

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

01/02/2024

DATE

SIGNATURE

CASE NUMBER:

SS004/2023

In the matter between:

THE STATE

and

SHABALALA SIFISO

ACCUSED

JUDGMENT

DOSIO J:

Introduction

[1] The accused is arraigned on the following seven counts, namely:
Count one, a charge of murder, read with s51(1) of the Criminal Law Amendment Act 105 of 1997 ('Act 105 of 1997'), in that it is alleged the accused killed Siyabonga Mazibuko on 31 July 2022. Count two is a charge of attempted murder in that it is

alleged the accused shot Simphiwe Kenneth Sangweni ('Simphiwe') on the same date as count one. Count three is a charge of attempted murder in that it is alleged the accused shot Ezekiel Beckam Leeuw ('Beckam') on the same date as count one. Count four is a charge of robbery with aggravated circumstances read with s51(2) of Act 105 of 1997 in that it is alleged that on the same date as count one the accused unlawfully and intentionally assaulted Simphiwe and Beckam and with force and violence took out of their possession a Samsung Grand Prime cellular phone to the value of plus/minus R750,00, a MobiCell Rio cellular phone to the value of plus/minus R350,00, a speaker box to the value of plus/minus R200,00, and a Nokia cellular phone to the value of plus/minus R6000,00 aggravating circumstances being present in that the accused wielded firearms and inflicted grievous bodily harm on Simphiwe and Beckam by shooting them. Count five is a contravention of s3 of Act 60 of 2000 for possession of a firearm to wit a pistol with unknown serial number and count six is a charge of contravention of s90 of Act 60 of 2000 for being unlawfully in possession of ammunition. Count seven is a contravention of s1, 2 and 3 of the Dangerous Weapon Act 15 of 2013 in that it is alleged the accused was in possession of a knife on the date in count one.

- [2] The accused elected to proceed without an assessor and understood the minimum prescribed sentence of life imprisonment should he be found guilty of count one and the minimum prescribed sentence of fifteen years should he be found guilty on count four.
- [3] The accused is represented by Mr Mosea and the State by Advocate Moseki.
- [4] The accused pleaded not guilty to all seven counts. A plea explanation in terms of s115 of the Criminal Procedure Act 51 of 1977 ('Act 51 of 1977') was made on his behalf to the following effect:
- '1. That after midnight on the 31st July 2022 he was approached by his friend's mother at his parents' home asking on his friend's whereabouts because he normally or usually hangs out with.
 2. The accused's friend is Philani Mgcina who resides in the same street as his at Ebumnandini in Tshepisong.
 3. The accused responded to her friend's mother by saying that Philani had passed by his house around 6-7 pm on Saturday the 30th July 2022 in the company of his girlfriend who stays at phase 7 in Tshepisong.

4. Philani's mother asked the accused to go look and fetch Philani where they normally hang out at a tavern in phase 7, Tshepisong.
5. The accused left his home at that time going to phase 7, Tshepisong at Madela tavern and found Philani drinking alcohol, fetched him to return to Ebumnandini section in Tshepisong.
6. On their way back home around 03h30, they were walking along Big street from phase 7 towards Ebumnandini Section.
7. They were looking for cigarette but most of the spaza shops on their way back were closed and the street vendors were not available.
8. They decided to pass through Tshorotsho (Tsholotso) shack at phase 1, Tshepisong where the local guys play and gamble dices and also hang out.
9. On arrival at Tshorotsho shack at number 4417 Khosi Street, phase 1, Tshepisong, the Accused knocked at the door and was welcomed with a response to come in.
10. The Accused opened the door and went inside whilst Philani remained behind him outside the shack door carrying a Heineken beer bottle 600-750ml.
11. The Accused noticed 4-5 guys playing dices on the table and asked to buy cigarette and was told that they did not have, then he asked for a joint of dagga known as a "Zol" and they said they did not have either.
12. The Accused and his friend, Philani left the shack towards their area at Ebumnandini section and found Philani's home residence gate locked.
13. They then went to the Accused's parents' home and slept over until they were woken up by Philani's mother around 8 am on the 31st July 2022.
14. The Accused denies that he returned to Tshorotsho shack at phase 1, Tshepisong and that he was part of the people who shot at the people who were inside the shack on the 31st July 2022.
15. The Accused further pleads that he does not own or possess any firearm or ammunition including dangerous weapons.
16. That is all Accused wishes to explain.'

