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

CASE NO: A135/2022

CASE NO: CC47/2021

In the matter between

ELCARDIO ADAMS

FIRST APPELLANT

ALFONSO CLOETE

SECOND APPELLANT

AND

THE STATE

RESPONDENT

Date of Hearing: 12 September 2022

Date of Judgment: 17 October 2022 (to be delivered via email to the respective counsel)

JUDGMENT

THULARE J

[1] This is an appeal against the decision of a magistrate to refuse to grant the appellants bail. The appellants were charged jointly with twelve others on a number of charges which includes contraventions of section 9(1) of the Prevention of Organised Crime Act, 1998 (Act No. 108 of 1998) (POCA), premeditated murders, conspiracies to commit murders, attempted murders, possession of unlicensed firearms and unlawful possession of ammunition.

[2] The issue is whether the decision of the magistrate was wrong.

[3] The first appellant, Adams, testified under oath and also submitted an affidavit which was made for the bail application. His testimony was that he had no previous convictions, pending matters or outstanding warrants of arrest. He was previously arrested on separate occasions but the charges were withdrawn. It was a total of 11 cases that had been previously withdrawn against him. He was 31 years of age, unmarried but in a long term relationship for about 11 years and had two children from that relationship and two other children from previous relationships. He lived at an address in Parow which residence belonged to his partner's mother.

[4] He had matric and operated a taxi business with two taxis and also ran a business of buying and selling. He sold hampers, fish and clothes and made about R70 000-00 per month. He had a valid passport and was willing to hand in his passport if granted bail. He handed himself over to the SAPS and was taken into custody. He knew about three weeks before handing himself over that he was to be arrested and added to the case of V. He had launched an earlier application for bail and was then informed that there were 24 charges against him and his co-accused. He had later received an indictment consisting of 60 counts and that of those he faced 27 counts. The first three were POCA matters. He was told that he was linked to four dockets. He heard that the State accused him of being the leader of the 28 Mobster Gang. He was not a mobster, and not even a 28. He had no tattoos on his body relating to gangs. He met the investigating officer (the IO) for the first time when the IO charged him. He was since his arrest familiar with who the investigating officer was. He had shown the IO tattoos on his body and the IO took photos thereof.

[5] Counts 13 to 16 related to the killing of Hempties Brown (Brown). The State alleged that T made a statement that he was with him (Adams) and three other men, to wit Ore, Spanners and the second appellant (Alfonso) in a field near a church in Happy Valley and that T said he (Adams) gave an instruction that T must drive shooters to go and kill Brown. He (Adams) had no knowledge about what T said and that he personally did not know Brown. He did not tell T to drive shooters to Brown to have Brown shot. He denied that after the shooting he met up with T, Thabo and Alfonso, that Alfonso drove him to that meeting.

[6] Counts 22 to 25 related to the killing of Gilliano Williams. He denied that he met with T and Spanners at Spanners' house. He denied that he had explained, at that meeting that there was a man who needed to be shot and killed. He denied that he had told them to hurry up because Williams was on a bus on his way to work. Counts 26 to 30 related to the killing of Shavonne De Wet and the injury to a three-year-old child. He denied that he had called T to Takkies' house. He denied that he was with Spanners, Mila, Skapie, Marlin and Ty and that he had said, according to T, that Corne' must be taken out and that must happen at Corne's house.

[7] He denied that he had explained the plan, which was that they must hit Corne's house from the front and that Spanners must wait at the back and that as Corne ran out, he told T where to drop the people in a car. He denied the allegations also made by another witness, U who said that U was also at Takkies' house on this day and that Zandre, Marlin, Takkies, TY, Spanners, Mila, Skapie and Maxie were also present and that he (Adams) told those people that they must go to Corne's house and shoot everyone they encountered there, whether inside or outside the house.

[8] Counts 41 to 51 related to the shooting at Galaxy Night Club. He denied U's allegations that U drove with Spanners and other men to Galaxy. They stopped at Caltex Garage in Athlone and that he (Adams) was present. He disputed U's allegations that he (Adams) told Marlin, Nathan, Zandre and Ty to go into the club and shoot Corne and Hannes. He disputed U's allegations that he (Adams) gave them each a 9-millimetre firearm and an amount of money. He disputed that he had told U to go home. He asked the court to accept the affidavit hereon prepared as an exhibit.

[9] His cross-examination illuminated a few aspects. It came to light that in one of the withdrawn charges was a count of intimidation and that Alfonso was also a co-accused in that matter. The two had approached the complainant in that matter and demanded that the complainant should pay in relation to the operation of a taxi and that they were threatened with being shot if they did not pay. It also emerged that the IO had made contact with the complainant in that matter, and that according to the complainant he (Adams) had sent his girlfriend to the complainant house, with other Mobster gang members, where the complainant was pointed with a firearm to sign a

withdrawal statement for the case. Because the complainant was scared, he chose to rather have the matter withdrawn than killed. He denied these allegations.

[10] It also came to light that the IO could not locate the appellants as they could not be found at their addresses. The IO called their attorney to report that his clients were running away and that the attorney must bring them in. On the day that V appeared in court, the attorney called him (Adams) and informed him that the prosecutor and the IO gave 10 names of persons that the State wanted, to charge in that matter as well, and his name was also mentioned. The attorney also indicated that he was going to hand him (Adams) over to the police.

[11] He denied a conspiracy to kill accused 2 in the same matter, at the High Court appearance on 5 November 2021 when they all appeared. The State case was that he (Adams) would have injected accused 2 with poison at the High Court when he was next to him, after he (Adams) realized that the confession made by accused 2 was captured on video footage, and corroborated the two section 204 witnesses. He denied the allegations by U that even before any arrest was effected, he (Adams) had given instructions that two police officers, Colonel Brown and the IO should be killed as both were targeting the Mobsters. He disputed that Colonel Brown would have been killed on his way from Blue Downs Court if he did not overtake a truck on a specified date. He also disputed that the IO would have been killed in front of Kuilsriver Police Station had it not been for a car blocking the section 204 witness's way on a particular day. The section 204 witness was with Spanners and Marvin Davids.

