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

**JUDGMENT**

Case No.: CC25/2020

In the matter between:

**THE STATE**

and

**CARLO HOFMEESTER**

Accused one

**CHADWIN ISAACS**

Accused two

**Neutral citation:**

**Coram:** HOLDERNESS J

**Hearing dates:** 14, 15, 16, 22, 23, 24, 29 and 30 April 2025; 5, 12, 13, 14, 19, 20 and 21  
May 2025 and 3 June 2025

**Judgment delivered:** 5 June 2025

**Summary:**

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**JUDGMENT DELIVERED ON 5 JUNE 2025**

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**HOLDERNESS, J:**

**A. INTRODUCTION**

[1] Four days before Christmas, on 21 December 2019, an unspeakable tragedy occurred. Five-year-old V[...] G[...] (the deceased or V[...]) was playing in the yard of his parents' home when, as alleged by the State, shooters shot at rival gang members in his vicinity. He died after sustaining a single bullet wound to the head. His death is tragic and inexplicable. And deaths of innocent children in circumstances such as these are far too common in gang ridden areas such as Lavender Hill.

[2] The two accused, Mr. Carlo Hofmeester (Accused No. 1) and Mr. Chadwin Isaacs (Accused No. 2), stand arraigned before this court on the charge of the murder of young V[...] and on 16 further counts in terms of an amended indictment, as follows:

**'COUNT 1**

**CONTRAVENTION OF SECTION 9(2)(a) OF ACT 121 OF 1998**

**IN THAT** the accused are guilty of a contravention of section 9(2)(a) read with sections 1, 10 and 11 of the Prevention of Organised Crime Act 121 of 1998,

**THAT** the accused in December 2019 at or near Lavender Hill, in the District of Wynberg unlawfully and intentionally performed any act which is aimed at causing, bringing about, promoting or contributing towards a pattern of gang activity as set out in counts 4 to 18.

**ALTERNATIVELY**

**CONTRAVENTION OF SECTION 9(1)(a) OF ACT 121 OF 1998**

**IN THAT** the ACCUSED are guilty of a contravention of section 9(1)(a) read with sections 1, 10 and 11 of the Prevention of Organised Crime Act 121 of 1998.

**THAT** the accused in December 2019 at or near Lavender Hill, in the District of Wynberg actively participated or as a member of a criminal gang, unlawfully, intentionally and willfully aided and abetted any criminal committed for the benefit of, at the direction of, or in association with criminal gang as set out in Counts 2 to 17 hereunder.

**THE PATTERN OF CRIMINAL GANG ACTIVITY AND / OR ACTS COMMITTED FOR THE BENEFIT OF THE DIRECTION OR IN ASSOCIATION WITH THE CRIMINAL GANG.**

**COUNT 2**

**MURDER**

**IN THAT** on or about 21 December 2019 and at or near Drury Court, Lavender Hill in the District of Wynberg the accused unlawfully and intentionally killed **V[...]** **G[...]**, a five-year old male, by shooting him with a firearm.

**AND FURTHER THAT** the provisions of section 51(1) of Act 105 of 1997 are applicable in that this crime is mentioned in Part 1 of Schedule 2 of the said Act (Murder – committed by a person, a group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy and that a minimum sentence of life imprisonment is therefore applicable).

**COUNT 3**

**ATTEMPTED MURDER**

**IN THAT** on or about 21 December 2019 and at or near Drury Court, Lavender Hill in the District of Wynberg the accused unlawfully and intentionally attempted to kill **WESLEY KOK**, an adult male person, by shooting at him with a firearm.

**COUNT 4**

**ATTEMPTED MURDER**

**IN THAT** on or about 21 December 2019 and at or near Drury Court, Lavender Hill in the District of Wynberg the accused unlawfully and intentionally attempted to kill **R[...]** **G[...]**, an adult female person, by shooting at her with a firearm.

**COUNT 5**

**ATTEMPTED MURDER**

**IN THAT** on or about 21 December 2019 and at or near Drury Court, Lavender Hill in the District of Wynberg the accused unlawfully and intentionally attempted to kill **OLIVIA STEVENS**, an adult female, by shooting at her with a firearm.

**COUNT 6**

**ATTEMPTED MURDER**

**IN THAT** on or about 21 December 2019 and at or near Drury Court, Lavender Hill in the District of Wynberg the accused unlawfully and intentionally attempted to kill **NATASHA DANIELS**, an adult female, by shooting at her with a firearm.

**COUNT 7**

**ATTEMPTED MURDER**

**IN THAT** on or about 21 December 2019 and at or near Drury Court, Lavender Hill in the District of Wynberg the accused unlawfully and intentionally attempted to kill **LETICIA BARNES**, an adult female, by shooting at her with a firearm.

**COUNT 8**

**ATTEMPTED MURDER**

**IN THAT** on or about 21 December 2019 and at or near Drury Court, Lavender Hill in the District of Wynberg the accused unlawfully and intentionally attempted to kill **CRYSTAL JOSEPH**, an adult female, by shooting at her with a firearm.

**COUNT 9**

**ATTEMPTED MURDER**

**IN THAT** on or about 21 December 2019 and at or near Drury Court, Lavender Hill in the District of Wynberg the accused unlawfully and intentionally attempted to kill **DERRICK STRYDOM**, an adult female, by shooting at him with a firearm.

**COUNT 10**

**ATTEMPTED MURDER**

**IN THAT** on 21 December 2019 and at or Drury Court, Lavender Hill, in the district of Wynberg the accused unlawfully and intentionally attempted to kill, **ELROY BOESAK** an adult male person, by shooting at him with a firearm.

**COUNT 11**

**ATTEMPTED MURDER**

**IN THAT** on 21 December 2019 and at or near Drury Court, Lavender Hill, in the district of Wynberg the accused unlawfully and intentionally attempted to kill, **GERSWIN BAARS** an adult male person, by shooting at him with a firearm.

**COUNT 12**

**ATTEMPTED MURDER**

**IN THAT** on 21 December 2019 and at or near Drury Court, Lavender Hill, in the district of Wynberg the accused unlawfully and intentionally attempted to kill, **B[...] K[...]** an adult male person, by shooting at him with a firearm.

**COUNT 13**

**ATTEMPTED MURDER**

**IN THAT** on 21 December 2019 and at or near Drury Court, Lavender Hill, in the district of Wynberg the accused unlawfully and intentionally attempted to kill, **DILLON WENTZEL** an adult male person, by shooting at him with a firearm.

**COUNT 14**

**CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a), ON 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARMS CONTROL ACT, 60 OF 2000, AND FURTHER READ WITH SECTIONS 250, 256, 257 AND 270 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 [POSSESSION OF FIREARMS WITHOUT LICENSE, PERMIT OR AUTHORISATION]**

**IN THAT** upon or about 21 December 2019 and at or near Drury Court, Lavender Hill, in the district of Wynberg, the accused unlawfully have in their possession firearm/s, the make of which is unknown to the State without holding a license, permit or authorization issued in terms of the Act to possess firearm/s.

#### **COUNT 15**

**CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 2, 103, 117, 120(1)(a), ON 121 READ WITH SCHEDULE 4 AND SECTION 151 ACT, 60 OF 2000, AND FURTHER READ WITH SECTIONS 250, 256, 257 AND 270 OF ACT, 51 OF 1977 [POSSESSION OF AMMUNITION WITHOUT LICENSE OR PERMIT]**

**IN THAT** upon or about 21 December 2019 and at or near Drury Court, Lavender Hill, in the district of Wynberg, the accused unlawfully have in their possession ammunition the exact make and quantity of which is unknown to the State without being the holder of:

- (a) a license in respect of a firearm capable of discharging the ammunition;
- (b) a permit to possess ammunition.

#### **COUNT 16**

**CONTRAVENTION OF SECTION 3 READ WITH SECTIONS 1, 103, 117, 120(1)(a), ON 121 READ WITH SCHEDULE 4 AND SECTION 151 OF THE FIREARMS CONTROL ACT, 60 OF 2000, AND FURTHER READ WITH SECTIONS 250, 256, 257 AND 270 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 [POSSESSION OF FIREARMS WITHOUT LICENSE, PERMIT OR AUTHORISATION]**

**IN THAT** upon or about 21 December 2019 and at or Drury Court, Lavender Hill, in the district of Wynberg, the accused unlawfully have in their possession firearm/s, the make of which is unknown to the State without holding a license, permit or authorization issued in terms of the Act to possess firearm/s.

## **COUNT 17**

**CONTRAVENTION OF SECTION 90 READ WITH SECTIONS 1, 2, 103, 117, 120(1)(a), ON 121 READ WITH SCHEDULE 4 AND SECTION 151 ACT, 60 OF 2000, AND FURTHER READ WITH SECTIONS 250, 256, 257 AND 270 OF ACT, 51 OF 1977 [POSSESSION OF AMMUNITION WITHOUT LICENSE OR PERMIT]**

**IN THAT** upon or about 21 December 2019 and at or near Drury Court, Lavender Hill, in the district of Wynberg, the accused unlawfully have in their possession ammunition the exact make and quantity of which is unknown to the State without being the holder of:

- a) license in respect of a firearm capable of discharging the ammunition;
- b) permit to possess ammunition.

## **B. PLEA, ADMISSIONS AND DOCUMENTARY EVIDENCE**

### **i. Plea**

[3] The State was represented at the trial by Adv Leon Snyman. Accused No. 1 was represented by Adv. Pieter Nel (Mr. P Nel) and Accused No. 2 by Adv. Chris Marius Nel (Mr. C Nel). Mr. P Nel and Mr. C Nel confirmed, prior to the plea being entered into the record, that the provisions of Act 105 of 1997 had been explained to both accused, who understood the consequences of the minimum sentencing regime if they were convicted on those charges in respect of which they had been notified a minimum sentence would find application.

[4] Both accused pleaded not guilty to all the counts on which they were indicted. Neither of the accused furnished an explanation of plea. All elements of the offences listed in the amended indictment were placed in dispute.

