

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL CASE NO. 135/2004

In the matter between:

REX

and

- 1. TSOTSO ZIKALALA**
- 2. MANDLA KHANYA**
- 3. NKOSINATSI MCANYANA MAHLINZA**
- 4. ISHMAEL MSHENGU MABUZA**
- 5. SIPHO GUMEDZE**
- 6. NOMPUMELELO VILANE**
- 7. BHEKI SHONGWE**
- 8. MAKHENZI NXUMALO**

CORAM Q.M.

MABUZA -J

FOR THE CROWN

MRS. MUMCY DLAMINI

FOR 1st, 2nd, 3rd & 4th ACCUSED

MR. M. MABILA

FOR THE 5th AND 6th ACCUSED

MR. B.J. SIMELANE

FOR THE 7th ACCUSED

MR. S. MAGONGO

RULING 16/06/09

[1] The Crown has closed its case and an application for their discharge in terms of section 174 of the Criminal Procedure and Evidence Act no. 67/1938 has been made on behalf of the of the accused persons. This is my ruling. The Accused persons have been charged with a total of 16 counts duly amended to which they pleaded not guilty. Their counsel confirmed their pleas. During the course of the trial Accused No. 6 was acquitted and discharged.

Accused No. 1 and 4 are guilty of the crime of ROBBERY: in that upon or about 15th of July, 2004 at or near Mankayane area in the region of Manzini, the said accused persons each or all of them acting in furtherance of a common purpose did unlawfully and with the intention of inducing submission by AARON KHUMALO to the

Count 1

taking by accused persons of the sum of E20,550.00 (Twenty thousand five hundred and fifty Emalangenij, threatened the said AARON KHUMALO that, unless he consented to the taking by accused persons of the said property or refrained from offering any resistance to them in taking the said property, they would then and there shoot him, and did then and thereupon take and steal from the said AARON KHUMALO the said property, which was the property of AARON KHUMALO or in his lawful possession, and did rob him of the same.

COUNT 2

Accused No. 1 and 4 are guilty of the crime of ROBBERY: in that upon or about 16th of July, 2004 at or near Ngwenya area in the region of Hhohho, the said accused persons each or all of them acting in furtherance of a common purpose did unlawfully and with the intention of inducing submission by ANGEL XIE to the taking by accused persons of the sum of E172,752.00 (One hundred and seventy two thousand seven hundred and fifty two Emalangenji) and TCL Cellular phone valued E2 500.00 and Nokia 2100 at E1,000.00 threatened the said ANGEL XIE that, unless she consented to the taking by accused persons of the said property or refrained from offering any resistance to them in taking the said property, they would then and there shoot her, and did then and thereupon take and steal from the said ANGEL XIE the said property, which was the property of ANGEL XIE or in her lawful possession, and did rob her of the same.

COUNT 3

Accused No. 1, 4, and 5 are guilty of the crime of ROBBERY, in that upon or about 23rd July, 2004 at or near Matsapha in the region of Manzini the said accused persons each or all of them acting in

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furtherance of a common purpose did unlawfully and with the intention of inducing submission by DEXTER FONSEKA and or Nomsa Nkambule to the taking by accused persons of the sum of E500,000.00, (Five hundred thousand Emalangi) threatened the said DEXTER FONSEKA and or Nomsa Nkambule, that, unless they consented to the taking by accused persons of the said property or refrained from offering any resistance to them in taking the said property, they would then and there shoot them, and did then and thereupon take and steal from the said DEXTER FONSEKA and or Nomsa Nkambule the said property, which was the property of DEXTER FONSEKA and or Nomsa Nkambule or in their lawful possession, and did rob them of the same.

COUNT 4

Accused No. 1, 2 and 4 are guilty of the crime of ROBBERY: in that upon or about 9th of August, 2004 at or near Lobamba area in the region of Hhohho, the said accused persons each or all of them acting in furtherance of a common purpose did unlawfully and with the intention of inducing submission by NATHI TSELA to the taking by accused persons of the sum of E36,428.45 (Thirty six thousand, four hundred and twenty eight Emalangi forty five cents), Nokia 7650 cell phone valued at E7,400.00, Nokia 5310 valued at E900.00 and MTN of total value of E4,888.00 threatened the said NATHI TSELA that, unless he consented to the taking by accused persons of the said property or refrained from offering any resistance to them in taking the said property, they would then and there shoot him, and did then and thereupon take and steal from the said NATHI TSELA the said property, which was the property of NATHI TSELA or in his lawful possession, and did rob him of the same.

COUNT 5

Count 1

Accused No. 1 is guilty of the crime of THEFT: in that upon or about 12th of August, 2004 at or near Zulwini area in the region of Hhohho, the said accused person did unlawfully and intentionally steal MTN airtime cards of total value of E900.00 (Nine hundred Emalangeni) from ERIC MOTSA the property of, or in his lawful possession.

COUNT 6

Accused No. 1, 2, 3, 4, 5 and 7 are guilty of the crime of ROBBERY: in that upon or about 25th September, 2004 at or near Siteki area in the region of Lubombo the said accused persons each or all of them acting in furtherance of a common purpose did unlawfully and with the intention of inducing submission by PHINDILE BONISILE DLAMINI to the taking by accused persons of the sum of E2,000,000-00 (Two million Emalangeni) threatened the said PHINDILE BONISILE DLAMINI that, unless she consented to the taking by accused persons of the said property or refrained from offering any resistance to them in taking the said property, they would then and there shoot her, and did then and thereupon take and steal from the said PHINDILE BONISILE DLAMINI the said property, which was the property of PHINDILE BONISILE DLAMINI or in her lawful possession, and did rob her of the same.

COUNT 7

Accused No. 5 and 6 are guilty of the contravening section 14 (1) read with section 14 (2) of the Arms and Ammunition Act No. 24 of 1964 as amended: in that upon or about 17th August, 2004 at or near Kwaluseni area in the region of Manzini the said accused persons each or both of them acting jointly in furtherance of a common purpose did unlawfully possess a MP5 Automatic rifle, an arm of war serial number 28726 without a valid licence or permit to possess an arm of war and did thereby contravene the said Act.

Count 1

COUNT 8

Accused No. 5 and 6 are guilty of contravening section 11 (1) read with section 11 (8) of the Arms and Ammunition Act No. 24 of 1964 as amended.

In that upon or about 17th August 2004 at or near Kwaluseni area in the region of, Manzini the said accused persons each or both of them acting jointly in furtherance of a common purpose did unlawfully possess a 9 mm star pistol serial number B44008 without a valid licence or permit to possess such a firearm and did thereby contravene the said Act.

COUNT 9

Accused No. 5 and 6 are guilty of contravening section 11 (2) read with section 11 (8) of the Arms and Ammunition Act No. 24 of 1964 as amended: in that upon or about 17th August 2004 at or near Kwaluseni area in the region of Manzini the said accused persons each or both of them acting jointly in furtherance of a common purpose did unlawfully possess 10 live rounds of ammunition of a 9 mm calibre without a valid licence or permit to possess a 9 mm firearm and did thereby contravene the said Act.

COUNT 10

Accused No. 4 is guilty of contravening section 11 (1) read with section 11 (8) of the Arms and Ammunition Act No. 24 of 1964 as amended: in that upon or about 8th October 2004 at or near Nkungwini area in the region of Shiselweni the said accused person did unlawfully possess a 9mm lugar pistol with no serial number without a valid licence or permit to possess such a firearm and did thereby contravene the said Act.

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COUNT 11

Accused No. 4 is guilty of contravening section 11 (1) read with section 11 (8) of the Arms and Ammunition Act No. 24 of 1964 as amended: in that upon or about 8th October 2004 at or near Nkungwini area in the region of Shiselweni the said accused did unlawfully possess 10 live rounds of ammunition of a 9mm calibre without a valid licence or permit to possess a 9mm firearm and did thereby contravene the said Act.

COUNT 12

Accused No. 4 is guilty of the contravening section 11 (2) read with section 11 (8) of the Arms and Ammunition Act No. 24 of 1964 as amended.

In that upon or about 8th October 2004 at or near Nkungwini area in the region of Shiselweni the said accused person did unlawfully possess a 9mm star pistol with no serial number without a valid licence or permit to possess such a firearm and did thereby contravene the said Act.

COUNT 13

Accused number 4 is guilty of contravening section 11 (2) read with section 11 (8) of the arms and ammunition act number 24 of 1964 as amended in that upon or about 8th October, 2004 at or near Enkungwini area the region of Shiselweni the said accused person did unlawfully possess 4 live rounds of ammunition of a 9 mm calibre without a valid licence or permit to possess a 9mm firearm and did thereby contravene the said act.

COUNT 14

Accused number 5 is guilty of defeating or obstructing the cause of justice in that on or about 25th September, 2004 at or near

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Mgubudla area in the region of Manzini disposed of a motor vehicle, Corsa Sedan which was an instrumentality of a Robbery offence under Count 6.

COUNT 15

Accused number 1,2,3 and 4 are guilty of the Crime of Theft in that upon or about 7th August, 2004 at or near Silverton in South Africa the said accused persons each or all of them acting in common purpose did unlawfully and intentionally steal a motor vehicle Opel Corsa registration FDZ 719NW valued at E150,000.00 the property of A. Van Niekerk or in his lawful possession.

COUNT 16

Accused number 1 is guilty of the charge of kidnapping in that upon or about 23rd July, 2004 at or near Matsapa area in the region of Manzini the said accused did unlawfully take and carry away Dexter Fonseca a male adult with intent thereby to deprive the said Dexter Fonseca his liberty by disposing him away.

[2] Count 1 : Robbery at Mankayane Filling Station

In this count Accused 1 and 4 were charged with the crime of Robbery, it being alleged that on the 15th July, 2004 at Mankayane, they in furtherance of a common purpose unlawfully threatened to shoot Aaron Khumalo thereby inducing him to submit, robbed him of the sum of E20,550.00 (Twenty thousand five hundred and fifty Emalangenani only) Testifying in respect of this count was Mbuyiseni Magongweni Nkambule (PW2) an accomplice witness. He testified that he was employed by the Roads Department at Mankayane. On a Thursday during July 2004 at about 10.00 p.m. accused 4 driving in a white 1400

Count 1

Nissan came to him to ask when the Mankayane Filling Station closed. He informed him that it closed between 7.30 p.m. - 8.00 p.m. Accused 4 further enquired whether or not the security guard carried a firearm but PW2 did not know. All he knew was that he was armed with a knob stick. Accused 4 further informed PW2 that he wished to rob the filling station that day.

[3] On the following day at about 8.00 a.m., Accused 4 telephoned him to find out whether or not he had heard about a robbery that had occurred the previous night at the filling station to which he responded negatively. Accused 4 requested that they meet at Malkerns. Accused 4 arrived driving a 1400 Nissan and gave him E700.00 requesting him not to inform the police that he (Accused 4) had robbed the filling station. He agreed. Accused 4 further informed him that the robbery had taken place at the filling station the previous evening which was Thursday at about 8.00 p.m. The amount taken was E8,000.00. PW2 informed the court that he had a cousin who was a witchdoctor whom accused 4 consulted frequently for muti. PW2 knew accused 4 through this witchdoctor. He identified accused 4 in the dock.

[4] Mr. Mabila in cross-examination of this witness stated that accused 4 did not own a mobile phone nor did he drive or own a Nissan 1400. The witness denied this. Mr. Mabila revealed that accused 4 sold motor vehicles as an occupation and the witness

Count 1

concluded. It was put to the witness that accused 4 did not commit the robbery at Mankayane and that the E700.00 he had been given by accused 4 was money owed to the witchdoctor. The witness maintained his story that the money was given to him so that he would not reveal that accused 4 was involved in the robbery.

[5] PW3, Aaron Khumalo was employed at the filling station at Mankayane as a manager. He testified that while he was at work on the 15th July 2004 at about 8.00 p.m. accused 1 came to the filling station called him by name and pointed a firearm at him. He demanded the safe keys. The lights were on. Accused 1 was described as tall and bright. After the third demand PW3, handed the keys over for fear that he would be killed. Accused 1 ordered him to lie down which he did. Accused 1 opened the safe and took a bag containing money. Before leaving Accused 1 locked the witness up together with three others in the office. The amount Accused 1 stole amounted to E20,550.00. PW3 saw Accused 1 when he entered the office. He identified Accused 1 in court. Mr.

Mabila introduced an alibi defence that Accused 1 was in Mbabane at the time of the commission of the robbery. The witness placed Accused 1 squarely at the filling station.

[6] I am satisfied that Accused 1 was at the filling station at Mankayane and that he made away with the amount of E20,550.00. PW3 testified that as manager his duties involved

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collecting the day's takings from the petrol attendants. He saw Accused 1 when he entered the shop and called his name. The identification in court was merely a subsequent confirmation of the earlier one. Accused 4 was implicated by PW3, whom he bribed with E700.00 to prevent PW3 from informing the police.

[7] PW41 Sanele Dlodlu an accomplice witness testified that on the 15th July 2004 he visited PW42, Peter Nkambule at his home at Esitjeni where he found Accused 1, 4 and Makhenzi. They were in a white 1400 motor vehicle which was idling ready to go. The time was about 6 p.m. or after. Accused 4 informed PW41 that they were going somewhere and that he should remain behind and PW42 would explain things to him. They returned later on carrying a white bank bag which contained money. The money was shared among them including this witness. They received E2,000.00 each. Accused 1 explained that they had robbed a filling station at Mankayane where they had threatened someone named Desmond. There was a Nokia cell phone.

[8] After sharing the money accused 4 asked each of them to contribute some money to enable him to pay the finger man who had supplied inside information at the filling station. They each contributed E100.00 except Accused 4 who said he would contribute E500.00.

[9] PW42 testified that he had met with Accused 1, 4 and Makhenzi on the 15/07/2004 at his house at Esitjeni. They discussed the execution of a robbery at Mankayane filling

Count 1

station. The idea had come with Accused 4. Accused 4 informed them he knew someone who worked at the filling station with whom he had already spoken. It was decided that Accused 1, 4 and Makhenzi should carry out the robbery. PW41 arrived before the three men left for Mankayane. It was decided that this witness would inform PW41 as to what was happening. The three left at about 6 p.m. using a white 1400 van which belonged to accused 4. At about 7 p.m. Accused 1 telephoned Makhenzi that they had succeeded in robbing the filling station. Thirty minutes later the three men returned carrying a bag containing money. The money was shared between Accused 1, 4, Makhenzi, PW41 and PW42. They kept E900.00 aside for the finger man. Makhenzi showed them a Nokia 3310 cell phone which he had stolen from the filling station. Accused 4 stated that he would return it as he suspected that it belonged to the finger man. PW42's share amounted to E3,000.00.

[10] Mr. Mabila cross-examined PW42 about the robbery at Mankayane. This witness re-iterated that he did not take part in the robbery at the filling station at Mankayane nor did he witness it nor did he see who took part in it. He recalled that Accused 1, Accused 4 and Makhenzi came back to his house after 7.00 p.m. after the robbery had been committed. It was put to him that it was Makhenzi who had planned the robbery and Accused 1 and Accused 4 listened in on the planning but did not carry it out. His response was that he could not deny this as he did not know how it started as he was not present. He confirmed that after the robbery Makhenzi telephoned him to say that it had been

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successful. Makhenzi did not tell him who was with him. He agreed that it was Makhenzi who was carrying the money bag when they arrived at his home. It was put to the witness that he could not deny that when Makhenzi left for Mankayane he dropped off Accused 1 and Accused 4 at

Malkerns where they were to meet Sicelo Shongwe and picked them up after 7.00 p.m. when he returned from Mankayane. His response was that he could not deny this as he was not present. It was put to him that Accused 4 reminded Makhenzi when the money was being shared to remember to put aside money for the informant as Makhenzi had told him of this after picking them up at Malkerns. It was Accused 4 who said that the cell phone should not be disposed of as it probably belonged to the informant. Notwithstanding PW4 2's responses to the cross-examination, I am satisfied that both accused 1 and accused 4 have a case to answer in respect of Count one.

Count 2: Robbery at Orion Sun, Ngwenya

[11] In this count, Accused 1 and 4 were charged with the crime of robbery it being alleged that on the 16th July 2004 at Ngwenya, they in furtherance of a common purpose unlawfully threatened to shoot Angel Xie thereby inducing her to submit and robbed her of the sum of E172,752.00 (One hundred and seventy two thousand seven hundred and fifty two Emalangeneni only), a TCL cellular phone valued at E2500.00 (two thousand five hundred Emalangeneni only)

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and a Nokia 2100 valued at E1,000.00 (one thousand Emalangeneni only).

[12] Sophie Dlamini (PW4) testified that she was employed at Orion Sun, a factory at Ngwenya which sews garments. She worked with the complainant Angel Xie. On the 16th July 2004 which was a Friday, she went to work as usual. At about 11.00 a.m. while she was talking on her mobile phone a man came into her office and said: "**we are here, we have arrived**". When she looked at him he was carrying a gun and instructed them to lie down. She was with two others; a cleaner and Angel Xie. The assailant spoke first in Siswati and when he commanded them to lie down, he spoke in English. The assailant wanted to know who Angel was and Emily the cleaner pointed her out after crying out why they were beating her.

[13] The assailant proceeded to beat Angel demanding the whereabouts of **the** money. At first Angel responded that she did not have the money but ultimately she handed the keys over. The assailants opened the cabinet where the money was kept. They asked for more money but Angel replied that there was no more money. They asked for car keys but nobody responded. The assailants left. Some colleagues to PW4 opened the door for them and telephoned the police. She did not see her assailant and could not identify him. She described the gun he was carrying as a long one. It had a magazine at its base and it

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was black. She indicated that the size of the gun was similar to the black gun before court.

PW4 was cross-examined about the gun and she admitted that she did not see the serial number.

[14] Dumisane Shongwe (PW5) testified that he was employed by the Water Services Corporation at Mbabane. His wife was employed at Orient Sun at Ngwenya. On the 16th July 2004 he went to fetch his wife from work to assist him in a family crisis that had arisen at the school where their son attended school. When he arrived at his wife's work place he entered the premises and parked his motor vehicle facing the exit. Upon arrival he noticed three well dressed men wearing hats standing within the premises but apart from one another. They were also wearing jackets as it was cold. PW5 alighted from his motor vehicle and went to a security guard who was about 10 metres away to request him to call his wife. The wife arrived and he told her why he had come to fetch her. She returned to the factory presumably to inform her superiors. While on her way back to the factory one of the men got up and spoke to the security guard and asked him to take him to his wife Zodwa Dlamini. While the security guard was responding that it would be difficult to locate Zodwa Dlamini, the assailant entered the gate and produced a gun. The other two men produced firearms and one pointed it at the witness. The assailant commanded this witness not to look at him and advised him that he would

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only see his wife after they had completed their mission which was to collect money.

[15] The two men went through the gate to the office while pointing a gun at the security guard and the third man took this witness and another security guard to the guard house where he ordered them to lay down. After a short while he ordered them to go and join the others at the office. When they arrived at the office they found others lying down and joined them. The three assailants were moving around shouting and demanding money. After they had been directed to where the money was they took it and left locking their victims in the office. They were let out by fellow workers. The police were called and the victims recorded statements after which this witness and his wife left. Later the police called him to identify one of the assailants. Crown Counsel called upon him to identify the assailant among the accused persons but he was not there. This witness also stated that the assailants carried a revolver and a big gun which he stated was similar to one in court.

[16] When cross-examined by Mr. Mabila this witness admitted that he did not know the serial numbers of the firearms. He revealed that his assailant was tall slender and light in complexion. In re-examination he revealed that his assailant could have been about 1.76 metres tall and that he was not familiar with firearms hence his ignorance with regard to serial numbers.

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[17] Sanele J. Dlodlu, PW41 an accomplice witness testified that PW33, PW42, Makhenzi accused 1 and 4 were his friends. That on the 15/7/2004 he was invited to Swaziland by PW42. At the time he lived in Nelspruit. PW42 and some friends wished to commit a robbery at Orion, a garment factory at Ngwenya that Friday. This witness stated that the idea to rob Orion had come with him. One day on his way to Nelspruit he had given a lift to a certain young woman who informed him that she was employed at a certain factory at Ngwenya. He had asked this young lady when they got paid and she had informed him. When he arrived at his home at Esitjeni he found PW 42, Makhenzi, accused 1 and accused 4. He asked them if they knew of a factory at Ngwenya as he had known the old one known as Beral. Accused 4 offered to obtain more information about the factory as he knew someone who lived in that area. It was further arranged that this witness would go and see the factory with accused 1 and a certain Vika Dlamini. They arranged a date which the witness could not recall. They went and saw the factory. This witness telephoned the young woman to whom he had given a lift and pretended to propose love to her. He did so to divert her attention from what he and his friends were doing. They gave the young woman a lift and she alighted at Motshane and he and his friends returned to Esitjeni to PW 42's home. Before the young woman had alighted she had given this witness and his friends all the information relating to the days on which the staff at the factory were paid. The factory was called Orion Sun.

