rules of logic which were enunciated in ***R v Blom 1939 AD 188*** at 202 – 203 where the Court held that:

“(1) The inference sought to be drawn must be consistent with all the proven facts. If it is not then the inference cannot be drawn.

⁶¹ R v Blom 1939 AD 188

(2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must a doubt whether the inference sought to be drawn is correct.”

81] It is common cause that the area in which Gregory Carelse lived and walked around on the day of his killing is notorious for crime, robberies and gang violence. The evidence of Dale Carelse was not disputed that in or around the date in question there was gang war and unrest in the area and that his father had always been armed with a fire-arm. It was also not disputed that the last activity on his cellphone was shortly before the time of the shooting, which was a social message to a friend in other words it did not record that he had been caught up in a situation where he had lost or was dispossessed of his firearm prior to the shooting. Gregory Carelse was a security conscious person and was actively involved in community safety, crime fighting and patrol. He left home around 15h20 with his .38 revolver in his waist holster. For these reasons it is inherent and most probable that at the time of his murder he was still in possession of his fire-arm. In my view, the only reasonable inference that can be drawn from the proven facts is that he was still armed with his .38 revolver. It follows logically that he was robbed of his fire-arm during the incident.

82] In all probability the 5 revolver bullet points retrieved from the body of Carelse were fired from his own revolver and most likely used in the further fatal assault on him. This is so particularly in light of the fact that there were two shooters and three fire-arms found to be used in the commission of the offences, that being, two 9mm pistols and one revolver. He was robbed of his .38 revolver and the ballistics report

determined that the bullet points were executed from a .38/357 revolver. It is however not necessary for this judgment that this Court is required to make such a finding.

83] The State sought of the Court to find that the killing of the Gregory Carelse was in the course of a hit which was placed on his life as a result of being a witness for the State in the triple murder trial of which he arrested one of the accused in 2017. It was not placed in dispute that another witness for the State in the same pending trial relating to the F shooting had also subsequently been shot and killed. It was the evidence and closing submissions for the State that the members of the community are fearful of their safety with the consequence result, that no witnesses were willing to testify to the killing being part of an executed hit. The area is known for crime including robberies and murders. Gregory Carelse was very active in policing and community safety and from the evidence it is clear that he was a brave and committed person to reduce crime in the area and did not hesitate to pursue the unlawful actions of others notwithstanding the fact that fear is pervasive amongst community members to act against the commission of crime with grave consequences for themselves. As evidence in relation to this plot as alleged was not led by the State other than as set out above, it cannot be conclusively found by this Court to have been the motive for the killing. By all accounts, the manner and circumstances of his murder is indicative that the shooters wanted him dead and they successfully achieved such goal.

84] I agree with counsel for accused 2 that the shooting of Prezano Holland is a mystery. Even the eye witness to the shooting testified that after seeing his father on the ground, he was perplexed at why Holland was lying on the opposite side of the

road and if in fact he was shot, nor had he noticed Holland prior thereto. The State invited the Court to find that the shooting of the deceased resulted in the shooting of Holland in that he would have been hit by a stray bullet. No evidence was led as to how it is that Holland was at the scene, where did he come from, where was he going to, who had interacted with him prior to his death and no one testified as to him being hit by a bullet. It is also reasonably possible that Holland had been hit prior to the shooting. It was a violent gang war prevailing in the area and the Court has heard that in the previous year three people were shot by persons in a passing vehicle, in broad daylight, and in a road nearby to the scene. The Court is not able to infer and determine beyond reasonable doubt that the killing of Holland transpired as a logical and consequent result of the shooting directed of Carelse as the intended victim.