### **ii. Admissions by the accused in terms of section 220 of Act 51 of 1977**

[5] Both accused made the following formal admissions, in terms of s 220 of the Criminal Procedure Act 51 of 1977 (the CPA):

- '1. The deceased was at all times correctly identified as **V[...] G[...]**, the person mentioned in the Indictment. A copy of the deceased's unabridged birth certificate is handed in as exhibit **A1**
2. The body of the deceased was marked with Death Register Number **WC/11/4101/2019**. The body of the deceased did not sustain any further injuries during the period from the time the alleged offence was committed until Dr Mandy Date Chong conducted the post-mortem examination on it on **23 December 2019**.
3. On **23 December 2019, Dr M Date Chong** conducted a postmortem examination on the body of the deceased. Her findings regarding the examination done on the deceased are correctly documented in the postmortem report. The content of the postmortem report is admitted as correct and the report is handed in as **exhibit A2**.
4. Annexure A to the postmortem report, the photograph taken at autopsy, correctly depict the injuries sustained by the deceased. The photograph taken at autopsy is handed in as **exhibit A3 (photographs 1-4)**
5. The photographic album, handed in as **exhibit A4**, containing the photographs taken by **Sergeant Thembinkosi Lamula** on 21 December 2019 at 3[...] Drury Court, E[...] Road, Lavender Hill, Steenberg, correctly depict the following:
  - 5.1 The scene (general area) where the alleged incident took place;
  - 5.2 The body of the deceased as found on the scene
  - 5.3 The exhibits collected on the scene
6. The content of the letter by Sergeant Thembinkosi Lamula, setting out the exhibits collected by him on 21 December 2019 at 3[...] Drury Court, E[...] Road,



Lavender Hill, Steenberg, is admitted as correct. The letter is handed in as exhibit **A5**.

7. The exhibits collected by Sergeant Thembinkosi Lamula, as set out in exhibit **A6** were correctly sealed, packaged and delivered to the Ballistic unit of Forensic Science Laboratory of the South African Police Service, where it was received intact and analysed by **Warrant-Officer Zelda Meiring**.
8. Warrant-Officer Barend Swanepoel collected exhibits, as set out in exhibit **A7**. These exhibits were correctly sealed, packaged and delivered to the Ballistic unit of Forensic Science Laboratory of the South African Police Service, where it was received intact and analysed by **Warrant-Officer Zelda Meiring**.'

### **iii. Exhibits**

- [6] The exhibits which were entered into evidence during the trial are as follows:

**EXH 'A':** Exhibit Bundle handed in by The State

**EXH 'B':** Police statement- P[...] K[...]

**EXH 'C':** Photograph of Drury Court

**EXH 'D':** Photograph of organogram – John Dickson and Accused No. 1 & 2

**EXH 'E':** Statement of Olivia Stevens

**EXH 'F':** Copies of plans & photographs

**EXH 'G':** Statement of Leticia Barnes

**EXH 'H':** Photographs- front of Drury Court

**EXH 'I':** Flash drive – video of scene

**EXH 'A1':** Deceased's birth certificate

**EXH 'A2':** Post-mortem report

**EXH 'A3':** Autopsy photographs

**EXH 'A4':** Scene of crime photograph album

**EXH 'A5':** Letter- Sergeant Lamula

**EXH 'A6':** Exhibits collected by Sergeant Lamula

**EXH 'A7':** Ballistics exhibits  
**EXH 'J':** Death certificate- Wesley Kok  
**EXH 'K':** Medical records- Wesley Kok  
**EXH 'L':** Facebook printout- Accused No. 2  
**EXH 'M':** Photograph of Fast Guns Graffiti  
**EXH 'N':** Ballistics report- 216/12/2019  
**EXH 'O':** Ballistics report-175/12/2019  
**EXH 'P':** Further Ballistics report  
**EXH 'Q':** Warning statement of Accused No. 1  
**EXH 'R':** Warning statement of Accused No. 2

### **C. EVIDENCE FOR THE STATE**

#### **i. Mr. P[...] K[...]**

[7] Mr. P[...] K[...] (Mr. K[...]), who lives at 3[...] Drury Court, Lavender Hill, is the father of the deceased, V[...] G[...], who was shot and killed, at approximately 14h15 on Saturday, 21 December 2019. The deceased was five years old at the time of his violent, untimely and tragic death.

[8] In evidence in chief Mr. K[...] testified that at approximately 14h00 on 21 December 2019, he was walking up E[...] Way from his home at 3[...] Drury Court, Lavender Hill after returning home from purchasing cigarettes from a nearby shop in Depsiton Street, when he noticed a suspicious looking man walking towards him, wearing black tracksuit pants, a white shirt, a black hoodie and a brown sun hat.

[9] Mr. K[...] turned back towards his home and went in to warn the people there he believed there was going to be a shooting, as a man who 'looked like a gangster' was running towards them, and as he was running he was hitching up his tracksuit pants, as if he was 'holding something heavy' in the waistband.

[10] Mr. K[...] then returned to his gate to see how far away this person was. He noted that he was very close to the gate at the entrance of his property in E[...] Way. He then

opened his gate to check where his children were. At this point the man in question was opposite the gate. He jumped up to look over Mr. K[...]’s shoulder into his yard, and as he did, his cap fell off.

[11] Mr. K[...] pulled the gate closed to try and prevent him from entering. According to his evidence in chief, the man grabbed him. He pulled free and ran down E[...] Way, in the opposite direction from the shop. When he turned around, he saw the man grab what appeared to be a firearm from his pants, kick open the gate and fire three to four shots. He entered the yard and fired a couple more shots before closing the gate and leaving the property. The shooter then ran in the direction of the shop in Depsiton Crescent.

[12] Mr. K[...] was asked if the shooter was present in court. He confirmed that he was and identified the Accused No. 1, who he referred to as Carlo Hofmeester aka ‘Naruto’. He testified that Accused No. 1 is not a friend of his, but that he has seen him in the community. He first met him playing soccer when he was about 13 or 14 years old.

[13] Mr. K[...]’s evidence was that Accused No. 1 and 2 were previously at Drury Court approximately three or four months before the shooting, to smoke mandrax or dagga.

[14] According to Mr. K [...], after the shooting Accused No. 1 headed towards the shop where he met another male person at the corner of Depsiton, and handed an item, which he could not identify from afar, over to him.

[15] Mr. K[...] testified that the other person took the item and ran in the direction of his house at Drury Court. He kicked the gate open at 3[...] Drury Court and fired shots. He then entered through the gate and fired more shots. He left the property and closed the gate and then ran in the direction of Depsiton Crescent. At the corner before the shop, he met Accused No. 1 and they both ran away.

[16] Mr. K[...] identified Accused No. 2, Mr. Chadwin Isaacs aka ‘Water’ as the second shooter.

[17] He testified further that at the time of the shooting Accused No. 2 was wearing black tracksuit pants and a red hoodie top. He recognized Accused No. 2, as he had previously come to 3[...] Drury Court with Accused No. 1, to smoke mandrax or dagga. Mr. K[...] said that people came there to smoke drugs, as his brother was a drug user and smoked there with members of the Mongrels gang.

[18] According to the evidence of Mr. K[...], both accused are members of the Fast Guns Gang, which he said was at war with the Mongrel gang

[19] After Accused No. 1 and 2 had run away, Mr. K[...] entered his property and saw his son, V[...], lying on the ground in a pool of blood, with his eyes open.

[20] Mr. K[...] testified that Wesley Kok, who was a member of the Mongrel gang, had also been shot. He was still alive when Mr. K[...] saw him after the shooting but died at a later stage of natural causes.

[21] Mr. K[...] testified that the death of his son on that fateful day destroyed his life and was a huge setback for him and for his son's mother. He said that he could not continue with life due to what happened and that he could no longer work.

[22] Mr. K[...] confirmed under cross-examination that at the time of the incident Accused No. 1 was wearing black tracksuit pants, a white shirt, a black hoodie top and a brown cap. When questioned, he emphasised that Accused No. 1 was not wearing a baseball cap and that his black jacket did not have a Nike logo. He said that Accused No. 1 would not have been wearing orange shoes as they would be too bright. His evidence was that the Accused No.2 was wearing a red hoodie and black tracksuit pants.

[23] The statement made by Mr. K[...] to the police shortly after the incident at approximately 14h00 on 21 December 2019 was confirmed by him and admitted into evidence as Exhibit 'B'.

[24] Mr. K[...] confirmed that he made the statement freely and voluntarily, and that it was written down in his presence and read back to him. It further emerged from his evidence that when he first saw and recognised Accused No. 1 before the shooting, he was approximately 4 metres from him. He was standing at his gate, and he then ran around the bin, jumped up and looked over Mr. K[...]’s shoulder over into his yard.

[25] It was pointed out to him by Mr. P Nel that his evidence in chief differed from what was contained in his statement, where he stated that Accused No. 1 and 2 hit or assaulted each other when they met at the corner near the shop, before Accused No. 1 passed an item to Accused No. 2.

[26] Mr. K[...] stated that he did not tell the detective who took down his statement that the accused hit each other. He said that the one passed something to the other.

[27] Mr. K[...] was steadfast in his evidence that it was Accused No.1 who was the first shooter, and that after the shooting in his yard he went into the house and fired shots again before he left, closing the gate behind him.

[28] Mr. K[...] testified further that he had been told by another individual, who did not wish to be identified unless he was given witness protection, that Accused No. 1 was a member of the Fast Guns gang. He emphasised that several witnesses to the incident would not come forward unless they were offered witness protection, as they feared for their lives.

[29] When it was put to him that Accused No.1 was previously a member of the Boston Kids gang, he recalled being at school at the time and said that the Boston Kids gang disbanded after two of their leaders were killed, with the remaining members becoming members of the Fast Guns gang.

[30] During cross-examination by Mr. C Nel on behalf of accused number two, Mr. K[...] was questioned about the fact that his evidence regarding the gang membership of

Accused No. 1 and 2 was based on the 'say so' of other people. His response was: 'We are from the ghetto... When one gang threatens the other, we know who is from which gang, and can identify individuals as Fast Guns members.'

[31] Mr. K[...] identified the following persons as being present in the yard of 3[...] Drury Court at the time of the shooting: Wesley Kok, R[...] G[...], Natasha Daniels, Crystal Joseph, Derrick Strydom, Elroy Boesak, Gershwin Baars, Brandon Kok; Dillon Wentzel. He said that Olivia Stevens and Leticia Barnes were at number 3[...]2 Drury Court.