[12] Cardo Enterprise, the business with registration address 9 Luthu Crescent was in the process of being deregistered as he owed SARS money and a default judgment had been obtained. He was in the process of paying SARS and was delayed by the maternity leave of the lady attending to the case at SARS. The address was registered in his sister's name but the sister had given the property to his mother and that is where he resided since he was about seven years. He could not explain why her partner deposed to an affidavit wherein she said he did not live at the address where he said he lived at, that it was her mother's property for which he was paying rent. He could also not explain why the IO was told that he did not live in Luthu Crescent but in Goodwood. It also transpired that the person the IO found at

Luthu and said Adams did not live there was his sister's child. His co-accused, number 9 in the same matter, also lived there. He also previously resided in Goodwood which is another property of his partner's mother. He then moved to Paarl. He rented accommodation and left when contracts expired in Strand, Somerset West and Gordon's Bay.

[13] The police, led by General Lincoln visited his house, with Carte Blanche, in Goodwood. He was already staying in Parow at the time. This was after the police had visited his home, searched it and alleged that they found rounds of ammunition in a jacket pocket. It is after this ammunition incident that he moved to Parow. He could not explain how the police were able to trace only one of his taxis and not the other on the eNatis system. For the one that could not be traced under his name, he had supplied [...] as the licence disc number, but the one the police could find was [...]. He could not explain the discrepancy, except to note that the registration happened when he was in custody. The vehicle was also registered under Alfonso's wife. His explanation was that their wives worked together, but the vehicle had been under his name. Alfonso's wife became worried that he would not be able to make payments on their rent -to -own agreement, and made him sign some documents to transfer it back to her name. He did not know how it came about that his bank account and that of his partner stood at R592 443-00 and R769 043-00 respectively.

[14] He denied the allegations contained in the alleged confession of V in an Ekurhuleni matter, where V stated that he and another went on his (Adams) instructions to go and kill the deceased. He denied knowledge of the allegations made in the confession and pointing out on video that V and another, under his (Adams) instructions, had to kill Galliano Williams, one of Hempies' employees. He denied the allegations made by V, corroborating the section 204 witnesses and another witness who shot and injured V in relation to the incident where De Wet, the sister-in-law of Hempies was killed. He had no comment to that a witness identified V at an ID parade.

[14] He knew V who is accused number 2 from seeing him around the area of Happy Valley some years but did not know him personally. He knew V by his nickname and came to know his real name after arrest. He did not know where V stayed. There were no issues between him and V. He cannot understand why V said what he said

and implicated him. V implicated him as the person who gave instructions. He knew that V was on drugs as V used to ask money from him, praying and craving for a smoke. He also knew accused 3, known as Ore, or about 10 years, and knew him through friends. He knew Alfonso, who was accused number 4 and a co-appellant since 2015 from the taxi industry. He grew up with Jonathan Blaauw, a co-accused known as Takkies. He knew accused number 6 Emile Cleo Vas Rooi from just seeing him. He knew Nathan Jonathan Erasmus, accused 7 as he also came from Happy Valley. He did not know accused 8, Tyrone Engelbrecht but had seen him once or twice before but had never spoken to him. He knew accused 9, Shelton Africa as he stayed in his (Adams) mother's place since 2018 and as Enrico's friend. He knew Zandre Calvin, accused 10 like Sakpe and Emile, from seeing them in the area. He went to the same school as accused 11, Marlin Andrew Benjamin. He lived backstreet to his (Adams) mother's house. He knew accused 12, Rudolf Steenkamp and number 13 Thabiso Mabuntlela from just seeing them in the area. He knew accused 14, Roland Faans through Enrico Otto, for about 5 years.

[15] He was not aware that the property in Goodwood had been transferred from his partner's mother to his partner's name. He knew T as they lived in the same area in Happy Valley. They lived in the same street, which was a crescent and T lived on the other part of the street. He grew up in front of T since pre-primary, and knew T's nickname. T used to work for him cutting or trimming trees and doing some paving, and they also did long distance driving, and they used to drive together. T later drove his taxis, but he dismissed T after receiving complaints. T was using drugs and was not trustworthy. T was a handyman so he used T to do painting and other work under supervision after dismissing him. He saw T now and then thereafter. They never had any issues, except that he could note a funny attitude whenever T asked him for money and he did not give it. He disputed T's allegation that T knew him as a member of the Mobster gang. He agreed with T that he let go of him as a taxi driver because Alfonso was not happy with T, although T continued to do long distance driving for him now and then especially to the Eastern Cape.

[16] He disputed T's allegations that he (Adams) used to speak about himself, and referred to himself as the Mobster boss. He disputed throwing around money at taverns, to show people who was the boss. He disputed T's allegations he (Adams)

had called T to a field and said that he was tired of Hempies who always shot at them first and made trouble in his area, and asked T to be the driver to go and check if they could not find Hempies, who was the leader of Firm, a 28 gang of Kleinvelei, at Wendy road. Hempies had businesses in Wendy road. He denied giving T and his companions information about Hempies whereabouts and what he was wearing on the day he was shot and before he was killed. He denied that T and his companions came to him (Adams) after shooting Hempies, and that Adams was in the company of Alfonso and Spanners. He denied that he enquired if Hempies had died, and when it was confirmed, that he promised to sort them out the following day. He denied asking T if he had received money from Spanners when they met after that day, and that he told T not to say anything about what had happened.