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[18] During a telephone conversation accused 4 advised him that he had found an informant who had advised him that the money at Orion Sun was usually transported in a colt double cam or caravel. This witness left for South Africa and advised his friends that he would return during pay day at Orion Sun. He returned on the 15/7/2004 and went to PW42's house at Esitjeni. He found accused 1, 4 and Makhenzi about to leave for Mankayane. He left after they had returned after arranging to meet on the following day on their way to rob Orion Sun.

[19] It had been decided that Vika Dlamini be excluded from this heist as his dreadlocked hairstyle would easily give them away. The following morning at about 8.00 a.m. accused 1 arrived. This witness, accused 1, accused 4 and Makhenzi left for Orion Sun. They were armed. Accused 1 was carrying a big firearm called an uzzie, PW 42 carried a 9mm pistol and this witness carried a 9mm pistol. Each person was assigned a certain function. Their plan was to wait at the gate for the motor vehicle carrying the money. Accused 1 was detailed to point his firearm at the driver and if the driver tried to drive off, he was to shoot at the tyres of the motor vehicle. This witness was detailed to check if there was any passenger and to hurriedly take the money. Accused 4 was detailed to drive the getaway motor vehicle which was the white 1400. Makhenzi was detailed to remain in the motor vehicle with accused 4 as the group suspected that he was known in the area and would be

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easily recognised. He had lived at Msunduza location in Mbabane for a long time and some people who lived at Msunduza were employed at Orion Sun and would recognise him. PW 42 was detailed to scare off anyone who approached including the security guard.

[20] They left Esitjeni and proceeded to Ngwenya travelling in the white 1400 with accused 4 driving. On arrival at Ngwenya they went via an overhead bridge and did not go direct to Orion Sun. When they arrived at the bus shelter near where Parsons trucks park, PW42, accused 1 and the witness alighted. Makhenzi and accused 4 drove on to the bus shelter next to Orion Sun. Accused 1, PW42 and this witness walked towards the bus shelter where accused 4 was parked and stood a short distance away. A woman came out of the factory and went to accused 4 and Makhenzi and talked with them. Makhenzi alighted from the motor vehicle and walked towards this witness and his friends. Meanwhile accused 4 drove off. Makhenzi advised this witness and his friends that the woman was feeling indisposed and had requested accused 4 to drive her to the hospital. Accused 4 telephoned Makhenzi. Accused 4 returned and advised this witness and his friends to board the motor vehicle as he had good news for them. They did so and drove towards Oshoek and parked behind a certain bottle store. He informed this witness and his friends that the woman to whom he had spoken had informed him that the money was already inside the factory office having been brought the day before.

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[21] He had enquired from her how they would identify the office and she had responded that there was a dog at the door tied to a long rope. They should go straight to the door on the left and inside they would find some Chinese and that the one called Angel keeps the keys to where the money is kept. The witness and his friends drove back to Orion Sun. Accused 4 parked the motor vehicle near the bus shelter and remained with Makhenzi while PW42, accused 1 and this witness proceeded to the factory. Upon arrival at the gate this witness called the security guard but he paid no attention and did not respond. Shortly thereafter a bantam motor vehicle stopped near the gate and PW5 (Dumsane Shongwe) alighted and called to this security guard who responded. PW5 informed the security guard that he had come to fetch his wife who was employed in the factory. Their son had taken ill. This witness was within earshot and overheard them. The security guard went to call the wife. When he returned he opened the padlock to the gate and let her out to talk to her husband. She returned to the factory and the security guard asked this witness what he wanted.

[22] It was then that this witness produced a firearm from his waistband, grabbed the security guard by his shirt front and informed him that they should go to the office. The security guard opened the gate and this witness grabbed him using his left arm after he had breached the gate and pointed it at the security guard. Accused 1 who had been behind this witness stood up, produced a gun from a bag which had been slung over his shoulder and went to PW5 (Dumsane Shongwe) and pointed

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the gun at him, asking him to join them. This witness and his friends went through the gate to the guard house. PW42 and accused 1 instructed this witness to remain behind and guard the security guard and PW5 and when PW5 returned they were to join them in the office. This witness ordered the security guard and PW5 to follow suit as the wife to PW5 was taking too long to return. When this witness entered the office he found PW42, accused 1 and Makhenzi assaulting the Chinese lady and asking where the money was. A Swazi lady responded that the keys are kept by the Chinese woman when they are not with her. She pointed to a drawer. PW42 opened the drawer where he found the keys. He was shown a shelf which he opened and found the money.

[23] The money had already been packed into envelopes for wages. PW42 took them and put them in the bag which had carried the Uzzi. The witness and his friends asked for more money and were showed money that was not in envelopes. They took it and left instructing the staff not to leave the office. The bag in which the money was placed was carried by accused 1. From the office the witness and his friends went to their motor vehicle and left towards the Mbabane direction. They entered the Checkers direction and went via the High Court and joined the Mbabane-Manzini public road at the junction at Mangwaneni. They avoided going through the city as they feared the police whom they had passed near Nkoyoyo on their way to Orion Sun. They returned to Esitjeni. When they arrived at Esitjeni they opened the envelopes took out the money and mixed it with the

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money that was not in envelopes and shared it. This witness shared out the money. He shared it out in bundles of E1,000.00 amongst himself, Makhenzi, accused 1 accused 4 and PW42. His share amounted to approximately E30,000.00 to E31,000.00. He does not know how much the others got as they did not ask one another. However he gave PW42 and accused 1 more while he was sharing the money.

[24] He stated that they had hidden some money from accused 4 and Makhenzi. PW42, accused 1 and this witness had previously decided to hide some money from accused 4 and Makhenzi as the latter were not used to large sums of money. When they arrived at the house and alighted from the motor vehicle this witness delayed accused 4 and Makhenzi from entering the house. This was a ruse designed to enable accused 1 to take some envelopes containing money and hide them. After sharing the money accused 4 and Makhenzi were asked to leave in order to avoid suspicion as there were too many people in PW42's home. This witness states that they also wished to be left alone so that they could share the money that they had hidden. After sharing the money, PW42 telephoned a friend of his called Jakes to come and fetch him, accused 1 and this witness. PW42 and this witness were returning to Nelspruit.

[25] While waiting for their transport, they burnt the empty envelopes and other incriminating documents. It was then that PW42 revealed that he had also taken some cell phones from Orion Sun. He suggested that they should be sold in Nelpruit and

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should not be used in Swaziland fearing that the company MTN would be able to trace them and this would lead to their arrest. When Jakes arrived he transported PW42, accused 1 and this witness. Accused 1 remained in Mbabane from where he hired transport to take him to his house at Mhlambanyatsi.

[26] This witness testified that when he and his friends went to rob Orion Sun, their firearms were loaded. He informed the court that the uzzie belonged to Makhenzi. Of the 9mm pistols, one belonged to the witness. It was silver with brownish sides. He had borrowed it from his friend Mdavu. The other one belonged to accused 1 and Makhenzi. It was blackish and its sides were ordinary. The witness identified the firearm. He did a dock identification of accused 1 and accused 4. He knew accused 2 and accused 3 by sight but had not done anything with them. He did not know accused 6 and accused 7. It was agreed by counsel that there was no need to identify the ford which was parked outside court.

[27] When Mr. Mabila cross-examined him he agreed that his statement did not record that on the way from Orion Sun along the way Accused 1 and PW42 agreed to hide some money from the others and that when they shared the money some got less than others. He agreed that his statement excluded the fact that his colleagues assaulted the employees at Orion Sun. He agreed that his statement did not include the fact that after the robbery- he dropped Accused 1 at Mbabane for the latter to go on to Mhlambanyatsi while he went on to Nelspruit.

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[28] He was asked why when he deposed to his affidavit he swore that the contents were correct when he had left out the above. His response was that what he deposed to was what he was agreeing to as of that day. Asked if what he was now telling the court was what he got to know afterwards, he stated that this was not correct. He was asked to explain what he meant and he stated that what he had told the police was what he had remembered of the pictures he had in his mind as of that day (6/8/2004). Some of the things he had forgotten and that is why he did not mention them. He agreed that when he recorded his statement it was a month after the robbery. He continued that when he gave his evidence in chief he did not tell the court that some things he had remembered afterwards. It was put to him that on the first day when he gave evidence in court it was almost two years after the robbery at Orion Sun and yet he was able to recall incidents that happened long ago than those that had recently occurred. His response was that it was easy because giving evidence in court is easier than at the police station. His reason was that at the police station one is scared of being detained and one must try and exonerate oneself.

[29] He informed the court that among the cell phones taken were a small red Motorola, a nokia and an alcatel. The nokia was taken from Mankayane. These were sold in Nelspruit. He was asked if there was anything else that he had told the court that he did not inform the police. He further stated that he did not tell the police that part of the money was hidden from the others

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because they were not used to a lot of money. He did not tell the police that he was the initiator of the Orion Sun robbery and that he had given a lift to a girl employed at Orion Sun and that she had told him about Orion Sun. He did not tell the police that when he shared the money he had given Accused 1, PW42 and himself a bigger share than the others. He did not tell the police that he and his friends had planned to use Billy and the others as their defence. He stated that he was straight with the police as he had told them the real people with whom he had committed the offences.

[30] He agreed with Mr. Mabila that he did not tell the police that on a certain particular night when Accused 4 telephoned to tell him that Accused 1 had been arrested, the witness asked his friends to take him to the why not motel to sleep there as he was driving a stolen car. He stated that he told the police that Vika was part of the initial plan to rob the Orion Sun even though this was not recorded. Asked why he did not inform the Commissioner of Oaths about this omission he stated that he did not do so because Vika ended up by not taking part in their plan.

[31] The next witness who gave evidence in respect of Count 2 was PW42, Peter Nkambule, an accomplice witness. He testified that after accused 1, accused 4 and Makhenzi returned from Mankayane, the group discussed another plan of robbing the Orion Sun factory at Ngwenya. He too confirms PW41's evidence that the idea to rob the Orion Sun came with PW41. They had been informed that a caravel and a colt van was used in

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conveying the money from the bank to the factory. They had surveyed the area first before attacking. The survey was done during June 2004 before the Mankayane robbery.

[32] The robbery at Orion Sun was carried out during July 2004. It was carried out by accused 1, accused 4, PW41, PW42 and Makhenzi. Accused 1, PW41 and PW42 carried pistols. They drove in the white 1400 van which belonged to accused 4 who was its driver on that day. Accused 4 dropped off PW41, PW42 and accused 1 and drove off with Makhenzi. After getting off the car, they went into a wattle forest and walked in it until they reached the factory. They did not want anyone to see their firearms while in the forest. Makhenzi telephoned PW41 and the three men made their way back to meet accused 4 and Makhenzi. Makhenzi informed them that there was an easier way to carry out the robbery. He informed them that accused 4 had given a lift to a woman who had informed him that the money had already arrived at the factory. Accused 4 and Makhenzi drove the three men to the gate of the factory dropped them off and drove away.

[33] The three men waited for a while at the gate as it was difficult to gain entry because there was a security guard on duty. While they were waiting a Ford Bantam van approached and the driver (PW5) alighted and went to talk to the security guard at the gate. PW5 returned to his motor vehicle and the security guard went into the firm and returned with PW5's wife who went out through the gate to PW5. When she returned to

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the factory the three men seized that moment to strike. PW41 produced his firearm and pointed it at the security guard at the gate, accused 1 went to fetch PW5 returned with him at gun point and put him in the guard house together with the security guard. PW41 was left to look after them while accused 1 and PW42 went into the offices. Along the way to the offices Makhenzi joined them. When they arrived at the offices they found 4 women. The 4th woman was Chinese. They demanded money from the women. PW41, who was guarding PW5 and the security guard arrived. PW41 and PW42 were carrying visible firearms and accused 1's firearm was concealed by his jacket. PW41 smacked one of the women and she pointed at the Chinese woman with her head. This witness went straight to the Chinese woman shifted his firearm from his right hand to his left hand and grabbed her with his right hand. He asked her where the money was but she pretended not to understand English and simply spread her hands. PW41 approached her and hit her hard on her cheek and she showed them the drawer that contained the money. PW42 opened it and Makhenzi brought a bag and the money which was in envelopes was placed inside the bag. When they had finished packing the money this witness took the Chinese woman's cell phone and they left with instructions to the women in the office to lie down and not move for ten minutes.

[34] They left the factory boarded their vehicle and drove towards Mbabane and back to Esitjeni. Before they reached the house accused 1, PW41 and PW42 devised a plan whereby they would hide some money from accused 4 and

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Makhenzi as these were not used to having a lot of money. The plan was that accused 1 would enter the house first with the money and hide some money while accused 4 and Makhenzi were detained outside. Accused 1 did so. The amounts hidden when shared totalled E6,000.00 each. After distributing the money PW42's share amounted to E37000.00 including the E600.00 which he received later.

[35] I accept the evidence of PW41 and PW42 in relation to Count 2. They both took part in the robbery and their narration of events is very accurate and detailed. I find that accused 1 and accused 4 have a case to answer.

Count 3: Robbery at Texray

[36] In count 3 accused 1, 4, and 5 were charged with the crime of robbery of the sum of E500,000.00 (Five hundred thousand Emalangeni) belonging to Texray Swaziland (Pty) (Texray) a manufacturing company based at Matsapha which money was in the possession of Dexter Fonseca (PW6) **PW6** testified that on the 23rd July 2004 at about 3.00 p.m. two men entered his place of employment. The man in front pointed a firearm at him and ordered him to lie down. The second man proceeded to where his co-workers were packing some money into pay envelopes. These unknown men robbed them of this money. On their way out one of the men grabbed this witness by his collar and took him forcefully along. This witness was forced to board a white bakkie together with the assailants and they drove off with

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him. While driving away the bakkie reversed into a gate. The witness was ordered to close his eyes and to keep his head down. He was dropped off near Sundowners Lodge along the Matsapha Mahlanya road.

[37] When this witness returned he found that the assailants had made off with a sum of E500,000.00 in cash.

This witness further informed the Court that a diary was found in the Texray premises. In the diary was an emergency travelling certificate on which was a passport size photograph. He was not able to see his assailants nor to identify them because the incident happened quickly but they were both males.

[38] When cross-examined by Mr. Mabila he was unable to say how or where the emergency travelling certificate and diary were found. He was not in charge of the money that was stolen but a Taiwanese man called Mike.

[39] Bheki Sydney Zeeman, PW8, confirmed PW6's evidence that two men exited Texray on the 23 July 2004. One man who was holding PW6 fired a shot and cursed and at the same time ordered PW6 to get into a white ford bakkie. One man was tall and light in complexion and the other was short and light. They were both wearing black jackets.

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[40] One of the assailants was carrying a red and white bag (Khonzekhaya) which appeared to have something inside. They drove away with Dexter Fonseca (PW6) but before then, they reversed in full speed and hit the gate which fell into the main road. They drove away in a motor vehicle with South African registration whose plates ended with GP. He identified Accused 1 as the one who held PW6. The whole incident had taken 3 - 5 minutes. The witness identified a white motor vehicle van which was in several pieces, and stated that this was the vehicle that was used on the material day of the robbery and that it had been intact then. He also pointed out the back of the bakkie which was damaged together with damaged rear right lights. The pieces comprised of the cab, bakkie and a petrol tank, a front loose door. There was a contraption that looked like part of the chassis but it was no longer attached to the motor vehicle. The vehicle had no number plates.

[41] Pressed by Mr. Mabila with regard to the identification of accused 1 he admitted that a police officer, Thabo Kunene (PW48) had shown him the photograph of accused 1 before he had given evidence. He disclosed that notwithstanding having seen accused's 1 photograph, he could identify him as he remembered what he looked like.

[42] **Nomsa Nkambule, PW9** testified that on the 23/7/04 she was at work at Texray. She stated that on Fridays the company normally paid wages and she had come with the

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money from the bank. The amount was E500,000.00. They put it on a table and began packing it into wage envelopes when two men came in. These men were both light in complexion, one was a coloured. They ordered the staff to put their hands up, produced guns and ordered them to lay down under the table.

She stated that before she went under the table she looked at one of the assailants. He took out a white bag with red stripes and began putting the money in it. (Khonzekhaya) The assailant who packed the money was accused 1. Both men were carrying small firearms. After packing the money they left with Dexter Fonseca (PW6). A colleague took the registration number of the motor vehicle the assailants were travelling in and insisted that the police be called. This witness also says that she saw the motor vehicle the two men were travelling in it was a white van.

[43] Asked about a diary she stated that the diary was found by PW 30 Mr. C. Chan a fellow employee. She identified Accused 1 and stated that the other suspect was not in court. She further stated that it was Accused 1 who was walking in front when the two walked in, it was him who ordered that they put their hands up and he took the money.

This witness also testified to identifying the motor vehicle at Lobamba Police Station that it was white and had been broken

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up. She was in charge of the money and she had not given anyone authority to take the money. She stated that the motor vehicle that she had identified at the police station was outside court.

[44] She was not shaken in cross-examination with regard to the identity of accused 1. She too confirmed that PW6 was grabbed by the assailants after they had taken the money and left with him. Even though she did not produce the cheque that she had used to withdraw the money, I am satisfied that she knew that an amount of E500,000.00 (Five hundred thousand Emalangeni) was stolen because she had taken the cheque to the bank and had withdrawn the amount herself.

[45] I am also satisfied with the identification of accused 1 and that he was carrying the bag containing the money amounting to E500,000.00 (Five hundred thousand Emalangeni). PW8 stated that it was accused 1 who held PW6. PW8's evidence is important because it places accused 1 at the scene. Accused 1's travel identification certificate, diary and other documents which were found by another employee of Texray Chen, PW30 were in the office where the robbery had taken place, places accused 1 squarely at the scene of the crime. His diary and travel certificate were found at Texray the day after the robbery. PW30 testified that it was him who found the diary and travel certificate. The latter had a photograph of accused 1.

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[46] Turning to accused 5, the only evidence which associates him with count 3 is that of the accomplice crown witness, PW11, Mkhetsile Winile Mabuza. She testified that one day before the robbery accused 4 came to visit her at her workplace, Texray. He was accompanied by accused 5. Accused 4 explained that accused 5 was his attorney and was a Nkambule. Accused 4 sought certain details about the money belonging to the company. Accused 5 enquired as to how many security officers were usually present during payday. She advised them that there were normally two security officers inside. Accused 5 asked her if these security officers carried any firearms and she responded positively. He further asked if their firearms had any ammunition and she replied that she was not sure. The two men left. She had never seen accused 5 before nor had she identified him in an identification parade. She did not give any physical description of him or what he had been wearing, she merely identified him in court. She did not point out any peculiar and identifying marks in respect of accused 5

[47] Furthermore there is no evidence placing him at the scene of the crime on the 23rd July 2004. nor is there evidence placing him at Esitjeni where the plot to rob Texray was hatched and concluded. When PW42 was asked if he knew accused 5 and 7 he replied that he did not know them prior to his arrest. It is my considered view that PWH's identification of accused 5 does not meet the required standards and must be rejected. Her evidence in respect of accused 5. is uncorroborated and even if she were

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not an accomplice witness, it still fails the test. It too much be rejected.

[48] I turn now to accused 4 who is implicated by PW 11, PW12, PW13, and PW41, Sanele Jeremiah Dlodlu and PW42, Peter Sive Nkambule. Mkhetsile Mabuza, PW11, met accused 4 through a workmate Thobile Mabuza a sister to accused 4. Towards the end of June 2004 accused 4 telephoned her and asked if she wished to meet his girlfriend and she agreed. He picked her up in a Nissan 1400 and drove her to Ngwenya Village which is outside Mbabane where his girlfriend Thandi Masuku lived. While there he told PW11 that he needed money from her place of employment, Texray. He extracted from her details such as the number of employees and how much each earned. She responded that there were about 2000 employees and that each earned not less that E400.00. He made same calculations and expressed his satisfaction that there was plenty of money to be stolen. The following day accused 4 picked her up in the same Datsun Nissan 1400 and drove her to work. When they arrived he asked even more questions about the building for e.g. he wanted to know what was behind the glass windows, she replied that there were offices and that the one in the centre was where the money was counted.

[49] After a few days he telephoned her and informed her that he was bringing some money for her and Thobile. When he arrived he was in the company of accused 5. He gave her E200.00 for Thobile and herself. He wanted to know if the

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employee's money was kept at the factory premises. She told him no. On another day accused 4 took her to Esitjeni to the home of PW42, Peter Nkambule. He was in the company of another of his girlfriends, Thulisile Matsebula, PW32. When they arrived at PW42's home accused 4 introduced a certain man Peter Zikalala as his boss. She was shown another man whom accused 4 said lived in Nelspruit and could not speak or understand Siswati and English. Peter Zikalala turned out to be PW42. He asked accused 4 how far the preparations had gone, to which accused 4 responded that preparations were complete. PW42 asked for directions to Texray and details as to how to get to the office where the money was counted when he was inside. He gave PW11 E30.00 to enable her to communicate with them when they were ready to put the robbery into effect. The man from Nelspruit turned out to be accused 1.