Onus on the State to prove charges beyond reasonable doubt:

85] It is a fundamental principle that in criminal proceedings the prosecution must prove its case beyond reasonable doubt and that a mere preponderance of probabilities is not enough. Equally trite is the observation that, in view of this standard of proof in a criminal case, a court does not have to be convinced that every detail of an accused's version is true. The version of the accused cannot be rejected on the basis of that it is improbable.⁶²

Principles applicable to an accused not giving evidence:

Accused 2 failure to testify:

⁶² S v Shackell 2001 (4) SA 1 (SCA) paragraph 30

86] The eye witness, Dale Carelse, placed accused 2 at the scene as one of the shooters. In **S v Boesak**⁶³ the court found that:

“It is trite law that a court is entitled to find that the State has proved a case beyond reasonable doubt if a prima facie case has been established and the accused failed to gainsay it..... one of the main and acknowledged instances where it can be said that a prima facie case becomes conclusive in the absence of rebuttal, is where it lies exclusively within the power of the other party to show what the true facts were and he or she fails to give an acceptable explanation.”

87] There is a *prima facie* case against the accused, the failure to answer it becomes a factor to be considered along with other factors and from that totality, the Court may draw the inference of guilt.⁶⁴ The accused’s constitutional right to silence cannot prevent logical inferences. The circumstances of a case must be such that a *prima facie* case, if left uncontradicted, become proof beyond reasonable doubt. This happens not because the silence of the accused is considered an extra piece of evidence, but simply because the *prima facie* case is in the absence of contradicted evidence on logical grounds strong enough to become proof beyond reasonable doubt.⁶⁵ I would say, that the *prima facie* case against the accused 2 in this case, without evidence under oath challenging the said evidence by the State, results in the *prima facie* case ripening into proof beyond reasonable doubt of the charges against him.

⁶³ 2000 (3) SA 381 (SCA) page 396

⁶⁴ S v Letsoko and others 1964 (4) SA 768 (A) page 776

⁶⁵ The Evaluation of Evidence Ss30-9 (d) – Page 545

88] This is exactly the position *in casu*. In the circumstance where Mr. Waylin Abdullah has exercised his constitutional right to silence, the Court is left with nothing but the uncontroverted *prima facie* case presented by the State, which unchallenged ripens into proof beyond reasonable doubt. This is not shifting the onus of the State to prove its case beyond reasonable doubt. The *prima facie* case of the charges against accused 2 therefore became conclusive in the absence of his rebuttal. His failure to give evidence was damning in the circumstances. Accused 2 chose not to testify in view of being accused of such a serious offence draws the inference that the appellant could not answer to the allegations against him. In **S v Chabalala 2003 (1) SACR 134 SCA** paragraph 21 the Court held in relation to an appellant who had elected not to testify in similar circumstances as Accused 2:

“The appellant was faced with direct and apparently credible evidence which made him the prime mover in the offence. H was also called upon to answer evidence of a similar nature relating to the parade. Both attacks were those of a single witness and capable of being neutralised by an honest rebuttal. There can be no acceptable explanation for him not rising to the challenge. To have remained silent in the face of the evidence was damning. He thereby left the prima case to speak for itself. One is bound to conclude that the totality of the evidence taken in conjunction with his silence excluded any reasonable doubt about his guilt.”

89] In ***Osman and Another v Attorney-General Transvaal***⁶⁶ the Court stated the following principle which squarely applies to this matter:

“Our legal system is an adversarial one. Once the prosecution has produced evidence sufficient to establish a prima facie case, an accused who failed to produce evidence to rebut that case is at risk. The failure to testify does not relieve the prosecution of its duty to prove guilt beyond reasonable doubt. An accused, however, always runs the risk that, absent any rebuttal, the prosecution’s case may be sufficient to prove the elements of the offence. The fact that an accused has to make such an election is not a breach of the right to silence. If the right to silence were to be so interpreted, it would destroy the fundamental nature of our adversarial system of criminal justice.”

EVALUATION OF WITNESSES:

90] The case for the State materially rested on the issue of identification and the credibility of the eye witness, Dale Carelse. Whilst he testified on details which he had not provided in his written statement, the absence of such details had been discussed earlier in this judgment and it cannot be said that his evidence is not credible or reliable. He withstood vigorous cross-examination and testified in a clear and coherent manner. He did not embellish his evidence for example he limited his testimony to what he had observed. He resisted stating that he saw the shooters removing the fire-arm from his father and testified that he saw them fiddling in the

⁶⁶ 1998 (4) SA 1224 (CC)

side of his father's waist. He maintained throughout this cross examination that he saw the faces of both accused fleetingly and observed them for just over a few seconds as they fled the scene, running into the opposite avenue, however, he was well able to demonstrate that his observations in respect of both accused and his previous knowledge of each provided him with sufficient opportunity to see and identify them.