[17] He denied calling T to Spanners' house and informing him that there was someone who was to be killed as the person regularly shot at Adams's people in Eerste River. He denied telling T to keep quiet about what had happened after the person was traced and killed while on his way to work. The person was targeted when using the bus. He denied that the instruction to kill the person was from him. He denied enquiring from T if he was paid for his role in the killing. He denied giving the instruction to kill Corne, Hempies's son, and that that should happen at Corne's home. He denied T's allegations that the job was a flop and since then he (Adams) did not want to speak to T.

[18] He denied the allegations by U that U knew him as the leader of the Mobsters gang. U observed how Adams spoke to other members, how he gave them instructions. U was told by him (Adams) that he U only worked for Adams and that if he had complaints he must bring them to Adams' attention only. He denied the rank structure which U gave with him (Adams) as overall leader of the Mobsters in Happy Valley, Kleinvelei, Kraaifontein and Dennemeer. He linked with Ore of Bishop Lavis. Spanners as second in command and led in Happy Valley and also ensured that all instructions of Adams were complied with. Mila was third in command, reported to Spanners and was the enforcer who attended to problems. Mila used Takkies, Stan, Marlin Benjamin, Zandre, Nathan Erasmus, Abongile, Bongi and U. Mila was most of the time present in execution of instructions.

[19] Roland was also a Mobster who U knew who sold drugs for Adams in Dennemeer. U delivered tik to the value of R15 000-00 per week to Roland, which he received from Takkies. U would be present when Takkies received instructions from Adams to deliver tik to a Nigerian national. It would be Adams who indicated where Takkies would meet the Nigerian. Adams denied knowledge hereof. U also knew that Shelton Africa, known as Put, was responsible for the collection of money from the people selling the drugs.

[21] Put stayed at Adam's mother's house. U was sometimes present when Put collected the money and deposited it into Adams' Absa account at Zevenwacht Mall. At the time that U was present, it was amounts of between R15 000-00 or R30 000-00. Adams admitted that there times when Shelton paid monies into his account but cannot say if U was with him. He disputed U's allegations of his involvement in the planning of the attack on Corne. He disputed U's version that after T was shot during the attack on Corne, and was hospitalized, he instructed U to go and check on T in hospital. He denied that U was driving around tik, money and guns for him. He denied U's allegations that on his instructions, U would transport firearms to Shelton and sometimes between Shelton and Wayne, an Apostle at a church who lived at the church where the firearms were delivered. He denied U's allegations that he was linked to Lekkers and Krake of Kraaifontein, to whom U delivered drugs and firearms on his instructions. He denied U's version that he was present the evening and was the one who gave instructions for the shooting at Galaxy, which targeted Corne.

[22] He denied V's allegations that they met and had a relationship because they were the 28 gang. He disputed V's allegations that he planned and provided the guns for the shooting. He denied that he spoke to V about the attack from Hempies Brown. He disputed V's version that V knew from him that Brown's people attacked his people and that V was with him when he received a call from one of Brown's people who said to him: "I told you I will shoot him dead", and that was after they had learned that Junior, a Mobster gang member, had been shot at a festival. He denied V's version that he was the one who discovered that one of Brown's people was travelling by bus and planned to kill him, and instructed V to kill the person. He also denied V's allegations of his involvement with the shooting targeting Corne, including that V, Alfonso and Spanners kept observation of the house leading up to the

planned attack on his instructions. He denied involvement in the hijacking of a bakkie, its movement to Beaufort West and later to Lady Gray, the fraudulent obtaining of its registration papers, the involvement of a traditional healer and its transportation to Lesotho.

[23] He disputed V's allegations that he had members of the SAPS helping the Mobsters with information. V mentioned Van Schalkwyk at Mfuleni, Geduld at Blue Downs, who even used to transport drugs with the police truck to prison, and a Captain at Beaufort West, known as Baard. He denied paying these SAPS members and providing them with cash if they did not have money. He denied knowing that Junior's father was a Mobster gang leader. He denied knowing that Elazine Razat, who deposed to an affidavit in his support, resided at an address which is a Mobster drug dealing house. He denied knowing that the drug dealing business of the Mobsters from this address was suffering because Hempies Brown sold better quality drugs and was a street away, and this was the reason the Mobsters killed him. He denied threatening U's mother and that it was that threat that caused her to sign a petition in his favour. He disputed that the petition was not genuine.

[24] Alfonso Shaun Cloete (Alfonso) is the second appellant. He deposed to an affidavit and also testified under oath in his application. His testimony was that he had no previous convictions, no other pending matters and no outstanding warrant of arrest against him. He is married and had two children. He was arrested at the home that he owned. He had lived at the address for 31 years. He was arrested after 12 early in the morning. He was arrested in the roof of his house where he was setting mouse traps at the time. He had been a member of the SAPS and was dismissed for bringing the SAPS into disrepute. He denied being a member of a gang. He had a tattoo which is his child's name. He understood the charges against him to be conspiracy to commit murder, murder, unlawful possession of firearms and ammunition. He was also aware that there were three POCA charges against him. He knew of one docket against him, which had been provided to him.

[25] He heard that the murder related to the death of Mr Hampshire Brown. He heard the allegations that T made against him about the meeting in the veld in the vicinity of a church in Happy Valley. He disputed the allegations and the conversation about the killing of Brown. He disputed allegations of him being the driver for Adams to

meet T and Thabo. He denied the allegations by U that he scouted to trace the movements of Corne.

[26] In cross-examination he confirmed that he knew Adams from the taxi business since 2015. They were in the same association. They became friends since 2016 when they attended taxi functions and then socialized together. He did not know V and only met him in prison. He shared a prison cell with V and they spoke. He heard that V made a confession which was recorded on video. He had no knowledge of the plan to inject V with poison during an appearance at the High Court. He knew Preston Dolan accused 3 and met Dolan through Adams in 2017. The three of them had photos together taken at parties. He used to drive Jonathan Blaauw's mother to church on Sundays and that is how he came to know him. He did not know accused 6, Emile Cleovis Rooi although he had seen him before and met him in prison. He knew accused 7, Nathan Jonathan Erasmus since 2016 as a taxi guard on the Mountain Rose route. He met accused 8, Tyrone Engelbrecht in prison and were in the same room in prison. He knew Shelton Africa, accused 9, from 2017 as Shelton used to hire his taxis and once socialized together. He did not know accused 10, Zandre Calvin, accused 11, Marlin Benjamin and accused 12, Rudolf Steenkamp. He met them in prison. He knew accused 14, Rolan Faans who he used to see in Dennemeer and once met him at a club.