[50] PW42 informed PW11 that he would give her E20,000.00 once the robbery had been carried out. He further cautioned her to keep a low profile after she had received the money. She should not spend recklessly to avoid attracting suspicion. On the 21/7/04 accused 4 telephoned her and informed her that he would arrive at Texray on the 23/7/04. On Friday 23/7/04 he telephoned her to confirm that the money had arrived and she responded positively. He telephoned at about 2:00 p.m. and informed her that he was on his way and was at Lobamba but had some problems with his car. Within a few minutes she heard noise and a gun shot in the factory. She was informed that a

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robbery had taken place. The following day on the 24/7/04 accused 4 telephoned her to meet him at Nhlangano. He told her to come with Thobile Mabuza.

[51] She met him at the bus rank in Nhlangano and from there they travelled to Hluthi in a white Ford. At Hluthi accused 4 informed her that the ford had been used in the robbery at Texray. Indeed it had some damage on it and some royal blue paint from the gate that the robbers had smashed into as they had made their getaway. Accused 4 gave her E10,000.00 as her reward for having assisted in the robbery. She informed the court that he informed her that his role during the robbery was to close the spaza phone at Texray and to chase away the security guard at the gate. He also informed her that the car was new. Thereafter accused 4 telephoned someone to fetch PW11 and Thobile. He was afraid to use the Ford as it had been seen in Nhlangano and would be recognised as the car that had been used in the commission of the robbery. He was also worried about a diary that had been mistakenly left at Texray and wondered if she had heard anything about it. She recalled that the number plate ended with a GP.

[52] Later she met accused 4 who asked her to give her E2,000.00 and again on the 4th September 2004 when he asked her for E1,000.00. On the 4/9/04 he was driving a corsa sedan. It is not clear what the significance of the

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evidence with regard to him asking for money and she giving him is unless it is to mitigate her role in the Texray robbery. The next time she saw him, he was in the company of the police. He had been arrested and the police wanted to know her role in the robbery. Initially she denied any knowledge of the robbery until the police advised her that PW42 had told them everything. She cooperated thereafter. She identified the Ford and Corsa.

[53] During cross-examination she was confronted with inconsistencies in her evidence. She agreed that as a police officer had recorded her statement on her behalf there were bound to be inconsistencies. The inconsistencies were as follows:

In the recorded statement she stated that Accused 4 first gave her E9500.00 at Zambezi. In her evidence in chief she stated that Accused 4 gave her E 10,000.00 while at Hluthi.

- There is no mention in her recorded statement that Accused 4 took back first E2000.00 and later E 1000.00 from the money that he had given her.
- There is no mention in her recorded statement of the Ford van nor of the corsa.
- It is not recorded that PW42 gave her E30.00 to buy airtime.

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- The description of the man from Nelspruit is not recorded.

[54] It is possible that the officer who was recording her statement left out many things and this does not make her testimony less truthful. The essence of her evidence may have been lost because someone else recorded it. She should have recorded it herself. She looked literate and she could have recorded the evidence herself in vernacular. It is better to interpret it thereafter. If someone else records it, there is so much lost which could have been easily captured had she recorded it personally. I am not going to hold the inaccuracy against her. Instead credence will be paid to her oral evidence in this court.

[55] She stated that accused 4 did not go inside the office on the date of the robbery, but she believed that he was the driver and had to stay inside the vehicle whilst awaiting his partners in crime. I accept that nobody saw who the driver of the vehicle was. I accept the evidence that the kingpin behind the Texray robbery was accused 4. PW11 was a credible witness who was unwittingly drawn into the net of accused 4. It is clear from the evidence that he was the master planner of the Texray robbery. He may not have personally executed it but I am satisfied that he was the master mind behind it. PW 11 was just a vulnerable pawn. Accused 4 used her without compunction. She was privy to inside information which makes it difficult to discredit her evidence.

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[56] There is evidence that accused 4 got rid of the ford bakkie in order to conceal evidence. **PW12, Mbongiseni Sabelo Khumalo** testified that on the 10 September 2004 his mechanic PW13 Siphon Ndlovu telephoned him and informed him that there was a motor vehicle, a ford courier for sale and accused 4 wanted E10,000.00 for it. The witness's car needed a spare part and he could harvest the spare part from the ford courier. He went to Matsapha and found accused 4 who took him to Siteki along Mangwanyane road to a Dlamini homestead to view the motor vehicle. When they arrived there they found the wife to the homestead. Accused 4 informed her that he had sold the motor vehicle to PW12. The motor vehicle was a white ford courier bakkie. The witness stated that the motor vehicle appeared to have been involved in an accident because it had dents on the front right, on the roof and at the back. It did not have any windows and accused 4 confirmed that it had been involved in an accident. Accused 4 wanted E10,000.00 for it but this witness brought him down to E7,000.00. The witness identified accused 4 in court. The car was also identified.

[57] I am satisfied with the evidence of identification because the parties entered into a transaction which ultimately benefited accused 4. Furthermore **PW13 Siphon Ndlovu**, the mechanic testified that accused 4 took him and PW12 to Ka-Langa to see the motor vehicle and negotiated to buy it. They towed it to Matsapha and stripped it in order to get the parts that PW12's vehicle needed. They went to Ka-Langa with accused 4. The stripping explains why the vehicle outside court was in separate

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pieces. PW13 informed the court that he knew accused 4 even before accused 4 sold the motor vehicle. He knew him previously as a pastor and often helped him. He identified accused 4 in court and the vehicle outside court as being the motor vehicle that had been sold by accused 4.

[58] It was suggested to this witness in cross-examination that accused 4 used to come in different motor vehicles for help and the witness agreed. He denied that accused 4 had told him that he was now in the business of selling cars and had given up being a pastor. When asked if accused 4 looked like he had been assaulted by the police, he disagreed. He did agree that the police spoke roughly to the witness. The witness confirmed knowing Mandla Dlamini who lived at the home from where the ford bakkie was collected. He further confirmed that the bakkie had a dent on top and looked as though it had overturned.

[59] Indeed the bakkie had overturned in Big Bend. This fact was disclosed by **PW22, 3799 Detective Constable Alpheus K. Mhlanga**. PW22 testified that on the 27th July 2004 he was called to attend to a traffic accident which had occurred near the Big Bend sugar mill. When he arrived at the scene he found that a diesel ford bakkie 2.5 had overturned and the driver and owner identified himself as Ishmael Mabuza of Mbangweni, Mbabane, accused 4. The bakkie was dented all over on the front and the sides. The bakkie was removed from the road with the assistance of Mandla Dlamini. Accused 4 was requested to go to

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the police station in order to record a statement but failed to do so. Instead Mandla Dlamini later on went to request a police clearance for the motor vehicle having been sent by accused 4. Mandla Dlamini is the man at whose home the bakkie was found by PW12 and PW13. This witness identified the bakkie as being the broken vehicle outside court.

[60] **PW23, Nehemiah Mbuyiswa Dlamini** is the father to Mandla and Musa Dlamini. He testified that during 2004, his two sons and a third man came to his home at Ka-Langa. They asked to leave a white van at his home. They said it belonged to their friend Mshengu. Mshengu is another name for accused 4. The vehicle was damaged at the back, front and top. **PW24, Mfanukhona Langa** who lives with PW23 corroborated the former's evidence that Mandla and Musa and a third man brought the vehicle.

[61] **PW 41 Sanele Dlodlu** gave evidence which implicated accused 1 and 4. He stated that after the robbery at Orion and before he left for Nelspruit, South Africa where he lived, it was decided that they should rob Texray. It was decided that accused 1 and Makhenzi should follow PW42 and this witness to Nelspruit. They would purchase a stolen motor vehicle in South Africa which they would use in the robbery at Texray. Accused 4 was exempted as he had already supplied a motor vehicle for the robbery at Orion.

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[62] He testified that accused 1 and Makhenzi telephoned him from Johannesburg and informed him that they had purchased a motor vehicle. He advised them to drive it to Nelspruit so that he could make arrangements for it to cross the border into Swaziland. The motor vehicle was a white 4x4 ford van. It had been purchased for E 12,000.00 from a Nigerian in Johannesburg. PW41 telephoned Thabo, a friend who worked at Oshoek bordergate. Thabo advised him to use the Lundzi bordergate where he had a police officer friend who would cause the vehicle to cross into Swaziland. The officer would require E1,500.00 for this service. As accused 1 and Makhenzi had spent all their money on the vehicle, PW41 and PW42 paid this money. They gave it to accused 1 and Makhenzi.

[63] This witness gave them Thabo's mobile number so that accused 1 and Makhenzi could keep in contact until they had crossed the border. PW41 stated that accused 1 and Makhenzi left Nelspruit after 7 p.m. After 2 hours Thabo telephoned to say that accused 1 and Makhenzi had crossed safely with the vehicle. Makhenzi also telephoned from Mbabane to report that they had had a safe journey. PW42 left for Swaziland too advising this witness that he would telephone him as to when he should come to Swaziland. PW42 later telephoned to say that PW41 should be in Swaziland on a Thursday as the robbery at Texray would take place on a Friday. PW41 was unable to come to Swaziland as he was previously engaged to commit a

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robbery in Nelspruit. He informed PW42 about this. PW41 testified that he informed his friends that he could not take part in the Texray robbery as he resided in Manzini and some workers at Texray who knew him would recognise him. He asked PW42 to keep his share for him and he would also give PW42 some money from the robbery at Nelspruit.

[64] On Friday after lunch PW42 telephoned this witness and informed him that the Texray robbery had been successful. PW42 advised this witness that he was driving to Nelspruit and would spend the night at this witness's house. Indeed at about 7 p.m. that Friday PW42 arrived. He advised this witness that the others had refused to give PW42 this witness's share, instead they had given him E1,000.00 to give PW41 as reimbursement for the money he had given accused 1 and Makhenzi the police officer at Lundzi border gate. He telephoned accused 1 but his phone was switched off. He telephoned accused 4 who advised him that they had given PW42 the amount of E5,000.00 to give him apart from the E 1,000.00 re-imbursing him. When he confronted PW42 with the information from accused 4,

PW42 stated that he had left the money behind because it was too little. Both PW41 and PW42 decided to return
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to Swaziland in order to ask the others about his share.

[65] The next morning this witness telephoned accused 4 to ask if the story about the E5,000.00 being too little was true.

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Accused 4 confirmed this story and advised this witness that as a result he had sent a taxi man with E500.00 to give to PW41's wife. When PW41 and PW42 returned to Swaziland they went to Esitjeni where they met with Makhenzi. During the night accused 4 telephoned and advised them that accused 1 had been arrested. He identified accused 1 and 4 in court. This witness revealed that it had been agreed that if anyone got arrested first this person should not reveal one another's identities. But they should indicate people who had left Swaziland while on the police wanted list. They had agreed to finger Billy Shaw, Ndoda Mkhwanazi and Vika Dlamini. They chose Billy Shaw because he was bright in complexion like accused 1 and Makhenzi. He confirmed the usage of Billy Shaw and the others during cross-examination.

[66] It was put to PW41 in cross-examination that some of the things he has said in his evidence in chief he did not record them at the police station. For example:

- He did not record that accused 4 had given his wife E500.00
- That while in Nelspruit he had telephoned Thabo to make arrangement for the vehicle to cross
- that he had an agreement with accused 1 and Makhenzi

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- that they would go to South Africa to get a stolen car that would be used in the Texray robbery.
- that he and his colleagues had planned the Texray robbery immediately after the Orion robbery.
- that accused 1 and Makhenzi would go and look for a stolen vehicle in South Africa.
- That accused 1, 4 and Makhenzi had robbed the filling station at Mankayane.
- That it was Thabo who had contacted the police officer at Lundzi border gate.
- That the amount charged for allowing the motor vehicle to cross was E1,500.00.
- That he did not record that he was present at the meeting where the Texray robbery was planned.
- Mr. Mabila put to the witness that his evidence was an afterthought but the witness denied this the witness admitted that he had recorded four statements at the police station, even though the Crown had misplaced the fourth statement.

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[67] He was shown several statements that he had recorded with the police. The first statement he had recorded at Mankayane referred to the Mankayane robbery. The second statement referred to the Texray robbery and was recorded at Matsapha. The third statement referred to the Orion Sun robbery and was recorded at Mbabane police station. The witness informed the court that he used to be self-employed as a taxi-operator but this business stopped during 2004 when his taxi was damaged. He was left with a tuck shop which also ceased to operate when he was arrested. Mr. Mabila engaged the witness in a series of questions and answers that showed that the evidence he had given in court differed from that which he had recorded in the statements made to the police.

[68] Mr. Mabila put to the witness that he felt bitter because he was not given a share of the money taken from Texray. The witness responded that he was not bitter just surprised that he was only given E1000.00 and that it was normal to share any money received equally even if one had not taken part in the robbery for example he was given E2000.00 from the Mankayane robbery even though he had not taken part in it. The witness confirmed that he had been involved in several robberies, however some matters against him had been tried and concluded and in others charges had been withdrawn in court and he had been acquitted in respect of some. He agreed that during November 2005 he took part in an attempt to rob Swaziland Meat Industries and that he

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was no longer an accused but an accomplice witness. He also agreed that in all the robberies in which he was involved and in which charges against him were dropped was because he became an accomplice witness. He further agreed with Mr. Mabila that there were at least two matters in which he featured as an accomplice witness and that these had not yet been concluded. It was put to him that the reason that he had given evidence in the present case was that he had been given indemnity in respect of the above cases, he denied this and stated that neither the police nor the Director of Public Prosecutions had negotiated with him. They had simply told him to become a witness.

[69] The witness further admitted that he was arrested on or about 16/8/04 for the Orion Sun robbery and implicated Accused 1 and PW42 who were thereafter arrested. He agreed that he did not implicate Billy Shaw and Ndoda Mkhwanazi as had been previously agreed. It was put to him that both Accused 1 and accused 4 denied ever taking part in any of the robberies namely Orion Sun, Mankayane and Texray and that they were at their respective homes when these took place. He denied this. It was put to him that the reason why the content of his evidence in chief was not in his recorded statements was because he was lying. He denied his.

I accept the evidence of PW41.

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[70] PW33 Fana Sibusiso Nkambule testified that PW42 was his older brother and that he personally knew accused 1 and Makhenzi. During July 2004, PW42 requested him to take a white Ford Ranger Intercooler (ford) to Lobamba car wash to have it washed. It was parked at their home at Esitjeni. It had arrived with accused 1 and Makhenzi. After he had finished washing it, PW42, accused land accused 4 and Makhenzi arrived in a white sentra. PW42 told him to drive the sentra while accused 1 and Makhenzi drove away towards Mahlanya in the ford. In the sentra were PW42 and accused 4. PW42 instructed this witness to follow the ford.

[71] Along the way accused 4 asked this witness to stop at the shopping complex at Mahlanya where he alighted and purchased a shopping bag commonly referred to as khonzekhaya. It was blue and white. He boarded the car and PW42 ordered this witness to drive on to Matsapha. At Bethany they found the ford parked and accused 1 alighted and took the bag to the occupants of the ford. Accused 4 returned. When this witness reached Matsapha, PW42 asked to be dropped off near Swaziland Breweries and asked to be collected after this witness had dropped off accused 4. Accused 4 asked to be dropped off at Matsapha Fire station. When accused 4 alighted he took with him a black bag and black jacket. This witness says that he saw the back of a firearm protruding from the black bag. The back of the firearm was black. It was a big gun. Accused 4 alighted off not far from Texray. The witness indicated a distance of about 500 metres.

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[72] This witness went back to collect PW42 whom he found at the same place where he had dropped him off. This time PW42 asked to be dropped off at the home of his cousin near Sigodweni police station. When PW42 alighted accused 1 telephoned requesting to be picked up where he had got off. At first this witness did not find accused 1 turned to go back to PW42 when accused 4 telephoned again. He picked him up near the fire station. Accused 4 was still carrying the black bag, black jacket and the gun. PW33 went to collect PW42 who ordered him to drive to Mhlambanyatsi. When accused 4 boarded the vehicle he uttered the words that he had finished but did not explain what it was that he had finished.

[73] When this witness arrived at Mhlambanyatsi they went to accused 1's flat where they found accused 1 and Makhenzi. He did not see the ford. Makhenzi ordered this witness to take the bag to the sentra. The bag contained something. He put it in the boot. Upon leaving the flat, they all boarded the sentra. At Emanyaleni bus stop at Mhlambanyatsi accused 4 and PW42 alighted and said that they would hire a taxi. This witness drove towards home but ran out of petrol at Ezulwini. Accused 1 telephoned PW42 and informed him about the petrol problem. After a while accused 4 and PW42 arrived in a white taxi. This witness was instructed to take the bag to the boot of the taxi, which he did. Accused 1 and Makhenzi joined accused 4 and PW42 in the taxi and left this witness at Ezulwini. After a while the

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taxi returned with Mfanasibili Nkambule who lived with the witness at Esitjeni. He alighted with petrol in a 5 litre container with which they filled the sentra. They drove home where they found accused 1, 4, PW42 and Makhenzi. PW42 gave this witness E5000.00. It was agreed by counsel that the ford was the motor vehicle outside court. The witness identified a black bag, (C3 exhibit 9), firearm (C3 exhibit 10). The witness identified accused 1 and accused 4 in the dock.

[74] Mr. Mabila tried to discredit this witness in cross-examination. He admitted two arrests for armed robbery. There was much about an alteration of the month of June to July in his statement recorded with the police. Also that he did not give evidence willingly but because he feared the police. He is bound to fear the police because he leads a life of crime.

[75] The alteration referred to is not material. The witness was not challenged as to whether he was lying. The events that he narrated were not lies even if he feared the police. I accept his evidence. Accused 4 may have not been inside the premises of Texray but he kept a watch. Accused 4 purchased the bag in which the money was placed that was robbed from Texray. The empty cartridge found at Texray premises matched one of the firearms found at accused 4's home at Nkungwini.

[76] PW42, Peter Nkambule an accomplice witness implicated accused 1 and accused 4 with respect to count 3. He

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testified that after distributing the money robbed from Orion Sun the group made plans to go to South Africa in order to purchase a stolen motor vehicle to use in the commission of another robbery at Matsapha. They needed a fast motor vehicle. They wanted a stolen one because a clean one would incriminate them as its number plates could easily be traced by the police in the event that someone wrote them down or remembered them. Whereas it would be difficult to trace ownership of a stolen motor vehicle. They each donated E2,000.00 for the purchase of the motor vehicle. Those who planned this trip were PW41, PW42, accused 1 and Makhenzi. The money for the purchase of the motor vehicle was kept by Makhenzi.

[77] The group left Esitjeni and proceeded to Mbabane where they separated. PW41 and PW42 left for Nelspruit and accused 1 and Makhenzi went to Johannesburg where they would purchase the motor vehicle. The reasoning behind this separation of their ways was explained by this witness. He stated that a stolen motor vehicle should not have too many passengers in it especially men as this raises suspicions that it is stolen and could be easily searched at a roadblock. When they arrived at Nelspruit, Makhenzi telephoned this witness and informed him that they had found a motor vehicle. It was a new 2.5 diesel intercooler Ford van and asked if they could purchase it. This witness agreed and they bought the motor vehicle. They brought the motor vehicle which was white to Nelspruit early in the

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morning. Makhenzi was driving. Makhenzi asked PW41 to make arrangements for the motor vehicle to cross the border into Swaziland. PW41 responded that he had a connection at the border gate who would have to be paid E1,500.00. They contributed the money. PW41 contributed E1,000.00 and this witness E500.00. The other two did not contribute anything. Thereafter they left and PW41 and PW42 remained behind. In the afternoon this witness left for Swaziland. Upon arrival in Swaziland he telephoned Makhenzi wanting to know where the motor vehicle was and that it should be parked in a safe place and that nobody should drive it. Makhenzi suggested that they meet at the parking area at the Plaza where the motor vehicle was parked. They did so and PW42 drove the motor vehicle to his home at Esitjeni and parked it there.

[78] Three days later PW41 arrived and together with him, PW42, accused 1 and Makhenzi they finalised the plans to rob Texray, at Matsapha. Their earlier plans had failed because of tight security. On another date accused 4 visited this witness and he told him about the plans to rob Texray and how difficult it was because of security and as a result they did not know what to do. Accused 4 responded by stating that his sister was employed at Texray and it would be best to inspect the place first before attacking it. Indeed the witness went with accused 4 to inspect Texray where accused 4's sister worked. Accused 4 assured this witness not to worry as the robbery could be discussed with his

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sister. But after discussing the matter with his sister accused 4 informed this witness that his sister had advised him that it was difficult to gain entry at Texray. Accused 4 advised this witness that he would go to Texray with a lawyer as it would be easier to gain access if he was accompanied by a lawyer. Accused 4 returned and reported that he had gone to Texray with a lawyer and his sister had shown them where the money was kept and where it was counted.

