

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS152/2015

DATE: 28-03-2022

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE

SIGNATURE

10 In the matter between

STATE

and

BONGANI BENEDICT MOKWENA

Accused 1

MASHININI ZWANE

Accused 2

STEPHEN MASHIANE

Accused 3

J U D G M E N T

20

KARAM, AJ: The accused, Bongani Mokwana hereinafter referred to as accused 1, Mashinine Zwane hereinafter referred to as accused 2, and Steven Mashiane hereinafter referred to as accused 3, were indicted in this Court on the following charges.

Count 1, robbery with aggravating circumstances. Count 2, unlawful possession of firearms. Count 3, unlawful possession of ammunition. Count 4, attempted murder and count 5, only preferred against accused 3, robbery with aggravating circumstances.

At the commencement of the trial, accused 1 and accused 2 were legally represented by Mr Mosekwa of Legal Aid South Africa and accused 3 was privately represented by attorney Mr Vorster. After the evidence-in-chief of the
10 first state witness, Mr Vorster received instructions to further represent accused 2 and took over the latter's legal representation from this stage forward.

Prior to pleading, the court confirmed that the accused understood the charges against them. All accused pleaded not guilty to all charges and no statements were made in terms of section 115 of the Criminal Procedure Act. Various submissions were made in terms of section 220 of the Criminal Procedure Act.

These are contained in EXHIBIT A and incorporate
20 references to EXHIBIT C, D and E. In essence, these relate to crime scene photographs of a shooting incident at the corner of Summit and Kelvin Roads in Sandton; that accused 2 was shot in the course of such incident and that accused 1 and accused 2 were arrested thereat; the ballistic reports relating to such incident and exhibits found at the

scene; and that the fingerprint lifted from the white Ford Ranger motor vehicle, with registration letters and numbers CB37SHGP, belonged to accused 3.

The accused confirmed their understanding of and willingness to make these admissions and their signatures reflected thereon.

The Court will now deal with the evidence tendered. Warrant Officer MacIntosh testified. During 2014 and 2015 he was a member of the detective branch attached to the
10 Sandton Police Station. He knows accused 1 and accused 2, but not accused 3. He testified how he and his team had come to ascertain the *modus operandi* of a group of house robbers who had been targetting the Sandton areas since 2014.

The robbers had utilised a white Ford Ranger motor vehicle, that is a *bakkie* with a cab and a half with identifiable characteristics and items loaded at the back of the vehicle. Video footage had revealed the registration letters and numbers of such vehicle as CB37SHGP.

20 On 3 February 2015 at approximately 14:45 PM he was travelling alone on Bryanston Drive in his unmarked vehicle, a white Golf GTI when he noticed a vehicle matching the description aforesaid approaching. He made a U-turn and followed the vehicle and noted the matching registration. He notified control, called for back-up and

activated his siren and blue lights.

The Ranger vehicle increased speed and proceeded through a red light. The witness notified control that he was now engaged in a high-speed chase, also proceeding through the red light. One of the occupants of the Ranger vehicle at the left passenger door opened the window and fired several shots at the witness.

There were four occupants in the Ranger vehicle, two in the front and two seated behind them. The witness
10 fired several shots towards the back of the Ranger. The shooting from the Ranger ceased and the door was closed. Upon the Court enquiring as to what he meant by this latter statement, he stated that the front left passenger had not opened the window and fired at him, but had opened the door of the vehicle, leaned out and had fired at the witness.

The chase continued on Summit Road and as the Ranger attempted to turn left into Kelvin Drive, the driver lost control of the vehicle and collided with a Mercedes vehicle that was stationary at that intersection. Accused 1
20 and accused 2 exited from the left passenger side of the now stationary Ranger.

Accused 1 and accused 2 each possessed a firearm and both fired a number of shots at the witness as he was exiting his vehicle. There are several bullet holes in his vehicle as a result. The witness returned fire. He does not

know what happened to the other two occupants as he was focusing on accused 1 and accused 2 who were now fleeing on foot down Kelvin Drive.

The witness was some 5 meters away from accused 1 and accused 2. As accused 1 and accused 2 were fleeing, they fired further shots at the witness and he fired at them. Accused 1 and accused 2 continued to run towards a stationary white Mitsubishi *bakkie* and the witness noticed accused 2 dropping his (that is accused 2's) firearm in the
10 street.

Accused 1 and accused 2 had run to the passenger side of the Mitsubishi *bakkie* and the witness was 2 meters away from them and he ordered them to surrender and accused 1 to drop the firearm that he was holding. After several warnings, accused 1 tossed the firearm partially over the bonnet of the Mitsubishi which was stationary in the middle of the street.

The witness then arrested accused 1 and accused 2 and called for backup and emergency medical services,
20 having noticed that accused 2 appeared to be injured on both legs, and to attend to any possible injured people in the Mercedes vehicle.

The witness did not notice any other people around in the street when the accident occurred and did not lose sight of accused 1 and accused 2 from the time they exited

the Ranger vehicle. Lt Col de Klerk, the witness's direct commander, arrived on the scene as well as Capt Odendaal.

The witness handed the scene over to the latter and the witness excluded himself from further investigation in the matter. During the course of his testimony, numerous points were indicated by the witness on EXHIBIT C. All of this is on record and the Court is not going to further burden this judgment by the repetition of same.

In cross-examination by counsel for accused 1, he
10 stated that when he followed the Ranger vehicle, there were no vehicles between his vehicle and the Ranger. He could see the occupants in the Ranger. Whilst he could not say who sat where therein, he could see that there were four occupants therein.

The glare and the fact that his vehicle was a low vehicle prevented him from seeing who sat where in the Ranger. It was only after the incident that he spoke to a woman who was the driver of the Mercedes vehicle. He did not see any occupants of the Mercedes vehicle immediately
20 after the collision.

He only saw accused 1 and accused 2 exit the left hand side of the Ranger and could not say which of these accused exited first as he was being fired at. These accused exited within seconds after the collision and immediately began firing at him.

He knelt and took cover behind the open door of his vehicle. He did not cover his head, notwithstanding that he was frightened, in order to see where the shots were fired. One covers or shields ones largest target, which is the body. He focused at all times on that portion of the Ranger where the shots emanated from.

He disputed that he was not concentrating on what was happening, and accordingly, did not see the other occupants of the Ranger exit the vehicle and flee. He
10 stated that he focused entirely on accused 1 and accused 2 as they were the immediate danger to the witness.

The witness insisted that both accused 1 and accused 2 were firing at him, but could not say how many shots were fired at him. He could not dispute that there may have been people around Kelvin and Summit Streets, but he did not see people as his focus was on accused 1 and accused 2 as they ran.

It was put that accused 1 would say that he was at the corner of Kelvin and Summit Streets together with other
20 people gathered in a group, waiting for people driving past to give them or offer them 'piece jobs'. The witness disputed this.

He testified further that accused 1 and accused 2 had run no more than 30 meters when the witness apprehended them and in so running, accused 1 was ahead

of accused 2. The witness was in close pursuit being some 5 meters behind them. He was not fully aware of what was happening around him as he was focusing on accused 1 and accused 2.

He could not state what happened to the occupant or occupants of the Mitsubishi vehicle. It was put that the reason therefor was because the witness had, once again, lost focus. The witness responded that he certainly did not lose focus regarding the two people he was pursuing as that
10 could have cost him his life.

It was put that accused 1 would say that whilst standing at the aforementioned intersection with other people, he saw a high speed car chase and heard an exchange of shots between the occupants of the vehicles in the car chase.

He and others he was with, started to run in order to escape being struck by stray bullets. The witness disputed this stating that accused 1 and accused 2 exited the Ranger, fired at him, that he never lost focus and that
20 they are the very people that he arrested.

The witness further disputed the version put that accused 1 did not possess a firearm and did not fire any shots at the witness or his vehicle on the day in question. The witness is of the view that he would have arrested accused 1 first as the latter would have posed more of a

threat to the witness, accused 2 being wounded.

When he arrested them, both of the accused were at the Mitsubishi vehicle and accused 1 was pointing his firearm at the witness. It was put that accused 1 would deny being arrested at the point depicted by the witness and further, that if accused 1 was indeed in the Ranger vehicle, his fingerprints and/or DNA would have been detected therein.

Further, that gunshot residue tests, which were
10 conducted on accused 1, would have proved positive if he did shoot at the witness. The witness replied that after the arrest of accused 1 and accused 2 he withdrew from the investigation and cannot testify regarding anything pertaining thereto.