[5] Formal admissions were made on behalf of the accused in terms of s220 of Act 51 of 1977, namely,

- (a) That the deceased is the person mentioned in counts 1 of the indictment, to wit: Siyabonga Mazibuko.
- (b) That the deceased in count 1 died as a result of a gunshot wound to the chest.
- (c) That the body of the deceased in count 1 sustained no further injuries from the crime scene, where it sustained injuries, until a post-mortem examination was conducted on the deceased by Dr Kholiwe Collin Skosana.
- (d) That on 3 August 2022, Dr Skosana conducted a post-mortem examination on the body of the deceased and recorded her findings in **Exhibit B**.

- (e) The facts and findings of the post-mortem examination as noted or recorded in Exhibit B by Dr Skosana are correct.
 - (f) That on 31 July 2022, Warrant Officer Stephen Molefe from Krugersdorp Local Criminal Record Centre of the South African Police Service took photographs of the crime scene at 4417 Khosi street, Tshepisoong phase 1 Kagiso, Johannesburg, as per **Exhibit C**.
 - (g) That the scene as found and observed by Sergeant Tumelo Phillip Sebelein in Exhibit C is correct.
- [6] The additional exhibits handed in where:
- (a) Exhibit D is a J88 medical report completed by Dr Molokomme in respect to Beckham. The report states that there was a lateral entrance wound to the right thigh
 - (b) Exhibit E is a J88 medical report in respect to Simphiwe stating that he was stabbed.
 - (c) Exhibit F is a statement of Tau Mogoboya the investigating officer.
- [7] The following witnesses were called, namely, Beckam, Simphiwe, Brian Bango ('Jabu') and Tau Mogoboya. The accused then testified.

Beckam

- [8] This witness stated that he was at Jabu's shack playing dice when the accused entered this shack. The time was around 01h00 to 02h00. The other people in the shack was Jabu, Simphiwe, Siyabonga, Kabelo, Thandolwethu, Lucky, Bongezi, Sibusiso and himself.
- [9] The visibility was good in the shack as there was an electric globe that illuminated the inside of the room. The accused knocked at the door and on entering he asked for a cigarette and this witness told him they don't have any cigarettes and that the accused must close the door. The accused replied that if he closes the door they will all get injured. There was another man who accompanied the accused.

- [10] Fifteen to thirty minutes later the accused returned and he was in the company of others. These people knocked on Jabu's door and stated they wanted dagga. This witness and others inside the shack replied they do not sell dagga. They were at this time playing dice and that is when they heard shots being fired. They accidentally kicked the stove and the electricity tripped. The men from outside entered the shack and they were using the torches on their cell phones to illuminate the inside of the shack. This witness was shot in his buttocks/thigh and he fell down. The accused was on top of this witness pointing his firearm down and he was searching this witness all over his body. The witness asked the accused what he was doing and the accused stated '*are you not fearful for me to explain it how it will be?*'.
- [11] Three phones were taken from him namely a Samsung, Nokia and Hauwei. This witness is adamant that it was the accused as the light from the cell phone torches was bright enough to see. Furthermore, this witness knows the accused's voice as he has spoken to him many times before. In addition, he knows the accused from a young age as the accused was picking up containers and the accused used to pass the stand that this witness had. The accused was also wearing the same clothing when he returned for the second time.
- [12] The other men who accompanied the accused were searching the other men in Jabu's shack. One of the attackers was swerving his gun around. The men who accompanied the accused were talking in Sesotho and the accused was talking in Zulu. The accused was talking to the other attackers in 'lokasi taal' which is a mixture of Sesotho and Setswana.
- [13] This witness received treatment for his gunshot wound as the bullet fractured his bones. This witness heard that Siyabonga had been killed. He was unsure whether Simphiwe was cut with a knife.