[79] This witness wanted to meet accused 4's sister and they arranged a date on which to bring her to Esitjeni. He informed PW42 that he did not wish his sister to meet too many people as he had planned to use magical tricks to get the money. When accused 4 arrived at Esitjeni with his sister he found accused 1 and PW42. Accused 4 entered the house leaving PW11 and another woman outside in the motor vehicle. In the house he instructed accused 1 to speak in English so that PW11 would not understand what they were talking about. This would make her believe that accused 1 was the one who was going to provide magical powers. Accused 1 went out to fetch PW11 and came back with her. The time was about 10.00 p.m. He introduced her but this witness was not interested in her name he assumed that she was a Mabuza. All he wished to know was what PW 11 had to tell them about Texray. He asked her how much was normally brought to pay them and she responded that for the employees who got paid at

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the end of the month the amount was one and half million Emalangeneni. If it was not at the end of the month the amount was five hundred thousand Emalangeneni. He asked her how one gained entry and she said that was difficult. People were not allowed entry even if they were on official duty. He asked about the office where the money was kept and she replied that it was delivered at the reception and from there transferred to an upper office. It is at this office that the money is sorted and placed into envelopes before

it is given to the employees as salaries. PW42 further asked her if accused 4 had seen the office as he had been there and replied that he had seen the office and that accused 4 would assist in identifying the office.

[80] PW42 instructed her to telephone accused 4 but she stated that she did not have any money. This witness gave her E30.00 for her to buy airtime so she could telephone accused 4. PW42 told her that if they were successful in carrying out the robbery they would give her E20,000.00 and he asked what she would do with it. She stated that she would start a hawkers business. PW42 warned her that should she get the money she should not use it in such a way as to cause them to be arrested. Accused 4 left thereafter with PW11 having agreed to discuss developments over the telephone with accused 4 who would relay the information to this witness. On the following day accused 1, accused 4, Makhenzi and PW42 discussed the

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robbery further but did not get much further as it was a difficult place to enter. After this failure, this witness came up with the idea of going to Texray with Makhenzi. They decided that Makhenzi could pose as a businessman because he was bright in complexion and would pass off as a white man. The group agreed to try this plan.

[81] The group chose a Friday to rob Texray. After a fortnight had passed they met the Thursday before the chosen Friday. At this meeting was accused 1, accused 4, Makhenzi, and PW42. On Friday accused 1 and Makhenzi took the ford in order to wash it while PW42 and accused 4 waited for the telephone call from PW11. PW11 telephoned before 1:00 p.m. and accused 4 stated that they should leave for Texray. PW42 and accused 4 travelled with Sibusiso Fana Nkambule (PW33) in a Nissan sentra which was driven by PW33. Accused 1 and Makhenzi travelled in the ford which was driven by Makhenzi. The latter drove ahead. Accused 4 carried the Uzzi while Makhenzi carried a pistol. Along the way accused 4 suggested that they phone Makhenzi and tell him to stop at Mahlanya so that they could purchase a container for the money. Accused 4 alighted and went to buy the container a large paper bag commonly called khonzekhaya. When accused 4 returned they drove on towards Matsapha. Along the way at Bethany they found accused 1 and Makhenzi waiting for them. Accused 4 got off and took the container to accused 1 and Makhenzi. Accused 4 returned to the motor vehicle and PW33 followed accused 1 and Makhenzi.

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[82] On arrival at the BP filling station PW42 asked PW33 to stop so that he could alight. PW33 proceeded with accused 4 towards Texray. When PW33 returned to the filling station this witness asked him to drive him to Dumisa Tsabedze's (PW37) place which he did. Before he dropped PW42 off he informed him that he had left accused 4 near the fire station. After 10 minutes PW33 telephoned this witness and told him to leave PW37's place as he was coming to fetch him and that it was urgent. Indeed he picked PW42 up and drove towards the fire station. They passed Texray where many people were milling around. They collected accused 4 who was carrying a folded jacket. This witness says that it was only then that he got to know what was in the folded jacket: it was the uzzi, a firearm. They drove towards Mahlanya. Makhenzi telephoned this witness and informed him that he should tell PW33 to drive to accused I's house at Mhlambanyatsi. This witness knew accused I's house. When they arrived there, they found accused 1 standing at the door. When they asked why he was standing at the door and where Makhenzi was, accused 1 responded that he was at the parking lot and they should all go to him. Accused 1 boarded the Nissan van and they all drove to where Makhenzi was. They found him carrying the bag containing money. PW33 opened the boot of the sentra and Makhenzi placed the container in the boot. Realising that the sentra would now be overloaded with two extra passengers this witness telephoned a taxi man called Zakhele or Zakes to fetch him. This witness did not see the ford. He decided that accused 4 and himself would

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get in the taxi and allow accused 1 and Makhenzi to go ahead in the sentra. Zakhele found PW42 and accused 4 walking along the way. They drove via Mbabane towards Lobamba. Along the way they found the sentra waiting for them at Mvutshini.

[83] When they enquired as to what was wrong with the sentra PW33 stated that they had run out of petrol. PW42 together with accused 4 and Zakhele went to buy petrol. After filling up the sentra both cars drove to Esitjeni. Zakhele was paid his taxi fare of E200.00 and he left. The group opened the container which had papers on top and some money in envelopes. This witness took out the money which was not in envelopes and PW33 emptied the money from the envelopes and destroyed the envelopes. Accused 1 removed the papers from the container. After sorting out the money they shared it. Accused 4 shared it out. Makhenzi informed the group that they were unable to get all the money as there was a lot of activity at Texray. He stated that the situation had been so bad that he had bumped the gate when he drove out. As a result he had to hide the motor vehicle. After sharing the money they realised that it was not as much as they had expected and realised that they would not be able to pay PW11 the E20,000.00 that they had promised her. Accused 4 suggested that they pay her E 10,000.00. They gave him this amount to give her.

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[84] Accused 4 asked to buy the ford and the group agreed that he could purchase it from them for E10,000.00 and he paid this amount. This witness recalled that Sanele Dlodlu (PW41) was aware about the robbery at Texray and could cause some problems for them if they did not give him some money. It was agreed that he be given E5,000.00 to which they all contributed and that this witness would go to Nelspruit to give PW41 the money. They then all went their separate ways. This witness received the amount of E51,700.00 from the heist. When the group parted accused 4 asked Makhenzi to show him where he had parked the ford so that he could take it to his home. Accused 1 left with PW 33 to Mbabane in the sentra while PW42 remained at home. The following day this witness left for Nelspruit to PW41's home. He related to PW41 all the events relating to the robbery. PW41 asked about his share. This witness informed him that there was no share for him. PW41 remained silent, left the house for sometime and when he returned looked very unhappy. He told this witness that he had telephoned someone who had advised him that the group had given his share to this witness. This witness responded that there was nothing and suggested that they both return to Swaziland so that they could find out from the others where PW41's share was. This witness stated that he had a reason for not telling PW41 about the money because he thought it was too little and PW41 would complain that it was too little if he informed him about it. PW42 wanted to meet with the others so that they could

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increase the money. The following day the two returned to Swaziland and went to the **Why Not** disco from where this witness telephoned accused 1 but his mobile was off. He telephoned Makhenzi who advised him that accused 1 had a problem. This witness asked him to look for accused 1 and both of them should join them at the **Why Not** disco.

[85] When accused 1 and Makhenzi joined them at the **Why Not** disco the matter was discussed and this witness informed the others that he had not given PW41 his share of the money because it was too little. This witness and Makhenzi added E2,000.00 each to the amount originally set aside for PW41. Accused 1 did not have any money because the police had taken it after they had arrested him. Accused 4 could not be raised as his mobile was off. This witness asked accused 1 why he had been arrested and was informed that the police suspected accused 1 of being involved in the Texray robbery. Asked why he had been released he responded that he had informed the police that he was not involved, it was Ndoda Mkhwanazi and Billy Shaw who were involved. He informed this witness that the police had taken him to South Africa to look for Billy Shaw and Ndoda Mkhwanazi but did not find them. He was released thereafter because the police were certain that he had not committed the offence. This witness informed the court that fingering Ndoda and Billy to the police was part of their plan when carrying out the robbery. In place of Makhenzi they would substitute Billy Shaw and in place of

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accused 1 they would substitute Ndoda Mkhwanazi as these were similar in features and complexion.

[86] Mr. Mabila cross-examined this witness. He confirmed that he operated a mini-bus transport business. He confirmed that Accused 1 also operated a transport business and that during or about 20/9/2004 he sold one mini-bus at E70,000.00 to accused 1. Accused 1 purchased another mini-bus from one Albert Mngomezulu. This witness confirmed that he had known Accused 1 since he was about 12 years old. He confirmed that Accused 1 was involved in dagga trafficking from which he made a lot of money. He confirmed that Accused 2 also sold dagga and had heard that Accused 3 also sold dagga but that he did not know of this firsthand. It was put to him that Accused 4 also dealt in dagga trafficking. That this witness had even accompanied Accused 4 to Nhlanguano where Accused 4 had a trial in which he was charged for possession of dagga and his motor vehicle had been seized by the police.

[87] The witness recalled that he had accompanied Accused 4 and was informed by him of the dagga case but that he had no personal knowledge of his dagga dealings. He agreed that when he was arrested on the 27/9/2004 the police were rough with him. That he was arrested before Accused 1 who surrendered himself and was delivered to the police by Mr. Mabila. He agreed that Accused 1 was assaulted by the police who never advised him of his rights at any stage. He stated that when Accused 1, PW41 and himself were being interrogated they were never

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cautioned. When the police took him to his house to point out the money he was not informed that he was not obliged to go to his home to point out the money. He agreed that they only had one meeting with regard to the robbery at Texray and that it involved accused 1, accused 4, Mkhetsile (PW11) and himself. That prior to the meeting Accused 4 introduced this witness to PW11 merely as Nkambule and did not elaborate further. It was put to him that PW11 did not inform the court about any meeting that she took part in wherein a robbery in respect of Texray was planned. Instead she told the court that the meeting that she attended included accused 1, accused 4 and a Peter Zikalala. His response was that PW11 was lying. The meeting did take place at this witness's home and there was no Peter Zikalala but himself.

[88] Mr. Mabila compared the evidence of this witness to that of PW11 with regard to the inspection that took place at this witness's house at which PW11 was present. Mr. Mabila pointed out the inconsistencies and contradictions. This witness concluded that PW11 lied in her evidence when she told the court that she was introduced by Accused 4 as he did not introduce her. She did not tell the court that at the meeting she divulged that every fortnight E500,000.00 was brought to Texray and one and half million Emalangi at month end. At the meeting she said she would start a hawkers business with the E20,000.00 that they were going to give her but she told the court that she did not know what she would do with E20,000.00 as she had never had never had so much money before. That at

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the meeting the issue of security was never discussed but she did not tell the court this she merely stated she had discussed this aspect with Accused 4 only. That in her statement to the police she recorded that she was promised E10,000.00 and not E20,000.00.

[89] That she informed the court that this money was a gift and not her share for supplying information about Texray. That in her recorded statement with the police she stated that the meeting had taken place during May 2004 as opposed to July 2004. That she did not record with the police nor inform the court that she was given E30.00 in order to purchase airtime so that she could telephone the gang when the money had been brought to Texray.

[90] It was further put to him that contrary to what he told the court PW11 had informed the court that the procedure as to how one enters Texray was not discussed. It was put to him that in the statement he recorded with the police that he had promised PW11 the sum of E15,000.00. His response was that this information had been incorrectly recorded despite the fact that it was read back to him confirmed by him and signed for by him.

[91]] Mr. Mabila next compared this witness's evidence to that of the accomplice witness Fana Nkambule (PW 33). He pointed out the contradictions and inconsistencies. This witness agreed that PW33 was the one that had lied and not him.

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For instance this witness had told the court that that Accused 1 and Makhenzi took the ford to Lobamba in order to wash it. PW33 said this witness had telephoned him to go and wash the motor vehicle. That on the day that the robbery was committed at Texray PW33 said that he had dropped him off near Swaziland Beverages and when he returned he picked him up from there. That on his way from Dumisa's flat PW33 told the court that he picked up Accused 4 first thereafter he picked up this witness. The witness stated that PW33 had lied. He picked him up first then Accused 4. That when they went to accused I's house at Mhlambanyatsi this witness told the court that they found accused 1 at the door who told them that Makhenzi was at the car park. Accused 1 boarded the sentra and all went to Makhenzi whereas PW33 told the court that they found Accused 1 and Makhenzi together at Accused I's house. That this witness had told the court that it was Makhenzi who put the bag containing money into the boot of the sentra whereas PW33 stated that Accused 1 instructed him to put the bag into the boot. That PW33 told the court that Accused 1, Accused 4, Makhenzi, PW33 and this witness boarded the sentra and that Accused 4 and the witness alighted at a bus stop after realizing that the sentra was overloaded. They called a cab while Accused 1, Makhenzi and PW33 proceeded in the sentra. Whereas this witness states that they got off at the car park and called a taxi from there and not at the bus stop.

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[92] That PW33 lied when he told the court that when the sentra ran out of petrol at Mvutshini, Accused 1 telephoned the witness and informed him that there was no petrol in the sentra. Whereas this witness told the court that when he arrived at Mvutshini he found the sentra stationery. He stopped to find out why and PW33 told him that they had run out of petrol. That PW33 had lied when he told the court that on arrival at the stalled sentra this witness informed PW33 to put the bag containing the money into the taxi. Accused 1 and Makhenzi boarded the taxi leaving PW33 alone with the sentra whereas this witness informed the court that he together with Accused 4 went to buy petrol, filled up the sentra and they all drove to his home. That PW33 lied when he told the court that 40 minutes after the taxi left it returned with Mfanufikile carrying a 5 litre container which had petrol. This witness told the court that nobody by the name of Mfanufikile lived at his home. That PW33 lied when he told the court that after Mfanufikile rescued him they drove home where they found Accused 1, Accused 4, Makhenzi and this witness already in the house. That this witness called PW33 and gave him E5000.00. That the actual truth was that when they all arrived home PW33 took out the envelopes that contained money and emptied them and tore up the envelopes. The money was shared thereafter. That PW33 lied when he informed the police that the above took place during June and not July. When this witness was asked to give a reason why PW11 and PW33 were lying he responded that he did not know but that he was the one telling the truth.

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[93] Mr. Mabila next compared this witness's evidence and that of the accomplice witness Sanele Dlodlu (PW41). He pointed out the contradictions and inconsistencies. This witness agreed that it was PW41 that had lied and not him. That PW41 had lied when he told the court that only accused 1 and Mackenzie contributed money for the purchase of a stolen motor vehicle in South Africa. That in fact accused 1, Makhenzi, PW41 and this witness had contributed the money. That PW41 had lied when told the court that Accused 1 and Makhenzi informed him and this witness in Nelspruit that they had bought the motor vehicle for E 12,000.00 from a Nigerian friend of Accused 1. That he lied when he told the court that this witness informed Accused 1 and Makhenzi that he would refund them after the Texray robbery whereas in fact they had each contributed E2,000.00. That PW41 lied when he informed the court that this witness had paid E1,000.00 to pay the officer who would cause the motor vehicle to cross the border whereas he paid E500.00. That he lied when he told the court that the reason Accused 1 and Makhenzi did not contribute towards the officer at the border gate was because they had used all their money in buying the motor vehicle.

[94] That this witness left Nelspruit after Makhenzi had telephoned PW41 advising them that they had arrived safely in Swaziland. This witness states that he left of his own accord and not because Makhenzi had telephoned, that he had arrived. That it was not true that the witness left PW41 in Nelspruit to go and

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make arrangements in Swaziland pertaining to the robbery and that he would telephone PW41 to tell him when he should come to Swaziland. That this witness did not tell the court as PW41 did that this witness telephoned PW41 and told him to come to Swaziland on Thursday as the robbery at Texray would be carried out on Friday. That PW41 lied when he told the court that he had telephoned this witness and informed him that he could not take part in the Texray robbery as he was involved in a robbery that same Friday in Nelspruit. That PW41 had lied that during the telephone conversation this witness would give PW41 a share from the Texray robbery and PW41 would also give this witness a share from the Nelspruit robbery.

[95] That PW41 had lied to the court when he said he could not take part in the Texray robbery because he was known in the Matsapha area having lived in Manzini whereas this witness stated that that was not the reason that PW41 could not take part in the Texray robbery. PW41 was not known in the area. This witness further stated that it was a lie that PW41 knew all the details pertaining to the Texray robbery. That PW41 lied that this witness had agreed to inform him about the outcome of the Texray robbery. That PW41 lied in court when he said this witness telephoned him enquiring how the robbery had gone with PW41 saying it did not go well.

[95] That PW41 heard when he said this witness responded by saying 'ezami ziwinile' (meaning that the Texray robbery was successful). That PW41 lied when he told the court that the

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witness had telephoned him on the Thursday preceding the Friday robbery and informed him that he was with PW11. That PW41 had lied when he told the court that this witness had given him E1,000.00 in Nelspruit as a refund for his contribution towards the purchase of the motor vehicle.

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[96] Mr. Mabila next put PW27's (Albert Mngomezulu) evidence to this witness to the effect that this witness had confided in him that he was not involved in the planning and execution of the Texray robbery. That it was the police who forced this witness to confess that he took part in the robbery and also to implicate the accused persons. PW42 explained that after his arrest he never discussed anything pertaining to this case with PW27. This witness revealed that as far as he was concerned PW27 did not have any reason to tell lies about him. The witness admitted that the statement he had recorded with the police was not made freely and voluntarily because once the police arrest a suspect they are aggressive and never give one peace. It was under duress that he admitted to the police that Accused 4 was given E15,000.00 to give his sister PW11 because he knew about it, even though he told the court that it was E 10,000.00. He stated that he admitted certain things to the police because they had already been revealed by the suspects. He admitted to the police that PW41 had been given E9,000.00 whereas he informed the court that he was given E5,000.00 to give PW41. He agreed that he admitted to the police that after counting his share from the Texray robbery it amounted to E63,000.00 and yet he told the court that his share amounted to E51,700.00.

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[97] Mr. Mabila tried to extract from this witness that the Texray robbery occurred on the 16/08/2004 as opposed to the 23/07/2004 but even though the witness could not remember the precise dates he was adamant that the Texray robbery occurred during July 2004. The witness agreed that money in the amount of E70,000.00 formed part of the money that the police took from him at the time of his arrest. He agreed that he did not physically witness the Texray robbery. It was put to him that Accused 1 and Accused 4 denied taking part in the robbery at Texray. He disputed this. It was put to him that Accused 1 and Accused 4 will deny that they had planned with anyone to commit the Texray robbery. His response was that they would be lying. It was put to him that Accused 1 in the presence of Accused 4 discussed the declining of business in the transport industry, to which this witness agreed. This witness confirmed knowing that Accused 1 knew Billy Shaw and Ndoda Mkhwanazi and that both had had brushes with the law with regard to armed robberies and that they had even been once arrested for these crimes.

[98] Even though there are inconsistencies in PW42's evidence, they are not material. Due to the tremendous length of his evidence he is not expected to remember every detail. Even though he was an accomplice witness he gave his evidence in a forthright and truthful manner. The court was impressed with his memory for detail. I find that accused 1

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and accused 4 have a case to answer in respect of Count 3. Accused 5 is acquitted and discharged.

Count 4: Robbery at Lobamba filling station

[99] In this count accused 1, 2 and 4 were charged with the crime of robbery it being alleged that on the 9th August 2004 at Lobamba, they in furtherance of a common purpose unlawfully threatened to shoot Nathi Tsela thereby inducing him to submit and robbed him of the sum of E36,428.45 (Thirty six thousand four hundred and twenty eight Emalangeneni forty five cents).

[100]PW1, Nathi Dexter Tsela testified that he was employed at the Caltex filling station at Lobamba. On the 9th August 2004 he was at work counting money. Between 10.00 a.m. 10.30 a.m. a man entered into his office and pointed a gun at him. The man ordered this witness to stand up and face the wall. He did so and as a result he was unable to see his features properly. When he tried to look at the assailant he was assaulted. The assailant dispossessed this witness of money and two cell phones: a Nokia 7650 valued at E7400.00 and a nokia 5310 valued at E900.00. He identified his cell phone in court. The other cell phone was not recovered. The money taken amounted to E36,428.45 (Thirty six thousand four hundred and twenty eight Emalangeneni forty five cents). He was unable to identify his assailant.