The witness denied that he had made a mistake in thinking that accused 1 was an occupant in the Ranger. It was further put that accused 1 would say that he was unaware that the police were involved in this high speed chase and shooting, as the witness's vehicle was unmarked
20 and hence, accused 1 ran away.

The witness replied that this version is absurd given the fact that he had blue lights flashing on the dashboard as well as four blue lights on the grille in the front of the vehicle. He disputed that he arrested accused 1 150 to 200 meters from the intersection and reiterated that he arrested

him at the Mitsubishi vehicle.

Cross-examination by counsel for accused 2 and accused 3 was held over as Mr Vorster, now also acting for accused 2, requested time to consult with accused 2. In the meantime, Mr Simpson (the driver of the Mitsubishi *bakkie*) as well as Mr Pather (the complainant on count 1) testified, in order not to waste court time and due to MacIntosh's unavailability the following court day.

The court will, for the purposes of continuity in this
10 judgment, proceed with the cross-examination of Mackintosh
by counsel for accused 2 and accused 3.

It was put to the witness that Simpson had testified that he, Simpson, had not heard any siren or seen blue lights.

The witness insisted that both were activated and would still have been on when he stopped his vehicle after the accident scene, as he would not have had time to turn same off. The witness conceded that his evidence is contrary to that of Simpson.

The distance between the firing at the witness
20 during the high speed chase and subsequent to the
collision, was half a kilometre and no more than 1 kilometre. The witness did not speak to the photographer regarding cartridges at the first shooting. Accused 1 and accused 2 were not wearing gloves.

It was put that the gun powder residue tests were

taken less than half an hour after the shooting, were negative, and that there is no positive fingerprint evidence linking the accused to the firearms. The witness stated that he could not comment- he did not see the evidence or the results.

The witness stated that the markings on photograph 23 of EXHIBIT C would most likely be cartridges from his firing. He could have fired five or more shots. He could not dispute that there only appear to be two fired cartridges on
10 the left hand side of the Ranger as depicted in photograph 36 of EXHIBIT C.

It was put that Simpson had stated that there were four vehicles in front of his Mitsubishi. The witness could not remember seeing other vehicles whilst pursuing accused 1 and accused 2, his focus being on them. He conceded that if there were other vehicles they would, logically, have had to run past these vehicles to reach the Mitsubishi.

It was put that accused 2 would say that he was at the grass area depicted on photograph 25 of EXHIBIT C
20 when he heard shooting and ran towards the vehicle at the top of the photograph. The witness denied this. The witness conceded that there could have been people on the grass area, but he did not see them.

It was put that there were at least five people there with accused 2 who also started running due to the gunfire

and accused 2 then fell, realised that he had been shot, and was then arrested by the witness. The witness denied this stating that the first time the accused went down, was when the witness arrested him at the Mitsubishi.

He was adamant that accused 1 and accused 2 had exited the Ranger and that photograph 63 of Exhibit C was the firearm accused 2 had dropped off whilst running. The witness is aware that a Jaguar motor vehicle was damaged in the gunfire. It only saw the vehicle after the incident.

10 James Gordon Simpson testified. On 3 February 2015, at approximately 14:00 he was driving his vehicle, a Mitsubishi Triton *bakkie*, on Kelvin Drive and was stationary at a red robot. He was about five motor vehicles behind the front vehicle that was collided into by the Ranger vehicle.

He heard a police officer screaming for people to put down their firearms and he heard multiple shots being fired. Those ordered to put down their firearms were taking cover behind the Ranger and the other vehicles in that queue. These people had exited from the Ranger vehicle.

20 The witness ducked under the steering wheel of his vehicle whilst the shooting continued. He noticed somebody attempting to open the front passenger door of his vehicle, which was locked. He then exited his vehicle and ran up Kelvin Drive towards Summit Road.

He cannot remember whether he observed if that

person was armed. He later observed two people who had been arrested, near his vehicle. He noticed blood on his front left passenger door. Photograph 80 of EXHIBIT C depicts the firearm on the ground next to his vehicle.

As he hid under the steering wheel, he could hear the noise from the gunshots coming closer to him. The letter small 'a' on photograph 79, depicts where the person was, who attempted to access his vehicle, and the letter 'b' is where he heard and later saw the policeman ordering
10 people to stop and drop their firearm.

In cross-examination by counsel for accused 1 he stated that he saw the Ranger collide with the Mercedes, the Golf vehicle arrived less than 2 or 3 minutes later, and he saw the people exiting the Ranger.

He was unable to state the distance of the Golf from the scene at the time the collision occurred; how many people were in the Ranger; whether the Golf was there at the time the occupants of the Ranger exited same; from which door they exited, or how many exited.

20 This was as a result of the incident having occurred 7 years prior. He further cannot recall what happened to the other vehicles ahead of his and behind the Mercedes, and the occupant or occupants of such vehicles. He cannot recall whether there were people standing on the corners of the intersection prior to the collision or whether he saw

people running for cover when the shooting started.

He does not know how or where the detained persons were arrested or who the person is who attempted to open the door of his vehicle. The Golf vehicle was not a marked police vehicle and he does not recall there being a siren or observing any blue lights.

He does not know how the firearm marked 'R' on photograph 79 landed there or who dropped same there. There was no cross-examination on behalf of accused 2 and
10 accused 3.

Karlin Pather testified. He is the complainant on count 1. On 3 February 2015 the witness was resident at 32 St James Crescent in Bryanston. At approximately 14h00 the witness was at home watering his garden. The gate to the complex was open as there was construction underway thereat.

He noticed three men in construction attire walking towards his front door. He entered his house from the patio door and encountered the three men inside his house. Upon
20 him enquiring as to what they were doing there, one replied that they are there to give him a quote.

One of the men was carrying a toolbox. Upon the witness enquiring what quote, the one man lifted the clipboard he was carrying and pointed a firearm at him. The domestic worker was fetched from the kitchen by another armed man.

They were then taken upstairs to the bedroom where the witnesses's wife was, the firearm being held against the witnesses's back.

The witness advised his wife to be calm and to cooperate. The assailant behind the witness asked him where the safe was and whilst he led him to the safe and proceeded to open same, he saw his wife and the helper lying face down and their hands being secured with the witnesses's ties which had been removed from the cupboard.

10 Prior to going upstairs the witnesses's watch, wedding ring, cellular telephone and wallet were removed from him. After opening the safe the witness was also taken to the bedroom where he too, was made to lie down and his hands tied.

 They were instructed to lie and not move. After some 5 minutes and concluding that the assailants had left, he freed his wife's hands. She in turn freed his hands and he pushed the panic button. All items in the safe were removed. He subsequently made a statement to the police and
20 proceeded to testify about the items removed, the total value thereof being R410 000. He saw the assailants placing watches and jewellery in his wives Louis Vuiton handbag. Five minutes after having advised the ADT armed response official, who had arrived shortly after receiving the panic signal, what had transpired, this official advised the witness

that the assailants had been apprehended.

Two policemen subsequently arrived at the witness's residence and requested him to accompany them to a crime scene to identify his belongings. He saw people arrested there. This scene was five to seven kilometres from his residence, a 5 to 10 minute drive therefrom.

Upon arrival at the scene, the witness immediately recognised the white *bakkie* with the ladder at the back, as depicted on photographs 1 and 2 of EXHIBIT C, from his
10 residential security footage. This vehicle was first parked outside the property and later in the driveway of the premises.

The witness immediately noticed his wife's handbag and a laptop which he subsequently identified as his. Other items depicted on photograph 152 of EXHIBIT C were also identified as his and his wife's, the witness stating that he was unaware at that stage that the cologne and sunglasses had also been taken.

He proceeded to testify about other items found in the vehicle that belonged to him and his wife. Most of the
20 items taken in the robbery were recovered, save for a Mont Blanc money clip containing approximately R2 000 in cash. The security footage aforementioned, was handed in by consent and marked EXHIBIT J.

This depicts the white *bakkie* with the ladder, parked outside the complex; then parked in the driveway of the

complex; and men wearing caps entering and then exiting the residence carrying goods. The witness testified regarding what is depicted on the footage, emanating from his personal security cameras, which photographs he downloaded.

He then testified about the traumatic effect of this incident; that his wife received counselling; that she wanted to emigrate and that they subsequently moved out of this residence as a result. There was no cross-examination of this witness.