Simphiwe

- [14] This witness stated that he was also at Jabu's shack on 31 July 2022. The time was around past twelve to one in the morning. The accused came together with another man looking for cigarettes and dagga. Beckam opened the door for them. They said they did not have and the two men left. Beckam asked the accused to close the door and the accused replied that if he closed they would all get injured. There was enough light as there was an electric globe in the centre of the shack that illuminated the room.
- [15] This witness saw that the accused had a gun at his waist and that he was holding it with his hand. The accused had a white jacket on and black trousers.
- [16] This witness has known the accused for two to three years by sight. A week prior to that, the accused had come to him to ask him if he wanted to buy a cell phone. He told the accused he did not sell cell phones. The accused seemed injured and this witness gave him some tea. The accused is well known in the community.
- [17] Fifteen to thirty minutes after the accused had come for the first time there was another knock at the door and the people were asking for cigarettes and dagga again. He once again told the people they do not sell cigarettes or dagga. Another man who was speaking Sesotho spoke and told them all to take out everything. They were all shocked. They then heard gunshots being fired outside the door. Everyone tried to run to take cover. The men outside kicked the door and the light went off. The witness Beckam stated that he had been shot. One of the men who was on top of the bed woke up Jabu and he was using his phone to illuminate the room. The men who had entered the room were searching everyone. He stated that he is unsure who searched him, however, he was searched three times. The accused was seen searching Beckam. The accused was handing over to someone else what he took from these witnesses. This witness was adamant that he knows the accused's voice.

- [18] This witness stated that the accused was wearing the same clothes when he returned for a second time, which comprised a white jacket, black pants and he was also holding a gun and knife. This witness stated that the illumination from the cell phone torches brightened up the whole room. There were two men illuminating the room. One was on top of the bed and the other one was standing by the door. The men robbed this witness of a Rio cell phone, a Samsung cell phone and also his speaker.
- [19] When the men left, this witness felt that his shirt was wet. He was unsure how he had been injured. This witness was unsure whether his injury was caused by a cross bullet or a knife. At the hospital his wound was stitched. He still limps as a result of the injury sustained. The injuries made him weak and dizzy. He noticed that Siyabonga was not talking and that he had died.

Brian Bango 'Jabu'

- [20] This witness, testified that he is referred to as Jabu. He testified that on 31 July 2022 he heard a knock at the door of his shack. It was around 03h00 when he heard a knock at his door. The accused entered and he was looking for cigarettes or dagga. The accused was wearing a white sweater and black jeans. They were about nine in the shack and they were gambling. Some were playing dice, others cards and others drafts. There was a bright light from an electric globe inside the shack.
- [21] The accused left and after fifteen to thirty minutes he returned wearing the same clothes. The light illuminated from the cell phone was able to cast enough light. This witness stated that from where he was positioned on the bed, he could see clearly what was going on the first time the accused came into the shack as well as the second time. He saw that Beckam was shot and that the men pointed firearms at them and asked for money and cell phones. Approximately ten cell phones were taken. He saw that the accused climbed on top of Beckam.

Tau Mogoboya

- [22] This witness testified that he is the investigating officer and that he received a call from the state witness Beckam that he had spotted the accused in Ebumnandini. This witness went there and Beckam pointed the accused out and he arrested the accused.
- [23] This witness added that he could not trace the other men who were in the shack on the evening of 31 July 2022. The witness could not trace the whereabouts of the witnesses Lucky Mdlalo, Ncube Maqhawe, Mongezi Mahlopho Ndlozi and Kabelo Ngwenya
- [24] At the end of the State's case, the accused testified.

The accused

- [25] The accused testified that he resides at Ebumnandini section, Tshepisoong. At midnight on 30 July 2022, he heard a knock at his door. When he opened he found the mother of Pilani who was asking where Pilani was. Pilani is his friend. The accused went to Madela's tavern where he found Pilani holding a beer bottle. They left and crossed Impala road whereupon Pilani informed him he was craving a cigarette. The time was now quarter past one in the early morning. They went to Tshorotsho's place in phase 1, which is Jabu's house where the accused knew people play dice and also where one can get cigarettes. He knocked on the door and opened it with his right hand. Pilani was behind him. There were about six or seven men inside playing dice. He knew some of the men, namely Killer and Lucky. He asked for dagga and cigarettes but they did not have any. They then left and went to Pilani's home but Pilani's house was locked so they decided to go to the accused's house. The time was 03h20. They both slept at the accused's house until the next morning at 08h00 when Pilani's mom woke them up.
- [26] The accused stated that he knows Beckam as he would bump into him on the street occasionally.