91] The Court must not merely pay lip service to the rules of caution which applied.⁶⁷ The Court is alive to the fact that mere pronouncement that it is taking a cautious approach to the evidence is insufficient and is the equivalent of non-compliance. It must be apparent that the Court has indeed treated the evidence cautiously. The Court is satisfied that he was well able to observe the unfolding of events at the scene to the extent that he had testified. I am satisfied that his implication of the accused as being the shooters were not mistaken or false nor was it suggested to him by the investigating officer. This Court has been mindful of the caution which need to apply to his evidence as both a single witness and a witness on identification. He was familiar with both the accused for a significant period of time and he recognised him in the quick succession of events. He withstood cross-examination on a number of aspects relating to this testimony, stuck to his version of events and was consistent throughout his testimony as to his observation of the scene as well as his recognition of both the accused as the shooters. He was constant and consistent that he knew both accused from the area and having had some or other interaction or mutual friends with them over a great many years. He was able to identify both the accused by seeing their faces and as they left his

⁶⁷ S v Ganie 1967 (4) SA 203 (N) 206H; S v Letsedi 1963 (2) SA 471(A) 473 F

father's body on the ground and running back across the road. The evidence of the eye witness were not simply bald and unsubstantiated assertions that the perpetrators were in fact the accused. He methodically testified as to his observation on the day, how he had recognised him and he was consistent in that regard. The Court is mindful and alive to the fact that a positive assurance with which he was sworn to the identity of the accused persons is in itself no guarantee of the correctness of his evidence. I am of the view that all these factors were sufficient safeguard against a possible mistaken identification by him.

92] To this extent the evidence of his mother, Rezone Carelse, indicated consistency as a first report by the eye witness. They both testified that Dale told her shortly after the incident that he had seen accused 1 and 2, known to him as Krag and Wena, shooting his father. It is highly probable that the Dale had been scared to make a statement to the police and that only after support of his uncle, was he prepared to make a statement. His reluctance to make a statement is perfectly understandable given the climate of fear and violence which prevails in the area in relation to criminal activities. His evidence that he does not step on other's toes unless he has to. He came across to the Court as someone who if facts minds his own business, not troublesome to others nor vindictive. He testified to the circumstances of his father's death when he felt comfortable and safe to do so and when he felt that he was duty bound to do that. He came across proud of his father and the legacy that his father was a community activist and prominent in crime prevention. This clearly had prompted him, notwithstanding his fears, to attest to what he knows of his father's killing. The Court found his evidence to be clear and satisfactory in all material respects. Both Dale and his mother, Mrs Caresle, were

impressive witnesses and the Court is satisfied that the truth was told notwithstanding any shortcomings.

93] The investigating officer, Col Kinnear and Sergeant Henderson testified in a clear and satisfactory manner. They made concessions during their testimony which lends credence to the weight and credibility of their testimonies. The Court was satisfied that they were honest in their testimonies and in the performance of their duties as officers. They withstood vigorous cross-examination. The evidence of the other police officers in their various roles and capacities in relation to the investigation of these crimes supported and corroborated the testimonies of Dale and Mrs. Carelse in respect of their evidence relating to the investigation of the incident and the photo identification parade which was conducted. They made concessions, testified in a clear and coherent manner and was not evasive in their answers.