10 The case then moved into a trial-within-a-trial in respect of a statement allegedly made by accused 3. The Court was advised that the contents of same constitute a confession and that accused 3 alleges that he was threatened, unduly influenced and assaulted by the police, who forced him to sign blank pages.

 Alfred Robert Odendaal was then called to testify, both as a witness in the main trial and in respect of the trial-within-a-trial. He has been with the South African Police Services for 32 years, was a warrant officer at the time of the
20 incident and he is currently a captain.

 In February 2015 he was attached to the Serious and Violent Crimes Unit at Sandton Police Station. He was the initial investigating officer in this matter, but was subsequently transferred to Pretoria. Whilst he was the investigating officer in this matter, he did not work in the

same unit as Capt Mavhundla.

At approximately 15h30 on 3 February 2015 he was informed that he was needed to attend to the scene of this incident and proceeded there, where Maclintosh advised him of the shootout in the car chase and the shootout subsequent to the Ranger's collision with the Mercedes and Maclintosh's arrest of two suspects.

He saw accused 1 and accused 2 there and that one of the suspects were injured. The scene was cordoned off,
10 and the necessary personnel from the Local Criminal Record Centre were contacted and the scene processed. Items were recovered from inside and outside the Ranger, as well as firearms and these were entered into the SAP13 register.

He was approached on the scene by a complainant who advised him that he was an Uber driver, driving a Toyota Avanza vehicle, and was waiting at the scene for a call when the incident unfolded. That two black males approached him pointing firearms at him, pulled him out of his vehicle, assaulted him with their firearms and drove off in his vehicle.

20 Some of the items recovered inside and outside the Ranger, were linked to the house robbery that had occurred just prior to the car chase with Maclintosh. The witness visited the residence of this robbery (It is not in dispute that this is that of the complainant on count 1) and that the complainant had been taken to the scene of the collision

where he had identified certain of his robbed items.

The witness further examined the security camera footage and produced photographs therefrom and confiled EXH J. It declared that the vehicle on the footage was the same vehicle recovered at the scene.

The witness stated that he received information regarding other suspects on the scene and a fingerprint of accused 3, linked to the Ranger, confirmed the information received. Accused 3 was traced to a residence in Thembisa.

10 In the early hours of 25 March 2015 at approximately 00h30 the witness, accompanied by Warrant Officer Makgato and some uniformed members, arrived at this house and knocked on the door. An elderly lady opened the door and the witness advised her that he is a policeman and he is looking for Steven Mashiane.

She replied that he was not present and had gone to Moria. She permitted them access to search the house. Prior to the woman opening the door for them, the witness had heard a sound emanating from the roof of this house.
20 Whilst inside the house and whilst speaking to a woman he found inside the first bedroom, he heard another sound in the roof.

He looked for a trap door leading into the roof and found one in the passage ceiling and found dust on the floor below the trap door. The witness climbed through the trap

door into the ceiling and saw a figure in the dark. The witness approached and saw accused 3 sitting quietly towards the edge of the house, and there was a black bag next to him.

The witness took the bag and ordered accused 3 to come out of the roof. Makgato received accused 3 from the ceiling, the witness passed down the bag and then climbed down himself. Accused 3 confirmed that he is Steven Mashiane. Inside the bag was ammunition of various
10 calibres.

He was warned of his rights and advised that he was being arrested for possession of ammunition and the case currently before this court. He communicated with accused 3 in English, who understood what was explained, and Makgato was with him when his rights were explained.

Accused 3 advised the witness that he wishes to cooperate, is willing to make a statement and is further willing to point out the house where the other Steve lives. Further, that he is aware that he is being sought. This other
20 Steve possesses three additional firearms.

Although he was warned that he was not compelled to point out anything, he was willing to do so. He further stated that he, that is accused 3, had spoken to accused 1 when accused 1 was appearing in court and accused 1 had advised accused 3 that the witness was 'a good guy'.

They proceeded to a room in Alexandra. Nobody was located thereat and no firearms found. On the way to detain accused 3 at the police station, the witness arranged with Capt Mavhundla to come and take a statement from accused 3 at the Sandton Police Station.

Accused 3 was then detained and the witness went on to testify as to the procedures involved therein, including the signing of the SAP14A form, EXHIBIT K. The witness further testified on the occurrence book entries relating to the booking out and booking back of accused 3, EXHIBIT L, when he was taken to make his statement.

The witness requested that entry 1406 relating to the booking back of accused 3 after the statement was taken, be also signed by another officer to counteract subsequent allegations of assault after a confession is made. When the witness received accused 3 back from Capt Mavhundla, as well as the statement, the accused had no injuries, was calm, relaxed and his demeanour was very good.

In cross-examination by accused 1, the witness stated that he could not recall whether he spoke to occupants of the other vehicle at the scene and did not take statements from bystanders, but took notes regarding possible witnesses.

Whilst he was the investigating officer, he is aware

that no fingerprints, DNA and primer residue testing implicated accused 1. He did not interview accused 1 at the scene. De Klerk did conduct an interview, but the witness is unsure which of the accused or whether it was both that were interviewed.

When asked whether he ever spoke to accused 1, which could give an impression that he was a nice guy, the witness stated that he did interview accused 1 later and thinks he took his warning statement. He did not promise
10 accused 1 anything and is unable to explain how accused 1 perceived him.

It was put that accused 1 would deny ever stating that to accused 3.

In cross-examination for accused 2 and accused 3, the witness stated that whilst Maclintosh was part of the field team, he was part of the tracing unit at Sandton. He never carried any docket, nor was he an investigator.

He denied that he was misleading the Court as to Maclintosh's role, stating that the latter's role was to look at
20 certain aspects of the matter, visit crimes scenes and try and identify and trace suspects, in order to assist the investigators, but that he was at a different section at Sandton.

He could not recall whether he interviewed and obtained a statement from the driver of the Jaguar vehicle

and does not know whether the Jaguar was moved. It was put that accused 3 would say that in June 2012 to April 2015, he was a part owner in a car wash in Thembisa and his duties included moving vehicles after they had been washed and cleaning and vacuuming the inside of vehicles. Further, that he does not dispute that his fingerprint was found on the Ranger. The witness replied that this was the first time he had heard such explanation as when questioned about his employment details, accused 3 had
10 stated that he was unemployed.

It was further put that accused 3 had sought refuge in the ceiling as he is also a taxi owner and hearing the bang that woke him up, he believed it may be people targetting taxi owners, some of whom also claim to be police.

The witness repeated his earlier evidence that accused 3 had advised him that he was unemployed and was of the view that accused 3 hid there to avoid detection by the police. It was only when he saw that the witness had
20 spotted him, that he approached the witness.

He disputed that one of the policeman fired a shot into the ceiling of the residence after accused 3's mother had opened the door and that a further shot was fired. The witness stated that accused 3 approached the witness upon realising that he was now trapped and that no shots were

fired.

Accused 3's version was that when the first shot was fired, he began entering the ceiling and whilst still entering the trapdoor, the second shot was fired. Counsel approached accused 3 and was then instructed to put that the first shot was fired when the accused's mother had pushed or shoved this witness; that accused 3 was still in the ceiling; because of the first shot accused 3 proceeded to exit the ceiling and in the process of exiting the ceiling, the
10 second shot was fired. The witness had never entered the ceiling at all. This was disputed. It was further put that no black bag was found with accused 3 and there was no charge in the indictment reflecting same.

The witness disputed that no bag was found with accused 3 and stated that he could not state whether there was a charge pertaining to same as he was no longer the investigating officer in the matter.

The witness testified that it was not necessary to call a photographer to the arrest of accused 3, as the
20 ammunition was in the bag and had been seized in the roof and was already in the witness's possession. Accordingly, the originality of the scene had been disturbed.

It is in the discretion of the investigating officer or arresting officer whether to call a photographer to the scene. He disputed that accused 3's rights were not

explained to him upon his arrest.

He agreed that his first words to accused 3 were 'are you Steve', and disputed that his next words were, 'we're are now going to the other Steve', and the further version that accused 3 was then taken to a premises where there were rooms and told to point out where Steve stays.

It was accused 3 who indicated that he was willing to take them to the other Steve; took them to these premises and showed them a room. He confirmed that the
10 door of the room was kicked in and no person or anything was found therein.