[32] Mr. K[...] reaffirmed his evidence that when he saw Accused No. 1 running towards him, looking like he was holding something heavy in his tracksuit pants, he ran to warn the people staying at number 3[...]. He said that between the time of the issuing of the warning and shots being fired, some people in the yard had time to go and hide in the house and in his sister's shed. He testified further that Elroy Boesak and 'another person' were in the yard, but after being warned they moved to the house opposite 3[...] Drury Court. He said they were not in the yard or in the line of fire when the shooting took place.

[33] Mr. K[...]’s evidence under cross-examination was that he saw both accused together at the shop after the first part of shooting, and that they were 'always together.' When it was put to him that according to Accused No. 2 when he heard the shots fired he looked towards 3[...] Drury lane and saw John Dickson shooting in the yard, he responded that the investigating officer told him that John Dickson is the one that issued the guns to both accused, and that he was arrested and went to jail after the incident, at the same time as both accused. He died in prison.

[34] In re-examination Mr. K[...] made it clear that after he had entered the premises at 3[...] Drury Court to warn the people that there may be a shooting, he went to the gate to see who was coming and saw Accused No. 1, who went around the bin and jumped up to look over his shoulder into the yard. He stepped onto the sidewalk to close the gate behind him and that is when Accused No. 1 grabbed him and he could see his

face more closely. He pulled loose, ran away and turned back and saw Accused No. 1 shooting into the yard.

## **ii. Olivia Stevens**

[35] The next state witness was Olivia Stevens (Ms. Stevens), who resides at 4[...] Drury Court. At approximately 14h15 on the day of the incident, Ms. Stevens was at number 3[...]2 with her friend, Leticia Barnes.

[36] Ms. Stevens pointed to where 3[...]2 Drury Court is on Exhibit C. It appears that the window of number 3[...]2 is diagonally above 3[...], on the first floor.

[37] According to her evidence, at the time of the incident Ms. Stevens was playing cards with Leticia and 'Uncle Mol', when they heard gunshots. They went to the window to see what was happening, and she saw Accused No. 1, who she referred to as Naruto.

[38] When she was asked whether Naruto was present in court, Ms. Stevens, without hesitation, pointed to Accused No. 1. Ms. Stevens shouted out the window to him: *'Naruto, jou n...! Why are you shooting in the street?'*

[39] She testified that Leticia did the same. When asked where he was shooting, she said at number 3[...], which on Exhibit C is behind the garbage wagon or 'skurrel wagon'.

[40] According to the evidence of Miss Stevens, after she shouted at Accused No. 1, he turned and shot at the window where she, Leticia and Uncle Mol were standing. They fell backwards, and after checking whether everyone was okay, she told Leticia that she was going to check on Wesley Kok, as he was painting at his brother's place on the middle floor. He was not there. She found him at his house at number 4[...]2 where he was with his father and was covered in blood. They took him to the hospital by car.

[41] Ms. Stevens testified that Wesley Kok was a member of the Mongrels gang. She further stated that she knew Accused No. 1, as they were at primary school together. She said that he was wearing dark clothes on the day in question, and that he is a member of the Fast Guns gang, who had been fighting with the Mongrels.

[42] She expanded on this evidence stating that accused No. 1 became a Fast Guns member when the gang was first formed.

[43] In cross examination Ms. Stevens confirmed that when they looked out the window after hearing shots fired, she was in the front, Uncle Mol was behind her and Leticia Barnes was at the back.

[44] She stated that she did not see Accused No. 1 shooting into the yard of number 3[...] but saw him coming out of the gate at number 3[...]. She confirmed that he then shot directly at her.

[45] During cross-examination Ms. Stevens confirmed that the Accused No. 1 was wearing black pants and a black jacket, and a floppy hat. She said that as he was running out of the yard his hat fell off and she could clearly see his face. When she screamed at him, he looked up at her directly and fired just one shot at her. She did not count the number of shots before she stopped looking out the window.

[46] When asked if she knew a person named John Dickson (Dickson), Ms. Stevens testified that she only knows a person whose nickname is 'Piele' and that he is deceased. She pointed out the photograph of Dickson on Exhibit 'D'.

[47] Ms. Stevens did not agree when it was put to her that Mr. Dickson looks like Accused No. 1. She emphasised that it was Accused No. 1 who shot at her, and that when she shouted out the window, she shouted Naruto's name



[48] The statement given by Ms. Stevens to the investigating officer was introduced into evidence, after she confirmed that it was given freely and voluntarily given, and that it was her signature on the statement.

[49] Ms. Steven's evidence was clear and consistent in all material respects. She did not waiver under cross examination and repeated that she had known Accused No. 1 for many years, could clearly see his face at the scene of the shooting when he shot directly at her. She also repeated that he was a 'Fast Gun.' She denied that he was wearing a Nike jacket and said that it was a plain black jacket. She further denied that he was wearing an orange baseball cap or blue pants and confirmed that he was wearing black pants.

### **iii. Leticia Barnes**

[50] Ms. Barnes, the next witness for the State, testified that at approximately 14h15 on 21 Dec 2019 she was at 3[...]2 Drury Court, playing cards with Ms. Stevens and 'Uncle Mol'.

[51] They heard shots and went to look out the window. She shouted out the window: *'Jou ma se ... Why are you shooting here?'*

[52] Ms. Barnes testified that she saw Accused No. 1, who she described as 'Naruto', and without hesitation she pointed out Accused No. 1 in court. According to her evidence, Accused No. 1 was standing in the backyard outside 3[...] Drury Court and shot towards them.

[53] She testified further that after they had checked that no one was injured and had checked out the front window that no one was coming, she opened the door and ran to her sister-in-law. She then heard further shots after Accused No. 1 had fired one shot at the window.

[54] The witness testified that she has known Accused No. 1 for a number of years and that at the time of the shooting, in December 2019, he was a member of the Fast Guns gang. She further testified that she also knew Accused No. 2, and that he was a Boston kids gang member 'years ago.'

[55] In cross-examination Ms. Barnes confirmed that 'Uncle Mol' is still alive and lives at number 3[...]2 Drury Court, but that he is elderly and indicated that he does not wish to become involved in the court case or investigation.

[56] Ms. Barnes was referred to the statement which she gave to the police, which she confirmed signing and that it was given freely and voluntarily. It was pointed out to her that there was no reference to 'Uncle Mol' in her statement. She explained this by saying that she did not mention him as she knew that he did not wish to become involved.

[57] She further confirmed that at the time of the shooting, Accused No. 2 was wearing black pants and had black shoes on, and not orange shoes as was put to her in cross examination.

[58] Lastly, Ms. Barnes indicated that she only knew John Dickson by his nickname and she disagreed when it was put to her that he was similar in height or had similar body features to Accused No.1. She said that accuse number one was lying about what he wore on the day of question and that he is shorter than Mr. Dickson.

[59] Ms. Barnes was a reliable witness. She answered all questions put to her confidently and without hesitation. Her evidence was satisfactory and collaborated the version given by Ms. Stevens in all material respects.

**iv. Ms. R[...] G[...]**

[60] The next state witness was R[...] G[...], the mother of the deceased, who lives at 3[...] Drury Court.

[61] She testified, displaying great distress, that at approximately 14h15 on the day of the incident, she was in the kitchen with her newborn child, E[...], when she first heard the shooting.

[62] When she heard the shots she went to hide. After it had been quiet for a while she went to look for her other two children, S[...], who was three years old at the time, and V[...], who was five years old.

[63] She testified further that when she was in the kitchen, before she went to hide, Wesley Kok came in, after having been shot. His father took him to the hospital by car.

[64] After the shooting stopped, she called for her children, and S[...] ran to her. When she asked him where his brother was, he showed her that his brother was in the backyard. She followed him and saw V[...] lying there. She started shouting and went to the gate to look for her partner, Mr. K[...]. She said after that it was quiet for a time before a second round of shooting began. She went out into the yard after the second round of shooting and saw V[...] lying there. He had passed away. Ms. G[...] was barely able to speak, so great and overwhelming was her grief when asked to recall the events of that day. Neither of the accused showed any emotion at all during her heartrending testimony.

**v. Sergeant Xhanti Sinathi Neti**

[65] Sgt Xhanti Sinathi Neti (Sgt Neti) holds the rank of sergeant and has been stationed at Steenberg SAPS for the past twenty years. His evidence was led in respect of count 1, in particular the contravention of section 9 of the Prevention of Organised Crime Act 121 of 1998 (POCA).

[66] During argument counsel for both accused conceded that if the court accepted the State's evidence that Accused No. 1 and 2 were the perpetrators of the shooting that occurred on 21 December 2019, the elements of count 1, namely the contravention

of section 9(2)(a) read with sections 1, 10 and 11 of the Prevention of Organised Crime Act 121 of 1998 (POCA), have been satisfied.

[67] In light of the court's findings hereinbelow, it is therefore not necessary to deal with the evidence of Sgt Neti in great detail.

[68] Sergeant Neti confirmed that he knows Accused No. 1 from when he was a member of the Boston Kids gang. According to him, Accused No. 2 is a member of the Fast Guns, and has a tattoo of a 'F' on his right foot for 'Fast', and 'G' on his left foot meaning 'Guns'

[69] Sgt Neti's evidence was that Accused No. 1 is also a Fast Gun, as he 'walks' with the Fast Guns in the area. He testified that the Mongrels is another gang operating in Lavender Hill and Steenberg. He stated further that Accused No. 1 would not have posed with Accused No. 2 when he was making the sign of the Fast Guns gang, unless he was in the same gang. He was steadfast in his evidence that when they were arrested in respect of these incidents, they were members of the Fast Guns.

[70] According to Sgt Neti, in December 2019 when this incident occurred, there was a gang fight between the Fast Guns and the Mongrels. He said that the activities of the Mongrels include selling drugs and protecting their turf by shooting at opposing gangs.

[71] Mr. Snyman handed in a printout of a post from the Facebook profile of Accused No. 2 dated 29 October 2023, as Exhibit 'L'. Mr. C Nel on behalf of Accused No. 2, did not object and placed on record that Accused No. 2 does not deny that the relevant excerpts are from his Facebook profile but will say that he stopped being a member of the Fast Guns a year before the incident. It is clear from Exhibit 'L' that Accused No. 2 describes himself as Fast Gun, is making the sign of the Fast Guns, and goes under the moniker 'Water'. A similar picture was posted on the profile of Accused No. 2 making the same sign on 15 December 2023. The words super imposed on the photograph are 'Chadwin aka Water Fast Guns.'