[27] He knew T who he met in 2015 as a driver of Adams. T had a problem with him as T accused him for losing his (T's) job. He denied T's allegations that he, Adams, Niger who was Nathaniel Moses and also owned taxis and Ore who was Preston Dolan, were Mobster bosses. He denied T's allegations against him meeting with others at a field and planning to attack Hempies. He did not know who was Spanners and denied that he conspired to kill Hempies and that he was present when Adams wanted to know after the shooting if Hempies was indeed dead. He denied T's allegations that Adams, in the presence of T, once asked him (Alfonso) for rounds of ammunition and he (Alfonso) said that that would not be a problem.

[28] He did not know U and never met him. He disputed U's allegations that he was always doing the scouting for Corne and that on the day planned for Corne's shooting, he was tasked to check what cars Corne's people were driving and also their movements. He disputed U's allegations that he was part of the conspiracy to

kill Corne. He disputed U's allegations that U was present with Adams and others at Blaauw's house when Adams called him (Alfonso), that he arrived and Adams instructed him to go and read Corne, which meant monitoring his movements and surrounding circumstances, and that U saw Adams giving him (Alfonso) money although he did not know how much it was. He disputed leaving and later calling Adams to report that Corne was still home. He disputed U's allegations that he later phoned Adams to report that Corne was driving a purple Chev bakkie and was on his way to Grabouw.

[29] He acknowledged that the police came to his house to arrest him. According to him his wife disputed the version of the police that his wife told the police that he was not home. The police said that they heard movements in the roof and went to investigate. He did not have his phone on him, but still had his firearm on him when he arrived home that night. His wife complained of mice in the roof, so he went up the roof to put a mouse trap and that is when the police arrived, at around 2 am. He denied the version of the police that he was hiding there. He denied receiving a call from Shelton Africa, at the time of his arrest, informing him that the police were looking for them and that he replied that they got him. Of the police who were there, he only knew Captain van Reenen.

[30] He was dismissed from the police for bringing the police into disrepute after he was arrested for the intimidation charges where a victim from the taxi association alleged that he was intimidated to withdraw charges. He was a co-accused in that charge where it was alleged that money was sought from people in the industry and they were promised to be shot and killed if they did not pay. He denied that he bought a firearm from Brown which was traced in Happy Valley following on the information provided by U.

[31] He made about R40 000-00 per month from his taxi business and about R10 000-00 from his fishing business. The taxi business was registered in his wife's names. He had two taxis, the one doing the Bellville and Mountain Rose route and the other the Eerste River and Tuscany Glen route. Since his imprisonment he is unable to attend to the fishing business. One of his taxis was written off so only one is operating. His imprisonment resulted in outstanding school fees. He denied being a member of a gang and participating in gang activity. He had no knowledge that a

witness in a previous intimidation case where he was a co-accused with Adams withdrew the case because the witness was threatened by members of a gang. His wife prepared a petition and went to people to sign it. He knew most of the people who signed the petition, who are mainly neighbours and people who stayed in the same suburb.

[32] He is charged with three counts related to POCA as well as conspiracy to commit murder, murder, possession of an unlicensed firearm and ammunition and these allegations are related to the death of Hempies Brown. In the indictment there were no other charges against him. He was not aware of the evidence against him by U until it was disclosed to him. He denied the allegations of U who implicated him in other charges other than the ones already in the indictment.

[33] Bernard Wilson (Wilson) is a sergeant in the SAPS with 18 years experience and attached to the Anti-Gang Unit since its inception in 2018. The unit had groups to investigate gang groupings and he was mandated to look into the Mobster gang. There had been a previous project on the gang, which was dealt with by Captain Joubert. Some of those pursued in the previous project were deceased, but Adams was on that list of those listed in the previous project. Adams featured on the structure of the Mobster gang. Most of the witnesses were part of the gang members who turned around and gave co-operation with the police. At the time there were 9 of such witnesses, commonly referred to as 204 witnesses. The charges in that previous project were 19 murder, various attempted murder, illicit drug dealings and gang activities. The cases investigated in that project were not placed on the roll, save for one which was expedited, removed from the project and successfully prosecuted with the accused therein being sentenced to four life imprisonment.

[34] Adams was implicated in 12 murder counts. He was implicated on various attempted murder charges. There were also rape charges but Adams was not implicated in rape charges. There were also charges of robbery. 3 of the 204 witnesses were killed whilst the first project was still running. The Mobster gang came to know that the 3 made statements to the police. The gang called them traitors and scavengers. They were killed even before the cases were enrolled. The other 204 witnesses went into hiding. Adams was a facilitator in the 12 murders. He was logging out persons who should be killed and provided the firearms to those

who committed the actual killing. Adams will still be charged with those matters together with others who were not in this current matter. It is other Mobster gang members together with Adams who were involved. At the time of the first project which was led by Joubert, the leader of the Mobster gang was Nathaniel Moses. He was killed and after that Adams took over as the leader. Moses was called Nigger.

[35] Adams was part of the management of the gang when Moses was the leader. He kept the firearms for the gang, and assisted in allocating the firearms out when there was a hit to be done. Adams was in the circle of discussions when the 12 murders were planned during Moses' leadership. It is only in one of the 12 where the allegations were that Adams himself killed the deceased. Even in the first project, there were police officers who were implicated as having been used in the commission of some of the offences. He could not divulge the details because they were not charged yet, but were working at Kleinvlei and were on the payroll of the Mobster gang.