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[101]PW16 was Bongiwe Glenda Hlophe. She testified that she was employed at the Caltex filling station at Lobamba. She was at work on the 9th August 2004 when two men struck between 10:00 a.m. to 10:30 a.m. One of the men went directly to the accountants office where money was being counted and the other remained behind. The accountant was PW1. One was tall and light in complexion and had a chubby face and body. The other was short thin and tough. His hands were thin with veins standing out when he produced the firearm. It was he who remained behind. He pointed the firearm at her while he removed money from the till that she was manning. He wore a pink shirt and a short sleeved jersey over the shirt. The firearm he carried had wooden brownish handle.

[102] He ordered her to lie down and demanded airtime cards which she handed over in a plastic together with the money from the sale of the cards. She was challenged by Mr. Mabila in cross-examination who put to her that she could not identify her assailant. She maintained her stand that her assailant was accused 2, Mandla Khanya.

[103] The next witness that testified under this count was PW21, Sifiso Simelane. He is an accomplice witness. He testified that he owned a car wash business next to the Caltex filling station at Lobamba. He knew PW42. During June 2004 PW42 brought his car to be washed. He asked this witness whether money was made at the filling station. His

Count 1

response was that there was money made but that it was not much. On another date PW42 asked this witness who was responsible for banking the money and how it was done. The witness disclosed that PW1 was responsible for the money and pointed out PW1 to PW42. After this visit by PW42, PW21 heard that a robbery had taken place at the filling station on the 9th August 2004. On the evening after the robbery PW42 gave this witness the sum of E1500.00 in appreciation for the information he had given about the filling station.

[104] The cell phone belonging to PW1, a nokia 7650 (Exhibit C41) which he identified in court was recovered from PW26, Sibongile Sibandze. She testified that she was accused I's girlfriend. Prior to his arrest he had arrived with Exhibit C41 at her house and informed her that it belonged to a friend. The police recovered the sum of E18,000.00 (Eighteen thousand Emalangen) which accused 1 had given her. She informed the court that the money had come from accused I's transport business. She disclosed that accused 1 sold dagga in South Africa and normally had large sums of money. She testified that when the police brought accused 1 to her home he looked as if he had been assaulted.

[105] The next witness under this count was PW42. He testified that he was informed by PW21 that there was money that

Count 1

was available at the filling station at Lobamba and it needed clever people to take it. The money was usually banked in the morning. PW42 offered to find some people to steal the money. On a certain date he introduced PW41 to PW21. PW41 requested PW21 to take him to the filling station so that he could see the person who normally counted the money and the place where it was counted. Upon their return PW41 advised PW42 that in order to steal the money he needed someone to assist him. PW42 could not assist as the people around Lobamba knew him. PW42 suggested accused 1. The matter was discussed with accused 1 who was taken to see the filling station and confirmed that he would assist PW41.

[106] In the end accused 1 robbed the filling station without PW41 who had returned to Nelspruit. Accused 1 enlisted the assistance of accused 2 and Makhenzi. As they had no car they telephoned accused 4 who arrived in a silver grey corsa sedan. Accused 1, 2 and Makhenzi used accused 4's motor vehicle. Accused 4 and PW42 remained behind in a white Toyota corolla and informed accused 4 where the others were going in his car and accused 4 did not mind PW42 and accused 4 remained near Somhlolo stadium but moved to the hot springs near Parliament which is not far from the filling station. Makhenzi who had left carrying a pistol telephoned PW42 who informed him to drive to Matsapha to PW37's (Dumisa Tsabedze) at Matsapha. PW37 is PW42's cousin. When PW42 and accused 4 arrived at

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PW37's house he found accused 1, 2 and Makhenzi already there. PW42 knocked and asked PW37 permission to use his house. The latter agreed and moved out.

[107] The group moved in, emptied the contents of the bag which had money and airtime cards. They shared the money and airtime cards. This witness received E6,000.00 and took airtime cards to the value of E 150.00, E60.00 and E90.00. PW42 suggested that they keep money aside for PW37 for using his house and the finger man PW21. They put aside E2,000.00 for PW21 and E900.00 for PW37 together with some airtime cards. They left the firearms they had used with PW37. They requested PW37 to burn the plastic bags and bank bags which had carried the money and the used airtime cards. One firearm was black and the other silver and brown. They left PW42 gave PW21 E1,500.00 instead of E2,000.00

[108]PW37 next gave evidence. He is an accomplice witness. He testified that he was employed as a security guard during 2004. He knew PW41 and PW42. On the 10/08/2004 PW42 arrived at his rented room at Matsapha and asked to use his house together with some friends of his. This witness agreed and moved out of the room. When the people arrived this witness recognised accused 1 whom he knew but he did not know the other two who were with accused 1. They went into his room and 30 minutes later left. PW42

Count 1

remained behind. PW42 gave him E900.00 and some airtime cards for having used his room. PW42 then requested him to burn some papers and to keep two firearms for him. One firearm was black and the other had a brown butt. PW42 informed this witness that the owners of the firearms would collect them. Indeed Mdavu came to collect the black one and accused 1 the brown one.

[109] The Crown has not proved a ***prima facie*** case against accused 1 and accused 4. PW1 did not see his assailants. PW16 saw only accused 2. PW42 has stated that accused 4 remained with him while the robbery was being carried out. Accused 1 and 4 are acquitted and discharged. Accused 2 has a case to answer in respect of count 4.

Count 5

[110] There was no evidence led in respect of this count. Accused 1 is acquitted and discharged.

Count 6

[111] In this count accused no. 1, 2, 3, 4, 5 and 7 are charged with the crime of robbery it being alleged that on the 25th September, 2004 at or near Siteki, they in furtherance of a common purpose unlawfully threatened to shoot Phindile Bonisile Dlamini thereby inducing her to submit and robbed her of the sum of E2,000,000.00 (two million Emalangen).

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[112]PW7, Phindile Bonisile Dlamini testified in respect of this count. She related how she was robbed of the sum of E2,000,000.00. PW7 worked as an accountant at Evukuzenzele wholesalers at Siteki in the Lubombo district. She testified that on the 25/9/2004 while she was at work a robbery occurred. The owner of the business is PW43 Mr. Moses Motsa. Mr. Motsa owns several businesses in Manzini, Mpaka and at Siteki. Each branch would count the takings and record the amount. Thereafter the money would be transmitted to the main branch at Siteki. PW43 and herself would count the money from all the shops and record it.

She informed the court that the amounts were as follows:

The total amount from the hardware store at Siteki was E154,880.00. This was 3 days takings.

- The total amount from a cafe in Manzini was E121,743.54. This was 7 days takings.
- The total amount from Mpaka was E123,885.55 which comprised of 7 days takings.
- The total amount from the hypermarket at Manzini was E486,374.30 which comprised of 4 days takings.
- The total amount from old Thekwini Supermarket was E399,948.10 which comprised 4 days takings.

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- The total amount from new wholesalers in Manzini was E488,709.06 cash and cheques worth E4,176,307.34.
- The total amount from the wholesaler at Siteki was E62,751.65 which comprised 3 days takings.
- The total from the supermarket at Siteki was E224,582.10 which comprised 3 days takings.

The total amount was E2,062,882.80 cash and cheques worth E4,176,307.34. The grand total being E6,239,190.14.

[113]The denominations were E100 notes, E50 notes E200 notes, E20 notes and E10 notes. She said the money would be counted into bundles and then clipped together for example she would count 10 x 100 notes and clip these together. The clips of 10 would then be bound into bundles of 10 and wrapped with rubber bands as follows:

E200 x 20.000

E100x 10.000

E50 x 5.000

E20 x 2.000

E10x 1.000

[114] The money would be packed into 8 plastic bags for each outlet and these plastics would be packed into a suitcase

Count 1

and taken to the bank. The plastics on the 25/9/04 were navy blue big ones and small ones which were grey with black stripes. The suitcase was maroon in colour. The suitcase was marked with the name: Evukuzenzele, Siteki on the inside cover. She had marked it because it was getting worn out. It was torn on the zip edge. She identified this suitcase in court.

[115] She further stated that she packed the money, cheques bank deposit book and a fork in the suitcase. She then left for the bank on foot escorted by two security guards, Sifiso whose surname she had forgotten and John Shabangu PW19. The bank was very near to the business. All they had to do was walk through the gate cross a public road and reach the bank. Sifiso carried the suitcase. The witness walked in front, Sifiso after her in the middle and Shabangu brought up the rear.

[116] The gate was customarily opened by a lady. On this day after she had opened the gate a motor vehicle came to a stop in front of them, blocking the way. The witness passed behind the motor vehicle happily chatting to the others following her. When she reached the white line of the tar road she realised that she was no longer getting a response from the ones following her. She turned around and saw that someone was pointing a firearm at Sifiso. The person pointing a firearm grabbed Sifiso by his shirt front and he fell down. Another man approached also carrying a firearm

Count 1

he helped the one who had accosted Sifiso by taking the maroon suitcase and they walked towards the motor vehicle which had blocked their way. The two men entered the motor vehicle. When this witness had passed the motor vehicle earlier there was only one person inside. Once the two men had entered, another man approached from the direction of the bank. He ran towards the car as it was about to drive off and boarded it. At the time the motor vehicle drove off an armed police officer came from the market direction. The officer fired a shot which hit the left passenger window as the motor vehicle drove off.

[117] The witness described the motor vehicle as a silver grey opel corsa with G.P. plates. She did not see the full registration. She returned to the store and informed PW43 of what taken place and they both went to report the incident to the police at Siteki. The police tried to give chase but were unable to catch up with the opel corsa.

[118] The following Thursday, police officers from Matsapha came and took this witness together with PW19, John Shabangu to Matsapha. The police explained that they had apprehended certain people and they wanted the witness to come and see if the people who had committed the robbery at Siteki were not among them. The arrested people were among groups of 5 or 6 people. There were three groups. She identified accused 1 who had taken the suitcase and accused 2 who had escorted accused 1 from the first two

Count 1

groups. She was unable to identify anyone in the third group. She again identified accused 1 and 2. She recalled that the firearms were short. She handed in the document on which she had recorded the cash and the cheques: C6 Exhibit 5. The court adjourned to inspect a motor vehicle which was parked outside within the premises of the court. The witness identified it as the silver grey opel corsa that the assailants had used at Siteki. There was no glass in the left passenger window, confirming her story that the police bullet had shattered it as part of the glass had fallen on the ground.

[119] Mr. Mabila cross-examined this witness about the identify of the assailants. She was adamant that she saw accused 1 and 2 in the short time that the robbery occurred. She described the assailants to the police. The first one was light in complexion tall and fit. The second one was short dark and had pimples on his face. Mr. Mabila put it to the witness that accused 1 and accused 2 were never at Siteki on the 25th September 2004 nor on any date closer to the 25th September 2004. The witness was adamant that she had seen accused 1 and 2 that she was not mistaking them with other people. Mr. Mabila further stated that accused 1 and accused 2 would call witnesses to confirm their whereabouts on this date. Mr. Mabila further cross-examined her about the identity of the motor vehicle that she had identified outside court. She was equally adamant that it was the motor vehicle that the assailants had driven away in it because of the absent left passenger window

Count 1

that the police officer had shot off. She was cross-examined by Mr. Simelane and Mr. Magongo but nothing much turns on their cross-examination. She was not shaken.

[120] PW 34 Sifiso Ginindza testified that during 2004 he was employed as a security guard at Evukuzenzele, Siteki. On the 25/9/2004 he was at work and his employer, Mr. Motsa instructed him together with PW11 and PW19 to take some money to the bank for banking. The money was contained in a maroon suitcase and this witness was carrying the suitcase with the money. As they were crossing the road he felt someone grab him at the same time insulting him. Something cold was placed on his neck, the bag was grabbed from him, he was pushed and he fell down. He lost consciousness. When he regained consciousness he went to report at the police station. He was unable to see his assailant and cannot identify his assailant. The bag he carried was torn by the zip and was maroon. He identified it as Exhibit "C6 Exhibit 13.

[121] Mr. Mabila cross-examined this witness and he revealed that the police had suspected him of being involved in the robbery. He stated that even though the police had suspected him, when they interrogated him they did so politely.

[122]PW19, John Shabangu testified in respect of this count. He testified that at the time of the robbery, he was a security

Count 1

guard at Evukuzenzele, Siteki. This witness was employed as a security guard at Evukuzenzele, Siteki during 2004. On the 25th September 2004 he was at work and at about 11.00 a.m. he was instructed to take money to the bank. He accompanied Phindile Dlamini (PW7) and Sifiso Ginindza. The latter was also a security guard. Sifiso Ginindza carried money in a marron suitcase. PW7 walked in front Sifiso next and this witness brought up the rear. They went through the gate and near Store supermarket they found a motor vehicle parked with one person inside. A man came towards them from the direction of Lewis Stores he was moving very fast and caught Sifiso by his shirt front. The person swore at Sifiso saying voetsek put it down! Before Sifiso could put it down the assailant pushed him and he fell. He produced a firearm and pointed it at Sifiso's neck before he pushed him down. After he had pushed Sifiso down he dispossessed him of the suitcase and hurried towards the motor vehicle motor parked at the gate which was now idling and got inside. The witness then attended to Sifiso. This witness heard a gun shot and looked at the motor vehicle which was driving away fast. The motor vehicle was a silver grey sedan. This witness returned to Evukuzenzele supermarket.

[123] Some time later police from Sigodvweni police station at Matsapha arrived at Evukuzenzele at 8.00 a.m. and called this witness and PW7. They boarded a white Kombi (minibus) and were driven to Sigodvweni police station. They were asked to identify the people who had robbed

Count 1

them of the money on the 25th September 2004. This witness responded that he was able to identify the one who had taken the money. PW7 also said she could identify them. She left first. PW7 also said she could identify them. She left first. After that a police officer called this witness and they went into a room where there were several people. He was asked to look at them and make his identification by touching the person on the shoulder. He described one of the assailants as tall and light in complexion. He identified accused 1. He also identified accused 1 in court.

[124]PW43, Moses Motsa testified that he was the complainant and the proprietor of the businesses known as Evukuzenzele. He stated that on the 25/9/2004 he was in his office at Siteki where he prepared money to be banked. The total amount to be banked was:

Cash	:	2062.882.80
Cheques	:	4176.30.4
Total	:	6239.190.14

[125] The money was placed in a maroon suitcase as was customary and given to Phindile Dlamini (PW7) and two security guards Sifiso Ginindza (PW34) and John Shabangu (PW19) to take to the bank. The bank is within walking distance. Shortly after they had left he heard a gunshot and he ran from his office to investigate.

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He met PW7 who was crying saying that she had been robbed of the money. He drove off to the police station where it was confirmed that his money had been stolen. Later he was called by the Lobamba police who informed him that they had recovered some money amounting to E672,000.00. He informed the court that he had two methods that he used in binding his cash to enable him to identify it in the event something happened to it. **The first** method was to bind the money as follows:

E20.00	in	E 2,000.00 bundles
E20.00	in	E10,000.00 bundles
E200.00	in	E20,000.00 bundles
E50.00	in	E5,000.00 bundles
E10.00	in	E1,000.00 bundles

[126] **The second** method was that he used different coloured clips for different denominations for example.

E200.00	maroon clips
E100.00	silver clips white clips yellow clips
E50.00	green clips
E20.00	
E10.00	

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The witness actually identified some bundles of money which had clips as described above. He identified the maroon suitcase. He handed in some documentary evidence as Exhibit C6 Exhibit 8-16.

[127] Mr. Mabila cross-examined this witness. He elicited from him that he did not know the serial number of the stolen money. The witness was asked if he had withdrawn any money from the bank and he responded that he had not except from his personal account. It was elicited from him that he normally counted the money and sometimes someone checked it and it was placed in plastic bags and packed in the suitcase before it was taken to the bank together with the deposit books. He was asked about a fork found with the money and its significance. His response was that he did not know anything about the fork. Nothing much turns on the significance of the fork except some superstitious story which is irrelevant herein.

[128]PW20, 4627 detective Constable Siphon Ndzinisa testified that during September 2004 he was based at Siteki. On the 25/9/2004 he went to patrol in town as it was a busy day. He went in and out of Evukuzenzele Supermarket and as he was crossing the road he noticed a silver grey sedan motor vehicle parked in the middle of the road between FNB and Lewis Furnishers. The rear passenger doors were open and he saw two men behind that motor vehicle who appeared

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to be engaged in a fight. One of them grabbed a maroon bag from the other and got into the motor vehicle on the left rear passenger seat. This witness ran towards the motor vehicle after realizing that the maroon bag was from Mr. Motsa's shop.

[129] The bag was used to take money to be banked. As the doors to the motor vehicle were closed this witness shot at it twice as he realised that a robbery had just taken place. There were too many people milling around for this witness to release more shots. The first bullet landed at the edge of the left front passenger door and second bullet hit the left passenger window. He did not notice the registration numbers except that the last letters were "G.P". The motor vehicle was a silver grey corsa. This witness stated that he could identify the motor vehicle. Counsel for all the accused persons agreed that it was not necessary to conduct an inspection in loco of the motor vehicle which is parked outside court. It was agreed that it is the same motor vehicle that has been the subject matter of this case. He described the assailant as being tall and light in complexion and heavily built. He did not do a dock identification.

[130]PW29 3892 Detective Constable Bonus Mahlalela Count 6 testified that on the 25th September 2004 he was on duty and that he was attached to the Criminal Intelligence Department at Siteki. While he waited next to Lewis Stores a silver grey motor vehicle approached. It had South

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African plates, the last alphabet was GP. The motor vehicle moved slowly it did not come to a complete stop it remained idling. The motor vehicle was about 3 metres from where this witness was standing. Two men alighted and went straight to the people who normally carried Mr. Motsa's money who were carrying a maroon bag. One man alighted from behind the driver took out a pistol from his waist band and went straight to the people who were carrying the money. The second man alighted from behind the left passenger seat went straight for the person who was carrying the bag. He took the bag while the man carrying the pistol placed his pistol on the neck of the one carrying the bag of money. After grabbing the bag they returned to the motor vehicle.

[131] This witness heard two gun shots. He saw a third person come from the road near the First National Bank enter the motor vehicle. He was able to see the first two clearly but not the third one who got into the passenger seat.

He noticed PW20 who followed the man who got into the passenger seat. This witness used his mobile phone to call the police. The motor vehicle drove towards Manzini. On the 30/9/2004, this officer was called to an identification parade at Matsapha as some people had been arrested. He went together with Phindile Dlamini (PW7) and John Shabangu (PW19). This witness was able to identify accused 1 and accused 2. Accused 1 had grabbed the

Count 1

maroon bag containing money and accused 2 had pointed the gun at the security guard. This witness stated that there were two separate parades. He informed the court that the motor vehicle was a sedan corsa. Counsel for the accused persons agreed that there was no need to inspect the motor vehicle outside court. They accepted that it was the same vehicle that all the witnesses had identified.

[132] Mr. Mabila cross-examined this witness and put to him that PW7 and PW19 had informed the court that they were the only two who attended the identification parade. This witness responded that PW7 and PW19 were not telling the truth. It was also put to this witness that PW7 had informed the court that there were three groups of five people that comprised the identification parade. This witness responded that PW7 was not telling the truth. He was asked whether PW19 was lying when he stated that the identification parade was made up of a single line of 15 people from whom they had to select the suspects. This witness said that PW19 was lying. He was also told that PW7 had said that there were three other people in the room where they were supposed to identify the suspects. This witness had said there were two besides himself. The officer responded that PW7 was not telling lies because PW7 went in at a different time than himself. Mr. Mabila asked this witness whether the photographer was present in the identification room all the time and the witness answered in the affirmative. Mr. Mabila asked this witness whether PW19

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was lying when he told the court that the photographer came later. This witness responded that he did not know what happened when PW19 entered the room, he was only referring to what happened when he (the witness) entered the room.

[133] It was put to this witness by Mr. Mabila that PW20, 4627, Detective Constable Siphon Ndzinisa had informed this court that he had seen the scuffle for the money bag but did not see anyone pointing a firearm at the assailant. This witness responded that PW20 had come from the direction of Lubombo he may not have seen all that this witness saw. Asked if he talked about the evidence with PW20 this witness denied this. Asked further how he knew that PW20 had come from Lubombo direction, this witness responded that he had heard gunshots coming from the Lubombo direction and concluded that there was another officer in that direction. Otherwise he did not see PW20 approaching the scene of crime. He only saw PW20 after hearing the gunshots.

[134] Mr. Mabila put to the witness that it was not true that he had witnessed the robbery and proceed to state why namely:

> That the witness was never taken to identify the suspects at Matsapha

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> That had the witness witnessed the robbery he would have seen that the corsa sedan was parked and stationary at the side of the road and not in motion.

> That had the witness gone to the identification parade he would have been aware that three identification parades were conducted on the 30th September 2004

> That the reason why his evidence was at variance with PW7, PW19 and PW20 was because he was lying.

The witness responded that he was not lying.