He disputed that accused 3 had taken them on a wild goose chase or that he was angry at not finding the other Steve or the three firearms. He disputed that he and Makgato rushed the entries 1397 and 1398 of EXHIBIT L and stated that accused 3 did spent approximately half an hour in his office before Mavhundla arrived.

He knew Mavhundla was on the way and this time was used to obtain fingerprints. He strongly denied
20 assaulting accused 3 in his office using a tube and water and that Makgato participated therein.

On the courts question as to why the taking of the statement could not wait until the following morning, given the lateness of the hour, the witness replied that whilst it could have waited, if a person or suspect desires to make a

statement, the police try and arrange for this to be done as soon as possible.

When asked why the accused could not be taken to a magistrate the next morning, the witness stated that if the accused did not want to make a statement, he would not have done so. He called Mavhundla and the latter was able to assist in the taking of the statement. If he was not, then the taking of the statement would have waited.

The witness did not book the accused into the cells
10 and have other officers book him out when Mavhundla arrived to distance himself from accused 3, the witness being the arresting officer and investigating officer. The witness booked him out as there was administrative work to be done, necessary documentation to complete, and the accused's fingerprints to be taken.

The version that was put that the accused's fingerprints were taken the first time the following morning, was disputed. It was possible that his fingerprints were taken again the following morning, and if so, it was not by
20 the witness. A suspect's fingerprints must be obtained when charged.

The Court asked why Mavhundla had to be woken up and travel to the police station and if there were no other officers present at the police station to take the statement. The witness replied that at night there are no commissioned

officers on duty who are experienced in taking statements that amount to confessions.

Whilst Mavhundla was also stationed at Sandton, he was the commander of the Housebreaking Group. A warning statement is taken when a suspect is charged. This witness did not take such a statement from this accused as it is not necessary to do so when a confession statement has been made.

It was disputed that accused 3 was coerced and
10 assaulted into signing the statement. He disputed that it was procedurally incorrect for accused 3 to not have been booked out by independent officers and taken to Mahundla's office.

Moleko Herbert Makgato testified. He is currently a captain in the South African Police Services stationed at Sandton. In 2015 he was a warrant officer and was attached to the Feld Unit under the detectives. He remembers the events of 25 March 2015 very well.

He knows accused 3 from these events. He was
20 requested by Odendaal to assist in the arrest of one of the suspects in this matter according to information that this witness had received, namely accused 3. On arrival at the address at Thembisa, Odendaal went to the front door of the house and the witness proceeded to the back of the house.

The witness heard a noise emanating from the roof.

He then heard Odendaal shouting that there was someone in the roof. He heard Odendaal shouting, 'come out, come out'. Upon entering the house, the witness saw Odendaal's legs hanging through the trap door and heard Odendaal saying, 'come out, come out, I can see you'.

The witness approached Odendaal and the latter then passed accused 3 to the witness through the trap door, as well as a bag, Odendaal stating that he had found it on the roof. On questioning by the Court the witness explained
10 that when he had stated 'on the roof' he was referring to between the ceiling and the roof, not on top of the roof.

When Odendaal had knocked on the door of the residence, the latter had stated that they were the police. Odendaal then came down from the ceiling and upon opening the bag, they found different kinds of bullets therein.

The suspect confirmed that he is Steven Mashiane. Odendaal then explained the accused's rights to him and the accused stated that he understands. Both spoke in English
20 and it appeared to the witness that the accused understood English very well.

Accused 3 indicated, voluntarily and without any coercion, that he was aware that he was being sought by the authorities and was going to point out another Steve also wanted by the authorities. They proceeded to Alexandra

where accused 3 pointed a door to a room.

Odendaal knocked on this door and receiving no response, kicked the door open. Nobody was inside the room and nothing unlawful was found therein. They then proceeded to Sandton where accused 3 was detained. Odendaal detained accused 3 and the witness was present.

The accused was not assaulted by anyone. When taking them to the other Steve, it appeared to the witness from the manner in which Odendaal and accused 3 were
10 conversing, that they were friends. The witness was present when the accused volunteered to make a statement.

After detaining the accused, Odendaal advised the witness that he, that is Odendaal, had already spoken to Mavhundla to take the statement. Odendaal then booked out the accused to his, that is Odendaal's office, to take the accused's fingerprints.

In stating this the witness lifted both his hands, and stated that he was present when the accused was booked out and the witness also went with the accused and
20 Odendaal to Odendaal's office. Odendaal took the accused's prints and completed the pro forma documentation relating to the compilation of an investigation docket.

Mavhundla subsequently arrived and took accused 3 with him to his office. At no stage whatsoever was accused

3 assaulted by anybody, he did not complain of any injuries and none were visible. The accused's friendly demeanour had remained throughout the process.

The witness and Odendaal remained in Odendaal's office after Mavhundla had received accused 3. Mavhundla was from a different unit to the witness. In taking a statement an officer from another station or unit is utilised, who has no knowledge of the matter being investigated.

When Mavhundla returned to Odendaal's office with
10 the accused, the witness was still present with Odendaal in the latter's office and the witness was with Odendaal when accused 3 was taken back to the cells. The accused appeared normal, there were no injuries observed and he did not complain of any.

In cross-examination by counsel for accused 2 and accused 3, the witness stated that he and Maclintosh were attached to the same unit. As such, he was aware of the spate of robberies and *modus operandi* used by the robbers. He was unaware as to whether Odendaal was aware of this
20 as the latter was not attached to their unit, but to the Serious Crimes Unit.

Mavhundla was the commander of the Housebreaking and Theft Unit. House robberies did not fall under the same unit as the housebreaking and theft unit. Mavhundla had no knowledge of the house robbery

investigations. The witness disputed that any shots were fired during the arrest of accused 3, stating that he can identify the sound of a gunshot.

He further disputed the version that Odendaal did not enter the roof. He was unable to state how Odendaal obtained the black bag, but after receiving the accused, Odendaal handed the witness the bag. Upon entering the house the witness saw Odendaal's legs hanging from the trap door.

10 Odendaal may have entered the ceiling prior to the witness accessing the house. Odendaal's first words upon exiting the ceiling was that he was placing accused 3 under arrest for the ammunition in the bag and accused 3's rights were explained to him in English.

Odendaal stated that we have the right man, Steven Mashiane, and accused 3 confirmed that he is Steven Mashiane. After confirming his identity, accused 3 was arrested and his rights explained to him. Odendaal asked accused 3 whether he understands his rights and accused 3
20 replied in the affirmative.

Accused 3 stated that he is aware that he is wanted by the police and will take the police to the other Steve who stays in Alexandra. That Steve is the one who fled the scene. Odendaal asked accused 3 where the firearm is that was used to hijack the Avanza vehicle and accused 3 stated

that this other Steve has that firearm.

The witness did not hear accused 3 telling Odendaal that Odendaal will find three firearms at the other Steve. It was put that Odendaal did not testify regarding this conversation about the firearm used to hijack the Avanza and that same is with the other Steve.

The witness maintained that he did hear this and it was for that reason that they then left Thembisa for Alexandra to look for this firearm. It was put that accused 3
10 was placed in a Golf GTI vehicle and there were three other occupants therein, namely the witness, a black policeman named Steve and another black policeman, en route to Alexandra.

The witness could not recall whether it was a Golf vehicle, but stated that the occupants in the vehicle were Odendaal, the witness and accused 3. Odendaal was the driver. There was no policeman at the scene called Steve. The witness mentioned that notwithstanding that the accused had just been arrested, he was in a good mood and
20 smiling and denied that the accused was terrified.

The accused had volunteered to take them to where the other Steve was. The witness stated that they, that is the police, did not know the address, that the accused directed them and upon arrival at Alexandra, at a house that has many shacks, accused 3 pointed at one of the doors and

stated that Steve resides there.

Notwithstanding their disappointment at not finding the other Steve there, the mood between them and accused 3 did not change. After accused 3 had been detained at the Sandton cells, was the witness informed by Odendaal that Mavhundla was coming to take a statement from accused 3.

The witness did not at any stage hear any telephonic communication between Odendaal and Mavhundla regarding arrangements for the latter to take the
10 statement. Several calls were made by Odendaal, but the witness was unaware as to who the calls were to.

Whilst the witness agreed that there is no need to rush to take fingerprints of the suspect or do the administration subsequent to an arrest, as the police have 48 hours until the suspect appears in court, he went on to state that it depends on the investigating officer as to how he would prefer to conduct his investigation and perform his duties.