- [27] The accused denied returning a second time on 31 July 2022 or that he was in possession of a firearm or a knife or that he robbed Beckam of his cell phones.
- [28] The accused stated that he was wearing a yellow t-shirt on the night in question and that it was impossible to have tucked a firearm in front of his waist. He disagreed that Simphiwe saw him wearing a white jacket and black jeans. He denied the version of Jabu that he returned a second time or that he was in the company of a short and tall man. The accused also denied taking the cell phones from the occupants in the shack to illuminate the interior of the shack.
- [29] The accused denied having a firearm or license for a firearm. He denied shooting anyone.

Evaluation

[30] There are two versions before this Court, namely that of the state witnesses as opposed to that of the accused. When considering a criminal case, it is important to consider the totality of the evidence and then to assess the probabilities emerging from the case as a whole.

[31] In the matter of Stellenbosch Farmer's Winery Group Ltd and Another v Martel & Cie SA and others,¹ the Supreme Court of Appeal held that:

'The technique generally employed by the courts in resolving factual disputes of this nature may be conveniently summarized as follows: To conclude on the disputed issues, a court must make findings on (a) credibility of the factual witnesses, (b) their reliability and (c) the probabilities. As to (a) the court's findings on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as:

- (i) The witness's candour and demeanour in the witness box,

¹ *Stellenbosch Farmer's Winery Group Ltd and Another v Martel & Cie SA and others* 2003 (1) (SA)11(SCA).

- (ii) His bias, latent and blatant,
- (iii) Internal contradictions in his evidence,
- (iv) External contradictions with what was pleaded on his behalf or with established fact or with his own statements or actions,
- (v) The probability or improbability of particular aspects of his own version,
- (vi) The calibre and cogency of his performance compared to that of other witnesses testifying about the event or incident.

As to (b), a witness's reliability will depend, apart from the factors mentioned under (a) (ii), (iv) and (v) above; on opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c) this necessitates an analysis and improbability of each party's version on each of the disputed issues. In the light of (a), (b) and (c), the court will then, as a final step determine whether the party burdened with the onus of proof has succeeded in discharging it'.²

[32] The witness Beckam impressed this Court. He was honest to state that he did not see who shot him or the deceased. Had he wanted to falsely implicate the accused, he could easily have said that the accused shot him and the deceased. The witness stated that he only saw what the accused did to him. He maintained his version that he saw the accused come in the second time, holding a gun and a knife and searching him. He was adamant he only saw two holding firearms. He denied the accused was wearing a yellow t-shirt as he stated it was very cold and the accused was wearing a jacket. During cross-examination he repeated that the accused was wearing a white sweater and black pants. He denied that the accused only speaks pure Zulu.

[33] The witness Simphiwe equally impressed this Court. This witness was honest during cross-examination that he did not see how he was injured. If he wanted to falsely implicate the accused he could easily have stated that the accused either shot him or

² Ibid para 5.

stabbed him. If this witness wanted to further falsely implicate the accused he could have stated that the accused searched him, yet he states he never saw who searched him. This witness was also adamant that the accused was not wearing a yellow t-shirt. He was also adamant that the accused was holding something that resembled a firearm on his waist towards the right hip. This witness was adamant that he recognised the accused as the accused had come to him a few weeks prior and that the accused lives at Tshepisong.

[34] The witness Jabu impressed this Court. He went one step further than the two previous state witnesses by stating that the accused was wearing a Drimac sweater on 31 July 2022. He repeated that he saw the accused clearly from the cell phone torches that illuminated the room. He stated that all the goods taken from them were handed over to a short man.

[35] The difference in the evidence of Beckam and Simphiwe as to whether cards were played in that room or dice is not material. The fact remains people were in that room playing games.

Corroboration amongst state witnesses

[36] All three eyewitnesses testified that they saw the accused in the early morning hours and that he was looking for cigarettes and that when they told him to close the door, he stated that if he closed the door they would all get injured. The accused in his evidence in chief confirms that when he went to the shack and opened the door he knew some of the men there.

[37] All three state witnesses corroborate each other on the clothing the accused was wearing and that he was wearing the same clothing when he returned for the second time. This clothing was a white top, be it a sweater or jacket and black pants.

- [38] The eyewitnesses all state that there was enough light illuminated from the cell phones to see clearly what was going on. They all state that the electricity tripped as a result of the electric heater.
- [39] Beckam and Jabu both corroborate each other that the accused climbed on top of Beckam. All three eyewitnesses confirm that the accused was in possession of a gun and knife.
- [40] The witnesses Beckam, Simphiwe and Jabu all state that the firearm that the accused had was about 20cm long and grey/silver in colour.
- [41] The witnesses Beckham and Simphiwe both state that the accused was not speaking pure Zulu. They both recognised his voice.