[135] Mr. Mabila put to the witness that accused 1 and 2 were not at Siteki but at Mbabane on the 25/9/04. The witness refuted this and stated that they were at Siteki. Mr. Mabila made much of the failure by this witness to inform the court in his evidence in chief that the assailant who grabbed the bag of money did not push the person carrying it down. This he attributed to the fact that the witness was lying that he witnessed the robbery. Ultimately this witness admitted that he did not see the person carrying the money fall down. Asked if it surprised him that PW7 and PW19 had informed the court that the person carrying the money had fallen down, this witness stated that these witnesses stated what they had seen and he had also stated what he had seen. Confronted that both PW7 and PW19 had informed the court that it was actually accused 1 who was carrying the firearm

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and the one who had pointed the firearm at the person who was carrying the money he insisted that he was telling the court what he had seen. Asked if it would surprise him that PW7 and PW19 had informed the court that it was accused 2 who had escorted accused 1 into the motor vehicle and not the other way round as the witness had informed the court. He responded that he would not be surprised as the action was fast.

[136] When asked that the evidence of PW7, PW19 PW20 and this witness's evidence was irreconcilable he stated that he could not agree as he did not hear these witnesses when they gave evidence. This witness was asked whether he was aware that PW7 had testified that three shots were fired contrary to him having stated that there were only two gunshots. His response was that PW7 was a lay person and had no knowledge of firearms.

[137]PW 25, 2323 Inspector Howard Themba Hlophe testified in respect of count 6. He stated that he was based at Lobamba police station and is attached to the identification parade unit. On the 30/9/2004 while at Matsapha police station he was requested to conduct an identification parade. He was assisted by Constable Lokotfwayo the photographer whose role was to take some pictures during the course of the exercise. This witness was also assisted by Constables Simelane and Thwala. He conducted two separate identification parades involving two suspects as

Count 1

the features of the suspects were not the same. One was tall and light in complexion and the other was short and dark. The first parade included Sicelo Zikalala whom the witness identified as accused 1. The other involved accused 2. PW19, John Shabangu identified accused 1 as being involved in the robbery at Evukuzenzele, Siteki. Next was PW7, Phindile Dlamini. She also identified accused 1 as having been involved in the robbery at Evukuzenzele, Siteki. PW29 Bonus Mahlalela identified accused 1 as being involved in the Siteki robbery. As each witness pointed out a suspect the photographer took pictures.

[138] The second identification involved Mandla Khanya accused 2 . John Shabangu (PW19) failed to identify accused 2. Phindile Dlamini (PW7) identified accused 2 as being involved in the Evukuzenzele Siteki robbery. Bonus Mahlalela also identified accused 2 as being involved in the Siteki Robbery. This witness handed in his report as Exhibit C7C6. He identified accused 1 and accused 2 in court. He handed in form RSP8 as exhibit C6 72. Before each identification he had tried to contact Mr. Mabila the attorney for both accused but was unable to reach him.

[139] Mr. Mabila cross-examined this witness and put to him that he had been instructed that there were three identification parades but he denied this. It was also put to him that Phindile Dlamini (PW7) had informed the court that there were three groups on parade but this witness denied this

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and maintained that there were only two. It was also put to this witness that only two witnesses participated in the parade namely PW 19, John Shabangu and PW7 Phindile Dlamini but the witness denied this and said there were three including PW29, Bonus Mahlalela.

[140]PW31 2325 Detective Constable J. Lokotfwayo testified that he was a Scenes of Crime officer based at Lubombo RSP. His job included photography, forensic and taking fingerprints and packaging of exhibits. On the 30th September 2004 he attended an identification parade at Matsapha police station which was conducted in two divisions since there were two suspects to identify and three witnesses. He took photographs of the first and second parade which consisted of about eight men. PW7 was called to the first parade and she pointed out accused 1. At the second parade she identified accused 2. PW19 failed to identify anybody. There were three witnesses called in respect of the second parade, namely PW7, PW19 and PW29. PW29 (3892 Detective Constable Bonus Mahlalela) identified accused 1 and 2. PW31 handed in the photographs he had taken at the parade (Exh.C6 8(a) - (g)). This witness stated that whenever a witness identifies a suspect he takes a photograph and where no suspect is identified he does not take any photograph.

[141] Mr. Mabila cross-examined this witness and put to him that PW7 (Phindile Dlamini) informed the court that there were

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three identification parades. The witness responded that PW7 was lying. Also put to the witness was that PW7 was able to identify accused no. 1 in the first parade and he responded in the affirmative. It was put to this witness that 2323 Inspector Howard Themba Hlophe (PW25) lied when he stated that the first witness was a male, John Shabangu. The witness's response was that PW25 was lying. It was put to the witness if PW19 (John Shabangu) was lying when he informed the court that this witness came later during the identification parade. The witness responded that PW19 was lying. This witness had remained throughout the duration of the identification parade. It was further put to this witness that the third identification parade was staged for the purposes of identifying accused 3 during which no one could identify him including PW7 (Phindile Dlamini). His response was that PW7 was lying there was no third parade. This witness stated that PW7 lied when she stated that besides this witness and the suspects there were three people inside the identification room.

[142] PW 14 was Mncedisi Mamba who was introduced as an accomplice witness. He stated that during the month of September 2004 he was at his home. Accused 4 arrived during the first week of October 2004 and asked this witness to drive for him. Accused 4 stated that he wanted to stage a robbery but he could not disclose the place unless this witness first agreed to drive for him. This witness agreed and accused 4 advised him that the robbery would be staged at Motsa's at Siteki and for this purpose accused

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4 needed a fast driver as the place was far and they needed to catch up with time. This witness expressed a wish to think things over. The following week accused 4 returned to this witness who stated that he could not carry out the mission but would help find someone trust worthy for accused 4. This person was Sikhumbuzo Dlamini but this witness would need to talk to him first. Accused 4 returned the following week, a third time, and this witness informed him that Sikhumbuzo was unavailable.

This witness further stated that accused 4 complained that too many people had been told of his plans meaning this witness and Sikhumbuzo. He also told this witness that a lawyer friend of his from Siteki had informed him about the money at Motsa's. On the occasions accused 4 came to see this witness he was driving in a silver opel corsa sedan SD 129 DG or G.G. which was still in good condition. This witness identified accused 4 in court. Counsel for the accused persons agreed that there was no need to inspect the opel corsa as its identify was not in issue. He was cross-examined but nothing much turns on this.

[143]PW15 Jabulile Dlamini testified that as of Saturday the 24th September 2004 she was employed at Nisela guest house which is situate at Nsoko along the Big Bend-Lavumisa public road. She stated that she was used to accused 4 because he was a regular customer at Nisela guest house. On the 24/9/2004 when accused 4 arrived he was carrying a

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middle size maroon Pullman suitcase and he made a reservation for three people. She wrote out an invoice for Accused 4 for three people and the invoice came to E 100.00 per person. Only two people arrived instead of three. They arrived on the 25th September 2004. This witness wrote the check out date on the invoice which was the 26th September 2004. This second person was male. She further stated that when accused 4 completed his portion of the invoice he wrote his name as Samuel Mabundza. When she asked him why he explained that he did not know what was wrong with him but he was confused. She stated that he gave her E100.00 and said she should use E50.00 and he would collect the change on another date. After accused 4 had paid the bill she gave him the top copy (original) and kept the other copies for the cashiers.

[144] She stated that after she had given accused 4 the invoice him and the second unknown man went to their rooms. She also left while accused 4 was talking on his mobile phone giving someone directions to Nisela guest house. She stated that she saw a private motor vehicle come through the gate but did not notice much about it. She saw them leave and went to the motor vehicle and that is when accused 4 gave her E100.00. The motor vehicle was a silver grey opel corsa. Accused 4 was driving and the second man was seated next to him. This witness handed an invoice as an exhibit C6 (6) 6869. She also identified accused 4.

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[145] Mr. Mabila cross-examined this witness and put to her that in the statement that she had recorded with the police on the 12 October 2004 15 days after the 26th September 2004 she recorded that the motor vehicle that accused 4 was driving was greyish and the make was unknown to her. She responded that she told them that the motor vehicle was greyish in colour and that they did not ask what the make was. He put to her that she recorded with the police that accused 4 drove out of Nisela guest house alone and what she was now telling this court that accused 4 left with someone.

[146] Mr. Mabila also put to her that she saw the motor vehicle which drove in after accused 4 had telephoned giving directions and that it was a white sedan but she now is telling the court that she did not notice it. Nothing much turns on the cross-examination of this witness.

[147]PW17, Bhekifa Khumalo informed the court that he was illiterate and was unable to tell dates and months of the year. He hailed from Zombodze at Nhlangano. He was a traditional healer and accused 4 was his patient. Accused 4 first came to this witness for treatment for a cough. When he next came it was at night between 9.00 and 10.00 p.m. This witness asked how accused 4's cough was and the latter stated that it was better. After offering to give him a bottle of medicine accused 4 went to sleep in the children's room saying he would awake early in the morning and leave

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before this witness had awoken. In the morning this witness went to check if accused 4 had not forgotten anything in the children's room. He found a maroon bag. Another person had occupied the room before accused 4 and this witness did not know whether the bag belonged to accused 4 or the other person. He took it and kept it. On a day this witness received a call from the police who said that they were with accused 4.

[148] The officer said that they wanted the bag that was left by accused 4. This witness instructed the officer to hand the mobile phone to one of his wives Estel Ngwenya (PW18) to whom he gave directions to retrieve the bag from his 'indumba' or consulting hut. When he returned home the maroon bag had left with the police. He identified accused 4 in court. The next time he saw accused 4 was at Big Bend prison. This witness and accused 4 had a conversation about a fork that accused 4 had stated he had given to this witness. This witness denied this.

[149] When asked by Mr. Mabila whether his wives had access to his consultation room this witness denied this adding that his keys were hidden that is why he had to ask the officer to hand over the phone to him so that he could give PW18 directions as to where to find the keys. The witness was asked where he had talked with accused 4 when he saw him in Big Bend whether he talked through bars or in a room. This witness said it was in a room and that accused

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4's attorney was not present. Nothing much turns on PW17's cross-examination.

[150]FW 18 Estelle Khumalo is the wife to PW17, Bhekifa Khumalo. She confirmed that accused 4 was a patient of her husband (PW17). She had seen him on the first occasion but had not on the second occasion. She saw him when he came in the company of the police. The police wanted a bag that had been left by accused 4 in the children's room. PW17 was not at home that day and the bag was not in the children's room. She gave the police PW17's mobile phone number and they called him. PW17 in turn requested the police to give PW18 the mobile phone and told her where the bag was. Accused 4 pointed at the bag. It was a maroon suitcase with handles. It had a red stripe on the corner and it was torn somewhere. It was old. She identified accused 4 in court.

[151]PW32 Thulisile Octavia Matsebula testified that during 2004 she was a teacher at Our Lady of Sorrows School in Hluthi which is in the Shiselweni district. She knew accused 4. He is her boyfriend. On the 2nd October 2004 at about 5.30 a.m. some police officers arrived at her house with accused 4. The house is allocated to her by the school and is on the school premises. Superintendent Khethokwakhe Ndlangamandla enquired from her what accused 4 had left in her house and her response was a bag with his clothes. The police officers together with accused 4 went to her bathroom and accused 4 pointed up to the ceiling from

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which the police retrieved a green and black checked plastic bag containing money notes. This witness informed the court that she did not notice the denomination of the money because she was shocked and shivering that the money was in her house and she did not know about it. She identified the plastic bag in court. The money was packed in money bundles. She disclosed to the court that she knew Mkhetsile Mabuza (PW11) as accused 4 had brought PW11 to her house as well as with another sister to accused 4 but she did not see what type of vehicle they had come in as they had parked in the front of her house and she had not gone there.

[152] She further stated that accused 4 had taken her to PW11's home where she spent a night but accused 4 had left during the night and returned in the morning. He had used a brown private motor vehicle. When accused 4 had arrived with the police to her house at Hluthi he was handcuffed and his T-shirt concealed the handcuffs. She identified accused 4 in court. The money was not counted after it was retrieved from her ceiling. She did not know how much the money was. She had visited accused 4 at Big Bend Correctional Facility and at Mbabane.

[153] She was cross-examined by Mr. Mabila. She disclosed that she had visited accused 4 the previous week to her giving evidence because she had heard that accused 4 was unwell and may have been suffering from tuberculosis. However

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the cause of his illness was that accused 4 had allegedly been beaten up and his knee had been squeezed. This had been done by the correctional service officers at the remand centre. When she had visited accused 4 at Mbabane, he was using a wheelchair. He alleged that he had been beaten up by police officers. He also had chest pains: she had visited accused 4 again the following week and found that he was ill and in bed. She stated that while he was at Big Bend and on one of her visits she found that he could not walk without assistance. He claimed that he had been beaten and strangled by the officers at the remand centre. She further stated that prior to accused 4's arrest he was well and could walk without assistance.

[154] When counsel for accused 4 wished to know if the police had used harsh language with accused 4 when they arrived at her home in Hluthi she revealed that they talked strongly and harshly to accused 4 but not loudly or at the top of their voices. She revealed that at the time the police arrived with accused 4 she had been involved with him less than 6 months. She confirmed that when accused 4 came to her house with the police she could see that he had been assaulted on his face and his clothes had blood stains on them. She further stated that the police did not caution accused 4 before he pointed at the ceiling from where the money was retrieved. She stated that accused 4 had travelled to Maputo where he had sold a 4x4 Hyundai motor vehicle for E350.000.00. She further stated that when she

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and accused 4 became lovers she enquired of him as to what he did for a living and he told her that he bought motor vehicles from South Africa and resold them. She had travelled with him and some friends to South Africa in a BMW for this purpose. She further stated that the money retrieved from her ceiling was in a plastic bag and not a maroon bag. She further agreed that accused 4 was in the habit of carrying large sums of money before his arrest due to the business he was in.

[155] When she was re-examined she confirmed that accused 4 carried large sums of money but not always. She stated that she did not see in what container the money retrieved from her ceiling was in before it was placed in the plastic because she did not know that it was in her house. She had never witnessed accused 4 buy a motor vehicle. She stated that the police who came to her house were only concerned about money and informed her that she may have read in the newspapers that some money had been stolen from Evukuzenzele, Siteki. She could not recall what the strong words used by the police on accused 4 were but their general attitude was one of no nonsense. Asked what the names of the police officers were who had strangled accused 4 and squeezed his knee she responded that he did not tell her because she did not ask accused 4. She had visited accused 4 but it was during week-ends while he was at Big Bend Correctional facility until he was moved to Sidwashini Correctional facility at Mbabane.

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[156] She observed for herself that accused 4 had been assaulted. When he was brought to her he was assisted to walk. He was carried by some boys. They held his arms and feet. However the last time she had seen him in Big Bend he was no longer being carried or helped to walk but complained of his general state of health. She had visited accused 4 at Mbabane a week before she gave evidence. The first day he was in a wheel chair and the second day he was confined to bed. The day on which she saw him in a wheelchair he appeared swollen and would gasp while talking and he explained that he was having some chest problems. She was asked if she had seen any injuries on accused 4 after he informed her that he had been squeezed and strangled, she stated that she saw that he was swollen. She was asked if accused 4 had told her the name of the doctors who had advised him that he was suffering from tuberculosis, she responded that accused 4 had not informed her the doctor's name.

[157]PW 27 Albert Mngometulu testified that he resided at Nkwalini Zone 4, Mbabane. That he was self-employed and operated a transport business. On the 25th September 2004 he was at Matsapha washing his motor vehicle. He received a call from accused 2 who is a cousin to him. Accused 2 wanted this witness to give him a lift to Mbabane. Accused 2 arrived with PW42 in the latter's motor vehicle. Accused 2 together with accused 1 and another man named

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Mncanyana alighted from PW42's motor vehicle and boarded this witness's motor vehicle to Mbabane.

[158] On the 29th October 2004, the police called this witness to Mbabane. When he met the police they indicated that they wished to go to his house at Nkwalini Zone 4. The police were with accused 2. The police and accused 2 boarded the police minibus and proceeded to Nkwalini. This witness drove ahead and waited at his house for the police. When they arrived at this witness house, they went inside where accused 2 pointed at a drawer which the police opened as accused 2 was handcuffed. From the drawer, the officers retrieved a plastic bag which contained money. The police took the money and informed this witness that they would call him to the Lobamba police station when they had counted the money. The police called this witness later that day. The money when counted amounted to E1 17,000.00 or E107,000.00 and was in mixed denominations of E20, E50 and E100 (local currency). Accused 2's demeanour was depressed and scared but he did not look as if he had been assaulted just badly treated. This witness informed the court that he knew accused 1 as he grew up with him at Msunduza, Mbabane. Mncane was a friend of a friend named Vusi Msibi. PW42 and this witness were employed together at one time by Special Bus Service. He identified accused 1 and accused 2. He identified Mncane as accused 3.

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[159] Mr. Mabila cross-examined this witness who revealed that he had known accused 1, 2 and 3 for over seven years. He also revealed that 1, 2 and 3 sold dagga in South Africa and from this illicit business they generated a lot of income and often carried large quantities of money. He revealed that PW42 and him had been friends for a long time and confided in one another. It was this witness that officer Khethokwakhe Ndlangamandla telephoned to help him get hold of PW42'. He could not deny that accused 2 when he arrived at this witness's home at Nkwalini had not been assaulted by the police even though he did not have any visible injuries. This witness changed his testimony and stated that he did not actually see accused 2 point out the drawers from where the money was retrieved. He recalled that the police first went into the kitchen and came back into the living room and this witness followed behind the police. He recalled that the police spoke to accused 2 in a rough manner. They were swearing at accused 2 and insulting him.

[160] This witness informed the court that while accused 1, 2, 3 and 4 were in custody at Big Bend Correctional facility this witness visited them. This witness could not recall what he had discussed with the accused. He did however reveal that PW42 engaged in armed robberies but not the current ones being tried before this court. This witness was informed by PW42 that he did not plan nor execute the current robberies but this witness did not know whether PW42 was telling the

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truth or not. Mr Mabila put to this witness that PW42 was threatened with arrest by the police if he did not implicate accused 1, 2, 3 and 4. This witness confirmed that was what PW42 had told him. This witness revealed that officer Khethokwakhe

Ndlangamandla instructed him to fetch PW42 from Johannesburg and that PW42 would not be arrested. This witness fetched PW42 and indeed the latter was not arrested. The witness was not told as to what had taken place between PW42 and officer Ndlangamandla. Mr. Mabila put to this witness that when accused 1, 2 and 3 asked for a lift from him from Matsapha to Mbabane they did not mention to him that they were from Manzini. That the reason they sought a lift from this witness was because PW42 had informed them that he was no longer going to Mbabane but to some other place even though they had gone to Manzini with him. This witness agreed that this was what was said by accused 2 when accused

- 2 called he stated that he was in Manzini. Accused 1 and
3 did not call him.

[161]PW28 2928 Detective Constable Mpendulo Dlamini testified that on the 30th September 2004 while off duty in Nhlangano town he saw accused 4 whom he had been informed had committed an offence at Siteki. This witness called other officers and proceeded to accused 4 whom they found at one of the shops at Nhlangano. The officers

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introduced themselves and informed accused 4 that he was under arrest for a robbery at Siteki. The officers cautioned accused 4 in terms of the judges rules. They took accused 4 to the police station and requested to search accused 4, who agreed. He was searched and the sum of E7006.00 was found in his pockets. The money was in Swazi and South African currency the bulk of which was in Swazi currency. This witness thereafter called the Lubombo police who came and collected accused 4, the money and a BMW motor vehicle that accused 4 had been driving. This witness knew accused 4 previously and identified him in court as accused 4.

[162] Mr. Mabila cross-examined this witness. He put to this witness that he had been instructed by accused 4 that this witness had during 1999 arrested accused 4 for possession of dagga. This witness agreed that accused 4 had been arrested but not by him. It was further put to this witness that accused 4 was never told that he could decline the search of his person and that the money found in him was mainly Swazi currency. The witness denied the latter.

[163]PW37, Dumisa Phillip Tsabedze (accomplice witness) testified that PW42 had come to him during September 2004 stating that he needed his help. PW42 told this witness that there was a certain job that he had to do at Siteki and that he needed someone who knew Siteki very well and who resided at Siteki. He informed this witness

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that the job was to be done at Evukuzenzele. This witness agreed to assist by finding such a person. PW42 further revealed to this witness that someone else had assigned him this job, and that this person did not have the expertise to carry out the job. The person who had assigned him that job was a lawyer. PW42 did not disclose the lawyer's name. This witness advised PW42 that he would speak to someone who was a resident of Siteki but he did not know whether or not this person had the necessary expertise. This witness telephoned accused 7 (Bheki Shongwe) who was employed at the same place as the witness as a security guard. Accused 7 wished to know who had a job at Siteki and this witness informed him that it was PW42. Accused 7 stated that he lived in Siteki and normally did his shopping at Evukuzenzele.