The witness did not see a problem of them being
20 together with the accused when Mavhundla fetched the accused, as long as they were not present when the statement was being taken. He denied that he and Odendaal severely interrogated accused 3 in the office, stating that he was busy with the prints and Odendaal was writing.

He did not know what Odendaal was writing. Because Odendaal was the arresting officer and investigating officer, he can charge the suspect at the time fingerprints are taken.

He does not know however if Odendaal was charging accused 3 at this stage in the office. He denied that he and Odendaal inflicted the torture of tubing accused 3 in the office, stating that this was impossible as Mavhundla was already on his way to take the statement
10 that the accused had volunteered to make.

He explained that the police official who books out a suspect, has to be one who books back the suspect and the official in charge of the occurrence book will ask the suspect whether he is happy and free from injury. Even though a suspect is willing and compliant, he must still be handcuffed to avoid being surprised.

The witness was present from beginning to end to safeguard both Odendaal and the suspect.

Roger Mavhundla testified. He is a captain and has 35
20 years experience in the South African Police Services. He is currently stationed at Bramley. On 25 March 2015 at around 01h30 he received a call from Odendaal.

At that stage the witness was in charge of the Housebreaking Unit at Sandton and was a lieutenant and a commissioned officer. Odendaal requested the witness to

come to the police station to take a statement from a suspect. He arrived there some 30 to 45 minutes later from Kagiso where he resides.

Odendaal was attached to the Serious and Violent Crimes Unit, a completely different unit to that of the witness. He went to Odendaal's office where he found Odendaal, Makgato and the suspect, that is accused 3. He did not know the suspect or his name.

Odendaal introduced the suspect to him as Steven
10 Mashiane and the witness took the accused to his, that is the witness's office. The witness observed no injuries on accused 3. The witness had the pro forma forms for taking a confession in his office, and he then proceeded to go through same with accused 3.

He and accused 3 communicated in English and Sotho and they understood each other. There was no difficulty whatsoever in this regard. He obtained accused 3's personal details from accused 3. His and the accused's signatures were affixed to the bottom of each
20 page of the pro forma, as well as the accused's right thumb print.

The accused indicated to him that he is willing to make a statement in the absence of a legal representative. The accused narrated and the witness noted everything the accused said. After the accused had completed his

statement, the witness requested him to read same and the accused read same himself.

The witness enquired from the accused as to whether he had complaints pertaining to the statement and the accused replied that it was 'a very perfect statement'. The witness requested the accused to write this in his, that is the accused's own writing at the bottom of the page. The accused did so.

The accused was very cooperative and respectful.
10 The witness testified that upon reading this now to the Court, he noticed that the accused had written the words that the statement taken from him by the witness is, 'freely involuntarily'.

Had he noticed this before he would have requested the accused to amend it with him. The witness had understood the accused's statement to mean that he had given the statement freely and voluntarily. After all the pages had been signed by the accused, the witness requested Odendaal to come and fetch him.

20 The accused had made no reference to any other occupation or venture apart from the taxi industry. He did not assault the accused. The accused was extremely cooperative. The accused made no reference to having been assaulted prior to the witness receiving him. All the information contained in the pro forma and statement, were

obtained from the accused.

In cross-examination by counsel for accused 2 and accused 3, it was put that accused 3 had instructed Mr Vorster that his, that is accused 3's, erstwhile attorney Mr Leisher had instructed accused 3 to do this when confronted with such a situation, this being the accused's opportunity to inform anybody who sees this that this is involuntary.

The witness could not comment on this version.
10 Similarly the witness could not comment on what was put to Odendaal or Odendaal's responses thereto, stating that he was not present at the accused's arrest and can only comment on the pro forma the witness completed.

The witness was only aware of house robberies in 2014 and 2015 in Sandton when there were shootings. The witness concentrated on housebreakings, and house robberies fell under serious and violent crimes. As such, he did not have detailed knowledge of the house robberies in Sandton.

20 The witness conceded that he had made an error in not amending the pro forma where it stated that the suspect was brought to his office, as he had fetched the suspect from Odendaal's office. It was further human error that he did not delete the pro forma statement indicating that there was also an interpreter in the witness's office as there was

no interpreter involved in this matter.

The clothing of the accused was not wet. It was also an error that the accused signed in the space for justice of the peace, the witness ought not to have signed there. It was put that the accused would tell the Court that he was assaulted and tortured by tubing and water prior to the witness receiving him.

The witness could not comment stating that he was not present then. He denied forcing the accused to sign
10 many blank pages. It was put that both Odendaal and Makgato had testified that the witness had taken accused 3 to Odendaal's office thereafter.

The witness replied that he does not recall well, but believes he telephoned Odendaal to fetch accused 3. He disputed that his and Odendaal's offices were in close proximity to each other and disputed that he was misleading the Court in this regard, but confirmed that their respective offices were on the same floor.

On questioning by the Court, the witness stated that this
20 was the first occasion that he had been called in the middle of the night and required to travel some 40 kilometres to take a confession from a suspect.

He was still relatively new at taking confessions and this was his fourth or fifth one and there was a possibility that there were other officers on duty at the

police station to take the statement.

In re-examination, he stated that as they worked on shifts, there would have been other officers on duty at the time.

He does not know the reason that Odendaal requested him to take the statement.

The State then closed its case in the trial-within-a-trial. Mr Vorster advised the Court that accused 3 had given him instructions that he would not be testifying in the trial-within-a-trial, and this notwithstanding that he had
10 explained to accused 3, the implications of not testifying.

Accused 3 did not testify or call any witnesses and accused 3's case in the trial-within-a-trial was closed. The State and Defence addressed the Court and the Court ruled that the statement be provisionally admitted into evidence and that the reasons for its decision would be furnished at a later stage.

The Court now gives its reasons for this ruling.

It is trite that there is no onus on the accused to testify. He has the fundamental constitutional right to
20 remain silent and the onus remains at all times on the State. No negative inference must be drawn against his failure to testify.

All this means, is that the Court has the duty on the evidence before it, to determine whether the statement was made freely and voluntarily by the accused, whilst in his

sound and sober senses, and without having been unduly influenced so to do.

See generally *Osman and Another v The Attorney General for the Transvaal* 1998 (4) SA 1224, (CC) and *S v Boesak* 2001 (1) SA 912 (CC). Having said that, it must be remembered that what is put by counsel on behalf of his client does not constitute evidence *per se* until same is testified to by his client.

The Court found both Odendaal and Makgato to be
10 good witnesses and Makgato corroborated Odendaal in material respects as to the accused's friendly demeanour and willing to cooperate fully with the police, and unilaterally offering to point out the whereabouts of the other Steve.

This cooperative spirit, according to Odendaal, extended to the accused's willingness to make the statement. The differences in their evidence does not impact in any material respect upon the issue of the statement. They corroborate each other materially
20 regarding the detention and booking out of the accused and Mavhundla's receiving of the accused and returning of the accused to them.

Whilst it may in the circumstances have been more desirable to wait until the morning and have the accused then make his statement or have him taken to a magistrate,

there was nothing procedurally incorrect in what Odendaal arranged with Mavhundla.

As Makgato stated, Odendaal was the investigating officer and it was accordingly in his discretion how he dealt with the matter. This Court is obviously aware of the fact that conscientious investigating officers often, 'strike while the iron is hot', in having statements taken immediately where a suspect is cooperative and willing to make same rather than wait and risk a suspect changing his mind to
10 make such statement.

Having said that, this Court is very alive to the fact that there are instances where suspects are assaulted and tortured to make same. In this case, it appears from what was put to the witnesses, that the assault was perpetrated subsequent to the attempted pointing out of Steve.

Furthermore, it was put that the contents of the statement did not emanate from the accused. In other words, the accused was not the author of same. It would thus appear that the accused would have been assaulted in
20 order that he sign blank pages in front of Mavhundla.

This is highly improbable and the Court did not have the opportunity, by virtue of the accused's failure to testify, of finding out the reasons as to exactly what, if anything, was said to him at the time he was assaulted or the reasons why he was so tortured.

There is nothing in the Occurrence Book entries that reflect that the accused had visible injuries or any evidence that he had complained to anybody that he had been tortured as alleged. I have no doubt that Mr Leisher would surely have advised the accused that if he was in fact tortured, to ensure that he notify the magistrate of same at his first appearance. There is no evidence of such.