[36] In one instance, it was planned with a policeman to arrest a person who was lured to be at a place where there would be drugs. The plan was to get the person into prison so that he could be killed. The policeman arrested the person at the specified date and place for drugs and the person was taken to prison. The person could not be killed in prison because of security challenges. It was decided that the person should be bailed out and killed after he was released on bail. Adams paid bail for the person and took the person to Domingo, a shebeen in Happy Valley, where the person was killed. According to Wilson's information, the person was killed on the instruction of the overall leader of the 28 in the Western Cape, George Thomas whose nickname was Geweld. Nigger and by extension the Mobster gang was receiving instructions from Geweld. The Mobster was a 28 gang.

[37] Alfonso was also part of the management of the Mobster gang under Nigger. He was assisted by Nigger to get into the taxi business and was used by Nigger whilst he was still in the SAPS. Alfonso was recruited into the Mobster gang and the police monitored him from 2011. Alfonso was put under surveillance after sources informed the police that he was involved in gang activities. Alfonso was brought to the taxi business by the Mobster gang. The management of the taxi industry were threatened by the gang to accept him, failing which they would be killed. The taxi

industry management feared for their lives and let Alfonso join the taxi industry. In that first project, there was also a case where the Mobster gang went to the home of a prosecutor to kill the prosecutor. The prosecutor was not home but they threatened the family.

[38] In respect of the charges in the indictment, the AGU members attended a crime scene and reported that information suggested that the killing attended to was related to a conflict between two gangs, the Horribles and the Mobsters. Another killing, where the victim was a woman, also had relations to the conflict between the two gangs. The AGU and the DPP agreed to expedite the two matters both in respect of investigation and prosecution so that the alleged persons involved could be arrested. This is what led to the departure from the first project which was overall, to this path, which is the second project which was case specific. There was then focus on the two murders and cases that related to them.

[39] A threat analysis was done by Crime Intelligence and it amongst others identified Adams as the leader of the Mobsters. Crime Intelligence also provided other cases in respect of the new project. Wilson was tasked with infiltrating the gang and getting information from some of the Mobster gang members. He got people inside the gang who provided information. This information included the identification of Adams as the leader and the late Marvin Davids also known as Spanners as the second in command. The information indicated the leadership structure of the gang over areas. Marvin Davids ran day to day operations in Happy Valley, in Dennemeer it was Roland Faans who is also an accused in this matter. Nathaniel Matthews was in charge of Kleinvlei, assisted by Jerome Thomas also known as Life. The reason that Kleinvlei had two leaders was because Matthews was in and out of prison and Thomas was always outside and available. Craig Francis known as Kraka led in Kraaifontein. Preston Dolan known as Ore led Bishop Lavis and Dolan was also adviser to Adams because of his seniority in the 28 gang.

[40] Three people were identified in respect of the murder that related to a woman, on the project. These were V, T and U. The information he received on the crime scene was that one of the persons involved was wounded. Members of the AGU visited hospitals and there was an alert on a male person admitted for gunshot wound. He got a report from Tygerberg hospital about a gunshot wound patient

admitted. The name provided by the patient was Donovan van Wyk. He checked the system at Kleinvlei police station to see if such person was ever arrested before. He went to see the person at the hospital and also took a picture of the person and send it to people doing the ground work at Kleinvlei as well as to Crime Intelligence. The person identified himself as Donovan van Wyk from Bishop Lavis. However, the report he got back was that the person on the picture was known as V from Happy Valley.

[41] He went to confront the patient about this information. It was in the presence of other police officers and the patient asked that they speak in private and not in the presence of others. In private the patient confided that he was V residing at Happy Valley. He checked the security room and established that V was brought in by two people who carried V as V could not walk properly and the two were identifiable on the hospital camera footages. He took the photos from the cameras to V, and V identified the two as Dirkie and Mila. It was established that Mila was Emile Rooi and Dirkie was U. V also mentioned a name who it was established was T. The investigation led to the link with the murder of Hampshire Brown. This was another murder investigated at Kleinvlei.

[42] T was arrested on a different matter and he went to interview T at Goodwood prison where he was detained. T indicated that he wanted to co-operate with the police and was prepared to tell the truth. T made allegations in which he implicated himself and others. He sought the guidance of his seniors and the interview was taken over by Captain van Rheenen. The matter was discussed with the DPP and it was decided that T will be used as a 204 witness. The contents of the statement that T made was what was discussed at length already in this bail application and put to the appellants.

[43] Based on T's statement U was traced. When confronted with what T said, U made statements wherein he implicated himself in the planning and shooting of Brown and also in taking V to hospital. Both T and U indicated that the instructions came from Adams. One day he went to Kuilsriver and was inside a shop when U called him and warned him not to come out as there were Mobster gang members waiting for him to assassinate him. The threat analysis done by Crime Intelligence on his life confirmed that the threat was real. Following on the information provided by

U, the police were able to stop and arrest Charlton Afrika, an accused in this matter, as the police followed the leads of the details of the transportation of firearms, drugs and the money flows. The police confiscated the money and the vehicle. The amount found was R8000-00. As part of further investigation, the vehicle was installed with listening devices before it was handed back. The information about the bugging of the vehicle was leaked. Adams knew about it and ordered that the vehicle be sealed out and the Mobsters must get rid of the vehicle.

[44] The police followed up on U's information on the activities of the Mobsters and went to search a shack on the property where there was also a house on 12 June 2019 and found three 9mm firerams and an R5 rifle hidden in a toolbox. The shack was used by Michael Mandava from Zimbabwe. One of the firearm was registered as a private firearm of a Constable Brown who worked at Areloy police. Constable Brown when confronted said he had sold the firearm to Alfonso. Alfonso disputed Constable Brown's version.