Probabilities

- [42] The accused states that he was wearing a yellow t-shirt in the early morning hours of 31 July 2022. The Court rejects this as false and not reasonably possibly true. At that time of the year, especially in the early morning hours of 03h20 it must have been very cold. The fact that there was a heater that was switched on in the shack confirms it was very cold.
- [43] The version of the eyewitnesses that the accused was wearing a sweater or jacket is more probable. The accused agrees he was there the first time when he asked for cigarettes and dagga. If he was wearing a yellow shirt there would have been no reason for the eyewitnesses to dispute this and state he had different clothing.
- [44] The accused stated there is no bad blood between any of the eyewitnesses who testified against him. As a result, there is no motive for them to falsely incriminate the accused. The fact that all three state witnesses are clear that he was present is because they saw the accused on two occasions. The version of the accused that the

three eyewitnesses want to falsely implicate him because he got to Jabu's house in the early morning hours is rejected by this Court as false and not reasonably possibly true.

[45] The accused's version that that the eyewitnesses would not have been able to identify his voice is rejected as false and not reasonably possibly true for the following reasons:

(a) The witness was at Jabu's shack earlier that evening and all the three eyewitnesses heard him saying that he wanted cigarettes or dagga. There was a period of fifteen to thirty minutes before the same voice was heard again.

(b) The accused confirms that he was known to the second state witness, namely, Simphiwe.

[46] In *S v Mthethwa*,³ 1972(3) SA 766 (A) the Appellate Division as it then was stated that:

'Because of the fallibility of human observation, evidence of identification is approached by the Courts with some caution. It is not enough for the identifying witness to be honest: the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility, and eyesight; the proximity of the witness; his opportunity for observation, both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face, voice, build, gait, and dress; the result of identification parades, if any; and, of course, the evidence by or on behalf of the accused. The list is not exhaustive. These factors, or such of them as are applicable in a particular case, are not individually decisive, but must be weighed one against the other, in the light of the totality of the evidence, and the probabilities'.⁴

[47] The first appearance of the accused occurred in a well-lit area. The eyewitnesses were in close proximity to the accused. During the second incident the illumination from the cell phone torches as well as the close proximity of the eyewitnesses convinces this Court that the three eyewitnesses were in close proximity to the accused during the

³ *S v Mthethwa* 1972(3) SA 766 (A).

⁴ *Ibid* at 768 a-c.

incident and they had sufficient opportunity to observe the accused. The circumstances, under which the identification was made, were favourable to amount to a reliable identification.

[48] The state witnesses testified that they could not tell the court who was firing the fatal shot that caused the death of the deceased and caused the injuries to the first and the second state witnesses. The state witnesses testified further that shots were fired from outside and the said shots penetrated through the door that was closed. The state witnesses testified that the accused was with the people that stormed into their shack shortly after the shots were fired into their shack and searched them.

[49] The doctrine of common purpose allows for the imputation of the conduct of one party (the immediate party) to another party (the remote party) in either of two situations.⁵ The first is where there is an agreement or 'mandate', express or implied, between those parties to do the act in question, and the act falls within the borders of what has been so expressly or impliedly agreed upon.⁶ The second is where, even if no actual agreement, whether express or implied, existed between the parties, the remote party actively associated himself with the conduct of the immediate party by actually committing some act of association with the intention of associating himself with the conduct of the immediate party.⁷ In both forms of common purpose, it must be shown that the requisite *mens rea* or fault was present in respect of the remote party.⁸ Where *mens rea* in the form of intention (or *dolus*) is required, as in the case of murder, either *dolus directus* or *dolus eventualis* will suffice.⁹

⁵ (see *Shange & others v S* [2017] 3 All SA 289 (KZP) at [45], where the court distinguished clearly between the two situations; see also *S v Sithole & another* (unreported, GP case no 777/15, 20 February 2017) at [24]); *Tshikila & others v Minister of Police* (unreported, GJ case no 16/06499, 23 April 2019) at [12]).

⁶ (see *McKenzie v Van der Merwe* 1917 AD 41 46; *R v Duma & Another* 1945 AD 410 at 415; *R v Mkize* 1946 AD 197 at 205; *R v Shezi & Others* 1948 (2) SA 119 (A) at 128.).