Mavhundla testified that the accused's clothing was dry when he was with him. There is no evidence that there
10 was any water on Odendaal's office floor when Mavhundla received the accused. There is no evidence from the pro forma (safe for the word 'involuntarily' which I will deal with hereinunder) that the accused was injured or had been tortured.

Mavhundla, similarly with Odendaal and Makgato, refers to the accused's demeanour and full cooperation. What is the explanation for the lengthy time Mahundla spent with the accused, if it was simply to force the accused to sign blank pages?

20 Notwithstanding that Mavhundla was indeed careless in the performance of his duties, the Court found him to be an honest and a credible witness. This Court is of the view that none of the errors of Mavhundla in completing the pro forma, EXHIBIT M, are material or such that they affect the admissibility of the statement.

If there was anything untoward in his dealings with the accused, he would surely not have offered the accused the opportunity to write anything down himself on the last page of the pro forma. In dealing with this aspect, the word 'involuntary' must be looked at in its context.

The pro forma reveals that the accused wrote the following and I quote:

10 "The statement taken from me by
 Mr Mavhundla is freely involuntary. Nobody
 influenced me to submit the statement. I
 read the statement as correct."

It is not in dispute that the accused wrote this himself. The accused did not testify and confirm that he had previously been informed to write this and in what circumstances he should do so, whether, because he was forced to do something against his will, or because he had been tortured or assaulted or threatened, or because of all of the above.

20 Whilst there is no onus on the accused to prove anything, it must be stated that the said Mr Leisher appeared in this Court on unrelated matters on various occasions and as such was available and could easily have been called as a witness to corroborate the version put and explain exactly what he had advised the accused to do and in what circumstances.

This Court is of the view that in the circumstances

and having regard to the context of what the accused wrote, that it is probable that what the accused had intended to write was 'freely and voluntarily' and his lack of proficiency in the English language resulted in what was written.

What is further significant is that it is not in dispute that the accused wrote this entry himself. Why would the accused write:

"The statement taken from me by
Mr Mavhundla..."

10 if no statement was taken from him? This is wholly incompatible with the version put that the accused did not make any statement, but was forced to sign blank pages. Why would the accused unilaterally refer to a statement taken from him if there was no such statement taken?

Having regard to all of the aforesaid, the Court was of the view that the statement was freely and voluntarily made by the accused, whilst in his sound and sober senses, without him having been unduly influenced so to do, and ruled that it be provisionally admitted into evidence.

20 Subsequent to the Court's ruling, Mavhundla was recalled by the state to read out the contents of the statement obtained. This is EXHIBIT M1. I pause to state that notwithstanding the Court having been advised by counsel for accused 3 that the content of the statement did not emanate from accused 3, this Court was of the view

that, in the interest of justice, the contents not be revealed to the Court until its determination on its admissibility or otherwise.

On hearing the witness refer in his reading of the statement to the arrest of accused 3, the Court immediately stopped him and handed back the statement requesting the State to conceal same, which portion remains concealed. The witness testified that at the bottom of each page of the statement are the witness's and accused 3's signatures, as
10 well as accused 3's right thumb print.

In cross-examination by Mr Vorster, it became apparent that a pointing out was done by accused 3 subsequent to this witness taking the statement. This pointing out did not include the scene in count 1 or some of the other scenes of crime referred to in the statement.

The witness was not able to state what exactly the pointing out related to, stating that he was not the investigating officer in this matter at the time. The contents of the statement was written precisely as related by the
20 accused.

No questions were asked of the accused and no places were mentioned. The witness did not have a list of cases that the police wished to link the accused to, all that is contained in the statement emanated spontaneously from the accused.

When asked whether Odendaal and Makgato had requested the witness to ask the accused about these incidents referred to in the statement, the witness denied this and stated that the accused, being present when this witness received him from Odendaal and Magathu, would have been aware of such request had same been made.

In re-examination the witness stated that a Capt Minnaar was in charge of this pointing out and that he, the witness, had requested a Col de Klerk, Odendaal's superior, to be trained in a pointing out, not having ever
10 done a pointing out, and that he, the witness, was simply there at that pointing out as an observer.

On the Court's questioning the witness stated that the pointing out took place at 09h00 on 25 March 2015 and that he became the investigating officer in this matter in January 2017 after Odendaal's transfer to head office, and did so on the request of General Sithole.

He does not know Pather and the latter's past and current address is unknown to him. I pause to state that
20 Odendaal had in his evidence-in-chief referred to his transfer and that he had subsequently become aware that this witness had taken over the matter.

The State then requested that the evidence led in the trial-within-a-trial be incorporated into the main trial. Both counsel for the Defence had no objection thereto. The

State advised the court that the complainant on count 5 was untraceable and that it would accordingly not be pursuing same.

The State then closed its case and the Court invited Mr Vorster to apply for a Section 174 discharge of accused 3 on count 5 and accused 3 was accordingly discharged on count 5.

Accused 1 testified. He is Bongani Benedict Mokwana, spelt M-o-k-w-a-n-a.

10 On 3 February 2015 he was residing in Birch Acres, Kempton Park. He was engaged in doing piece jobs. He had been picked up to do a job that morning at the corner of Summit and Kelvin Drive and thereafter was dropped off thereat at around 14h00 to 15h00. He was wearing a two piece overall suit.

 When he was dropped off, there was a group of people, similarly workers, who are always there waiting to be picked up or dropped off. He sat down to eat his meal and then saw a Golf GTI vehicle chasing a Ford Ranger
20 vehicle at high speed and the occupant in the Golf was firing shots at the Ranger.

 Accused 1 started running down Kelvin Road with the six or seven people in the group, to take cover. Some of the group jumped over a precast wall. Accused 1 ran to where there were shrubs and crawled into the shrubbery.

When the Ranger vehicle turned it collided with another vehicle and that is when he heard most of the gun shots being exchanged between the occupants of the Ranger and that of the Golf. It was when he was crawling to the shrubs that he heard this exchange of fire.

Accused 1 marked an X on photograph 2 of EXHIBIT C where he was initially seated and it was 100 to 150 metres to the shrubs where he ended up. He then heard a voice ordering him to stand up and not move. He was
10 searched, nothing was found in his possession and he was then arrested.

He denied that he alighted with accused 2 from the Ranger and fired shots at Maclintosh; that he possessed a firearm or tossed same onto the road; or was arrested where Maclintosh indicated at X1 on photograph 80 of EXHIBIT C. He knows nothing about the robbery on count 1 and Pather did not point him out at the identification parade.

Primer residue tests and DNA test were conducted on him. He did not know accused 2 and accused 3 prior to
20 his arrest and did not see either of them on the day in question. It is possible they were among the group of the six or seven people.

He knows nothing about the references to himself by accused 3 in the latter's statement. The Bongani Mokoena is not him as his surname is spelled M-o-k-w-a-n-

a. He did not know MacIntosh prior to his arrest and was not the occupant or driver of the Ford Ranger on 3 February 2015.

EXHIBIT N was then handed in by consent of the State, being the results of the primer residue testing on accused 1 and accused 2, which results were negative.

In cross-examination by the State, he stated that on the day of the incident he was at the place in question looking for a job.

10 He arrived there alone at around 10h00 to 11h00. He and another person were hired to complete a painting job he had started previously. He was fetched at around 10h00. It was the first time he saw the other person hired with him. He does not know of this other person's whereabouts. He did not see accused 2 on that day among the group of six to seven people.

He arrived at that place from his home looking for work at around 09h00. He was picked up to do the work between 10h00 and 11h00 and dropped off thereafter
20 between 14h00 and 15h00. He did not see accused 2 when he was dropped off. He did not see accused 2 after his arrest, but did see an injured person some 90 meters away.

When asked how he knew the person was injured at that distance, he replied that he heard the police saying that the person is injured. He frequents this place looking for

work and has never seen accused 2 there. He uses taxis to travel to that intersection and looks for work there as the Sandton tariffs are better than those in Kempton Park.

He did not know Maclintosh prior to this day and there was accordingly no bad blood between him and Maclintosh. Prior to the collision, it was only the occupant of the Golf who was firing at the Ranger. The occupants of the Ranger were not firing at the Golf.

It was after the collision that there was this
10 exchange of gunfire between the occupants of the vehicles. He saw the occupants of the Ranger vehicle alight therefrom and fire shots. He was in the process of running away and at a distance of some 60 meters from this shooting scene.