94] The evidence of accused 1 was riddled with contradictions. Whilst he testified in his evidence in chief that he does not really know Carelse, he later changed this to not knowing Carelse at all. He later conceded that he heard from his sister's daughter that his sister and her children live at the property of Carelse. He testified that he was occupied with listening to music on his cellphones on the day of the shooting but denied that it was functional for the purposes of making or receiving calls as it does not contain SIM cards. He exclusively used it as music devices. He went back on this version when he had to explain what he was doing on the date of his arrest at residence where he was arrested. Again, he changed his version to

justify that as he was struggling to hear calls properly, he tried to swop the phone with one, John, who resides at the home where he was arrested. That he could not hear calls properly flies in the face of him not having SIM cards in the cellphones. His testimony that he had no contact with the community (and therewith cellphone contact) was an attempt to illustrate that he had absolutely no knowledge of the shooting where Carelse and Holland had been killed weeks prior to his arrest. However, the place of his arrest and the numerous occasions when police attended at his home after the incident in search of him in vain flies in the face of his claim that he had never left the home otherwise. Whilst it was his version that he was only a member of the 28's in prison, Warrant Officer Lombard was not challenged when he testified that once a member of a gang in prison the member inevitably belongs to a gang outside of prison. The Stanfield leadership of the 28 gang and that the Valhalla area fell under their control was not challenged when various witness testified thereto. It is highly improbable that accused 1, whom on his own version was a 28 gang member in prison, would have no knowledge of the leadership of the 28's in the area. Accused 1 attempted to put distance between himself and the various significant events and persons which played pivotal roles in the incident, being, both deceased, the eye witness, the leadership of the 28 gang in the area, Wilson as a gang member, the F shooting and that Carelse had apprehended Wilson and was listed as a State witness are in my view falsely created in his attempts to absolve himself from involvement in the shooting. He was known to have previous brushes with the law whilst Carelse was a known law enforcement officer. It is highly unlikely that accused did not know who Carelse was and what his role was in the community. The accused 1 was an untruthful and evasive witness who tailored his evidence as questions were put to him during his testimony. He was economical with the truth.

Whilst he maintained that he had an alibi which would confirm that he was at home at the time of the shooting, no alibi witness was called to testify thereto. The failure to call such a witness adversely affects the version of the accused that he was at home with his relatives at the time of the shooting.⁶⁸

CONCLUSION:

95] It is trite law that the correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicated of his or their innocence. I have in my findings also taken account of the inherent strengths and weaknesses, probabilities and improbabilities on both sides and having done so have to decide whether the balance weighs so heavily in favour of the State so as to exclude any reasonable doubt about the guilt of the accused respectively. Having applied the relevant legal principles in the adjudication of this matter, the determination of the case for the State and the defence and the principle that the onus is on the State to prove its case beyond reasonable doubt as discussed hereinbefore and whether on the facts and circumstances of this case whether the version of accused 1 is reasonably possibly true and if the State had discharged the onus resting upon it, it is relevant to refer to the following dictum in ***Moshepi and Others v R (1980 – 1984) LAC 57*** at 59F – H, in the evaluation of all the evidence:

“That is not to say that a broad and indulgent approach is appropriate when evaluation evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the

⁶⁸ S v Teixeira 1980 (3) SA 755 (A)

mosaic as a whole. If that is not done, one may fail to see the wood for the trees.”

96] The motive for the killing of Carelse is not altogether clear to this Court. Whilst it is highly possible that it was an execution killing with a view to eliminate him as a State witness in the trial relating to the F shooting of 2017, on the evidence this Court is not able to make such a conclusive finding. What is apparent is that the killing was executed with the direct intention to murder Carelse and in the course thereof he was robbed of his firearm. Carelse in all likelihood had been walking back to his residence, the shooters had waited for him and came guns blazing from the hideout spot which faces the corner of the road on route to his home. No less than 3 firearms were used in executing the killing of Carelse, with multiple gunshots directed at his vital organs. The intention was clearly to murder him in a brutal and cruel manner.

97] For the reasons set out above, taking into account all the evidence in this matter this Court makes the following finding in respect of both Accused 1 and 2:

“(i) Count 1 in respect of the murder of Gregory David Carelse, the Court finds you guilty;

(ii) Count 2 in respect of the murder of Prezano Holland, the Court finds you not guilty;

(iii) Count 3 in respect of the robbery with aggravating circumstances of Gregory David Carelse, the Court finds you guilty;

(iv) *Count 4 in respect of the possession of unlicensed firearms the Court finds you guilty as charged;*

(v) *Count 5 in respect of unlawful possession of ammunition, the Court finds you guilty as charged.*

SALIE-HLOPHE, J