[45] Following U's information, the police searched a second house and found another R5 rifle, two magazine and 2 rounds of 9mm ammunition. Adam Murphy was arrested for that unlawful possession. Murphy told the police that he was given the rifle and ammunition by Spanners for safe keeping. When he refused to take them he was threatened that his daughter would be raped and killed as the Mobsters knew where she went to school and that he also would be killed. Murphy was told that where he lived was the place of the Mobsters and he (Murphy) was a Mobster. Murphy told the police that he took the firearms because of fear for his own life and that of his daughter. Murphy's intended plea bargain was thwarted by the intervention of Adams.

[46] Following on U's information the police searched the shack occupied by Thabiso Mavundlela, who is one of the accused in this matter. The information included that he kept firearms for the Mobsters. At the time of the search there was nobody found in the shack. An Oozie, which is also an assault rifle was found together with a hand grenade and 66 rounds ammunition, 61 of 9mmm rounds, 38 special live rounds and 9 of 7.65mm rounds and a police bullet proof. The bulletproof, traced by its serial number, was traced to belong to a police officer in Kleinvlei and it was discovered that he had reported it stolen during a housebreaking. U had informed the police

during the interview that Adams had a contact in the army in one of South Africa's other provinces and that he bought the firearms from that contact. The assault rifles were bought from that army contact for R40 000-00 and the handguns for R20 000-00.

[47] According to U Colonel Brown was supposed to have been killed by him (U) and Spanners. The details of the date, place and time as well as the vehicle that Colonel Brown was driving on the day of the aborted killing, matched where the Colonel was, and the vehicle he was driving on that day. The reason that he and Colonel Brown had to be killed was that they were too forward and were on the Mobsters. These attacks were planned before the arrests and the matters were placed on the roll. The AGU and Crime Intelligence reported its cases and projects to the Provincial Commissioner and this happened in the presence of station commanders and section and sector commanders. Everyone in that meeting then came to know which projects the Specialised Units were investigating against which gangs. The Mobsters had police officers that they used to give information. Some in the gangs were agents for Crime Intelligence, the AGU and the gangs. They would supply information to the gangs about the police activities and also supply the police with information about gang activity.

[48] U gave information about the Athlone matter which related to Hempies Brown's son, Corne' and Corne's uncle, Hannes on the night of 5 to 6 October 2019. Hempies, Corne and Hannes were members of the Horribles gang. The Horribles gang was also part of the 28 gang. U indicated the involvement of Adams, Alfonso and other members of the Mobsters which included some of the accused in the matter, in the planning of that shooting and also that Alfonso scouted the area and the persons before the shooting. U also named who executed the shooting and what role those present played. U also mentioned the specific involvement of Adams and Adams' instructions to the Mobsters including Adams's distribution of the four firearms to those who went in to shoot. U's testimony about who were instructed to go in and shoot was supported by video footage which was obtained from the club.

[50] The police established with information that the Mobsters wanted Corne' dead because he had taken over as leader of the Horribles from his father, secondly, because they wanted his drug trade area and thirdly, because he came to know that

the Mobsters were behind the killing of his father. Adams had given instructions for Corne' to be killed. At one attempt on Corne's life in fulfilment of this instruction, Corne had been arrested and the charges against him withdrawn in court. However he was not released from the cells as a police officer working in Blue Downs held him back and said he cannot go because he had to appear on another charge. Meanwhile this police officer called the Mobsters and told them about Corne's imminent release. Spanners and others lay in wait for Corne on his route from the court and there was an attempt to shoot him and a shootout ensued. In that shootout Corne's driver shot back and hit Emile Kleefis, who was part of the Mobsters who lay in wait for Corne'. Emile ran from the scene bleeding and the police got blood samples which positively linked him to the blood followed after the shooting scene. Corne was eventually killed. This was after four failed attempts in which Adams was provided with information around Corne's movements, and planned for Corne's attack.

[51] V was arrested on another charge and when interviewed indicated his willingness to co-operate with the police and made a confession in relation to different cases and a pointing out. The confession and the pointing out were recorded in video. He confessed to the killing of a person on the instructions of Adams. Adams told him that the person had to be killed as he killed a Mobster at Kraaifontein. There was somebody inside the house where the person to be killed was, who communicated with Adams and gave him information including in which room the target was sleeping. V was with Juandre Calvert, one of the accused in this matter when the killing was executed. At that stage of confession there was no evidence implicating V or anyone on this murder. V indicated that he wanted to come clean and tell of all the murders he committed for the Mobsters. The statements obtained from those who were in the house confirmed the report of V as to what happened.

[52] The allegations made by T, U and V were covered in detail in the evidence of the appellants and will not be repeated, suffice to state that they were confirmed by Wilson as the State case against the appellants and other accused. In respect of the intimidation charge and its withdrawal, the evidence was that the Taxi Association leaders were taken to Gordon's Bay where they were told to wait, by members of the

Mobster gang. Nathaniel Moses and Alfonso arrived at Gordon's Bay where they were kept. The Association leaders were offered money and told to accept the Mobster gang members as members of the taxi business and Association. The Association leaders declined the money and acceptance into membership citing due process. The Association leaders were pointed with guns, given the money and instructed to approve membership, which they did under that duress. After Moses was killed, Alfonso and Adams went to the Association and informed the Association that Adams was taking over. Alfonso and Adams also informed the taxi association leaders that their taxis will also take the then newly established Stellenbosch route. The Association was also offered money on the threat of death, to accept Adams. It was after the threat by Adams and Alfonso that the Association leaders reported to the police.

[53] The police established that members of the Mobster gang were following the State Advocate dealing with the matter and his security detail, after an adjournment of the matter whilst the matter was being dealt with in the Magistrates Courts in Blue Downs. The investigating officer was also alerted by the State Advocate, after returning from the Magistrates chambers where they were called together with the appellants' representatives, that the magistrate advised the parties of a call that was received by that presiding officer from someone who enquired if the appellant s would be granted bail.