He does not know why Mackintosh is implicating him. He confirmed that he stays at Birch Acres in Kempton Park and that his name is Bongani. It was put that it is strange that he does not know accused 3 who refers to accused 1 in his statement and he was asked where accused 3 would obtain this information.

20 He replied that he does not know. On the Court's questioning, he stated that after he was dropped off after completing this job, he sat down eating and was hoping that he would be hired again, as he usually leaves to go home at 17h00.

He saw one person who had alighted from the left

door of the Ranger firing shots. He did not jump over the precast wall as he is not good at jumping. Whilst running he tripped and fell and then crawled to the shrubs. The white male who had hired him for the painting job is a Mr Salter.

In further cross-examination he stated that he informed Maclintosh that he had worked for Mr Salter that day, had just been dropped off and was having his lunch. He agreed that this was new evidence and that same was never put to Maclintosh.

10 He further stated that he did tell his legal representative that he had informed Maclintosh of the aforesaid. What he did not inform his legal representative of, was the name Salter. The case for accused 1 was then closed.

Accused 2 then testified. He is Charles Shiyanduku Ebandla Zwane. He testified that after 13h00 on 3 February 2015 he was fetched by a friend and transported to RedHill School to seek admission of his daughter there. His friend dropped him off at the school
20 advising him that he was going to make a delivery and would collect him.

He was prevented from entering the school without having had made an appointment, requested a school brochure which was given to him, and then proceeded to walk to the intersection where the incident took place and

stood under a tree there due to it being a very hot day.

He then called his friend advising, him that he had not been permitted to enter the school and that he was waiting for him at that corner. Whilst standing there, he heard the sound of moving vehicles and gunshots and a white van colliding with another vehicle, a GTI vehicle following the white van.

When he heard the gunshots and saw the collision, he ran away from point X to point B on photograph 2 of
10 EXHIBIT C, where he fell in the middle of the road. He could not stand up and then lost consciousness. He regained consciousness in hospital where he was informed that he had been shot four times.

He was unable to state who had arrested him. He denied Maclintosh's allegation that he had alighted from the Ranger *bakkie* and fired shots at him, that he had tossed the firearm, and that he had anything to do with the robbery on count 1.

He only met accused 1 and accused 3 at prison
20 after his discharge from hospital some two months later. He does not know Masheto Zwane. At prison, he was advised that he was not implicated by the primer residue tests.

In cross-examination by the State, he stated that he does not work, but owns a tavern and a taxi.

It was put that a document in possession of the

State indicated that he informed the police that he was unemployed. He replied that he told the police he owns a tavern and taxi and that maybe they interpreted that to mean he was unemployed.

He does not know when he gave the police details as to his date of birth. It was put that the document further indicated that he is single. He replied that he is traditionally married and does not know where the police obtained this information from.

10 He takes owning a tavern as not being employed and does not remember if he told the police that he is unemployed. He was asked whether he had advised his lawyer regarding his visit to RedjHill School. He replied that he did not as he and his lawyer did not have sufficient time together.

In most instances Mr Vorster was busy consulting with accused 3. On the Court's questioning as to whether the Court was correct in understanding that accused 2 did not furnish Mr Vorster with this information, the accused
20 replied that he did inform Mr Vorster of this for the first time, when they had consulted the day before.

The accused confirmed that Mr Vorster was his legal representative when Maclintosh had testified and that Mr Vorster, on many occasions during the proceedings, approached the accused to consult and take instruction.

When pushed as to why he did not advise Mr Vorster thereof on these occasions and to put this version to Maclintosh, he replied that he was under financial pressure relating to how he would pay for his legal fees and accordingly, is not sure as to whether he told Mr Vorster everything.

His mind was on raising funds for his defence. It was put that the accused was lying in that Mr Vorster had requested from the Court time to consult with accused 2.
10 He replied that he was not lying, but that there was insufficient time and that his, that is accused 2's mind, was not functioning because of the pressure.

He lives in Alexandra and his daughter attended a school in Lombardy. The fees were R700 a month. He does not know the name of the current school where his daughter is enrolled at and he was paying R1 200 per month therefor. He was dressed in overalls on the day in question.

When asked why he would wear overalls to go and apply for admission of his daughter at the school, he replied
20 that he always wore overalls as he was in charge of deliveries for his tavern and that he did not have a problem therewith, as long as they were clean.

He approached RedHill as his friends recommended it as a good school and he discovered on that day that it is one of the most expensive schools in Gauteng. He did not

study the pamphlet, but saw that fees ranged from R 78 000 to R82 000 per year, but is not sure which grade this pertains to.

He does not know whether his daughter is in standard 2 or 3. Although his wife deals with the schooling and such issues pertaining to the child, she did not attend at the school as she works.

When asked why he did not call his friend to collect him after being denied access to the school, he replied that
10 his friend had already left and he could not see his friend's vehicle. He walked in the direction of The Wedge shopping mall where his friend had gone.

He did not walk to the mall as it was too hot. It was put that the version of going to RedHill was a fabrication and hence not put to any State witness. He replied that he did not tell his lawyer of same as he was confused. He did not stand under a tree outside the school entrance or the pavements around the school and call his friend to fetch him, as there were no trees there.

20 He did not see any shootout, but only heard gunshots; he does not know who shot at him; he did not see Maclintosh on the day of the incident; there is no bad blood between Maclintosh and himself and he does not know why Maclintosh would fabricate stories about him and accused 1.

He has not lodged a criminal complaint against the

police for having been shot and injured. His surname is Zwane and he lives in Alexandra.

The case for accused 2 was then closed.

The State applied to have the indictment amended to reflect the name of accused 1 as Bongani Mokwana, M-o-k-w-a-n-a. The Defence did not oppose this.

Accused 2 then indicated that his surname is spelled incorrectly and is Shindu and not Mashinini as reflected in the indictment. The Court enquired as to where
10 the name Shindu now arises as he had given his full names when he was sworn in.

Mr Vorster approached accused 2 and accused 2 then informed the Court that his real name is Charles Shiandubebandla Zwane. The Defence had no objection to the State's request to amend the indictment regarding accused 2's names, to the name given. The indictment was amended accordingly to reflect the aforesaid.

Accused 3 testified. He is Steven Leshage Mashiane. He stated that on 25 March 2015, around
20 midnight, he was asleep at his house when he heard a knock and people shouting 'police, police'. As he is in the taxi industry and attackers sometimes falsely claim to be police, he was afraid and went through the trap door and hid in the ceiling.

His mother opened the door and he did not hear the

conversation between her and the police. He then heard the trap door being opened and he heard a voice saying, 'come out, come out'. He did not move and this person then fired a shot. It is not in dispute that he is referring to Odendaal.

He, that is accused 3, stated that he was coming and saw half the body of Odendaal who received the accused and handed him to a black officer. It is not in dispute that this is Makgato. Odendaal then climbed down from the trap door and enquired from the accused whether
10 he was Steven.

The accused stated that he is Steven and Odendaal then demanded to know where the firearms are. The accused asked him what he is speaking about and Odendaal responded that the accused knew which firearms Odendaal was referring to. They requested his mother for permission to search the house and she consented.

They only searched the accused's bedroom wherein were his partner and their 5 year old daughter. Nothing was found. They then requested the accused to take them to
20 Steve. The accused enquired from them as to who they were referring to.

They then advised him to change out of his pyjamas into clothing as they were taking him with them. He was handcuffed and placed in a GTI golf vehicle with three black police officers. Odendaal travelled in a grey 4x4

van.

The driver of the Golf advised the accused that they were going to Steve's place in Alexandra, to 14th Street and that the accused must point out Steve's room. At the premises he was taken to where there were approximately eight shacks and rooms in total.

The accused cooperated with them, because of the shot fired by Odendaal in the house. He was very scared. The accused pointed at a room and advised them that the
10 Steve they are seeking is in that room. The policeman who had cuffed the accused took out his firearm, pointed it at the accused and advised him that he would be shot if he, that is the accused, was lying.

They knocked at the door and there was no response. Odendaal kicked open the door. There was nobody inside and the room was searched. Nothing was found. They asked accused 3 why he had shown them the wrong room to which the accused replied that he had informed them that he did not know this person.

20 They proceeded to Sandton Police Station where Odendaal and Makgato interrogated him in an office, asking about Steve and other names. They advised him that he should tell them the truth. The accused responded asking Odendaal what truth he was referring to and why he had been arrested.