[164] Accused 7 told this witness that he could find a person but it was better if this witness could arrange a meeting between PW42 and himself. This witness telephoned PW42 and informed him about his conversation with accused 7. PW42 arrived and this witness took him to accused 7's place of employment. PW42 and accused 7 spoke in the motor vehicle within the presence of this witness after he had introduced them. PW42 explained to accused 7 that he wanted someone to assist him gain entry to a job he wished to carry out in Siteki. Accused 7 agreed to look for someone and asked PW42 to give him a week within which to find such a person. PW42 instructed this witness to go to Siteki

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and survey as to when and how the money was taken to the bank. This was the money from Evukuzenzele. A weekend passed before accused 7 returned. Accused 7 telephoned PW42 who in turn telephoned this witness informing him that accused 7 had supplied him with all the information he needed he (PW42) would be able to carry out the job.

[165] On Saturday the 25th September 2004 at about 7.00 a.m. PW42 telephoned this witness and informed him that he was on his way to Siteki to carry out the job. On the same day at about 11.00 a.m. accused 7 telephoned this witness and advised him that the boys had already done the job and had taken the money. He did not tell this witness how the job was done or how he knew that it had been done nor did this witness ask him how accused 7 knew that the boys had done the job nor where he was when the boys had done the job. On Saturday afternoon PW42 telephoned this witness and informed him that they had done the job even though it was difficult in that the police had shot at them but nobody was injured. PW42 asked this witness to meet him at the car wash at Mahhala at Matsapha.

[166] When PW42 had telephoned this witness and informed him that he would give him some money as a token of thanks for directing him to accused 7. That he would give him money to give to accused 7 for having given them correct directions. When this witness arrived at the carwash he found PW42 with this witness's cousin PW41 (Sanele

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Dludlu). PW42 did not give him any money as promised until the witness left for home. PW42 promised this witness that he would call him. PW42 later telephoned this witness and informed him that he could not give him money in front of PW41 as the latter had wanted to take part in the job but could not do so. PW42 had feared that PW41 would go and report to the police if he saw him give the witness money. PW42 asked to meet this witness on a Wednesday but he telephoned on Tuesday and informed this witness that they had been arrested. He advised this witness that if the police arrived he should tell the police the truth and all that had taken place. The police indeed came and informed this witness that PW42 had instructed them to tell this witness to direct them to where accused 7 worked. This witness took the police to accused 7's place of work where they collected accused 7 and proceeded to the police station. This witness did a dock identification of accused 7.

[167] Mr. Mabila cross-examined this witness and put to him that it was during a week end when PW42 came with the men he did not know and had slaughtered a goat at his home at Esitjeni and had invited this witness. He further put to this witness that accused 1 had instructed him that on that day PW42 had informed accused 1 that this witness had brought the firearm with a brown butt. This witness denied this. Mr. Mabila further put to this witness that accused 1 denied ever going to collect a firearm from this witness's house. This witness denied this and stated that accused 1

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had informed him that PW42 had sent him to collect the firearm because he was headed to Mhlambanyatsi.

This witness agreed to Mr. Mabila's question that he did not know the serial numbers of the firearms and that the dominant colour on the firearm that he had picked out was silver.

[168] Mr. Magongo cross-examined this witness in regard to accused 7. The witness agreed that he did not recall the dates on which accused 7 was allegedly involved in this case nor the events that involved PW42. This witness agreed that he had recorded a statement with the police at Lobamba which he did not personally write. He dictated it to a police officer who read it back to him and caused him to sign. It was put to this witness that what was recorded in the statement was at variance with his evidence in chief. In the former he had stated that he had met with Bheki Shongwe (accused 7) and had suggested to accused 7 that he would bring Peter Nkambule (PW42). In the latter he called PW42 and told him that accused 7 had asked that PW42 should come so that they could talk. This witness denied that he had said that the two should meet and that the police officer had made a mistake. The witness insisted that it was accused 7 who had said that he wished to talk to PW42 personally. It was also suggested to this witness that accused 7 had enough money and did not need to collude or associate with PW42 in order to make money. It was put

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to this witness that he had the unlawful intention to carry out the job at Evukuzenzele with PW42 and not accused 7. It was further put to him that accused 7 had disclosed information about what usually happened at Evukuzenzele innocently and unknowingly that it would be used for an evil purpose. Otherwise accused 7 would have never have disclosed such information. This witnesses response was that all he could say was that accused 7 and PW42 had a discussion face to face.

[169] It was put to this witness that in his evidence in chief he had stated that he met PW42 and Mahhala and PW42 was supposed to give this witness money for himself and accused 7. In the statement recorded with the police the witness recorded that PW42 did not talk about his (witness's) share nor that PW42 had come to Mahhala to give this witness his share and that of accused 7. The witness responded that he had explained everything to the officer who had recorded the statement. It was further put to this witness that his statement recorded with the police did not state that PW42 was going to give this witness money for accused 7 because the latter had given him accurate information with regard to Evukuzenzele. This witness insisted that he had informed the police officer who had recorded the statement. The witness agreed that he had colluded with PW42 but denied that he had implicated accused 7.

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[170] It was put to this witness that accused 7 denied telephoning this witness and informing him that the job was a success nor colluding, conniving or planning to commit an offence with PW42 and this witness. That accused 7 denied ever telephoning PW42 and informing him how money was banked at Evukuzenzele, that accused 7 denied acting in the furtherance of a common purpose with the co-accused in respect of Count 6. Except for agreeing with the attorney with regard to accused 7 not being involved with the other co-accused this witness denied all that was put to him and was insistent that accused 7, PW42 and himself had met and discussed the robbery at Evukuzenzele.

Mr. Simelane cross-examined this witness and put it to him that it was in fact this witness who had approached PW42 with the idea of robbing Evukuzenzele but the witness denied this. It was put to him that he was the one who approached PW42 with two offers to rob True-Pep Stores at Siteki or Evukuzenzele. This witness was alleged to have informed PW42 that Tru-Pep Stores banked on Wednesdays money in the region of E50,000.00 and Evukuzenzele banked on Saturday money in the region of E500,000.00. The witness denied this imputation.

[171]PW42, Peter Nkambule (accomplice witness) related how Evukuzenzele at Siteki was robbed. He stated that the idea had come with accused 4 who informed PW42 that there was money there which was banked on Saturdays. Accused

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4 further stated that the money amounted to five million Emalangi and sometimes it was ten million Emalangi. Accused 4 informed this witness that he had been advised by his attorneys about this money. Accused 4 further stated that they should arrange a date and drive to Siteki to check out facts about this money. Indeed this witness, accused 4 and Makhenzi drove to Siteki on a Saturday which this witness cannot recall.

Makhenzi was introduced to PW42 by accused 4. They used the Nissan 1400. They arrived at Siteki before 10.00 a.m. and left at about 12.00 p.m. but did not learn anything about the money. They arrived at 12.00 p.m. because the bank was closing and they had not seen any banking being done by Evukuzenzele. After this they again met and this time accused 1 was present and this witness informed him about this money and plan. Accused 1 expressed a wish to go to Siteki on a stated date to see for himself how this money was conveyed to the bank. Once more they returned to Siteki. This time they included accused 1. They arrived at 8.30 a.m. in order to be there when the banks opened and closed but they did not see what they had wished to see. They drove in a white corolla which belonged to PW42 and he was driving.

[172] This witness testified that accused 4 had informed them that the money was taken to the bank in a suitcase by three people, who walked to the FNB bank carrying the suitcase.

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This is what the group expected to see when they went to Siteki. When they did not see this accused 4 stated that he would have to revisit his informers. Accused 4 later returned to tell them that the money was now banked in Manzini. For the time being the plan proved to have failed. One day this witness visited PW37 and asked him to look around for a place which this witness could rob as PW37 was a security guard. PW37 agreed and stated that he would discuss the idea with some clever people. After a few days PW37 telephoned this witness and stated that he had found a certain person. PW42 informed PW37 that he would meet the person instead of discussing the matter over the phone. He met PW37 who told him that the person he had talked with had advised him of two places they could rob. One was Trupep and the other Evukuzenzele at Siteki but that the latter needed strong men because there was a lot of money. This witness responded that he wanted the money that needed strong men and asked PW37 how this person had known about the money from Evukuzenzele as this witness had always wanted the money from Evukuzenzele. PW37 informed PW42 that the man he was talking about was an electrician and often did electrical jobs at Evukuzenzele. He also serviced the machinery. PW37 suggested that it would be better for PW42 to talk to this man himself as he worked close by in the vicinity of Matsapha.

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[173]PW42 was at first reluctant to go to this man's work place as he felt that if he was arrested later there would be overwhelming evidence against him. He preferred that the man came to him. However, they eventually decided to go to the man's work place. They arrived during the lunch hour and PW37 went to fetch the man. PW42 and this man sat inside the car while PW37 stood outside PW37 introduced this person as Boycey. The man was anxious to return to work so nothing much was discussed. PW42 and PW37 agreed that PW37 would talk to Boycey and PW37 would inform this witness what had been decided. PW42 left. PW37 later telephoned PW42 and informed him that he was of the opinion that Boycey and PW42 should meet. This witness apprised accused 1 of the recent developments and accused 1 was also of the opinion that PW42 should return to PW37 and ask him to arrange the meeting with Boycey so that the latter could explain certain things to him. PW37 again took PW42 to Boycey's work place where all three discussed Evukuzenzele. Boycey spoke about the money but said he was not sure if Evukuzenzele followed the same banking procedure as they used to do in the past. Boycey offered to go to Siteki as his home was at Siteki. If the banking procedure was still the same he would inform PW37. Later, PW37 telephoned this witness and informed him that Boycey's trip had been successful.

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[174] After receiving these news this witness looked for Accused 1 and informed him that the plan to commit the robbery at Evukuzenzele was going well. They telephoned Accused 4 who arrived and was brought up to date. It was agreed that the robbery would be carried out by Accused 1, Accused 4, Makhenzi, and PW42 and that it was to be carried out on Saturday the 25th September 2004. Before this day this witness realised that the date of the robbery co-incided with a date on which he was due to coach in a boxing tournament. He would not be able to take part in the robbery. They had to look for someone who would replace him. They decided to use Mandla Khanya (Accused 2). On the 24th September 2004, the witness and Accused 2 went to sleep in Mbabane. During the night this witness telephoned Accused 4 and instructed him to join them and bring Makhenzi with him. Accused 4 could not join them and instead suggested that they meet at Manzini early on the following day and he would go via Siphofaneni where he would pick up Makhenzi. The following morning Accused 4 telephoned this witness informing him that he was already at Siphofaneni but could not find Makhenzi. This witness advised Accused 4 to join them. They telephoned Accused 1. The major problem they had was lack of transport as PW42 had to use his vehicle to transport his boxers to Simunye.

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[175] Accused 1 telephoned his taxi driver to drive him to where he was to meet Accused 4. The taxi driver had prior commitments which he carried out before assisting them. PW42 left for the old bus rank where he was due to meet the boxers in his stable. When he arrived at the bus rank he found Nkosinathi Mahlinza (Accused 3) who was interested in boxing but had not yet begun practicing it. As Makhenzi had not been located, PW42 discussed with Accused 3 to replace Makhenzi. Accused 3 agreed. PW42 telephoned Accused 1 to know his whereabouts so he could hand over Accused 3. They arranged to meet at Mvutshini. When they arrived Accused 1 was with Accused 2 (Mandla Khanya) and the driver of the taxi. They took Accused 3 and this witness proceeded to Simunye. Along the way and at Mafutseni Accused 1 telephoned PW42 alarmed that there was a police roadblock and this witness advised them to look for a place where they could stop a while. They were concerned because they were carrying firearms. The roadblock was dismantled before they could stop and they went on unhindered. When this witness arrived at Simunye the boxers were weighed in and were examined by the doctor. Before they could be examined this witness received another call from Accused 1 who advised PW42 that everything had gone well and that they should proceed to meet in Big Bend.

[176] This witness drove off towards Big Bend. Along the way- Accused 4 telephoned and informed PW42 to meet them at

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Nisela, an accommodation lodge outside Big Bend. When he arrived there he found Accused 2 and Accused 3 outside the fence. They boarded the car and directed PW42 to a Nisela lodge at Nsoko where they found Accused 1 and Accused 4. Upon arrival they found a lady who was a member of staff who seemed to have been waiting for them. She directed them to the room where Accused 1 and Accused 4 were but accused 1 came out to meet them and he took them to where accused 4 was.

[177] This witness found that Accused 4 had already shared out 5 piles of money which he was taking out of a brown suitcase. The suitcase still contained money. Accused 4 advised the group that they should not waste anytime but should get to work. PW42 states that the others got to work he did not because he was too excited and overjoyed at the sight of all that money. He just looked on. After they had finished sharing the money he took his share. PW42 stated that there were cheques as well but he was not interested in them but the cash. They decided to leave after sharing the money but Accused 4 said he would remain as there were some things he wished to take care of. These included the suitcase, eating fork and two pistols. The pistols were both black in colour.

[178] Even though the witness stated that the suitcase was brown he meant the colour maroon and that it was 30cms x 75 cm in size. PW42 used the Hluthi route to go to Esitjeni.

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When they arrived at Esitjeni PW42 took his money and went into the house without counting it as he had to return to Simunye. Accused 3 requested that he leave his share of the money at PW42's home. He had not counted it either. They left Esitjeni and Accused 2 telephoned a certain Albert Mngomezulu and requested him to meet him at the car wash at Matsapha. Accused 1, 2 and 3 alighted from PW42's car and joined Albert Mngomezulu while PW42 proceeded to Simunye. According to this witness the money was in mixed denominations of ten, twenty, fifty and one hundred Emalangeni. He did not recall seeing two hundred Emalangeni. The Swazi currency was mixed with South African currency with Swazi currency dominating. It was not packed in bundles and was not tied with a rubber band. On the 27/9/2004 a Monday PW42 planned to travel to South Africa. He telephoned Accused 1 who also wished to travel to South Africa as his motor vehicle a BMW was being repaired in that country. They agreed to meet at the Johannesburg Hotel in South Africa.

PW42 had still not counted the money robbed from Evukuzenzele.

[179]PW42 travelled in his white Toyota Corolla with a sum of E5000.00. This money was not from the Siteki money. He spent the night at the hotel and the following Tuesday morning at about 9.30 a.m accused 1 arrived. He was travelling in a white BMW in the company of accused 2 and accused 3. After showing

Count 1

off the BMW they left after PW42 told them that he would be going to the Carlton Centre. At about 3.00 p.m. they joined PW42 who was with his girlfriend. Accused 1 suggested that they return to Swaziland. They exchanged cars as this witness wished to drive the BMW. He took his girlfriend to Soweto and joined accused 1, accused 2 and accused 3 in Carolina and they followed one another back home. At the border gate they arranged to meet at Total Filling Station in Mbabane where they swapped cars. The following day at about 5.00 a.m. the police arrived led by Ndlangamandla. They knocked and when he opened he met all kinds of guns pointing at him. Another police officer handcuffed him. As they put him in their motor vehicle other police officers who had been hiding in the yard emerged from their hiding places. He was driven to Lobamba Police Station where Ndlangamandla informed him that he was being arrested for the robbery that had occurred at Siteki. PW42 denied any knowledge of the robbery but Ndlangamandla informed him that he would fetch Accused 1 and the others who had already been arrested. They locked him up in the police cells. They fetched him later and informed him that they wished to return to his home.

[180]The police wished to search the witness's home. Along the way they asked where Mr. Motsa's money was. Mr. Motsa is the proprietor of Evukuzenzele (PW43). The witness denied any knowledge of Mr. Motsa's money. The police informed

Count 1

PW42 that he was wasting time by his denials. An officer by the name of Mfanasibili Dlamini mentioned Accused 1, Accused 2 and Accused 3 and PW42 realised that the game was up. He admitted knowledge and the whereabouts of the money. When they arrived at his home the police instructed him to fetch the money. The witness informed the court that he had placed the money in different places in his house. He looked in a dressing table drawer, on top of the wardrobe and in another drawer but could not find the money. Ndlangamandla stated that PW42 should stop playing games with them and the witness realised from his tone that the police were getting annoyed so he gave them the money which had been leftover from the money which he had used while in South Africa. The police wanted to know where the rest of the money was and he responded that he did not know as he had left some people at home. There was a young man by the name of Ghibholo Nkambule who also lived at PW42's house and he stated that Sibusiso Fana Nkambule (PW33) had been in the house. As he was not at the homestead the police obtained his mobile phone number from PW42 and telephoned him.

[181] He arrived by taxi an hour later. When he alighted the police demanded the money he had removed from PW42's house. He led them towards an outside toilet where he retrieved a paper bag. Among the police present was an officer by the name of Nkomishi Simelane (PW45) and Thabo Kunene (PW46). They asked PW33 to show them the

Count 1

house at the homestead where he normally slept. From it they took a picture of Jesus Christ. They conducted a search in PW42's bedroom. They found PW42's passbook, purse and money in plastic bags and two bankbooks. One was a Swazi Bank book where this witness had placed cash amounting to E1500.00. The other was a Swaziland Building Society Gold account where he had placed cash amounting to E2300.00. They took this money. They removed E700.00 from his purse but left the money in plastic bags stating that it clearly was from his transport business as there was proof to this effect. They returned to Lobamba police station with this witness and PW33 whom they had arrested and placed them in separate cells. They fetched PW42 from the cells and advised him that they would count the money which came to E271,000.00. There was other money over and above this amount. They asked if all the money belonged to him and he responded that some of it belonged to Accused 3 who had asked him to keep his share.

[182] When this witness was about to leave the room the police brought Accused 3. They did not talk as the police led PW42 back to the cells. On that day he slept in the police cells and the next day which was a Thursday he was taken to Matsapha Police Station where he spent the night. On Friday he was returned to Lobamba Police Station where he recorded a statement where after he was released together with PW33. He informed the court that he was supposed to give PW37 some money from his share but was arrested

Count 1

before he could do so. They did not talk about Boycey's share because PW33 and Boycey were still to discuss it. PW42 made a dock identification of Boycey and this was Accused 7 (Bheki Shongwe) Accused 1 (Tsotso Zikalala) Accused 2 (Mandla Khanya) Accused 3 (Nkosinathi Mahlinza) Accused 4 (Mshengu Ishmael Mabuza). He was informed by Accused 1 that firearms were used to rob Texray. He got to know that the motor vehicle used at Siteki was a grey opel corsa sedan which he saw at Nisela. He noticed that its passenger window and the windscreen were damaged. He was informed by the people who had carried out the robbery at Siteki that it was shot at. He stated that he could not identify the ford Intercooler. He had heard that it had been damaged, he had last seen it in good condition. Mr. Mabila stated that there was no need to identify the two cars. He accepted the witnesses testimony as having identified them.

He made the following identifications:

- > A big black gun they called an Uzzie which belonged to Makhenzi.

- > One black gun with silver side which was brought by Accused 1 and Accused 2 from South Africa.

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- > One small black gun which he had carried during the robbery at Orion.

- > One silver gun which was owned by PW41 but was usually carried by Accused 1.
 - > A maroon bag which was similar to the money bag.

He further informed the court that Accused 2 and Accused 3 knew Accused 1 prior to 25/9/2004.

[183] Mr. Mabila cross-examined this witness. He confirmed that he operated a mini-bus transport business. He confirmed that accused 1 also operated a transport business and that during or about 20/9/2004 he sold one mini-bus at E70,000.00 to Accused 1. That accused 1 purchased a second mini-bus from Albert Mngomezulu. This witness confirmed that he had known Accused 1 since he was about 12 years old. He confirmed that Accused 1 was involved in dagga trafficking from which he made a lot of money which he usually carried on him. He confirmed that Accused 2 also sold dagga and had heard that Accused 3 also sold dagga but that he did not know of this firsthand. It was put to him that Accused 4 also dealt in dagga trafficking. That this witness had even accompanied Accused 4 to Nhlngano where Accused 4 had a trial in which he was charged for possession of dagga and his motor vehicle had been seized by the police. The witness recalled that he had

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accompanied Accused 4 and was informed by him of the dagga case but that he had no personal knowledge of his dagga dealings.

[184] He agreed that when he was arrested on the 27/9/2004 the police were rough with him. That he was arrested before Accused 1 who surrendered himself and was delivered to the police by Mr. Mabila. He agreed that Accused 1 was assaulted by the police and was never advised of his rights at any stage. He stated that when Accused 1, PW41 and himself were being interrogated they were not cautioned nor when the police took him to his house to point out the money.

[185]PW42 was cross-examined about the robbery at Siteki. He agreed that he had recorded a statement with the police with regard to the Siteki robbery of Evukuzenzele Supermarket. He was shown this statement (in court) dated the 1/10/2004 and admitted it as his. He stated that it was recorded on his behalf by the police in English read over to him in Siswati and he confirmed the contents and signed it. It was read to him in court and interpreted for him. He denied the contents. Mr. Mabila then proceeded to point out the inconsistencies and contradictions in his statement recorded with the police and his evidence in chief. He agreed with Mr. Mabila that his evidence recorded in his statement to the police was different from his evidence in chief given to the court; namely:

Count 1

[186] It was not recorded in the statement made to the police that it was Accused 4 who came with the idea of robbing Evukuzenzele

[187] It was not recorded that Accused 4 had informed him that he in turn got the idea from his lawyers.