[54] One did not need to have a tattoo to be a member of a gang. In gang language, you only needed to be *stambula*. This was a form of initiation, induction and orientation for new members. It was determined by the gang leader and was conducted by a person with the authority to make a new entrant a gang member. It included what you should know, what steps you had to follow and what entailed being a member of a gang. It is a form of schooling. There were business people who were involved in gangs and who did not have tattoos.

[55] The Mobster gang dealt with drugs, firearms, hijackings and theft of firearms. The leader was Adams. Beneath him was Preston Dolan in charge of Bishop Lavis, Marvin Davids in charge of Happy Valley and Craig Fredericks in charge of Kraaifontein. Happy Valley had two sub-components, Dennemeer where Roland Faans was in charge and Kleinvlei where Nathaniel Matthews and Jerome Thomas

known as Live were in charge. The next layer were storage places which the gang called channels. It was Adam Murphy and Mike Madaba. These were people who kept the firearms. Graham Bruns kept the drugs. The next level were the drivers and these were Leroy Appolis, Alfonso, U, Thabiso Mavundlela, T and Shelton Africa. The next layer was the enforcer, who was Emile Cleovas. He kept the discipline among gang members. The last layer was the shooters or hitmen. These were Marlin Benjamin, Nathan Erasmus, V, Emile Cleovis, Tyrone Engelbrecht and Zandre Valvid.

[56] Where the gang was operating there were always writings on the walls, houses and on the street. For the Mobsters there was the number 28 and the letters MOB. Preston Dolan was very high ranking in the 28 prison gang. He was an advisor to Adams. Jonathan Blaauw was responsible for Tik. Rudolf Steenkamp and Nathan Erasmus were responsible for stealing cars which were used for the hit and other transport needs of the gang. Alfonso was mainly used for scouting. As a known police official it was not easy for people to suspect him. Alfonso and his vehicle were also used to transport drugs. Alfonso's wife had five vehicles registered under her name. Three were her vehicles and the other two belonged to Alfonso's relatives who could not register the vehicles in their names as they worked for government and could not run taxi businesses.

[57] The petition in favour of the appellants were signed by people in the mobster stronghold. It is also a known strategy used by gangsters to buy food parcels for the community members and also pay their electricity bills in areas where the gang members are residing. This is done to portray gang members as good people to the community. When the gang members are arrested, they then go to those communities to get petitions in their support for release.

[58] Christian Daniel Dirk van Reenen is a Captain with 26 years experience in the SAPS and a detective in the AGU in the Western Cape. He led a different group to that of Wilson who was under the command of Colonel Brown. They shared information with the group led by Brown. He was involved in the arrest after J50 were issued for both appellants. His group arrested Adams and he was present at the arrest of Alfonso. There were about 10 J50 warrants for the Mobster gang members. On 21 February 2020 after 2 in the morning Alfonso was arrested by Sergeant

Langsberg. The police arrived at Alfonso's home and knocked at the door. Alfonso's wife opened the door. She was asked where was Alfonso and she said that he was not home.

[59] The asked permission to search the house as they had a J50 warrant. She gave the permission to search and Alfonso was found hiding in the ceiling of his residence. There were a number of police on the scene and during the search at some stage Langsberg said they found Alfonso. Langsberg reported that there was noise from the ceiling and they asked a member to check inside the ceiling from a trapdoor that was in front of the door of the main bedroom and Alfonso was found. Alfonso had with him his legally .38 special revolver, which Alfonso handed himself to Langsberg. When van Reenen came to where they discovered Alfonso, the trapdoor was already opened and Alfonso was already coming out through it. He asked Alfonso what Alfonso was doing with the firearm in the ceiling. Alfonso said that he had a mice problem and was hunting for mice.

[60] The police were still in the kitchen with Alfonso when Alfonso received a call from Charlton Afrika. It was a short discussion. Afrika asked Alfonso if he knew why the police were looking for them. Alfonso said they had me and Afrika dropped the call. Van Reenen had been to Afrika's place to arrest him but did not find Afrika, before they came to Alfonso. He then went to Goodwood to Adams' residence to execute the warrant. The other police were already there. They did not find Adams. He heard Adams girlfriend tell Wilson that Adams did not stay there anymore.

[61] Around 7 in the morning he observed a missed call from Adams' attorney of record. He knew it was Adams attorney and called back. He informed the attorney that the police had J50 warrants for his client. The attorney enquired who else and he told the attorney the names of those not yet arrested. There were arrangements over the weekend and the attorney relayed to the police that after consultation with his client Adams and the others will hand themselves over to the police on Sunday the 23rd at 6am. Just after 7 am on the 23rd Adams and three others handed themselves over to the police.

[62] He was introduced to an informer during the investigation by Wilson into the project and on the basis of the information supplied by the informer he was part of

the team that went to search premises identified as where firearms were kept by the Mobster gang. Firearms and ammunition, including a grenade and a police bulletproof were found in only two of such premises during a search operation where a number of premises were searched. The firearms recovered were not registered in the names of any of the accused, including the appellants. Only one firearm was traced to a policeman who alleged that he sold that Norinco pistol to Alfonso for R2000-00. The policeman, Constable Brown, had indicated to the police that he had a drinking and gambling problem and had money problems. Alfonso denied knowledge of the firearm of buying it from the police man. The police received information from the public, through informers. Van Reenen did not want the informers identified, as he was recruiting informers and would not like even prospective informers to know that there was a risk of their identification being made public as they would not avail themselves to help the police.

[63] Section 65(4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (the CPA) provided:

“Appeal to superior court with regard to bail

65(4) The court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which in its or his opinion the lower court should have given.”

Section 60(11)(a) of the CPA provided:

“Bail application of accused in court

60(11) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to –

- (a) In Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release.”