[72] Sgt Neti's evidence was clear and consistent. He did not waiver under cross examination. He was a strong and credible witness. Under cross examination he said that in the weeks before the incident he worked in Lavender Hill every day and saw gang members there. He would speak to them whilst investigating cases. He confirmed seeing both Accused No. 1 and 2 in the area in the weeks before the incident.

**vi. Sergeant Siyasanga Mapukuta**

[73] The next state witness was the investigating officer, Sergeant Siyasanga Mapukuta (Sgt Mapukuta), who has been a part of the Anti-Gang Unit (AGU) since its establishment in 2018. He testified that the AGU is a provincial, specialised unit formed by the president to fight the increasing rise in gangsterism and gang related crime, which is particularly prevalent in the Western Cape. He said that people are killed in gang related incidents every day, especially innocent children who get caught in the crossfire during gang shootouts.

[74] Sgt Mapukuta took over the investigation of the present matter when Detective Sergeant Salie resigned from SAPS in December 2023.

[75] According to Sgt Mapukuta, former Accused No.1, died in prison of natural causes. It emerged from the investigation that he provided the firearms to both accused to carry out the shooting. He said that Mr. Dickson was a member of the Fast Guns, and was arrested on 1 April 2020, after Accused No. 1 and 2 were arrested.

[76] Sgt Mapukuta's evidence in chief was that Dickson was not similar in looks and build to Accused No. 1. He said that Dickson was slightly shorter, and lighter in complexion.

[77] In the course of his investigation he found a firearm under a bed in the house of a certain Mr. Chad Philander. He was arrested for possession of an unlawful firearm. They then established that this firearm was used in the shooting in these proceedings.

[78] Sgt Mapukuta explained that gangs do not keep firearms as the police know who the gang members are. The weapons are kept by individuals who are not gang members. When a hit is arranged, the firearms are delivered to the gang member or shooters. After the shooting the guns are collected by the person in whose possession they were.

[79] Sgt Mapukuta was taken through each of the counts in the amended indictment. And asked why the individuals named in the indictment (in the counts for attempted murder) were not available to testify. He stated that Ms. Daniels did not testify as she is in a psychiatric hospital, and Ms. Joseph, Mr. Strydom and Mr. Baars did not testify as they feared for their lives. He further confirmed that Mr. Boesak left 3[...] Drury Court shortly before the shooting started, that Mr. K[...], the uncle of the deceased died in 2023 and Mr. Wentzel (Count 13) was shot and killed in 2024.

[80] Sgt Mapukuta confirmed that Fast Guns is still active as a gang. He was shown photographs taken of walls in the area where Fast Guns operated and confirmed that the graffiti on the walls are markings of their territory or 'turf'.

[81] According to Sgt Mapukuta the 'business' of the Fast Guns' is selling drugs, robberies, car jackings and protecting their turf. He further confirmed that in December 2019 there was fighting between the Fast Guns and the Mongrels gang.

[82] In cross-examination Sgt Mapukuta testified that Dickson facilitated the process by which the shooters, Accused No. 1 and 2, were given the firearms used in the shooting. He confirmed that according to the ballistic report, the weapon found under Mr. Philander's bed was an Arcus 9mm parabellum pistol (the Arcus), and the firearm found under the tree was a CZ 9mm short pistol (the CZ). He further confirmed that only one of the casings found at the scene was compatible with the Arcus. He could not say whether any of the casings found at Drury court were compatible with the CZ.

[83] Sgt Mapukuta confirmed that they had not found any DNA or fingerprint link between either of the two accused and the abovementioned firearms.

**vii. Warrant Officer Zelda Meiring**

[84] W/O Zelda Meiring (W/O Meiring) was the next witness to testify on behalf of the state. She confirmed the contents of the reports which she prepared in respect of cartridges recovered at the crime scene, and the Arcus and CZ.

[85] W/O Meiring confirmed that four cartridges or bullet casings were recovered at the crime scene at 3[...] Drury Court. After undertaking the necessary investigation, she confirmed that one of the cartridges was fired from the Arcus firearm. The other three 9mm cases could not be positively linked to the CZ.

[86] W/O Meiring stated that in her opinion it was unlikely that only one firearm was fired at the scene. She further confirmed that the other three 9mm casings did not have sufficient marking to link them to the CZ. The State thereafter closed its case.

**D. TRIAL WITHIN A TRIAL - THE WARNING STATEMENTS**

[87] When the State gave notice that it intended to lead evidence regarding the admissions of Accused No.1 and 2 made in warning statements, the defence for both accused objected, and hence a trial within a trial was held regarding their admissibility.

[88] The state sought to have the warning statements admitted solely to prove that the accused had made previous inconsistent statements.

[89] Detective Umir Salie (who has subsequently resigned from the SAPS) (Mr. Salie), and who at the time of the interview with the accused, was attached to the Anti-Gang-Unit testified on behalf of the state in the trial within a trial. Both accused also testified.

[90] At the conclusion of the trial within-a-trial, and after hearing arguments from the state and defence counsel, both warning statements were ruled to be admissible and were received into evidence as Exhibits 'Q' and 'R'.

[91] After hearing extensive evidence and argument, I made a ruling, which is interlocutory in nature, that the warning statements are admissible and could be introduced into evidence. I refrained from giving reasons or making credibility findings and indicated that the reasons for my ruling would form part of this judgment. These reasons follow.

[92] Mr. Salie gave detailed evidence of the procedure he followed in taking down the warning statements of both accused. He fully explained all of their rights to them, as contained in the comprehensive pro forma warning statement, which he duly completed during the interview.

[93] He explained that the accused had the right to remain silent and were not compelled to make any statement or answer any question and that any statement made or answer given could be used in a court of law and could be submitted to the attorney general or public prosecutor. The accused were advised that they had the right to legal representation, including legal aid. Neither of the accused chose to have a legal practitioner appointed to them before giving the statement.

[94] Both of the accused elected to answer questions put to them by Mr. Salie rather than giving a statement. They answered all the questions posed to them, and their detailed answers were written down by Mr. Salie in an annexure to the warning statements.

[95] Mr Salie testified that Pollsmoor prison, which is the prison to which both accused were transferred after they had been formally arraigned, would not have accepted prisoners who were injured or who had open wounds, unless provided with a SAP 70 by a medical practitioner.



[96] The State presented real evidence in the form of the relevant extract from the occurrence book for the relevant period and the blanked-out warning statements. There are no records in the occurrence book of any assaults, neither are there such records in the district court proceedings. Mr Salie was referred to entries where there were numerous cell visits by various police officers and no record was made of any complaints by either of the Accused.

[97] Both accused gave detailed evidence of several alleged assaults from the time of their arrest until their incarceration at Steenberg Police Station. The assaults which they described were of such a grave nature that it is undoubtable that if indeed such vicious assaults did take place, the accused would have sustained serious, visible and potentially life-threatening injuries. The accused made no complaints about injuries, and Pollsmoor accepted them as a new prisoners.

[98] Mr. Salie emphatically stated that he was the only officer in the interview room with the accused and that he never assaulted or threatened them in any manner whatsoever.

[99] It is abundantly clear from the answers given to the questions asked by him, that such information could not possibly have fallen within his peculiar knowledge and could only have emanated from the accused. He stated that no uniformed member is allowed in the interview room when he takes a statement from an accused. Mr. Salie denied the assertion that questions were not put to Accused No. 1.

[100] Accused No. 1 stated that he was assaulted on four occasions by AGU members and reported these assaults to the police and to Mr. Salie. He stated that the last assault occurred during the interview with Mr. Salie when an AGU member came in, stood behind him, held his shoulders and beat him. He said that as a result of this assault his shoulders were painful, and his ribs were broken.

[101] Accused No. 1 denied that the interview proceeded as Mr. Salie had described. He confirmed his signature on each page of the statement, however he denied that he

signed the statement freely and voluntarily and stated that he did so as, *'Ek was in my moer geskop'*.

[102] Accused No. 2 also testified that Mr. Salie assaulted him at Muizenberg beach and further assaulted him by spraying him with pepper spray in the enclosed interview room, until he passed out. When he regained consciousness, he saw Mr. Salie and an AGU member with an iron pipe which was allegedly used to hit him several times.

[103] The admissibility of warning statements is governed, in the main, by section 219A of the CPA and section 35(3) and (5) of the Constitution. Section 219A of the CPA provides that:

‘The evidence of any admission made extra-judicially by any person in relation to the commission of an offence shall, if such admission does not constitute a confession of that offence and is proved to have been voluntarily made by that person, be admissible in evidence against him at criminal proceedings relating to that offence.’

[104] The relevant part of section 35(3) of the Constitution reads that: ‘Every accused person has a right to a fair trial, which includes the right – (a) to remain silent; (b) to be informed of the charge with sufficient detail to answer it;...(h) to be presumed innocent, to remain silent, and not to testify during the proceedings;...(j) not to be compelled to give self-incriminating evidence;’. Section 35(5) of the Constitution provides that: ‘(5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.’

[105] The State bears the onus of showing that the warning statements were made freely, voluntarily and without violation of the accused’s constitutional rights. The measure of proof required is beyond reasonable doubt. Furthermore, where the Court is confronted with diametrically opposed versions, as it was here, the evidence must be

evaluated by considering a conspectus of all the evidence presented so as '*to consider the inherent probabilities*'.

[106] As set forth by Myburgh AJ in *S v Mtsholotsholo and Others*<sup>1</sup> a court is enjoined to weigh '*evidence that is reliable ... alongside such evidence as may be found to be false*' and consider '*independently verifiable evidence*' to determine '*if it supports any of the evidence tendered*'. In finding whether the warning statements are to be admitted it is necessary to '*decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the Accused's version*' and '*an Accused's version cannot be rejected merely because it is improbable. It can only be rejected on the basis of the inherent probabilities if it can be said to be so improbable that it cannot reasonably possibly be true.*'<sup>2</sup>

[107] The cross-examination of both accused highlighted the multiple contradictions and inconsistencies in the versions put on their behalf to Mr. Salie and their evidence in chief and under cross-examination.