⁷ (see *S v Safatsa & Others* 1988 (1) SA 868 (A), *S v Mgedezi & Others* 1989 (1) SA 687 (A) and *S v Singo* 1993 (1) SACR 226 (A).).

⁸ (see *S v Sithole & Another* (*supra*) at [24] and [26].).

⁹ (see *S v Mgedezi & Others* at 705; *S v Papu & Others* 2015 (2) SACR 313 (ECB) at [14].).

[50] For common purpose to be present, the requirements as set out in the case of *S v Mgedezi*,¹⁰ must be met, namely:

1. the accused must have been present at the scene of the crime;
2. he must have been aware of the assault by someone else on the victim;
3. he must have consciously shared a common purpose in the true attackers assault on the victim;
4. he must have expressed his association with the other persons unlawful conduct;
5. he must have had the required fault (*mens rea*) for the particular offence.

[51] The Constitutional Court in *S v Thebus and another*¹¹ the Constitutional Court held that 'The doctrine of common purpose is a set of rules of the common law that regulates the attribution of criminal liability to a person who undertakes jointly with another person or persons the commission of the crime.'¹²

[52] In the case of *DPP, Gauteng v Pistorius*,¹³ the Supreme Court of Appeal stated that: 'Murder is the unlawful and intentional killing of another person. In order to prove the guilt of an accused on a charge of murder, the state must therefore establish that the perpetrator committed the act that led to the death of the deceased with the necessary intention to kill, known as *dolus*.'

[53] In order to reconcile with the principle of common purpose, the State should be able to establish prior agreement between the perpetrators or that there was active association to the said commission of the crime. There were a few men who entered Jabu's shack. The eyewitnesses stated how they all saw how the accused was participating in the robbery. There is no direct evidence stating that it is the accused

¹⁰ *S v Mgedezi* 1989 (1) SA 687 (A).

¹¹ *S v Thebus and another* 2003 (6) SA SOS (cc).

¹² *Ibid* para 18.

¹³ *DPP, Gauteng v Pistorius* 2016 1 SACR 431.

who fired the shot that killed the deceased and injured both Beckam and Simphiwe. However, from the actions of the accused during the robbery, it is clear that due to his presence at the scene of the crime he must have been aware of the assault on the people inside Jabu's shack and furthermore shared a common purpose with all the attackers. On the basis of *dolus eventualis*, due to the many shots that were fired he must have foreseen the reasonable possibility that people could be injured and be killed.

[54] This court finds that the accused who was in the presence of the other men wielding firearms, as well as himself, foresaw that someone could have been killed in the shooting. Irrespective of whether this accused fired the shot from his firearm that injured Beckam and killed the deceased, the fact remains that on the basis of *dolus eventualis* the accused could have foreseen people would have been injured and could have died. Accordingly, the accused is found guilty of murder on count one.

[55] In respect to count two, there is not sufficient evidence to convince this court what caused the injury sustained by Simphiwe. It could have been a knife or a cross-bullet. The area where the injury was inflicted is not a life threatening area. As a result, this Court is not satisfied that the State has proved the offence of attempted murder. The accused on the basis of common purpose and *dolus eventualis* is found guilty of assault with intent to do grievous bodily harm on count two.

[56] In respect to count three, which is a charge of attempted murder, this court finds that the shot which fractured the right hip of Beckam was serious and he could have died as a result of this injury. Accordingly, this Court finds that on the basis of common purpose and *dolus eventualis* the accused is found guilty of attempted murder on count three.

[57] In respect to count four it is clear to this Court that the accused participated in the robbery and he is accordingly found guilty on count four.

- [58] In respect to count five and six it is clear that he was in possession of a firearm and whether or not it is his firearm that was used in killing the deceased or injuring Beckam, the fact remains there must have been live ammunition in these firearms jointly held by all the perpetrators that entered Jabu's shack that night. Accordingly, the accused is found guilty on counts five and six.
- [59] As regards count seven, it is clear that he was seen wielding a knife and accordingly he is found guilty of possession of a dangerous weapon, namely a knife.

D DOSIO
JUDGE OF THE HIGH COURT
JOHANNESBURG

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Date Heard:

1 February 2024

Judgment handed down:

1 February 2024

Appearances:

On behalf of the State:

Adv E. Moseki

On behalf of the Accused:

Mr T. Mosea (Attorney with right of appearance)