[64] The evidence against the appellants include witnesses as envisaged in section 204 of the CPA. Three witnesses, to wit, T, U and V, who implicate Adams as the leader of the Mobster gang and Alfonso as a member thereof, and as persons involved in organized criminal activity, are themselves self-confessed gangsters who

have involved themselves in violent premeditated crimes and at least one of them, T, used drugs. Investigation and prosecution of serious and violent crime, including by organized gangs, is a legitimate State interest. The evidence of witnesses as envisaged in section 204 is necessary for the administration of justice and the maintenance of law and order.

[65] Against this background, the simple answer to the appellants' criticism of the use of section 204 witnesses in their matter is this: Yes, the laws of the Republic of South Africa (RSA) allows for a witness, to use the appellants' terminology, "to take the proverbial 30 pieces of silver from the RSA which hold the keys to their cells where they would serve a term of life in prison" should they not deliver answers frankly and honestly on the questions put to them by the prosecutor, which answers may incriminate such witness with regard to the offences specified by the prosecutor. The suggestion by the appellants and advanced by their Counsel, to wit, that the pieces of silver is from the police or the prosecutors is a deliberate misstatement and poor characterisation of our law. This is so because it is the trial court, and not the police or the prosecution, which in terms of section 204 forms an opinion as to whether the answers given by such person were given frankly and honestly, and subject to the very provisions of section 204, decide on whether such witness is discharged from prosecution of the offences specified by the prosecutor. Such witness is not discharged for giving evidence that is favourable to the State [*S v Mokoena* 2003 (1) SACR 74 (T) or only when the witness implicates the accused. Neither is it required by the section that the answers must be to the satisfaction of the court [*S v Naude & Another* 1976 (1) SA 798 (RA)].

[66] In *Commentary on the Criminal Procedure Act*, Du Toit et al, Service 60, 2018 at page 23-50F it was said:

"The effect of the section is that persons criminally associated with the accused are compellable witnesses, and that such witnesses are deprived of the privilege set out in section 203"

Section 203 refers to the privilege where a witness is excused from answering incriminating questions or the privilege against self-incrimination. Section 204 encourages persons to provide self-incriminating evidence in courts of justice, and provides them a protection.

[67] Viewed against the background of the serious allegations against the appellants, the fact that the appellants handed themselves over to the police in the presence of their legal representatives, or their cumulative personal circumstances including that they had no previous convictions, had families and had fixed places of residence, paled into insignificance. This is more so because for three days the appellants were sought by the police and could not be found at their known places of residence. Moreover, Adams's wife told the police that he no longer lived at the address which according to his evidence was his permanent residence. This was when the police sought him. Alfonso's wives told the police that he was not home, when he was in fact inside the house and was in the roof hidden by the ceiling, with a revolver on him.

[68] The appellants are alleged to have run a criminal enterprise, a gangster called Mobster gang in Happy Valley, Kleinvlei, Bishop Lavis, Dennemeer and Kraaifontein. It involved the transportation and selling of prohibited drugs. It included killing opponents in the gang world and in the prohibited drug trade. The gang was assisted by some members of the police and forced business, in particular the taxi business to admit its members into the routes at gun point. The gang had protection and assistance from corrupt members of the police. The corrupt police protection and assistance included transportation of its drugs from court to prison, the betrayal of rival gangs and their exposure to death and leaking of information from police planned activities, strategies and tactics to deal with gangs. These allegations, including the involvement of members of the army in selling arms and ammunition to the gang, which arms are used in the killings, rape and robbery of other people to advance the aims, objectives and the hegemony of the 28 gang in general and the Mobster gang in particular, surely created a sense of shock and outrage to the law-abiding members of the South African society, especially in the Western cape. The petition by those who seem to be inside the cocoon of criminal enterprise or benefit from it, is simply a frill which adds no substantive value to the fabric of our society.

[69] There is evidence implicating the appellants in intimidating the taxi industry to admit them into the business, with the chairperson and secretary of the taxi association pointed with firearms by members of the appellants' gang, and admitted

contrary to the association's due processes. There is evidence implicating the appellants previously in intimidating witnesses who had made cases against them, and forcing the witnesses to sign withdrawal statements or risk being killed. There is evidence implicating the appellants in conspiracies to kill, and at least three persons in this project were killed, which project is within a greater project where the appellants are also implicated.

[70] The evidence suggests not only a capture of some lower ranking officers in the SAPS. The evidence suggests that the senior management of the SAPS in the province has been penetrated to the extent that the 28 gang has access to the table where the Provincial Commissioner of the SAPS in the Western Cape sits with his senior managers and lead them in the study of crime, develop crime prevention strategies and decide on tactics and approach to the safety and security of inhabitants of the Western cape. This includes penetration of and access to the sanctity of the reports by specialized units like the Anti-Gang Unit and Crime Intelligence, to the Provincial Commissioner. The evidence further shows that the 28 gang and the Mobsters in particular are breathing heavily on the necks of public prosecutors who guide the investigation of organized crime and institute criminal proceedings against its members. Such prosecutors are under a constant and permanent threat to their lives and that of their close families. The evidence also shows that the Mobsters have now moved gear upwards and are interfering with the decorum of the courts and the independence of judicial officers, and testing the judicial oath of office, especially the word "without fear".

[71] In my view, the release of the appellants on bail will undermine the sense of peace and jeopardise security among members of the public. Their release will also undermine and jeopardise the public confidence in the criminal justice system. I am unable to find, as regards the crime, the personal circumstances of the appellant, the interests of the community and the interest of justice, anything that is cogent to establish the requisite exceptional circumstances. In my value judgment, the appellants failed to adduce evidence which satisfied the court that exceptional circumstances existed which in the interests of justice permitted their release. I am not satisfied that the magistrate was wrong to refuse to grant the appellants bail.

[72] For these reasons I make the following order:

The bail appeal is dismissed.

DM THULARE
JUDGE OF THE HIGH COURT