[108] Mr. Salie on the other hand was clear and logical. He did not waiver in cross-examination and the court has no reason not to believe him. In addition, the occurrence book corroborates the version of the state that there was no assault or injuries. Various cell visits were conducted by various officers and there are no entries to confirm the accuseds' version that they were injured. In addition, the fact that Pollsmoor accepted the two accused, is indicative that they arrived as new inmates without injuries.

[109] In line with the principles set forth in *S v Sauls and Others*<sup>3</sup> '*The trial Judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told.*'

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<sup>1</sup> *S v Mtsholotsholo and Others* (CC01/2018) [2023] ZAWCHC 340 (26 May 2023).

<sup>2</sup> *S v Trainor* 2003 (1) SACR 35 (SCA); *S v Shackell* 2001 (2) SACR 185 (SCA) at para [30]; *S v BM* 2014 (2) SACR 23 (SCA) at para [2]. *S v Mtsholotsholo and Others* *ibid*.

<sup>3</sup> 1981 (3) SA 172 (A) at 180F.

[110] In *S v De Vries & Others*<sup>4</sup> Bozalek J held that '*I am of the view that should the evidence seized be held inadmissible by virtue of this technical defect, the accused will gain an unjustified advantage in the trial and the administration of justice will be brought into disrepute in the eyes of reasonable members of the public in our society.*'

[111] In all the circumstances I am satisfied that the State proved beyond reasonable doubt that the warning statements were taken freely and voluntarily without the violation of the accuseds' constitutional rights. The versions of the Accused that they were assaulted at multiple locations by various police officers, and yet never showed any visible injuries nor reported any of the alleged assaults, considering the inherent probabilities, were so improbable that they could not be considered reasonably possibly true.

## **E. EVIDENCE FOR THE DEFENCE**

[112] Both accused gave evidence in their defence. Neither of them called any other witnesses.

### **i. Mr. Carlo Hofmeester**

[113] Accused No. 1 denied that he is guilty of any of the charges levelled against him arising from the events that unfolded on 21 December 2019. He testified that he was formerly a member of the Boston Kids gang but denied belonging to the Fast Guns or any other gang at the time of the incident.

[114] In his evidence in chief, Accused No. 1 testified that on 21 December 2019 at approximately 14h00 he was at 'Ma Gladys' place at the front of Drury Court when he heard approximately eight gun shots ring out. He claims that he was not armed at the time. He then returned home.

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<sup>4</sup> [2008] JOL 22153 (C) at para [71].

[115] When asked about the evidence of the witnesses who said he shot at them at window on first floor, his response was that 'the people were lying'. This was a refrain which he repeated throughout his evidence. He denied shooting the deceased or 'shooting at anyone' on the day in question.

[116] When asked by his advocate whether there was anything else he wanted to say about the events that took place that day, Accused No. 1 said that he just wanted to say that he is 'sorry for what happened to the people or the kids, as he is also a father'.

[117] In cross-examination he confirmed that the shooting was at the back of Drury Court. He said that he never went to take a look when he heard the shots. He stood by his version that he was not involved in what happened that day.

[118] Accused No. 1 said that he never saw Ms. Barnes nor Ms. Stevens on the day in question. He denied that they shouted at him out the window and denied shooting at them. He said that he was 'just by passing by.'

[119] Accused No. 1 admitted that he has known Ms. Barnes, Ms. Stevens and Mr. K[...] for 'a long time.' Mr. Snyman also pointed to Mr. K[...], the father of the deceased, in the gallery, and Accused No. 1 confirmed that he had also known him for a long time.

[120] When asked why Mr. K[...] would relive the pain of recounting all the details of the killing of his child if they were not true, he said 'that man is telling lies.'

[121] In cross-examination he conceded that Dickson did not resemble him. He could not explain why he conveyed instructions to the contrary to his counsel, who put this version to certain of the state witnesses in cross-examination.

[122] It was put to Accused No. 1 that he testified that he was alone or at 'Ma Gladys' when he first heard the gunshots, however the version put to the state witnesses was that he was with a certain Shane Williams (Williams) in the courtyard at Drury Court at

the time of the shooting. His response was that this was incorrect, and that he was not with Williams, but was at the house of 'Ma Gladys.' He stated, for the first time, that Williams has passed away, but that at the time of the incident he was staying at the house of Ma Gladys. Mr. Snyman reminded him that the truth remains consistent, and the fact that his evidence is changing means that he is misleading the court.

[123] When asked about witnesses he intends calling, he said that he cannot contact them as he is in custody. He was reminded that his counsel and family members can assist in locating any witnesses should he wish to call them. Accused No. 1 mentioned again for the first time, that he wanted to call a certain 'Mishani', who he said was in the courtyard at the time of the shooting.

[124] When asked why it is the first time that he has mentioned Mishani, Accused No. 1 said it is the first time he is being asked about him.

[125] Mr. Snyman pointed out that this is the third version given by Accused No.1. He repeated that Williams is no longer alive. He was living with Ma Gladys at the time. He could not furnish an explanation for why this was so.

[126] Accused No. 1 confirmed that he knows Dickson, and that he is a Fast Gun. He further confirmed that his nickname is 'Naruto', and that the nickname of Accused No. 2 is 'Water'. When asked whether Accused No. 2 is a Fast Gun, he said 'yes, he is.'

[127] Accused No. 1 denied that he 'moved with' the Fast Guns, however he admitted spending a lot of time with Accused No. 2. He denied the version put to witnesses on behalf of Accused No. 2, namely that he was at the shop at the time of the shooting, or that Accused No. 2 ran towards him shortly after the shooting. He further denied that he ran towards Dickson at no. 3[...]. He could not explain why Accused No. 2 would give what was, according to him, a falsified or untrue version.

[128] Accused No. 1 admitted that there was fighting between the Fast Guns and the Mongrels at the time of the incident. He further confirmed that Wesley Kok aka 'Salibom' was a member of the Mongrels.

[129] When shown the crime scene photographs of the slain 5-year-old V[...], and asked to look at them 'through the eyes of a father', he showed neither emotion nor remorse. His response was 'no comment.'

[130] Lastly, Accused No. 1's evidence was that he did not at any stage have a firearm licence. When it was put to him that it was him and Accused No. 2 who went 'shooting at the Mongrels at 3[...], and that V[...] was killed by the raining bullets, he denied that this was so.

[131] On conclusion of the evidence of Accused No. 1, Mr P Nel informed the court that until the morning of 12 May 2025, his instructions were that there are no other witnesses available to testify on behalf of Accused No. 1. On 12 May at 11h15, Mr. Nel received two statements from potential witnesses, which appeared to be neutral, and did not advance the case of his client. After discussing these statements with Accused No. 1, he was instructed not to call either of the witnesses.

[132] At the conclusion of his evidence, Accused No. 1 told his counsel that he wished to call Mishani Williams as a witness. The trial was postponed for a day for him to be located. The investigating officer, Sgt Mapukuta, located this witness in this short time, and after consulting with him at length, Mr P Nel was instructed by Accused No. 1 not to call him as a witness. Accused No. 1 then closed his case.

## **ii. Chadwin Isaacs**

[133] Accused No. 2's evidence in chief was cursory and superficial. He denied that he was a gang member and that he was in possession of a firearm or fired any shots on the day of the incident.

[134] Accused No. 2 testified that on 21 December 2019 he was at the shop on E[...] road, in the vicinity of 3[...] Drury Court, Lavender Hill, when he heard shots being fired.

[135] He claimed that he saw Dickson shooting into the yard at 3[...] Drury Court. Accused No. 2 said that he headed to Depsiton crescent, and after the shooting Dickson walked in his direction. He heard more shots. Accused No. 1 thereafter joined him and Dickson and the three of them walked towards a field in the vicinity. He left the area and went to the house of his children's mother at 6[...] G[...]Ave.

[136] Accused No. 2 said that he heard that the police were looking for him and for Accused No. 1 for the shooting. He found Dickson and Accused No. 1 and told them that the police were looking for them. They then went to smoke and then drove off together. They were arrested two days later.

[137] Accused No. 2 said that he was not in possession of a firearm or any ammunition on the day in question.

[138] In cross-examination Mr P Nel put to Accused No. 2 that according to his instructions, Accused No. 1 was never in the company of Dickson on the day of the shooting. This was disputed by Accused No. 2.

[139] Mr Snyman asked Accused No. 2 whether he was making the sign of the Fast Guns in the Facebook profile photograph introduced into evidence. He admitted that he was. When questioned how, in light thereof, he could deny that he was a gang member, he answered that it was 'part of the past' and that he is no longer a Fast Gun. When Mr. Snyman pointed out that four years after the incident, he was still posting photographs on Facebook of himself with his gangster name and sign, Accused No. 2 had no comment.



[140] Accused No. 2 confirmed that he was at the shop in Depsiton when the shooting took place, and that he had a clear view of what was happening at 3[...] Drury Court. He confirmed that he saw Dickson shooting there, and that he was a Fast Gun.

[141] Under cross-examination by the State, Accused No. 2 testified that Accused No. 1 exited the yard at the back out of 3[...] Drury, approached him and asked who was shooting, to which Accused No. 2 replied that 'Dickson was shooting there'. Mr Snyman pointed out that the version put to Accused No. 1 and the state witnesses on his behalf was that after he told Accused No. 1 where they were shooting, he ran to the gate at 3[...] Drury Court. Accused No. 2 replied that Accused No. 1 moved in that direction, but he did not see whether he went to the gate, as he was walking towards Depsiton.

[142] Mr. Snyman reiterated that this version differs from that put to Accused No. 1 and the state witnesses. When asked why his evidence differs, he said he does not know.

[143] When asked why he walked away at that stage, Accused No. 2 replied that it was because Dickson was a member of the Fast Guns and would say that he was with him.

[144] The discrepancies in the versions given by Accused No. 2 were highlighted in cross-examination. In his evidence in chief, Accused No. 2 said that in first round of shooting, Dickson came towards him. He was specifically asked where Accused No. 1 was at this stage. Accused No. 2 said that after the first round of shooting by Dickson, he was at the shop. In his evidence in chief however, Accused No. 2 said that after he showed Accused No. 1 where the first round of shooting was, Dickson came towards him, and there was the second round of shooting.

[145] In cross-examination he testified that after the shooting Dickson came towards him, however he made no mention of Accused No. 1. Previously he testified that Dickson and Accused No. 1 came towards him and they walked through the field. He was specifically asked where Accused No. 1 was during the second round of shooting. Accused No. 2 said after showing Accused No. 1, he walked away from the shop and then other shots went off.

[146] According to Accused No. 2, Accused No. 1 is not a Fast Gun. It was put to him that it is well known that the Boston Kids were absorbed into the Fast Guns.

[147] Accused No. 2 was reminded that Accused No. 1 testified that at the time of the first round of shooting he was in the courtyard talking to Mishani. He would not comment and repeated that it is for the court to decide whether Accused No. 1 is telling the truth.

[148] When asked why Mr. K[...] would come to court and implicate him, he merely responded that he does not know Mr. K[...].

[149] When asked by Mr. Snyman how Mr. Salie would come to court and fabricate a warning statement which contained details he could not possibly know, details that do not show that he is guilty, yet according to accused he forced them to sign, he answered that Mr. Salie assaulted him to get him to sign that statement. He confirmed that he did not know Mr. Salie before this case.

[150] Mr. Snyman pointed out to Accused No. 2 that he wanted to remove himself from this shooting, and yet after the shooting he sought out Dickson and Accused No. 1 to warn them that the police were looking for them and went to smoke drugs with them.

[151] When asked why he would do that, he said it was because his name was also mentioned. It was put to him that the reason was that all three of them were Fast Guns and he and Accused No. 1 shot at the Mongrels. He denied this.

[152] It was put to Accused No. 2 that he and Accused No. 1 devised the strategy of blaming Dickson, as Accused No. 1's evidence was that the witnesses were mistaken and that the shooter which they saw was Dickson and not him. From the photographs introduced into evidence it then became clear that Dickson did not bear any resemblance whatsoever to Accused No. 1. So much so that Mr. P Nel apologised to the court in this regard.

[153] When shown the crime scene photographs of the deceased, Accused No. 2 remained steadfast that he was not involved in the shooting. He did not display any emotion.

[154] Lastly, Accused No. 2 confirmed that he did not have a firearm license nor a licence to possess ammunition.

## **F. THE COMMON CAUSE FACTS**

[155] In light of the extensive evidence led, it is helpful to highlight the facts which are common cause between the parties, which can be briefly summarised as follows:

155.1 At approximately 14h15 on 21 December 2019 at 3[...] Drury Court, Lavender Hill, a 'pela post' in Mongrel territory, where people congregate to smoke and socialise, there were two series of shootings in rapid succession. V[...] G[...], a five-year-old boy, was shot and killed, and known Mongrels gang member, Wesley Kok aka 'Salibom' was shot and wounded.

155.2 P[...] K[...], the father of the deceased, Olivia Stevens and Leticia Barnes had extensive prior knowledge of both accused. Accused No. 1 is known by the alias 'Naruto', and Accused No. 2 is known by the alias 'Water'.

155.3 At all material times on the day of the incident the persons named in counts 4, 6, 8, 9, 11, 12 and 13 of the amended indictment were present at 3[...] Drury Court, Lavender Hill.

155.4 Ms. Stevens and Ms. Barnes were present at 3[...]2 Drury Court during the incident.

155.5 The Mongrels and the Fast Guns, criminal gangs operating in the Lavender Hill area, were embroiled in a gang fight in the area at the time of the incident.

155.6 Firearms and ammunition were used during the shooting at 3[...] Drury Court. Both accused were at or near Drury Court at all material times on the day of the incident. They were both arrested two days later, on 23 December 2019.

155.7 The deceased, who was playing in the yard of his family home, died as a result of a single gunshot wound to the head.

## **F. ISSUES IN DISPUTE**

[156] I turn now to set out the disputed issues which this court is called upon to determine, which were helpfully summarised by Mr Snyman on behalf of the State. The main issues for determination are the following:

156.1 Whether both accused were, at the time of the incident, members of the Fast Guns gang, and, if so, whether they committed the offences on behalf of the gang.

156.2 Whether the accused were correctly and reliably identified by the witnesses as the shooters.

156.3 Whether the accused possessed firearms and ammunition whilst committing offences, and whether they possessed each other's firearms and ammunition in terms of the doctrine of joint possession.

156.4 Ultimately whether the state has proved its case beyond a reasonable doubt, and whether the versions of the accused are reasonably possibly true.

## **G. RELEVANT LEGAL PRINCIPLES**

[157] It is prudent at this juncture to set out the applicable legal principles pertaining to the evidence and issues which arose in the present matter, which are dealt on a topic by topic basis below.

### **i. The general principles applicable to evaluation of the evidence**

[158] It is trite that the State bears the *onus* of establishing the guilt of both accused beyond reasonable doubt. This does not mean beyond any doubt. The upshot of this is that if either of the accused puts up a defence which is found to be reasonably possibly true in the circumstances, he is entitled to be acquitted. The approach was usefully summarised by Nugent J in *S v van der Meyden*.<sup>5</sup>

‘The proper test is that the accused is bound to be convicted if the evidence establishes his guilt beyond reasonable doubt and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case, will depend on the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached, whether it be to convict or to acquit, must account for all of the evidence. Some of the evidence might found to be false, some of it might found to be unreliable and some of it might be found to be only possibly false or unreliable, but none of it may simply be ignored.’

[159] In regard to the assessment of the evidence, the Supreme Court of Appeal in (SCA) *S v Hadebe & Others*, cited with approval the decision of the Lesotho Appeal

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<sup>5</sup> 1999 (1) SACR 447 (W) at 449J - 450B.

Court in *Moshephi & Others v R*<sup>6</sup>, in which an overall evaluation of the evidence in totality was required:

‘The question for determination is whether, in the light of the evidence adduced at the trial, the guilt of the appellants was established beyond reasonable doubt. The breaking down of a body of evidence into its component parts, is obviously a useful aid to a proper understanding and evaluation of it, but in doing so, one must guard against a tendency to focus too intently upon the separate and individual parts of what is, after all, a mosaic of proof. Doubts about one aspect of the evidence led in a trial, may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again, together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence, but once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood for the trees.’

## **ii. Identification, recognition and single witness evidence**

[160] In the *locus classicus* of *S v Mthetwa*<sup>7</sup>, the then Appellate Division held:<sup>8</sup>

‘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

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<sup>6</sup> (1980-1984) LAC 57 at 59F-H.

<sup>7</sup> 1972 (3) SA 766 (A).

<sup>8</sup> At para 768A, and the authorities there cited.

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.’

[161] In the more recent decision of the Supreme Court of Appeal of *Abdullah v State*<sup>99</sup> it was held at para 14 and 15:

‘[14] In *Arendse v S* this Court quoted with approval the trial court’s comments in *R v Dladla*:

‘There is a plethora of authorities dealing with the dangers of incorrect identification. The *locus classicus* is *S v Mthetwa*, where Holmes JA warned that: Because of the fallibility of human observation, evidence of identification is approached by courts with some caution. In *R v Dladla* at 310C-E, Holmes JA, writing for the full court referred with approval to the remarks by James J delivering the judgment of the trial court when he observed that: one of the factors which in our view is of greatest importance in a case of identification, is the witness’ previous knowledge of the person sought to be identified. If the witness knows the person well or has seen him frequently before, the probability that his identification will be accurate is substantially increased in a case where the witness has known the person previously, questions of identification, of facial characteristics, and of clothing are in our view of much less importance than in cases where there was no previous acquaintance with the person sought to be identified. What is important is to test the degree of previous knowledge and the opportunity for a correct identification, having regard to the circumstances in which it was made.’

[15] This Court reaffirmed this principle more recently in *Machi v The State* where the witnesses stated that they knew the appellant and he too admitted that

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<sup>99</sup> (134/2021) [2022] ZASCA. (Citations of cases cited omitted).

he knew them. The court said in these circumstances there is no room for mistaken identity.'

[162] In terms of section 208 of the CPA, the court can convict an accused on the evidence of a single witness, if such evidence is satisfactory in all material respects and there is no untoward bias. The court is enjoined to approach such evidence with due caution.

[163] In *S v Miggel*<sup>10</sup> Saner AJ stated that:

'It is settled law that the evidence of a single witness must be approached with caution. In the normal course of events, the evidence of a single witness will only be accepted if it is in every important respect satisfactory or if there is corroboration for that evidence.<sup>11</sup>

The corroboration that is required is confirmatory evidential material outside the evidence that is being corroborated.<sup>12</sup> The corroboration does not necessarily need to link the accused with the crime.

The evidence of a single witness, as Holmes JA said in *S v Artman and Another* 1968 (3) SA 339 (A) at 341A - B, 'does not require the existence of implicative corroboration; indeed in that event she would not be a single witness'. The cautionary rule applies especially in the case of a single witness with regard to the identification by virtue of the fallibility of human observations.<sup>13</sup> The court must be satisfied that the witness making the identification is not only honest, but also reliable<sup>14</sup>.

The probability that an identification is reliable is strengthened when the person who has been identified was known beforehand to the identifying witness (*R v Dladla and Others* 1962 (1) SA 307 (A) at 310C). But even in that case, close

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<sup>10</sup> 2007 (1) SACR 675 (C) at 678.

<sup>11</sup> See *S v Sauls and Others* 1981 (3) SA 172 (A) at 180E - G; *S v Letsedi* 1963 (2) SA 471 (A) at 473F; *R v Mokoena* 1956 (3) SA 81 (A) at 85 - 6.

<sup>12</sup> *S v Khumalo en Andere* 1991 (4) SA 310 (A) at 328A - B.

<sup>13</sup> *R v T* 1958 (2) SA 676 (A) at 678A - F.

<sup>14</sup> *S v Mthetwa* 1972 (3) SA 766 (A) at 768A - B.



attention must be paid to the opportunity which the witness had of identifying the person in question in the circumstances then prevailing, in order to ascertain whether a correct identification was made.<sup>15</sup>

### **iii. Common purpose**

[164] In terms of the amended indictment on which the State relies, in respect of the count of murder (Count 2) on the provisions of section 51(1) of Act 10 of 1997, alleging that this crime is mentioned in Part 1 of Schedule 2 of the said Act, that is Murder, committed by a person, or group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy and that a minimum sentence of life imprisonment is therefore applicable.

[165] The main principles relating to the doctrine of common purpose may be summarised as follows

165.1 If two or more people, having a common purpose to commit a crime, act together to achieve that purpose, the conduct of each of them in the execution of that purpose is imputed to the others.

165.2 In a charge of having committed a crime which involves the causing of a certain result (such as murder), the conduct imputed includes the causing of such result.

165.3 Finding that a person acted together with one or more other persons in a common purpose is not dependent upon proof of a prior conspiracy. Such a finding may be inferred from the conduct of a person or persons.

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<sup>15</sup> *R v Dladla* above at 310E.

[166] The underlying rationale for the doctrine of common purpose is to cater for the situation where it is difficult to determine whose conduct can with certainty be said to have been the cause of the deceased's death.

[167] In *S v Thebus*<sup>16</sup> the Constitutional Court observed that in assessing whether the doctrine should be invoked, all factors regarding participation or active association need to be considered, including the location, timing, sequence, duration, frequency and nature of the conduct alleged to constitute sufficient participation or active association and its relationship, if any, to the criminal result and to all other prerequisites of guilt. Whether or not active association has been appropriately established will depend upon the factual context of each case.

#### **iv. Dolus eventualis and the 'alternative' of culpable homicide**

[168] It was argued on behalf of the State that the objective facts show that the incident was a gang fight, and that the shooters had the direct intention to kill Mongrel gang members, such as Wesley Kok. The State accepted that on the evidence before the court, it does not appear that either of the perpetrators had the direct intention to kill the deceased. The State however contended that there was direct intent to kill Ms. Stevens and Ms. Barnes.

[169] In a supplementary note filed in reply to the argument raised by the accused, namely that if the court were to find that the accused were the perpetrators, the death of the deceased was caused negligently as it cannot be shown that the shooters intentionally shot at the deceased, and it therefore amounts to culpable homicide, and not murder with intention in the form of *dolus eventualis*.

[170] This novel argument was not pursued with any vigour during oral argument, prudently so. As was correctly pointed out by Mr. Snyman, as both accused deny being the shooters on the day in question, they cannot in the 'alternative' argue that the

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<sup>16</sup> 2003 (2) SACR 319 (CC) at 345 par 45.

shooters never intended to murder the deceased nor intended to attempt to murder those present at 3[...] Drury Court.

[171] In *S v Makgatho*<sup>17</sup> the SCA affirmed that a person acts with intention, in the form of *dolus eventualis*, if 'the commission of the unlawful act or the causing of the unlawful result is not his main aim, but he subjectively foresees the possibility that in striving towards his main aim, the unlawful act may be committed or the unlawful result may ensue, and he reconciles himself to this possibility.

[172] The SCA went on to hold that<sup>18</sup>:

'The fundamental question is not whether he should have accepted that the result would follow, but whether in actual fact he accepted that it would follow. The test in respect of intention is subjective and not objective. The objective test is applicable in cases involving negligence and not intention.<sup>19</sup> There is a plethora of authorities demonstrating the rule that murder is a crime requiring intention; it cannot be committed negligently. See, for example, *S v Qege*<sup>20</sup> where it was said that:

'Where the accused performs an action knowing or foreseeing that somebody may be killed, and yet, despite that knowledge and reckless of the eventuation of the possible result, persists with that action, the form of intention is known as *dolus eventualis*.'<sup>21</sup>

## **v. Joint possession of firearms and ammunition**

[173] Counts 16 and 17 are in respect of different firearms and ammunition to those in counts 14 and 15, based on the doctrine of joint possession.

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<sup>17</sup> *S v Makgatho* 2013 (2) SACR 13 (SCA) at para [9], and the authorities there cited.

<sup>18</sup> *Ibid* at para 10.

<sup>19</sup> See *S v Ngubane* 1985 (3) SA 677 (A) at 685D – F; *A S v Dladla en Andere* 1980 (1) SA 1 (A) at 4A – B).

<sup>20</sup> 2012 (2) SACR 41 (ECG) at 48e – f.

<sup>21</sup> (See also *S v Swanepoel* 1983 (1) SA 434 (A) at 440A – B; *S v Nhlapo and Another* 1981 (2) SA 744 (A) at 750H 751C; *S v Dube* 1972 (4) SA 515 C (W) at 520G – H

[174] The vexed question of joint possession of a firearm and ammunition and the approach thereto where there is more than one perpetrator was considered in *S v Nkos*<sup>22</sup> as follows:

‘The issues which arise in deciding whether the group (and hence the appellant) possessed the guns must be decided with reference to the answer to the question whether the State has established facts from which it can properly be inferred by a Court that: (a) the group had the intention (animus) to exercise possession of the guns through the actual detentor and (b) the actual detentors had the intention to hold the guns on behalf of the group. Only if both requirements are fulfilled can there be joint possession involving the group as a whole and the detentors, or common purpose between the members of the group to possess all the guns.’

#### **v. Discrepancies in witness statements**

[175] It was held in *S v Bruiners en 'n Ander*<sup>23</sup> that:

‘The purpose of a police statement is to obtain details of an offence so that a decision can be made whether or not to institute a prosecution, and the statement of a witness is not intended to be a precursor to that witness' evidence in court. Quite apart from that, however, there are other problems associated with police statements. They are usually written in the language of the person who records them. Frequently the use of an interpreter is required and, invariably, such interpreter is also a policeman and not a trained interpreter. The statement, according to my experience, is also usually a summary of what the policeman was told by the witness and is expressed in language or in terms normally used by him and not necessarily the witness. I am of the view that the fact that discrepancies occur between a witness' evidence and the contents of that witness' police statement is not unusual nor surprising. Whenever there are

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<sup>22</sup> 1998 (1) SACR 284 (W)286G.

<sup>23</sup> 1998 (2) SACR 432 (SE) at 437h.

contradictions between the police statement of a witness and the evidence of such witness, or where there is no reference in a police statement to what can be considered to be an important aspect of that witness' testimony, the approach to be adopted in regard thereto is as described in *S v Mafaladiso en Andere 2003 (1) SACR 583 (SCA) at 593e - 594h.*'

## **G. EVALUATION**

[176] In my view the state witnesses, notwithstanding the minor discrepancies in certain instances between their written statements and oral evidence, were honest and credible, and their evidence was reliable.

[177] The same could not be said for either of the accused, viewing their evidence in totality and against the background of an overall evaluation of the other witnesses and their credibility.

[178] There were marked inconsistencies in the versions put to witnesses in cross-examination, and in the evidence which they gave in chief and under cross-examination. Both accused tended to adjust their versions when confronted with difficult questions. They were poor witnesses, and their evidence was neither cogent nor believable. They placed palpably false versions before the court, with a clear intent to mislead the court and to divert the court's attention from the true facts. It was clear that their counsel sought to present their case in a proper and professional manner, however the accused scuppered any attempt to present a coherent defence by the evidence which they proffered.

[179] I move now to consider the individual counts in respect of which the accused were indicted.

### **i. Count 1 – The POCA or gang related offences**

[180] The State pursued the main count of the contravention of section 9(2)(a) of Act 121 of 1998. Sgt Neti, an experienced police officer, testified about the gang structures in the greater Steenberg area.

[181] According to his evidence both accused are known as Fast Guns members, and the gang consists of a leader and its members.

[182] He further testified that the gang has a formal structure, that it still exists and that the gang has signs and symbols. The business of the Fast Guns is to commit various crimes.

[183] He further stated that the Boston Kids gang dissolved, and its members were absorbed by the Fast Guns. He said that Accused No. 1 'moved with the Fast Guns in the area.'

[184] Sgt Mapukuta testified about how firearms are supplied to the shooters of the gang.

[185] It is not in dispute that the Mongrels and the Fast Guns were embroiled in a gang war at the time of the incident.

[186] In 2023 Accused No. 2 posted photographs of himself and Accused No. 1 on social media, under the caption of Fast Guns and making the Fast Guns sign (Exhibit 'L').

[187] It was conceded in the heads of argument filed on behalf of Accused No. 1 that should the court accept the State's evidence, then accused No.1 is guilty and falls to be convicted on Count 1.

[188] In light of the court's findings below, it is accordingly not necessary to deal with this count in respect of Accused No. 1 any further, as he has conceded Count 1 and will be convicted and found guilty of a contravention of section 9(2)(a) read with sections

1,10 and 11 of the Prevention of Organised Crimes Act 121 of 1998 in that in December 2019 at or near Lavender Hill he unlawfully and intentionally performed acts aimed at causing, bringing about, promoting or contributing towards a pattern of criminal gang activity as set out in counts 4 to 18 hereunder, excluding counts 4 and 10.

[189] Mr. C Nel did not present any argument on behalf of Accused No. 2 in relation to Count 1. This is unsurprising, as on a conspectus of the evidence it has been shown, beyond reasonable doubt, that in December 2019 both of the accused were members of the Fast Guns gang or of a criminal gang operating in the area of Lavender Hill, as defined in section 1 of POCA, which was engaged in criminal activity in the area at the time.

[190] The evidence against Accused No. 2 is even more damning. He has a tattoo of an 'F' on his right foot for 'Fast', and 'G' on his left foot meaning 'Guns', which according to the evidence of Sgt Neti, denotes his membership of the Fast Guns gang. He has an alias, 'Water', and brazenly posted profile photos to his Facebook profile using his alias and making the sign of the Fast Guns gang whilst he was behind bars at Pollsmoor prison facing charges which included gang-related charges.

[192] In his evidence Accused No. 2 admits that he moved with Dickson, who he confirmed was a member of the Fast Guns. His testimony that he is not a member of the Fast Guns is demonstrably false and can be rejected without further ado.

[193] It is clear from the evidence placed before the court, which could not be challenged by the accused, that both accused acted in concert at the behest of the Fast Guns gang, with the clear intention of shooting members of the Mongrel gang.

[194] The court is therefore satisfied that the state has discharged the onus of proving that both accused are guilty of the contravention of section 9(2)(a) of POCA (Count 1).

**i. Count 2 (Murder) and Counts 3 to 13 Attempted Murder)**

[195] After considering the evidence of Mr K[...] that Mr. Elroy Boesak left 3[...] Drury Court before the shooting started, the State conceded count 10.

[196] The State contended that Accused No.1 and No. 2 had direct intent to kill Mr. Kok (Count 3), Ms. Stevens (Count 5) and Ms. Barnes (Count 7).

[197] The State relied on intention in the form of *dolus eventualis* in respect of the murder of V[...] G[...] (Count 2) and the attempted murder of Ms. G[...] (Count 4), Ms. Daniels (Count 6), Ms. Joseph (Count 8), Mr. Strydom (Count 9), Mr. Baars (Count 11), Mr. K[...] (Count 12) and Mr. Wentzel (Count 13).

[198] Both accused deny any involvement in the fateful shooting which took place at 3[...] Drury Court at approximately 14h15 on 21 December 2019. They give a wholly different account of the events of that afternoon in the answers provided in their warning statement. Whilst these statements do not constitute admissions, they do show that the accused both made prior statements which are in several material respects at odds with the evidence which they gave in court and the versions which were put to the various state witnesses on their behalf. This is just one of many factors which detrimentally impact the credibility of the accused.

[199] Mr. K[...], who witnessed both accused shooting into the yard and the house at 3[...] Drury Court was a good witness. He identified both the accused as the shooters on the day in question. He had ample opportunity to observe them both. It was broad daylight. More importantly, they are both known to him. In the case of Accused No. 1, he had known him since their school days. They played soccer together as children.

[200] Mr. K[...] testified that he saw Accused No. 1 running towards him as he was returning from the shop. He suspected that there would be a shooting and at great risk to himself, he ran to warn the people inside 3[...] Drury Court. Accused No. 1 approached the gate and peered into the yard. He would have seen there were several people in the yard and on the property, including young children such as the deceased.



After he closed the gate, Mr. K[...] was grabbed by Accused No. 1. He ran down E[...] Rd, and when he turned back, he saw Accused No. 1 enter the yard and start shooting.

[201] Mr. K[...] then observed Accused No. 1 running towards the shop, where he met Accused No. 2 and appeared to hand an object over to him. He witnessed Accused No. 2 moving towards Drury Court and shooting into the yard of Number 3[...]. Thereafter he ran back towards the shop and Accused No. 1 and 2 fled the scene together.

[202] The other eyewitnesses to the first round of shooting, Ms. Barnes and Ms. Stevens, both identified Accused No. 1. They testified that they looked out of the window, which was diagonally above the back entrance to 3[...] Drury Court and had a clear and unimpeded view of where the shooting took place. They both shouted swear words at Accused No. 1, using his alias of 'Naruto'. They not only identified him, as it was clear from their evidence that they recognised Accused No. 1 who they had extensive prior knowledge of. It was not disputed by either of the accused that these witnesses had known them for a long time. They were easily recognisable to them.

[203] After Ms. Barnes and Ms. Stevens shouted at Accused No. 1, he looked up at them and fired a single shot aimed directly at the window which they were looking out of. They retreated and went to check on their loved ones in the Court. Ms. Stevens testified that whilst she was on her way to find her mother, she heard a further succession of shots ring out.

[204] It is not disputed that one of the Mongrel gang members, Mr. Kok was shot and wounded. According to the evidence presented, he subsequently passed away, however his death was unrelated to the injuries which he sustained on 21 December 2019.

[205] It is furthermore not disputed that V[...] G[...] was shot and killed during the incident.

[206] It is not in dispute that of Ms. G[...] (Count 4), Ms. Daniels (Count 6), Ms. Joseph (Count 8), Mr. Strydom (Count 9), Mr. Baars (Count 11), Mr. K[...] (Count 12) and Mr. Wentzel (Count 13) were all present at the crime scene.

[207] However, it emerged from the evidence of Ms. G[...] that at the time of the shooting she was in the kitchen with her newborn baby, E[...], when she first heard the shots. She went to hide and only emerged to seek out her children after the shooting had stopped. In the circumstances I am not satisfied that it has been shown, beyond a reasonable doubt that the accused attempted to kill her, as she was not in yard or the vicinity of the shooting during the first or the second rounds of shooting.

[208] On a conspectus of the evidence I am satisfied that the identification and recognition of Accused No.1 by Mr. K[...], Ms. Barnes and Ms. Stevens is credible and reliable.

[209] Mr. K[...] was a single witness in respect of the identification of Accused No. 2. His evidence must therefore satisfy the cautionary rule in terms of section 208 of the CPA. A court can only convict an accused based on the evidence of a single witness if the evidence is clear and satisfactory in all material respects and there is no untoward bias.

[210] Arising from the foregoing I treated the evidence of Mr K[...] insofar as it pertains to the identification of Accused No. 2 as the second shooter with due caution.

[211] Mr. K[...]’s evidence in this regard was clear, consistent and reliable in all material respects. There was no suggestion that he held any bias against Accused No. 2. I accordingly accept such evidence.

[212] The various versions given by the accused regarding their actions on the day of the incident are contradictory, riddled with inconsistencies and when viewed against the proven facts and inherent probabilities can be rejected as implausible and palpably false.

[213] Taking into account the relevant legal principles set out above, I am satisfied that on a conspectus the evidence as a whole, both accused subjectively foresaw the possibility that in striving to shoot and kill the rival gang members belonging to the Mongrel gang in the yard at 3[...] Drury Court, they may injure or kill innocent bystanders, including children, that they reconciled themselves with this possibility and nonetheless proceeded with their nefarious and murderous course of action.

[214] This was not a case of an 'aimless shooting', as contended on behalf of Accused No. 1. Both accused went to 3[...] Drury Court with the specific intention of 'killing Mongrels'. Their actions were premeditated and goal directed.

[215] Both accused No. 1 and 2. would have seen the people in the yard before they commenced shooting. They subjectively foresaw that the shots fired may hit people other than their intended targets, including innocent women and children.

[216] Insofar as the defence counsel suggests that due to the location of the spent cartridges, the shooting did not only take place in the yard, this also does not advance the case for the accused. Not less than two shots were fired. One of those shots hit the deceased on the back of his head, killing him instantly. The other hit and wounded Mr. Kok.

[217] The accused were both very poor witnesses. As but one example of the numerous contradictions in their evidence, Accused No. 1 initially claimed that Shane Williams could corroborate that he was with him and not involved in the shooting. He later changed his version to say that it was Mishani Williams. At the last time and in the short time period of one day the investigating officer managed to locate Mishani Williams, who Accused No. 1 believed could corroborate his version, and yet at the end of the day he decided not to call him as a witness. There was no suggestion that he was unavailable or unwilling to testify. This speaks volumes about the plausibility of the evidence placed before the court by the accused.

[218] As contended by the State the accused cannot dispute that the shooters acted with common purpose as they alleged that they were not the shooters.

[219] On a conspectus of all the evidence, and considering all the proved facts cumulatively, I find that the only reasonable inference which can be drawn from the proved facts is that the accused acted in concert and that the doctrine of common purpose therefore finds application.

[220] On consideration of the different versions placed before the court, I am firmly of the view that neither of the accused's versions are reasonably possibly true. The versions they gave are demonstrably false and fall to be rejected.

[221] I find that both accused acted with intention, in the form of *dolus eventualis*, when they killed V[...] G[...] and attempted to kill Ms. Daniels (Count 6), Ms. Joseph (Count 8), Mr. Strydom (Count 9), Mr. Baars (Count 11), Mr. K[...] (Count 12) and Mr. Wentzel (Count 13), and with *dolus directus* when they attempted to kill Mr. Kok, Ms. Stevens and Ms. Barnes and are therefore found guilty on all of these counts.

[223] The court is therefore satisfied that the State has discharged the onus of proving that both accused are guilty of Counts 2, 3, 5, 6, 7, 8, 9, 11, 12 and 13.

#### **v. Possession of a firearm and ammunition**

[224] It is not disputed that firearms and ammunition were used during the commission of the offences on 21 December 2019. This was confirmed by the testimony of W/O Meiring, whose reports were handed in as Exhibits 'N', 'O' and 'P'.

[225] As I have found that the accused were indeed the shooters, this puts the firearms and ammunition in their hands. They admitted that they never had a licence to possess firearms or ammunition and are accordingly guilty and liable to be convicted on counts 14 and 15.

[226] The State relied on the doctrine of joint possession in an attempt to prove that the accused possessed each other's firearms as well during the commission of the offences.

[227] Having considered the requirements for joint possession as set out in greater detail above, I am not satisfied on the evidence placed before me that the State has shown beyond a reasonable doubt that the accused jointly possessed the firearms or ammunition as per counts 16 and 17. The accused are therefore found to be not guilty on these two counts.

### **ORDER**

[228] For all the reasons set out above, I find the accused, Carlo Hofmeester and Chadwin Isaacs:

- 228.1 Guilty of count one, the contravention of section 9(2)(a) of Act 121 of 1998.
- 228.2 Guilty of count two, the murder of V[...] G[...].
- 228.3 Guilty of count three, the attempted murder of Wesley Kok.
- 228.4 Not guilty of count four, the attempted murder of R[...] G[...].
- 228.5 Guilty of count five, the attempted murder of Olivia Stevens.
- 228.6 Guilty of count six, the attempted murder of Natasha Daniels.
- 228.7 Guilty of count seven, the attempted murder of Leticia Barnes.
- 228.8 Guilty of count eight, the attempted murder of Crystal Joseph.

- 228.9 Guilty of count nine, the attempted murder of Derrick Strydom.
- 228.10 Not guilty of count ten, the attempted murder of Elroy Boesak as conceded by the State.
- 228.11 Guilty of count eleven, the attempted murder of Gershwin Baars.
- 228.12 Guilty of count twelve, the attempted murder of B[...] K[...].
- 228.13 Guilty of count thirteen, the attempted murder of Dillon Wentzel.
- 228.14 Guilty of count fourteen, the unlawful possession of a firearm, as charged.
- 228.15 Guilty of count fifteen, the unlawful possession of ammunition. as charged.
- 228.16 Not guilty of count sixteen, the possession of a firearm, as charged.
- 228.15 Not guilty of count seventeen, the possession of ammunition, as charged.

[229] Both Accused No. 1 and No. 2 are duly convicted of counts one, two, three, five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, and fifteen, and are acquitted on counts four and ten.

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**HOLDERNESS, J**  
**JUDGE OF THE HIGH COURT**  
**WESTERN CAPE DIVISION**

**Appearances:**

**For the State:** Adv L Snyman

**For Accused 1:** Adv PW Nel

**For Accused 2:** Adv CM Nel