[188] It was not recorded that Accused 4 had informed him that the money at Evukuzenzele ranged between five to ten million Emalangi. He had recorded that it was E500,000.00.

[189] It was not recorded that on the Saturday which he could not recall he drove to Siteki for surveillance purposes. That they waited for two hours but did not witness anything.

[190] It was not recorded that he drove to Siteki with Accused 1, Accused 4 and Makhenzi.

[191] It was not recorded that it was Accused 1 who said that they should fix a date and go to Siteki to see how the money was banked.

[192] It is recorded that Accused 4 visited the witness at his home at Esitjeni during June 2004 and informed him about Evukuzenzele and Accused 1 was present.

Count 1

[193] It is recorded that it was Accused 1 who had informed the witness that there was work to be done at Siteki meaning the carrying out of the robbery. But in his evidence in chief the witness stated that Accused 1 was not aware of the plan to rob Evukuzenzele until the witness, Accused 4 and Makhenzi returned from carrying out a surveillance at Siteki and informed Accused 1.

[194] It was not recorded that the Nissan 1400 or the Corolla was driven by the witness.

[195] It was not recorded that three people usually took the money to the bank instead what was recorded was that Accused 4 informed them that two people took the money to the bank, a woman and a security guard.

[196] It is not recorded that Accused 4 had stated that he would investigate further as they had failed on two occasions.

[197] It is not recorded that Accused 4 when he returned informed the witness that the money was now banked in Manzini.

[198] It is not recorded that on the same day that the witness learned that the money was banked in Manzini he went to Dumisa Tsabedze a security guard (PW37) at his home at Matsapha to ask him to look for a place where this witness could stage a robbery. PW37 agreed and said he would also

Count 1

look for strong people. Instead it is recorded that it was Mzala Tsabedze (PW37) who approached the witness stating that he knew someone called Boycey who had told him that there was money which needed to be robbed but that the job needed strong men and yet in his evidence in chief the witness stated that he approached PW37.

[199] It is not recorded that after the witness had agreed with (PW37) he met Accused 1 and informed him that the issue of Evukuzenzele had resurfaced and that he had found a strong man who would assist him to carry out the job.

[200] It is not recorded that Accused 1 asked who that person was and encouraged the witness to go back to PW37 for a better explanation.

[201] It is not recorded that the witness obliged and met with Boycey and PW37.

[202] It is not recorded that after meeting the two above, the witness returned to Accused 1 to inform him that everything regarding the robbery was now fine.

[203] It is not recorded that thereafter both he and Accused 1 decided to telephone Accused 4 to enquire about transport and travelling arrangements.

Count 1

[204] It is not recorded in the statement made to the police that this witness would be replaced by Mandla Khanya (Accused 3) as he was engaged in the boxing tournament.

[205] It is not recorded in the statement made to the police that Mancane Mahlinza (Accused 3) would be included in executing the robbery.

[206] That seeing that the witness would be pre-occupied with the boxing tournament, accused 1 had to call a taxi to take him to where they were to meet with Accused 4.

[207] That there is no mention of a taxi at all.

[208] That in the recorded statement it is Boycey (Accused 7) who telephoned and informed the witness that there was a roadblock just before entering Siteki.

[209] That this witness in turn telephoned Accused 1 warning him about the roadblock. In his evidence in chief he informed the court that it was Accused 1 who telephoned him about the roadblock and that Accused 1 was with Accused 4.

[210] That in the recorded statement it was Accused 4 who telephoned the witness at 10.50 hours and advised him to come to Nisela to collect Accused 2 and 3 where he will also find Accused 1 and 4. Whereas in his evidence in chief

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he stated that it was Accused 2 who had telephoned advising him to go to Nisela where he would find Accused 1 and Accused 4.

[211] That in the recorded statement after he had collected Accused 2 and 3 he drove to Nisela parked the car next to the opel corsa and Accused 1 met him and took him to the booked room. In his evidence in chief after alighting from the motor vehicle he found a lady who seemed to be expecting him and who took him to the room where Accused 1 and 4 were.

[212] That in the recorded statement he did not mention that when he arrived home at Esitjeni to put away his money he found accused 3 outside and the latter requested that this witness keep his share of the money.

[213] That in the recorded statement he did not mention that when he went to put his money away, he drove with Accused 1, 2, 3 and 4.

[214] That in the recorded statement he did not mention that when he arrived at his home his brother PW33 was there. That PW33 saw when Accused 3 requested the witness to keep his share of the money for him.

Count 1

[215] That in the recorded statement and evidence in chief this witness does not mention giving PW33 any money to keep for him around the 27/9/2004.

[216] That nowhere in the recorded statement and in his evidence in chief does he mention that he telephoned PW33.

[217] That nowhere in the recorded statement nor in his evidence in chief is it mentioned that he telephoned PW33 upon his arrest nor that officer Ndlangamandla telephoned PW33.

[218] That nowhere in the recorded statement and in his evidence in chief did he mention that when PW33 arrived at the witness's home he found this witness with eight to nine police officers and that Mr. Ndlangamandla asked him where the money was. He agreed with Mr. Mabila that he never mentioned all the above because they never happened. He also agreed with Mr. Mabila that PW33 was lying when he gave evidence that these things happened. He confirmed that he was never cautioned by the police with regard to his right not to point anything out.

[219] It was put to the witness that Accused 1 denied ever sharing any money from any robbery with the witness, but that his money came from the sale of dagga which he sold in the United Kingdom and from his transport business. That he had informed the witness this. The witness agreed

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that he had informed him about the consignment sold in the United Kingdom. The witness agreed that he had received the sum of E 140,000.00 but that this was before the 25/9/2004 and before the robbery at Siteki. He agreed that part of the money taken from him included the money from Evukuzenzele.

[220] It was put to him that in the statement he recorded with the police it was stated that as part of their plan, the suspects had agreed to finger Billy Shaw and Ndoda Mkhwanazi as having been the assailants as they were on the police wanted list. He agreed. It was put to him that Accused 4 was out of the country between the 21/9/2004 to 26/9/2004 when the Siteki robbery took place. He disagreed.

[221] It was put to him and he agreed that even though he was not charged in a robbery which took place at Maxi Music during June 2005 he would be an accomplice witness. Six suspects were charged.

[222] He agreed that during September 2005 some colleagues of his took part in a robbery at Thembelihle and made away with E180,000.00. He agreed that he was not charged but he was supposed to be an accomplice witness.

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[223] He agreed that during September 2006 he was arrested together with two others for an attempted robbery at Malkerns.

[224] He agreed that during August 2006 he was arrested together with two others and charged with a robbery which had occurred at Matsapha Garments Factory.

[225] He admitted that he was currently out on bail having been granted by the High Court for a robbery charge committed in Manzini.

[226] He agreed that during June 1996 he was arrested together with others and charged for a robbery that occurred at a Malkerns branch of Evukuzenzele.

[227] He agreed that during 1997 he was arrested together with others and charged for an armed robbery that occurred in Manzini. They were also charged for housebreaking and theft.

[228] Mr. Mabila put to the witness that Accused 1, 2, 3 and 4 denied planning and executing any robberies with him. His response was that this was not true. He agreed that some of them did not take part in all the robberies. He agreed too that some of the accused did not know one another before their arrest in particular Accused 1 did not know Accused 5 (Sipho Gumedze) and Accused 7 (Bheki Shongwe).

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[229] Mr. Mabila put to the witness that during August 2004 he had a deal with Accused 4 involving a 4 x 4 Hyundai motor vehicle which went sour and this affected their relationship. The witness agreed.

[230] Mr. Mabila further put to the witness that Accused 2 was with Vusi Msibi of Nkwalini (Mbabane) on the 25/9/2004 between the hours of 8.00 a.m. to 12:00 p.m. noon fixing a bus belonging to Msibi which had mechanical problem. The witness denied this.

[231] It was put to him that Accused 3 was with his sister Nomsa at Siphofaneni on the 25/9/04. His response was that Accused 3 was lying.

[232] It was put to him that Accused 1 was in Mbabane on the 25/9/2004. He agreed but stated that this was later in the day.

[233] Mr. Magongo cross-examined the witness. He stated that when the police arrested him at his home they did not introduce themselves and yet he earlier stated that when they banged his door they said they were police in Siswati. The witness stated that he was not informed of his rights in terms of the judges rules. Nor was he advised that he was not obliged to point out anything. He informed the court that the officer who recorded a statement from him did not introduce himself. But the witness was already at the police

Count 1

station and was attended to by officer Mfanasibili Dlamini whom he knew to be a policeman. The latter told him that he would leave him with another officer who would record his statements. He agreed that when he recorded the statement he was not cautioned in terms of the judges rules. Asked if the statement he wrote under duress and which implicated Accused 7 (Boycey) was written without his rights being explained to him he stated that even though his rights were not explained to him, he did not recall talking about Accused 5. He talked about Dumisa Tsabedze (PW37) whom he knew. He did not know anything about Accused 7. PW37 knew Accused 7. He agreed that Accused 7 was not present when the Siteki robbery was planned or to rob Phindile Dlamini (PW7). That he never got a chance to talk to Accused 7. He instead met him in court. He agreed. Accused 7 did not give him information as to how the money is transported and banked at Evukuzenzele. He agreed that the allegation made by PW37 in his evidence in chief that Accused 7, the witness and himself that they should go and take the money at Evukuzenzele was not true. He denied ever having a cell phone conversation with Accused 7. He denied that he was promised to be released if he made a statement that implicated his colleagues. He stated that he had no idea what prompted the police to release him.

[234]PW48, 2507 Sergeant Thabo Kunene testified that he found a lot of money at PW42's home namely E38,900.00 recovered from a pink two in one blanket which was on top

Count 1

of his wardrobe in his bedroom. The money was in a blue plastic bag and was in notes. The sum of E227,920.00 was recovered from a disused pit latrine in a brown paper bag. The money was in a blue plastic bag and was in notes. This was at PW42's home. The amount of E38,900.00 alleged to be accused 3's share. Accused 3 directed the police to this money.

[235]A further amount of E 143,800.00 was recovered from accused 1's house at Thembelihle. It was hidden in an electric stove. Accused 1 pointed it out. It was in white plastic bag and in notes and in different denominations. It too comes from Siteki.

[236] A further amount of E1 10,700.00 was found at the home of William Mngometulu at Zone 4, Mbabane. Accused 2 led the police to Zone 4. The money was recovered in a wall unit drawer in the sitting room. It was in a plastic bag and in notes. It too come from Siteki.

[237]A further amount of E 18,500.00 was recovered from accused 1's house at Mhlambanyatsi. His girlfriend PW26 on his instructions led the police to it. the money was in a black purse in a wall unit.

[238] A sum of E7,006.00 was found on accused 4 upon his arrest at Nhlangano on the 30/9/04. On the 2/10/04 an

Count 1

amount of E124,000.00 was recovered from the house of accused 4's girlfriend PW32 at Our Lady of Sorrows School in Hluthi. The money was hidden in the ceiling. PW32 did not know that there was that much money in her house until accused 4 indicated it to her when he and the police arrived at her house. It was in a plastic bag which was blue with black and green colours. The money was in notes.

[239] The maroon bag which Evukuzenzele used to convey the money to the bank was found at a traditional healer's home at Zombodze, in the Shiselweni District at the home of PW17 and PW18. The bag was in the indumba which is the name of a consultation hut for a traditional healer. PW17 is accused 4's traditional healer. Accused 4 led the police to PW17's home.

[207] The evidence against accused 3, 6 and accused 7 is insufficient to call them to their defence. They are acquitted and discharged. I accept the evidence of the accomplice witness PW42. His evidence is corroborated by PW11 who identified accused 1 and accused 2. PW19 identified accused 1. PW29 identified accused 1 and accused 2 as being at the scene of crime. I am satisfied that accused 4 was one of the master minds behind count 6. PW15, PW17 and PW18 corroborate PW42. PW48 corroborates PW42 with regard to the moneys found with accused 1, 2 and 4. I am satisfied that accused 1, 2 and 4 have a case to answer in respect of count 6.

Count 1

Count 7, Count 8 and Count 9

AD Count 7

[240] Accused 5 is charged with contravening section 14 (1) read with section 14 (2) of the Arms and Ammunition Act No. 24 of 1964 as amended. Accused 5 is alleged to have been found in unlawful possession of an MP5 rifle, an arm of war serial no. 287216 without a valid licence or permit.

AD Count 8

[241] Accused 5 is charged with contravening section 11 (1) read with section 11 (8) of the Arms and Ammunition Act No. 24 of 1964 as amended. Accused 5 is alleged to have been found in unlawful possession of a 9mm star pistol serial no. B44008 without a valid licence or permit.

AD Count 9

[242] Accused 5 is charged with contravening section 11 (2) read with section 11 (8) of the Arms and Ammunition Act No. 24 of 1964 as amended. Accused 5 is alleged to have been found in unlawful possession of 10 live rounds of ammunition of a 9mm calibre without a valid licence or permit.

[243] The incidents in respect of Count 7, 8 and 9 are alleged to have occurred on the 17th August, 2004 at Kwaluseni area in the Manzini District.

Count 1

[244]PW35, Nozipho Lungile Mamba testified in respect of this count. She stated that during 2004 she was employed by accused 5 and accused 6 as a housekeeper. On the 16/08/2004 at about 12.00 p.m. accused 4 arrived accompanied by a tall light complexioned man. She knew accused 4 because he had got the job for her with accused 5 and 6. Accused 4 used to visit accused 5. Accused 4 wished to know where accused 6 was and she responded that he was at work. Accused 4 informed her that he had telephoned accused 6 about leaving a bag at his house. Accused 6 had agreed and said that he should leave it under accused 5's bed. Accused 4 indeed provided to the bedroom and placed it under the bed. Accused 4 then instructed her to take a good look at his companion as he would return the following afternoon to collect the bag. This was accused 1.

[245] When accused 5 arrived from work that evening PW35 forgot to tell him about the bag. She forgot to tell him again in the morning. In the morning the police arrived with accused 4's companion and took out the bag. When the police opened the bag it contained two firearms. One was a silver gun and the other a long brownish black gun.

[246] The next witness was PW47. This was a police officer, 3543 Constable Lucky Nkomishi Simelane. He testified that on the 16/08/2004 accused 1 was surrendered by his lawyer, Mr. Mabila to the police station at Mbabane. Accused 1 wished

Count 1

to point out something to the police and he was cautioned by 3479, Detective Sergeant Dlamini. This witness was present when accused 1 was cautioned. On the 17/08/2004 this witness led the police to accused's home at Matsapha. Upon arrival they met accused 5 and 6 whereupon 3479 Detective Sergeant Dlamini introduced himself and this witness and explained their mission to accused 5 and 6. Accused 1 said something to accused 5 who then went into his bedroom followed by accused 6 and the aforesaid police officers. Accused 1 remained in the sitting room.

[247] When they arrived inside the bedroom accused 5 lifted up a mattress and from in between the mattress and the base he removed a black bag. A muzzle of a firearm protruded from the bag. The bag was handed over to 3479 Detective Sergeant Dlamini and they all returned to the sitting room. 3479 Detective Sergeant Dlamini opened the black bag and took out a rifle. The rifle had a magazine which was loaded with 4 rounds of live ammunition. The rifle was an MP5, with serial no. 28726. He also took out a 9mm pistol which had a magazine loaded with 5 live rounds of ammunition. Its serial number was B44008. 3479, Detective Sergeant Dlamini asked accused 5 and 6 for a permit or licence to possess such firearms. He was unable to produce any licence or permit. The Sergeant cautioned accused 5 and 6, seized the firearms and arrested them. Thereafter they all left for the Police College at Matsapha where both firearms were tested in the presence of accused 5 and 6. Both firearms discharged rounds of ammunition and accused 5

Count 1

and 6 were formally charged for possession of firearms and rounds of ammunition.

[248]PW35, Nozipho Mamba testified that both accused 5 and 6 were not aware of the presence of the firearms as she forgot to tell them that accused 1 and 5 had left a bag whose contents she did not know in their bedroom. When 3479 Detective Sergeant Dlamini and PW49 arrived at accused 5's home and PW49 arrived at accused 5's home with accused 1, it was the latter who said something that caused accused 5 to lead the way to the bedroom where the bag containing firearms was found. Perhaps this would explain why accused 5 and 6 were not cautioned before heading to their bedroom. The police themselves were aware that accused 5 and 6 were unaware that there were firearms in their home.

I indicated earlier that accused 6 was acquitted and discharged. I now acquit and discharge accused 5 in respect of counts 7, 8 and 9.

AD Count 10

[249] Accused 4 is charged with contravening section 11 (1) read with section 11 (8) of the Arms and Ammunition Act no. 24 of 1964 as amended in that on the 8/102004 at or near Nkungwini area he unlawfully possessed a 9mm luger pistol without a valid licence or permit. The pistol is alleged to have had no serial number.

Count 1

AD Count 11

[250] Accused 4 is charged with contravening section 11 (2) read with section 11 (8) of the Arms and Ammunition Act no. 24 of 1964 as amended in that on the 8/10/2004 at or near Nkungwini he unlawfully possessed 10 live rounds of ammunition of a 9 mm calibre without a valid licence or permit.

AD Count 12

[251] Accused 4 is charged with contravening section 11 (2) read with section 11 (8) of the Arms and Ammunition Act no. 24 of 1964 as amended in that on the 8/10/2004 at or near Nkungwini area he unlawfully possessed a 9mm star pistol with no serial number without a valid licence or permit.

AD Count 13

[252] Accused 4 is charged with contravening section 11 (2) read with section 11 (8) of the Arms and Ammunition Act no. 24 of 1964 as amended in that on the 8/10/2004 at or near Nkungwini, he unlawfully possess 4 live rounds of ammunition for a 9mm calibre firearm without a valid licence or permit.

[253]PW48 testified that accused 4 led him and other police officers to his parental homestead at Nkungwini. The following were found hidden in the ground:

Count 1

A 9mm pistol CZ75 without a serial number which is the subject of count 10.

There were 10 live rounds of ammunition found in its magazine. They are the subject of Count 11.

A 9mm star pistol without a serial number which is the subject of Count 12.

There were 4 live rounds of ammunition found in its magazine. They are the subject of Count 13.

[254]Accused 4 did not have any licence or permit for any of the items listed above. According to the evidence of the ballistics expert Hendriena Johanna Blignaut, the two firearms were serviceable. Her evidence which was on affidavit was handed in by consent of all the parties. Accused 4 has a case to answer in respect of counts 10, 11, 12 and 13.

Count 14

[255] In this count accused 5 is charged with defeating or obstructing the course of justice in that he disposed of a corsa sedan at Mgubudla area which was used in the commission of Count 6.

[256]There was no evidence led to prove this offence. The only evidence that is before this court is that accused 4 led the

Count 1

police to this motor vehicle at Mgubudla from where it was towed to the police station Manzini and later to Lobamba police station. Mrs Dlamini submitted that this Count be dropped. Accused 5 is acquitted and discharged in respect of this Count.

Count 15

[257] In this Count accused 1, 2, 3 and 4 are charged with the theft of the opel corsa FDZ 719 NW on the 7th August 2004 at Silverton, South Africa. The motor vehicle belonged to A. Van Niekerk and was valued at E1 50,000.00 (One hundred and fifty thousand Emalangeni)

[258] I am satisfied that Mr. Van Niekerk is the owner of the corsa as evidenced by the report filed by G.W. de Jager, 0089688-8 D/Inspector dated 30/11/2004. The motor vehicle was reported stolen from Silverton, South Africa on the 7th August 2004. I am satisfied that it was used in the robbery at Evukuzenzele Siteki by the 4 accused persons. PW20, 4627 Detective Constable Sipho Ndzinisa fired two shots at the silver grey corsa as it made its get away after the robbery at Siteki. The first shot landed on the edge of the front left passenger door.

The second shot shattered the front left passenger window. Indeed the motor vehicle exhibited outside court had no left front passenger window.

Count 1

Accused 1, 2, 3 and 4 have a case to answer in respect of Count 15.

Count 16

[259] In this count accused 1 is charged with the offence of kidnapping Dexter Fonseca PW6. The evidence in regard to this count is set out under Count 3. There is no need for me to repeat it save to state that PW8, Bheki Sydney Zeeman identified accused 1 as the one who held PW6 as the assailants left Texray after the robbery. PW9, Nomsa Nkambule's evidence places accused 1 at the Texray scene of the crime. On the 4/10/04, PW6 identified the ford Intercooler which had spirited him away after the commission of the robbery at Texray. The motor vehicle was now in pieces. It was the same motor vehicle outside court. I am satisfied that accused 1 has a case to answer in respect of this Count.

Q.M MABUZA J