They replied that they had much time and would not finish with the accused if he did not tell them the truth. The accused then requested of Odendaal that he be permitted to call his lawyer. Makgato responded, saying to the accused that he knows too much.

At this stage, the accused was seated with his hands cuffed behind him. Odendaal left the office and returned with blue disposable elastic gloves and a glass of water. He explained how Odendaal stood behind him,
10 stretched the glove, Makgato poured water on his face and Odendaal then covered his whole face with the stretched glove.

The accused could not breathe, shook his feet, and noticing that he was choking, it was removed from his face. He then advised them that he would cooperate, fearing that he would die. Odendaal warned him not to waste their time again as he had previously when they had gone to Alexandra.

The accused assured them that he would cooperate.
20 Odendaal left the room, spoke on a cellular telephone, and returned advising the accused that somebody would be coming to interview him. After an hour or so, Mavhundla arrived.

Odendaal stated that he wanted Mavhundla to speak to the accused and that the accused would inform

him, that is Mavhundla, all the information about the case. It appeared to the accused that Mahundla knew which case Odendaal was referring to.

Makgato left the office. Mavhundla introduced himself to the accused and Odendaal informed Mavhundla that the accused is very cooperative and will tell Mavhundla everything he needs to know.

Mavhundla took the accused to another office and before the accused spoke to Mavhundla, Odendaal arrived
10 at this office, in possession of blank documents, and gave them to Mavhundla stating that the accused's statement be taken down on these papers.

Odendaal then left the office. Mavhundla told the accused to be comfortable and to relax and commenced interviewing him. Mavhundla then asked the accused personal questions about himself. He stayed for a long time with Mavhundla.

After interviewing the accused and before Mavhundla wrote down anything, he gave the accused the
20 blank pages and requested the accused to sign them. The accused did so. Thereafter the captain asked the accused whether he knows Bongani and Mashindu and about a Ford Ranger.

The accused replied that he does not know these people or this vehicle. Mavhundla then commenced writing

the statement. After completing a page, he would give that page to the accused, the accused would sign it and he would then continue writing the next page and so on.

After completing this process, he gave the statement to the accused to read. The accused saw his name reflected in the statement regarding cases, including the current case. After the accused had read the statement Mavhundla enquired from him as to whether everything in the statement was correct. Because the accused was very
10 scared, he stated that it was correct.

The accused was asked more than once by his counsel as to whether he himself, that is the accused, wrote anything on the statement. His reply was that he did not. He recalls that at the bottom of the statement Mavhundla wrote something about freely and voluntarily.

Odendaal then came to Mavhundla's office and Mavhundla advised Odendaal that he was finished. Odendaal then took the accused back to the holding cells. He thinks it was 05h00 or 06h00. The following day he was
20 charged then taken to do a pointing out.

He was advised to point out all the houses that were robbed. He did so, not knowing anything about these robberies at these houses. He was then questioned regarding his fingerprint found on the Ranger vehicle which had been admitted.

The accused stated that it is possible that his fingerprint could be lifted from such vehicle as he was a co-owner of a carwash with one of his friends in Thembisa and if there was a staff shortage, he himself would wash, vacuum, spray the vehicles and move same from the washing bay.

He denied being involved in the robbery on count 1, being an occupant in the Ranger vehicle or firing at Maclintosh after the collision. He stated that he first heard
10 of this incident when being interviewed by Mavhundla and that Mavhundla had stated to him that he was involved in these events.

He did not ask Mavhundla where he had obtained this information from, but believes Mavhundla had been given this information by Odendaal and Makgato.

In cross-examination by counsel for accused 1, he stated that he first got to know accused 1 when he was taken to prison.

He did not inform Mavhundla of the name Bongani
20 Mokwana referred to in the statement and has no idea how same came to be mentioned therein.

In cross-examination by the State, he stated that the first time he saw Odendaal and Makgato was at his arrest and Mavhundla when he came to fetch the accused at Odendaal's office, and that he had no prior dealings with

them.

He owned three taxis at the time of his arrest and was not directly involved in taxi violence, but it affects everyone. There was last taxi violence from 2014 until 2015. There was no taxi violence on the day of his arrest. It was put that whilst he knew that he was being sought by the police, he went and hid in the roof. He denied this.

He stated that two shots were fired by the police. He heard both shots whilst he was in the ceiling. He does
10 not know whether the first shot was fired inside or outside the house, but the second shot was fired inside the house. His mother had advised him of the hole in the ceiling resulting therefrom, and he saw this for himself upon his release on bail.

He has not filed any charge in relation thereto, but intends to when this case is finalised. If the occupants of the house wanted to open a case regarding this, he would not have stopped them. Despite the accused having been released on bail in this matter at some stage, he did not
20 open a case.

He advised the police that he does not know the Steve that they are referring to or where this person resides and denies directing them to Steve's house. They took him to the premises in Alexandra and instructed him to point out in which shack or room Steve resides. Both Odendaal and

Makgatho took out their firearms and cocked them. Because of his fear, he pointed at anything. Upon being asked how he points at a_____ when he does not know Steve or where Steve resides, he stated that as a result of the shots having been fired earlier, he was of the view that these people could do anything, so he just pointed at anything. When it was put that Odendaal had testified that the accused was very cooperative at all material times, the accused replied that he always smiles, even when he is sad or afraid.

10 One would always think that he is jolly and would never say otherwise. He was afraid because of the shots fired at his house and the firearms cocked at Alexandra, yet had smiled throughout, from the time of his arrest until his detention.

 He was smiling when with Mavhundla, but was still a bit scared, because of his prior dealings with the arresting officers. Whilst he cooperated and answered questions, he felt scared inside. He is not smiling in Court as he is listening to everything.

20 In Odendaal's office, when being interrogated by Odendaal and Makgato, he had stopped smiling as the situation was becoming tense, but was still cooperating with them. He continued smiling when he was with Mavhundla.

 Upon being asked why he would be tortured if he was cooperating with them, he stated that it was because he

did not know the answers to some of the questions he was being asked and because he had requested to speak to his lawyer.

He did not tell them anything whilst interrogating him, because they were asking him about crime scenes he was unaware of. It was put that they then achieved nothing from the interrogation and assault. He replied that according to him, they achieved nothing.

Odendaal did not give the accused any story to tell
10 or narrate to the person who would be coming to interview the accused. He had no story to tell Mavhundla. Mavhundla treated him with respect. He furnished Mavhundla with the answers to the personal questions asked, namely his name, address, employment, nickname and the like.

Regarding the confession statement, he was given blank pages to sign. It was put that he gave Mavhundla his story and that was what Mavhundla wrote down. He denied giving Mavhundla any story. He only got to know Masheto Zwane and Bongani Mokwana at prison.

20 He denied furnishing those names to Mavhundla. He did not inform Mavhundla about the car wash business as there was no reason for him to do so as it was a temporary business and his main focus was on the taxi business. He does not know why the issue of the car wash business did not arise in his conversation with Mavhundla.

He denied that the car wash business did not exist, and was raised to explain his fingerprint on the vehicle. He had the car wash business from 2012 until April 2015. The car wash business was located in Thembisa and whilst he does not know when the vehicle was washed, it is possible that this vehicle was washed there and that he had washed it.

The case for accused 3 was then closed.

The State argued that the accused be convicted and the
10 Defence argued that they be acquitted. It is trite that in a criminal case the onus of proof is on the state to prove its case beyond reasonable doubt. This is indeed a stringent test, but is applied in order to ensure that only the proven guilty are convicted.

It is further trite that the court is required to adopt a holistic approach in respect of the evidence and its assessment thereof and use a common-sense approach. It is not sufficient if the guilt of the accused appears possible or even probable.

20 His guilt must be proved beyond reasonable doubt. It must further be borne in mind that even if the accused is an unimpressive witness and has lied on certain aspects, this does not *per se* make him guilty of the charges. If his version is reasonably possibly true, he is entitled to an acquittal.

See generally in this regard *S v Hadebe and others* 1998 (1) SACR 422 (SCA), *S v Van der Meyden* 1999 (1) SACR 447 (SCA), *S v Phallow and Others* 1999 (2) SACR 558 (SCA), *S v van Aswegen* 2001 (2) SACR 97 (SCA), *S v Shackell* 2001 (2) SACR 185 (SCA) and *S v Chabalala* 2003 (1) SACR 134 (SCA).

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KARAM, AJ

JUDGE OF THE HIGH COURT

DATE: