
Muller, A.J.

1992/08/24 and 25

CRIMINAL LAW.

- various serious charges of Robbery with aggravating circumstances, attempted murder etc.
- several accused involved in different incidents.
- sommon purpose in respect of a particular incident.
- duplication of convictions - law.
- discussed and applied
- identification of suspects.
- identification parades.

IN THE HIGH COURT OF NAMIBIA

In the matter between

THE STATE

versus

1. PAULUS NDIKWETEPO
2. PRIMUS ANGULA
3. MATHEUS TJAPA
4. MWOOMA NGHIALEMHOTE
5. MICHAEL ANGULA
6. VENASIUS AMEHO
7. MARTIN KADWIKA

CORAM: MULLER, A.J. and

2 ASSESSORS: Mr.J. Karuaihe and Ms E.Keramen.

Heard on: 1992.04.23 - 1992.08.24

JUDGMENT

MULLER, A.J. : Six accused appeared in this case on 15 charges which varied from robbery with aggravating circumstances to escape from lawful custody. Originally 7 accused were supposed to stand trial on these charges but accused number 2 escaped and when the trial started on the 23rd April 1992 only accused numbers 1, 3, 4, 5, 6 and 7 were arraigned on these charges.

Mr D F Small, appeared on behalf of the State and Mr E. Kasuto on behalf of three of the accused. The remaining three accused were not legally represented but as counsel was available to act on instructions of the Legal Aid Board

on behalf of them, the matter stood down. After accused numbers 3, 4 and-5 also indicated that they are prepared to accept legal representation appointed by the Legal Aid Board as was the position in respect of the other three accused.

At the resumption of the trial Mr Grobler appeared on the instructions of the Legal Aid Board on behalf of accused numbers 1, 4 and 5, while Mr Kasuto represented accused numbers 3, 6 and 7, also instructed by the Legal Aid Board.

The State asked for the separation of trials in respect of accused number 2 and the other accused in terms of section 157(2) of the Criminal Procedure Act, No.51 of 1977. This application was granted by the Court. All the accused expressed their satisfaction with their counsel appointed on their behalf and the charges were put to the accused.

Accused number 1 pleaded not guilty to charges 1 to 15. In respect of charge No.12 accused number 1 admitted that he fired a shot in the direction of Mr De Lange, the complainant in that matter, and hit Mr De Lange' s cheek, but denied any intention to kill Mr De Lange. His defence was one of self-defence. The Court put the admissions and defence which were put forward on his behalf by his counsel to accused number 1 and he confirmed it as correct.

Accused number 3 pleaded not guilty and made no admissions.

Accused number 4 pleaded not guilty to all charges - 1 - 13 and made no admissions.

Accused number 5 pleaded not guilty to charges 1 to 13 and made no admissions.

Accused numbers 6 and 7 pleaded not guilty but made the following admissions in terms of section 220 of the Criminal Procedure Act. In respect of charge No.11, they said that they were present on the date and place in question and that they further admitted that they were present when accused number 1 fired a shot at the complainant, Mr De Lange. This was confirmed by both accused.

This trial involved a number of robberies conducted during the period from the 29th December 1990 to 24th March 1991 in the districts of Omaruru, Otjiwarongo, Okahandja and Outjo in the Republic of Namibia. During the course of the incidents that led to these charges a number of other offences were allegedly also committed by the accused or some of them. As this is a very serious and complicated case involving a wide range of charges in respect of offenses committed at different times and involving a number of accused, I shall deal with the evidence of the complainants in respect of the different charges separately and then with the evidence by other witnesses relating to these charges.

In respect of each and every different incident the State alleged that the accused acted with common purpose.

CHARGES 1 AND 2:

These charges are the following:

CHARGE 1; IN THAT on or about the 29th December 1990 and at or near farm ONDURUGUEA in the district of OMARURU the accused unlawfully and with the intention of forcing her into submission, assaulted GOTTFRIEDE MARTHA BRIGITTA GRAMOWSKY by kicking her, throttling her, threatening her with a fire-arm and hitting her with clenched fists and unlawfully and with the intent to steal took from her the items mentioned in Annexure 1, the property of or in the lawful possession of the said GOTTFRIEDE MARTHA BRIGITTA GRAMOWSKY.

And it is further alleged that aggravating circumstances as defined in section 1 of Act 51 of 1977 are present in that the accused and/or an accomplice was/were, before, after or during the commission of the crime, in possession of dangerous weapons, namely, a fire-arm and a knife.

CHARGE 2; It is alleged that on or about the 29th December 1990 and at or near farm ONDURUGUEA in the district of OMARURU the accused unlawfully and intentionally assaulted ELIZABETH KAHL by pushing and kicking her with booted feet with intent to do the said ELIZABETH KAHL grievous bodily harm.

The following witnesses testified in respect of these two charges and I shall refer herein further to the witnesses only by their family name.

Dr A.J.C.Currie testified that on the 30th December 1990 he examined both Gramowsky and Kahl. In respect of the patient

Gramowsky, who was a 62 year old white female, according to his note at the time, she had been in a severe psychological shock. He found spattered blood-stains on the front as well as the back of her blouse, her left cheek was swollen with bruising of most of the skin, while both eyes were bloodshot with sub-conjunctival haemorrhages of the right eye. She also had an abrasion on the right chin and on the base of the left-side of the neck was a horizontal wheel and abrasion and there were also deep bruising and a superficial bruise on the left thoracic margin interiorly. Her right upper fore-arm showed superficial bruising with most of the skin and a minor laceration on the skin of the right mid-forearm. There were also bruising of the skin all over the left fore-arm dorsal and left dorsal of her left hand with an abrasion over the wrist. Her right shoulder was swollen and tender. According to him these injuries that he found was a direct result of being manhandled, shaken around and probably hit with a flat hand or the back of a hand.

The injuries were not serious but the severity thereof caused, according to the doctor, severe psychological trauma. According to the doctor the abrasion and wheel over the neck and throat area could have been caused by a rope burn or perhaps throttling with the patient's clothes by drawing it tight across her throat.

In respect of the patient Kahl, who was 84 years old at the time, the doctor found her infirm and with the need of assistance in walking, which was due to her age. Her left knee was slightly swollen with a 15 centimetre bruise and

she had extensive superficial bruising of the skin over the right lower fore-arm and wrist onto the dorsal area of the right hand. She also had extensive bruising of the left wrist and dorsal area of her left hand. There were also bruises of skin and deep tissues of her left elbow and she was in great psychological shock. The doctor also imputed these injuries to assault and manhandling.

In respect of Mrs Kahl's intellectual powers the doctor submitted that, according to him, she is senile and would not be a suitable witness as a result of that. She was not called to testify.

Mrs Gramowsky testified that on the evening of the 29th December she and her elderly mother, Mrs Elizabeth Kahl, were sitting on the verandah of the farmhouse. She and her mother were living alone on the farm after her father died and she had joined her mother there approximately two years before the incident. She had a 9 mm revolver, which could also use shotgun pellets, on a chair next to her as there were many snakes in the vicinity. It was full moon and she knew the exact time because her mother asked her the time and she saw on her watch that it was 20h30. Mrs Gramowsky's cat was alerted by something and she used the torch to look around in the vicinity of a Landrover parked outside the house. Two persons suddenly jumped onto the stoep and one grabbed her on her left arm and the other on her right arm. The one on the right, which she later identified as accused number 3 and with which identification I shall later deal herein more extensively, shouted "police, where is the

money". He let go of her arm and grabbed her in front of her shirt, hit her in the face and again asked where is the money. His other hand was over her mouth. Because of that and shock she could not answer. Mrs Gramowsky struggled with this man whereupon he again asked "where is the money, I am going to kill you". She also noticed suddenly that a third person stood in front of her, holding her own petroleum lamp in one hand and a pistol pointed at her in the other hand. When their small dog attempted to attack Mrs Gramowsky's assailant on her right he instructed the third person to kill the dog. The third person then noticed the revolver on the chair and while they spoke a language which she could not understand, he picked up the revolver. At that time her mother, Mrs Kahl, stood up and approached them. There was a further discussion between the assailants and the third person started pushing her mother around. Mrs Gramowsky attempted to talk to them in Herero by telling them that her mother is old and sick and should be left alone.

When the dog again started barking Mrs Gramowsky's assailant on her right ordered that the dog be killed. This assailant still had Mrs Gramowsky on her shirt-collar and then put a knife to her throat and repeated his request: "where is the money". Because he now held the knife in his other hand and this hand was not over her mouth anymore, she could talk to him and said there was no money. She was picked up from the chair and the person on her left removed her golden wrist-watch. She didn't see this person again. From here she was pushed backwards and had to walk backwards into the house

where she realised that the bathroom light was on. She was hit in the face by her assailant and he still used the knife pushing it against her throat. She attempted to bluff him when he asked for the light in the bedroom by saying that the bulb was broken. At this stage the other person, described earlier as the third person, also entered the bedroom and he used his lighter to search the room. Mrs Gramowsky's radio and hunting-knife were taken. She was very afraid that they would notice her rifles which were behind the curtain. She took R30 out of her purse and gave it to him which apparently annoyed her assailant and he asked for more money. She was pushed out of the room onto another verandah which was an enclosed little verandah, where she took R170 out of an envelope and handed it to her assailant. She was again hit in the face and lost her glasses. Her assailant again shook her and put the knife against her throat and asked for the rifles, otherwise he would shoot and kill her. Mrs Gramowsky said that her rifles were in Omaruru. She was then pushed into the bathroom where she noticed her mother was lying on the floor with the third person kicking her with his feet. At this stage Mrs Gramowsky, who was testifying in a very clear and direct manner, became overwhelmed emotionally and the Court had to adjourn to afford her the opportunity to calm down.

After the resumption of the evidence she said that her assailant, whom she identified as accused number 3, was not involved in any assault on her mother, but that it was only the third person who assaulted her. As a result of this assault Mrs Kahl is in a bad mental as well as physical

condition and is constantly in fear of anybody and anything. Mrs Gramowsky attempted to stop the third person assaulting her mother by saying that - God will punish him and that he should leave the old lady alone.

Accused number 3 was still choking her and when she was again asked for the guns which she repeated was in Omaruru, accused number 3 threatened to kill her, whereupon she said - "Go ahead and kill me". She could see in his eyes that she probably made a mistake and then attempted to divert his attention by showing them liquor that was kept by her father in the bathroom behind the curtain. Although they inspected it, they didn't take any of the liquor. Mrs Gramowsky was again pushed into the sitting-room and was further assaulted. She was asked where the telephone is and when she indicated the next room she was pushed into that room and asked where the light switch was. After the light was switched on accused number 3 took a knife from his pocket and cut the telephone wires. She was then pushed backwards again into the previous room. She was again asked for the rifles and was pushed into another room where the third person also entered and took blankets and a sewing-machine. She noticed that the cupboard doors were open. She was pushed back in the hallway and into the kitchen. She was also asked for the keys of the Landrover which she handed over to accused number 3. In the kitchen the fridge was open and the third person was taking things out of the fridge. Mrs Gramowsky said that she noticed that her assailant and the third person became very restless. While they were in the kitchen the dogs of the workers started

barking and the third person ran out onto the verandah. She was again hit by accused number 3 in the face, whereupon he pushed her and also ran out. After this, Mrs Gramowsky frantically switched on the yard light, closed the doors and fetched the rifle with which she shot three shots rapidly. She took the other rifles with her into the bathroom but couldn't lock the door as the lock had already been turned but the key was missing. She managed to drag her old mother who was very heavy to her bedroom and spent the rest of the night monitoring every window with her rifle in fear of the return of the attackers.

The next morning at a quarter past five her workers turned up and mentioned that they heard three shots at ten past nine the previous evening. Mrs Gramowsky put her mother into her other car and drove to Omaruru where she reported the incident to the police and they were taken to the doctor for medical examinations.

In respect of the identification parade Mrs Gramowsky testified that she was taken from Omaruru to Okahandja by two policemen and at Okahandja she was taken to the identification room where she was instructed in respect of the procedure of the identification parade. She walked past every person and inspected everyone carefully, taking her time. Although she immediately recognised accused number 3 she passed him in order to prolong his nervousness and then returned indicating him by putting her hand on his shoulder, whereupon a photo, that was handed in as an exhibit, had been taken. She said she was one hundred percent sure and

certain that accused number 3 was the person who was on her right on the verandah and throughout remained with her and assaulted her. She said she also recognised accused number 5 as being the third person who assaulted her mother, but because she had a little doubt she did not identify him on the identification parade but said that she is certain that he was her mother's assailant. She said at the identification parade she was 98% certain but gave him the benefit of the doubt. Mrs Gramowsky vehemently denied that anybody talked to her in her presence, as was put to her before the identification parade in respect of certain suspects and mentioning a person with the clothing that accused number 3 had on. She also attended an earlier identification parade in Outjo during which no identification was made by her.

The cross-examination of Mrs Gramowsky mainly turned around the identification parade in respect of accused number 3 as well as accused number 5.

Sergeant Christiaan Johannes Claassen testified that on the 30th December 1990 when he was stationed at Kalkfeld he was sent to the farm of Mrs Gramowsky in Omaruru district to take photographs. He identified Exhibit 0 as a bundle photographs and a key to the photographs of which he was the photographer. He dealt with each photo and the place where it was taken as indicated to him by Mrs Gramowsky and referred to the key that he compiled of these photos. He also confirmed a rough sketch plan of the house of Mrs Gramowsky that he had drawn up with every room indicated by

number and certain specific points indicated to him by Mrs Gramowsky as it appears on the key and also related these points to certain photographs by number. The photos were taken on the 30th December 1990, after the incident.

CHARGES 6 AND 7;

The incident that occurred on the 9th March 1991 in Otjiwarongo involving Mr John Henry Kriel and his wife Mrs Doreen Kriel lead to charges 6 and 7. These charges are the following:

CHARGE 6: It is alleged that on or about the 9th March 1991 and at or near Otjiwarongo in the district of Otjiwarongo the accused unlawfully and with the intention of forcing them into submission, assaulted/threatened to assault John Henry Kriel and Doreen Kriel by threatening them with a firearm and a panga and tying them up and unlawfully and with intent to steal took from them the items mentioned in Annexure 3 to the charge sheet, the property of or in the lawful possession of the said John Henry Kriel and Doreen Kriel.

It is further alleged that aggravating circumstances as defined in section 1 of Act 51 of 1977 are present in that the accused and/or an accomplice was/were, before, after or during the commission of the crime, in possession of dangerous weapons, namely, a firearm and a panga.

CHARGE 7: It is alleged that upon or about 9 March 1991 and at or near Otjiwarongo in the district of Otjiwarongo the

accused wrongfully and unlawfully, not being members of the Namibian Police did by words, conduct or demeanour pretend that they are members of the Namibian Police.

Charge 7 is a contravention of section 33(a) of Act 19 of 1990, namely impersonating a policeman. Section 33(a) of the said Act reads as follows:

"33. Any person -

8. not being a member, who by words, conduct or demeanour pretends that he or she is a member; or

9. who -

(i) persuades any member to omit to carry out his or her duty or to do any act in conflict with his or her duty; or

(ii) is an accomplice to the commission of any act whereby any lawful order given to a member, or any provision of this Act, may be evaded,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment".

In respect of these charges the two main witnesses were called to testify, namely Mr John Henry Kriel and his wife Doreen Kriel to whom I shall refer further herein as Mr and Mrs Kriel respectively. Mr Kriel testified that on the particular day, which was a Saturday, he was busy working in his yard mixing concrete and that he was assisted by his wife, Mrs Doreen Kriel. He noticed three black men, well-

dressed who approached his front gate. He then went up to them and one of them, which he later identified as accused number 1, showed him a piece of paper which he couldn't read because the words were written too closely together and he did not have his glasses on. He, however, managed to make out the words at the bottom of the piece of paper which seems to be the Namibian Police. Although he did not mention this in his examination-in-chief he was adamant in cross-examination that he was also at that time informed by these men that they were in fact from the Namibian Police. I should pause here for a moment to mention that during the course of Mr Kriel's evidence three interpreters from Afrikaans to English and vice versa were used. Although it appeared that Mr Kriel was in fact very fluent in English he preferred, as he was entitled to do, to testify in Afrikaans. During the course of the interpretation by the first interpreter it became clear that this interpreter did not in fact interpret all the words or the exact words used by the witness or Mr Small, on behalf of the State. As a result of this a further interpreter was used who became ill and this resulted in a third interpreter being used.

Mr Kriel was involved for many years in semi-precious stones and has apparently a good knowledge of it to such an extent that people, including black people, often approached him to get his advice on different stones. He also held a prospecting licence and was involved in the prospecting and mining of semi-precious stones.

Mr Kriel who was under the impression that these people were

in fact from the Namibian Police and when they mentioned that they had a problem, he thought that it may involve one of his workers and invited them into the yard. Whilst speaking to them at the gate and also during what occurred hereafter a third person dressed in a light grey suit always remained in the background. The three men with the third in the background, entered the yard with Mr Kriel. Accused number 1 greeted Mrs Kriel with the hand and they then proceeded to the back verandah. At the verandah Mr Kriel again asked for the piece of paper and then asked why there was no official stamp from the police on it. His wife also said that she would rather want a police officer in uniform to come to their house and explain what it was all about.

They were then both ordered into the house and entered the kitchen with two of the persons behind them. They sat at the table and Mr Kriel offered them coffee or tea. At this stage he was accused of dealing illegally in diamonds or something like that. Mr Kriel told them that he has a prospective licence and moved to the lounge where he showed them his collection of semi-precious stones. It was clear to him that they were not interested in that. They returned to the kitchen where he sat down on the edge of the table. He also noticed that one of the persons, whom he later identified as accused number 1, stayed with him and the other whom he identified as accused number 6 remained with his wife. Accused number 1 took a pistol from his pocket which he pointed between Mr Kriel's eyes and said that he has full right from the Namibian Police to shoot him dead on the spot. They were then requested to hold their hands in

the air. Accused number 1 thereupon took pieces of pre-cut nylon plastic rope from his pocket and accused number 6 tied both his and his wife's hands behind their backs. They were asked for money and were taken to the main bedroom. They were told that there must be money in the house. In the bedroom Mr Kriel indicated with his head where his rifle was in a bag next to the cupboard. The rifle was taken out of the bag by accused number 1 and thrown onto the bed and rolled into a duvet or a bedspread. This rifle was identified as Exhibit 2 and contained a Bushnell telescope. Accused number 1 asked for further fire-arms whereupon Mr Kriel indicated that there was a revolver in the cupboard in a box with cartridges. That was taken out and the revolver in its holder with a leather belt together with quite a number of cartridges for the revolver were taken by the assailants. The rifle was taken by accused number 1 and the revolver put into Mr Kriel's briefcase after the contents thereof were thrown out. Mr Kriel identified the revolver as his .38 Special Norma revolver and it was handed in as Exhibit 3. Mr Kriel said that he could notice that his wife's face was white and that she was in fear. At that stage accused number 6, who then had a panga in his hand which Mr Kriel didn't notice before, drew his finger across his throat indicating that their throats would be slit. They were taken out of the room and on their way his daughter's radio cassette player was also taken from her room. In fear of their lives and when again asked for money Mrs Kriel showed them where her purse was in the kitchen and approximately R120 in notes were taken from it. They were again returned to the bedroom and an attempt was made to

lock them into the toilet, but because there were no keys they were taken into her daughter's room and held there by accused number 6. They were then held captive in their daughter's bedroom by accused number 6 with the panga, while accused number 1 was apparently removing the property that was taken from the house. When Mr Kriel attempted to untie his hands accused number 6 warned him and he could notice that accused number 6 started to panic.

They were taken again to the kitchen and from there into the garage and where they were locked-up. According to Mr Kriel on several occasions and again in the garage they thought they would be killed. In the garage Mrs Kriel managed to untie her hands and with the aid of a nail she also assisted her husband to get himself untied. Mr Kriel then managed to get out of the garage and ascertained that the assailants had left, whereupon he went to the telephone the police but found that the mouthpiece of the phone was not there. He then found that the telephone wire between the mouthpiece and the telephone was cut.

He saw one of his neighbours getting into his car and asked him to call the police. He then went to fetch his wife and within ten minutes the police arrived. The police examined the house and took statements from himself and Mrs Kriel. Mr Kriel also testified that he and his wife attended an identification parade. At this parade he identified accused numbers 1 and 6 and was very positive that they were in fact their assailants on the 9th March 1991. The identification parade was held on the 2nd April 1991. Before that Mr Kriel

also attended another identification parade but none of the assailants were present at that parade. Mr Kriel was severely cross-examined in respect of the identification parade.

According to Mr Kriel he met Mr Schneider-Waterberg and his wife, whom he knows, also outside the police building and they greeted each other but did not talk about the various incidents that they were involved in as there was no time for it. He and his wife were immediately separated and taken to separate rooms. From this room he was taken to the identification room where he was instructed in respect of the procedure of an identification parade. He identified accused number 1 as the person who did most of the talking and who took most of the initiative on the 9th March 1991 and also accused number 6 as a person who had the panga and who was mainly with his wife. Mr Kriel denied that he was told anything during the course of the identification parade or before it by any of the police officers or that he could not identify any of the assailants and was then called to return to the identification room whereafter he identified both of them. Mr Kriel also confirmed Annexure 3 to the charge sheet as being the list of items taken from his house.

Mrs Kriel testified in English. She said on the said date she assisted her husband where they were doing concrete work in their yard. She noticed three black men approaching their gate and that her husband went up to them. She could not hear what they were saying but saw that a piece of paper

was shown to her husband. Her husband then invited them in and the taller person greeted her with the hand. They then went to the back verandah where Mr Kriel again looked at the piece of paper and asked why there was no official stamp on it. She also asked that uniform policemen should come to their house. They were then told that they do not want to co-operate and were pushed into the kitchen.

In the kitchen her husband was accused of illegally dealing in diamonds whereupon they went to the lounge where the stone collection was shown to the two men and they returned to the kitchen. She also mentioned that a third person was always in the background but did not enter the house. In the kitchen her husband went to sit on the corner of the table whereupon the one person took out a gun and pointed it at her husband and said that he was from the Namibian Police and that he would kill her husband because he was entitled to do it. They were then tied up by the shorter assailant and taken to the main bedroom. Here she also described that the assailants asked for money and fire-arms and that her husband indicated where his rifle was, which was taken by the taller person and put on the bed. She also described that they wanted money and that she then gave them the money that was in her purse in the kitchen, from which they took only the notes in an amount of R120. They returned to the bedroom and the assailants insisted that they want further fire-arms, whereupon her husband indicated where his revolver was. The revolver including the leather holster and the cartridges were taken and put into her husband's briefcase. She noticed that accused number 6 pulled a panga out

from the back of his shirt and with that he indicated that their throats would be cut. She said that she was very afraid and that she feared for her life. According to her, her husband seemed much calmer.

Mrs Kriel also testified that her daughter's radio was taken and that accused number 1 carried the property out of the house while accused number 6 held them captive in her daughter's bedroom. She also said that an attempt was made to lock them into the toilet, but because there was no key it was not possible. They were then taken to the garage when accused number 1 returned and locked them into the garage where she managed to untie her hands and assisted her husband in getting him untied. Her husband then managed to get out of the garage and that the police came within ten minutes, who examined the house and took statements from them.

Mrs Kriel testified that she also attended an identification parade but was too afraid to look into the faces of the people there. She was in fact so terrified during the course of the events of the 9th March 1991 that she could not concentrate on their faces and as a result could not identify anyone at the identification parade.

CHARGES 3,4 AND 5

The incidents that led to these charges occurred on the 3rd February 1991. The charges are as follows:

CHARGE 3: It is alleged that upon or about 3 February 1991 and at or near farm 0K0S0NG0MING0 in the district of

OTJIWARONGO the said accused did unlawfully and intentionally break and enter the house of HINRICH REINHARD SCHNEIDER-WATERBERG with intent to rob and did then unlawfully and with the intention of forcing them into submission, assault HINRICH REINHARD SCHNEIDER-WATERBERG, ANNELOSE SCHNEIDER-WATERBERG and ILSE MERCKENS by hitting them with sticks and pangas and threatening them with a firearm and unlawfully and with intent to steal took from them the items mentioned in Annexure 2 hereto the property of/or in the lawful possession of the said HINRICH REINHARD SCHNEIDER-WATERBERG, ANNELOSE SCHNEIDER-WATERBERG and ILSE MERCKENS.

And that aggravating circumstances as defined in section 1 of Act 51 of 1977 are present in that the accused and/or an accomplice was/were before, after or during the commission of the crime, in possession of dangerous weapons namely, sticks, pangas and firearm.

CHARGE 4: It is alleged that on or about 3 February 1991 and at or near farm OKOSONGOMINGO in the district of OTJIWARONGO the accused unlawfully and intentionally assaulted ANNELOSE SCHNEIDER-WATERBERG by hitting her with sticks and pangas with intent to do the said ANNELOSE SCHNEIDER-WATERBERG grievous bodily harm.

CHARGE 5: It is alleged that on or about 3 February 1991 and at or near farm OKOSONGOMINGO in the district of OTJIWARONGO the accused unlawfully and intentionally assaulted ILSE MERCKENS by hitting her with sticks and pangas with intent

to do the said ILSE MERCKENS grievous bodily harm.

The main witnesses who testified in respect of these three charges for the State were Mrs Annelise Schneider-Waterberg and Mr Hinrich Reinhard Schneider-Waterberg.

Mrs Schneider-Waterberg testified that on the night of the 3rd February 1991 she, her husband and her elderly mother of 81 years were watching television in the television-room of the farmhouse when four men suddenly entered the room. One had a pistol in his hand and the others were armed with pangas and sticks. They took in a very threatening position. The one with the pistol threatened Mr Schneider-Waterberg that they would be killed if they do not do what these persons requested of them. The one with the pistol also had a single shell in his hand to emphasize the threat. Mr Schneider-Waterberg was then hit by one of the assailants more than once and Mrs Schneider-Waterberg's aged mother, Mrs Merckens, was also hit with a stick, whereafter she herself was hit on her knees and shins with a stick. The assailants repeatedly requested money. Their hands were tied with electric cables and they were taken to the office where they were requested to hand over the keys of the safe as well as the gun-safe. Mr Schneider-Waterberg was hit again and fell to the ground and Mrs Schneider-Waterberg thought he was not alive anymore. Her mother was also further assaulted and also fell down. She herself sat in an office chair and was threatened by one of the assailants using one of their own shotguns which he pointed at her. In the meantime the safe was opened and the jewellery as well

as other valuables were taken while they heard some of the people were busy ransacking the rest of the house.

One of the assailants frequently entered the room and then stuck one of Mr Schneider-Waterberg's knives into the desk saying: "You fucking boers have to be killed". All the rifles were taken to the bedroom and Mrs Schneider-Waterberg was requested to hand over the keys for the car. As the keys were usually hidden in the cars she went out with some of the assailants but couldn't find the key. She returned and was taken back into the house after they heard the farm manager returning through the gate and the assailants with her became nervous and excited and started talking to each other in a language which was neither Afrikaans, English or Herero.

She was taken to the office where she was left for a few moments alone with her husband. She found that he was still alive and she asked for the keys which he handed to her and which she put on the table. This was then taken by one of the assailants who was at that stage in a hurry. The Schneider-Waterbergs and Mrs Merckens were taken to the bathroom where their hands were re-tied behind their backs. They were locked into the bathroom and heard the assailants packing things. After approximately 20 minutes everything was quiet. Mrs Schneider-Waterberg testified that her hands became very painful but her husband managed to cut the cables that tied his hands with scissors and then also freed herself and her mother. According to her, her mother was bleeding profusely. Mr Schneider-Waterberg managed to get

24

out through the bathroom-window and apparently went to call for help. When he returned the bathroom-door was unlocked.

According to Mrs Schneider-Waterberg four assailants entered initially but were later joined by a fifth person and she also became aware of a sixth person whom she didn't see outside when she was taken by the assailants to the car.

On the photos contained in Exhibit F, Mrs Schneider-Waterberg indicated blood-smears and stains in the bathroom caused by the bleeding of her mother and her husband. She also identified the sticks used to assault them on the photos in that bundle. She herself could not identify anyone at the first identification parade in Otjiwarongo, but at the second identification parade she identified accused number 1. As she could not bring herself to put her hand on accused number 1's shoulder she indicated him with a stick at the identification parade.

At Okahandja she attended a further identification parade where she identified accused number 3 by using a ruler to point him out. She also identified a body at the mortuary as being the person who had the pistol the evening of the incident at their farmhouse. Mrs Schneider-Waterberg was cross-examined mainly in respect of her identification of accused numbers 1 and 3 and on the features that made them identifiable to her. She remained adamant that accused numbers 1 and 3 were in fact part of the assailants that evening.

Mr Schneider-Waterberg testified that three people initially entered the house that particular evening, that they were threatened and all of them assaulted. According to him he may have become semi-unconscious after the second blow to his head. He was taken last from the T.V.-room to the office and on the way he was hit again against the head and also assaulted further in the office. As he thought it would be better to pretend that he was unconscious after being assaulted in the office he fell down and remained still on the ground. From the position that he was lying on the ground he could notice the assailants emptying the safes but could not see what happened behind his back where the desks were.

He supported his wife's evidence that she was taken out to the car and that when she returned she obtained the keys from him. He noticed while he was lying on the ground that the assailants walked in and out of the room and was once also told by accused number 3 that "they as 'boere' must be killed". He also confirmed that their hands were tied with electric wire.

Mr Schneider-Waterberg identified the items on Annexure 2 of the charge sheet as being the property stolen to the value of approximately R70 000.00 and containing many rifles and hand-guns. He also identified Exhibits 7, 8 and 9 being fire-arms stolen that evening but recovered by the police. He also identified Exhibit 10 which is a broken gas-pistol taken that evening. He then also related what occurred after the assailants took them to the bathroom and locked

the door whereafter they left. According to Mr Schneider-Waterberg he found the wires of the telephones in the house cut and had to go to his shop from where he called his foreman and the police.

Early in the morning the police arrived and they looked for tracks. He also testified that the corpse of the person in the mortuary has been the one that had the pistol that evening. Mr Schneider-Waterberg further identified accused number 1 at the second identification parade at Otjiwarongo as being one of the assailants while he also could not identify anyone at the first identification parade at Otjiwarongo.

At Okahandja he identified accused number 3 and a person who had a very prominent Roman type nose and was apparently accused number 2 who was not present in this court. He also admitted that he made a mistake in identifying another person at Okahandja who was not one of the assailants that night and said that he identified him because he was involved in another criminal activity and consequently made a mistake.

Mr Schneider-Waterberg was mainly cross-examined in respect of the identification parades and the identification of accused numbers 1 and 3 at those parades as well as the person whom he had mistakenly identified as being one of the assailants. He was also cross-examined in respect of their features and other means of identification. Although he could not describe any special features in respect of the

accused identified, he remain adamant that he had the opportunity to see their faces and that he did recognise them.

Mrs Merckens did not testify.

Dr E.A. Gaertner testified that he attended to Mr and Mrs Schneider-Waterberg as well as Mrs Merckens and examined them the day after the incident at Otjiwarongo. According to him, Mr Schneider-Waterberg was in pain and his clothing was blood-stained. He had a traumatic bursitis of the left elbow and two large lacerations on the crown of his skull, measuring 14 cm and 8 cm in length, respectively. There were no fractures but there was a swelling and tenderness over the right knee. The wounds on the head were sutured and the doctor suggested that the wounds were caused by a blunt object like a stick.

Mrs Schneider-Waterberg, 55 years old, were found by the doctor in a shocked and painful condition. Her clothing was blood-stained. She had a tramline ecchymosis over the wrists and bleeding over the left knee and left lower leg and her left thumb of the right wrist. The left knee was also swollen. There were no fractures. She was apparently hit by a blunt object like a stick. The tramline ecchymosis over the wrists were caused by being tied or held firmly, according to the doctor.

Mrs Merckens was an old woman whose clothes were bloodstained and who were shocked and in pain. She had a bruising

of the left fore-arm and her right elbow and also tramline ecchymosis of the right wrist as well as a 4 cm laceration over the left elbow. There was an open complicated fracture of the ulna on the right elbow. This could also have been caused by an assault with a stick and the tramline ecchymosis over the wrist by being tied-up with an electric wire. The doctor did not think that the fracture of the right elbow was caused by spontaneous falling but rather by an assault using a substantial amount of force.

CHARGES 8 AND 9;

The incident which resulted in these charges occurred at the farm OTJONZONDJATI in the Okahandja district of Mr HAROLD GUNNAR VOIGTS on the 16th of March 1991, late in the afternoon. These charges reads as follows:

CHARGE 8: It is alleged that on or about 16 March 1991 and at or near farm OTJONZONDJATI in the district of Okahandja the accused unlawfully and with the intention of forcing him into submission, assaulted HAROLD GUNNAR VOIGTS by hitting him with a hammer and wrestling with him and unlawfully and with the intent to steal took from him 1 x 9 mm C2 pistol with a value of approximately R900.00 the property of or in the lawful possession of the said HAROLD GUNNAR VOIGTS.

It is further alleged that aggravating circumstances as defined in section 1 of Act 51 of 1977 are present in that the accused and/or an accomplice was/were, before, after or during the commission of the crime, in possession of dangerous weapons, namely a hammer and fire-arms.

CHARGE 9; It is alleged that on or about 16 March 1991 and at or near farm OTJONZONJATI in the district of Okahandja the accused unlawfully and intentionally attempted to kill HAROLD GUNNAR VOIGTS by shooting at him with a fire-arm.

In respect of these charges Mr Voigts, his wife, a neighbour Mr U.J.J.Barth as well as Dr S.D.Hanekom testified.

Mr Voigts testified that he and his family had a braai that evening and when his wife wanted to bath the children it was found that there was no water, whereupon he went with two of his elder children to a pump. On his way three people approached him near his front gate, one rolling a motor vehicle tyre, followed by two others. They were very friendly and asked for help and tools to fix the tyre. Mr Voigts got out of the car, asked them to wait and went into his house. He told his wife that his semi-automatic rifle stood next to the telephone, put on his own pistol and took a hammer and tyre lever to the three people. He then went to the engine but found that the handle with which it has to be started was not there. He returned to the house and went inside to look for the handle in the workshop. One of the men approached him and asked for another tyre lever. Mr Voigts took another tyre lever and when he approached them where they were busy fixing the tyre he found that two persons were busy with it but three others stood around without assisting. He was suddenly attacked and felt that somebody removed his pistol from behind while he was also hit with what he suspected was a hammer on his forehead. They pulled him down to the ground and one sat on his left

arm and one on his right arm while a third one sat on his stomach pointing a pistol to his head. In the process Mr Voigts called loudly his wife's name twice. Both of the other two people sitting on his arms had hand-weapons. The man on his stomach asked "him where are the rifles, where is the money", while the man on his right shouted "Shoot him dead, shoot him dead". He identified the man on his stomach as the person who was later shot and the man on his right as accused number 3. In that particular moment he heard two shots from the direction of the house. His assailants were surprised and talked in Ovambo with each other. They got up and Mr Voigts kicked the man on his stomach from him and started to run to the house. He saw his wife coming towards him and on his way heard other shots which did not sound like rifle shots but like that of a hand-weapon. Mr Voigts took the rifle from his wife, fired a number of shots in the direction of a person running away. He then went into the house, put off the lights and locked the doors. He phoned the police and one of his neighbours, Mr Barth, also intervened on the farm-line whereupon Mr Voigts asked him to come to his home because they had been attacked.

When Mr Barth arrived at his home he informed Mr Voigts of a white Isuzu bakkie which was parked on the road that leads to the homestead. Mr Voigts handed him a shotgun and asked Mr Barth to shoot the tyres of the vehicle to immobilise it. When Mr Barth returned Mr Voigts who was convinced that he may have hit somebody wanted to go out to assist this person. Mr Barth and his wife tried to persuade him not to go but after approximately four to five minutes he and Mr

Barth went out and when he heard a voice in the darkness calling for water and help Mr Voigts told him that he was afraid when he approach him, he may be shot. The man assured him that he has thrown his fire-arm away. Mr Voigts and Mr Barth, who had obtained flashlights, approached this person and found him lying on his stomach, wounded high up in his left leg which was swollen almost double the size. This could be seen when Mr Voigts removed the person's trousers.

The police arrived and investigated the scene. Mr Voigts identified Exhibit 1 as his pistol and also testified that he attended an identification parade, approximately four days after the incident but was so overcome by emotion and shock that he could not look at the faces of the people and went out without identifying anyone. He later attended another identification parade where he identified accused number 3. He was almost certain that accused number 5 was also present during the incident but because he was not one hundred percent certain he did not identify him.

Mr Voigts also identified accused number 4 as being one of his assailants. Accused number 3 was, according to him, the person who sat on his right hand during the incident and he was also the person who told the others to shoot Mr Voigts. Mr Voigts also describes the place where the incident took place as being approximately under a light which enabled him to see the faces of his assailants. Mr Voigts was mainly cross-examined in respect of his identification of accused numbers 3 and 4 and the fact that

he was not emotionally able to identify anyone at the first identification parade.

Mrs Sitta Elke Voigts testified that after the braai that evening she wanted to bath the youngest child but there were problems with the water and her husband went to the engine. She noticed the three persons approaching and her husband talking to them. She said that her husband returned and mentioned to her that he did not trust them and told her where the semi-automatic rifle was, standing next to the telephone. He took his pistol and went out again. Her husband later returned and was looking for the handle of the engine and told her that the people seemed okay but that they still need more tools to repair the tyre. She had already finished bathing her youngest child and heard her husband shouting and calling her name from outside whereupon she took the rifle and went out of the house. She saw that their young son was still in the car. She cocked the rifle and shot over the heads of two people running away in the direction of the car where her son was. She fired another shot. She heard two shots which sounded that they were coming from a handgun. Her husband came running towards her and told her that his pistol was taken away. She handed him the rifle and told him where the two suspects went behind the vehicle. She ran into the house, tried to call her neighbours and the police and heard her husband firing a number of shots. He then entered the house. She also testified that she attended two identification parades at Okahandja but could not identify anyone. She was not cross-examined at all.

Mr Uwe Barth testified that he heard shots that particular evening coming from the direction of Mr Voigts' farm which is not far from his farm. He first heard rifle shots and then thereafter shots from a hand-gun. He then heard a number of shots coming from a semi-automatic rifle. He took the telephone and heard that Mr Voigts was busy trying to get hold of the police through the Post Office. Mr Barth asked him what happened and he was told that he was been overpowered by five or six persons and was asked to come and assist him. Mr Barth took his rifle and extra bullets and went over to Mr Voigts' house.

On the road from the main road to Mr Voigts' house he found a white Isuzu bakkie and when he met Mr and Mrs Voigts outside the house he informed him of this and he was asked by Mr Voigts to shoot and damage the tyres of the vehicle and was handed Mr Voigts' shotgun for that purpose. This is he did and he returned to Mr Voigts' house. He also described Mr Voigts' condition. Both of the Voigts' had to be calmed down. Mr Voigts' T-shirt was torn, he had a big swelling on his forehead and his left cheek was bleeding. He also noticed a revolver holster on Mr Voigts' side. He and Mr Voigts left the house after they heard somebody shouting. They took a strong flash-light and found a person lying on his stomach. He could see that this person was seriously injured when Mr Voigts pulled his pants down. The police arrived and the incident was related to the police. Mr Barth was requested to assist in bringing the Isuzu bakkie into Mr Voigts' yard, which he did by towing it with his Landcruiser. He identified this bakkie from the

photos in Exhibit C.

Dr.S.D. Hanekom of Okahandja testified that he examined Mr H.G.Voigts on the 17th March 1991 at Okahandja State Hospital. His general physical powers and state of health were normal. His T-shirt was torn and there was mud on the T-shirt. His left buttock and the left side of his ribs were bruised and had abrasions as well. His left knee was swollen and there were abrasions over his left and right hands, over the knuckles. His ribs were very tender. There were two superficial cuts, one on the forehead and one on the left side of the cheek. These injuries were caused by the use of blunt objects. Dr Hanekom also identified the injuries on the photographs, contained in Exhibit C and in particular photos 2,12 to 14. In respect of the swollen forehead the doctor suggested that quite a lot of force was needed to cause that injury.

CHARGES 10,11,12 AND 13;

These charges relate to the incidents that occurred on the 24th March 1991 on the farm Khairob in the district of Outjo and involving Mr and Mrs De Lange.

CHARGE 10: It is alleged that on or about the 24th March 1991 and at or near farm KHAIROB in the district of Outjo the accused unlawfully and with the intention of forcing her into submission, assaulted/threatened to assault PETRONELLA DE LANGE by hitting her against the legs and threatening her with a knife and firearms and unlawfully and with the intent to steal took from her 1 x 7,64 Mauser rifle with telescope

and 5 cartridges (value R2 000,00) and a x 9 mm Colt pistol with 45 cartridges (value R1 500,00) the property of or in the lawful possession of the said PETRONELLA DE LANGE.

It is further alleged that aggravating circumstances as defined in section 1 of Act 51 of 1977 are present in that the accused an/or an accomplice was/were, before, after or during the commission of the crime, in possession of dangerous weapons, namely firearms, sticks and a knife.

CHARGE 11; It is alleged that on or about 24 March 1991 and at or near farm KRAI ROB in the district of OUTJO the accused unlawfully and with the intention of forcing him into submission, assaulted/threatened to assault STEFANUS JACOBUS DE LANGE by shooting him with a firearm and hitting him with sticks and unlawfully and with intent to steal took from him 1 x Rolex watch (valued R1 500,00), 1 x Balograf ballpoint pen (value R20,00) and 1 x knife (value R20,00) the property of or in the lawful possession of the said STEFANUS JACOBUS DE LANGE.

It is further alleged that aggravating circumstances as defined in section 1 of Act 51 of 1977 are present in that the accused and/or an accomplice was/were, before, after or during the commission of the crime, in possession of dangerous weapons, namely, a firearm and sticks.

CHARGE 12; It is alleged that on or about 24 March 1991 and at or near farm KHAIROB in the district of OUTJO the accused unlawfully and intentionally attempted to kill STEFANUS

JACOBUS DE LANGE by shooting him with a firearm in the face.

CHARGE 13; It is alleged that upon or about the 24th day of March 1991 and at or near farm KHAIROB in the district of OUTJO the accused did unlawfully and intentionally steal stock, to wit two sheep with a value of R300.00 the property of/or in the lawful possession of STEFANUS JACOBUS DE LANGE.

Mr Stefanus Jacobus De Lange, the owner of the farm Khairob, who is 70 years of age testified that accused number 7, to whom he referred as Martin, was employed by him on Thursday the 7th of March, when he and his wife went to Outjo and was approached by the said accused number 7 in front of the Post Office, asking for work on a farm. He took accused number 7 to his residence in Outjo where he collected his personal belongings and that afternoon they went to the farm. The following day accused number 7 did not do much as he asked permission to clean the worker's house which was so dirty, according to accused number 7, that it looked as if pigs stayed in the house.

The next morning, the Saturday, accused number 7 worked on the farm and received his rations for the week. However, on the next morning when Mr De Lange called him to assist with the sheep, accused number 7 was gone.

Mr De Lange further testified that on the morning of the 24th of March 1991 he and his wife went to the sheep-kraal just after eight where his wife accused him of not looking properly after the sheep the previous evening as she saw one

of the sheep outside the kraal. On investigation it was found that there were wool on the upper part of the fence and on a recount it was established that one sheep was in fact missing. After this was discovered Mr De Lange also noticed footprints of at least three persons in the vicinity of the kraal which he encircled with his walking-stick to identify them later to the police. While he was still busy letting the sheep out of the gate for the day he noticed a black man on the southwestern side still outside the nearest fence and when he looked around he saw another man near the water-trough on the eastern side. He went to his wife to tell her to run home as he immediately thought of what happened to other farmers like Mr Schneider-Waterberg and Mr Voigts of whose attacks he had read about. He said that the man near the water-trough had his hand in front of his face and he could not recognise him. After he told his wife to run home he turned around, the man whom he saw first on the southwestern side was already inside the fence and approaching him. At that stage one of the De Lange's dogs, a Rottweiler/Dobermann crossing, came running from the side of the house to the person who approached Mr De Lange. Mr De Lange said that nothing else was spoken except that he told the man approaching him to lie down and keep still and then the dog would not attack him, as he knew the dog would certainly attack him. This person ignored this instruction and pulled out a firearm which looked like a .22 target shooting revolver which he pointed at the dog and fired a shot in his direction. The dog then stood still.

Mr De Lange who was not far from this person at that point

in time, took his walking-stick by the lower point, approached the person and hit at him. He said he aimed at his face and wanted to knock him out. It must be mentioned that Mr De Lange at that stage was recovering from a knee operation and needed to walk with the aid of a walking-stick. He is not certain where he hit the person but the walking-stick broke and he was in a fraction of a second thereafter shot in the face. He fell down and doesn't know how long he was unconscious but when he came to he was hit with something from behind on the back of his head. As he knew of only this person whom he identified as accused number 1 in his vicinity at that time he assumed that it was accused number 1 who had hit him with the revolver. He then became unconscious and when he woke up everything was silent. He turned himself over and noticed a person sitting approximately ten metres from him on the water-trough. This person had a beard. Mr De Lange pretended to be still unconscious. A person approached him and pulled his Rolex watch from his left arm, took his spectacles from his shirt pocket and threw it away and further emptied all his pockets. He later missed his pocket-knife. In the process he was turned onto his stomach.

He heard somebody calling from the house. The person who searched him responded in a language that he could not understand and they communicated with each other. After a while it was silent and he does not know whether he lost his consciousness again, but when he later looked around him he did not see anybody and could not get up and had to crawl to the fence where he pulled himself up and with the aid of a

piece of iron walked to the house. He did not find his wife in the house and discovered that his Colt pistol with leather holster and belt in which there were 45 rounds of ammunition, were missing as well as his 7.64 rifle.

After taking the duplicate keys of his vehicle he drove in the direction of his neighbour's farm. On the way he saw his wife trying to hide when he approached and calling "please leave me alone". She did not recognise him and he calmed her down and got her into the car. He drove up to the homestead of the neighbours from where he was taken by ambulance to Outjo and from there to Medicity Hospital in Windhoek. His wife discovered in hospital that his body was blue from his waist up to his neck which must have been caused by assaults. He himself did not feel any pain because he was under treatment with anaesthetics.

As a result of the injuries inflicted upon Mr De Lange the left side of his face is permanently damaged. He cannot shut his left eye and the whole left side of his face is partially paralysed. This was clearly visible to the Court when Mr De Lange took off his glasses that the whole left side of his face from the eye was drooping downwards and that the eye was nearly closed. He still has pain in his shoulders and experiences problems with his left knee and his elbow. He also experiences difficulty with hearing after the incident and his sense of balance has been impaired.

the revolver and rifle that were taken from his house which exhibits were handed into Court. The telescope of the rifle was damaged when it was returned to him. The rifle with telescope's value was given by Mr De Lange as R2 000 and that of the Colt pistol R1 500 and the watch that was taken from his arm has the similar value. His ballpoint pen and pocket-knife that he lost were evaluated by him at R20 each. The walking-stick was handed into Court as Exhibit 15 and it was clear that he was broken approximately 7 to 8 centimetres from the handle. A further piece of iron that was presumably used in the attack was handed in also. An oryx horn with a sharpened point was handed in and described by Mr De Lange as an object that he noticed after accused number 7 had left his service.

Cross-examination of Mr De Lange was mainly directed at what occurred when he was approached by accused numbers 1,6 and 7 who admitted at the stage of pleading that they were present on the farm as well as that accused number 1 did admit that he shot at Mr De Lange in self-defence.

Accused number 7 alleged in statements made by counsel that he was in fact employed by Mr De Lange from January to April 1990 and because he was never paid despite promises he left Mr De Lange's employ. He approached him again on the 7th of March 1991 to repeat his request for his salary that was not paid to him and was then taken with a further promise by Mr De Lange back to the farm. When he discovered that nothing would come from this promise to pay his outstanding salary, he left on the Sunday morning and returned with two friends

on the morning of the 24th of March 1991 to ask for his outstanding salary. It was also put to Mr De Lange that since April 1990 until the 7th of March 1991 the police in fact called Mr De Lange on several occasions to enquire in respect of this outstanding salary. Mr De Lange adamantly denied all these allegations and said that he ever employed accused number 7 in the past and saw him only for the first time on the 7th March 1991 when he employed him. He also denied that he owes accused number 7 anything.

The version of the accused put to Mr De Lange in respect of what occurred when they approached him and afterwards, which he denied, was the following: The three accused went to the homestead and according to accused number 7 waited outside because they were afraid of the dogs until the De Lange's came out of the house and were on their way to the kraal. They then peacefully approached Mr De Lange and according to Accused number 1 both the dogs started charging at them. Mr De Lange then said "lie down your kaffirs, what do you want on my farm", he also said, "sa, catch him, catch him". Accused number 1 then told him that they came in peace and wanted to talk to him and that he should stop his dogs. Mr De Lange replied by saying, "you kaffirs don't pass through my farm" and at the same time encouraged the dogs by saying, "sa, catch him". Accused number 1 said he then picked up stones to defend himself against the dogs. Mr De Lange then approached accused number 1 and hit him with the walking-stick over his nose. This caused bleeding and pain. At that stage he pulled out his revolver and shot two shots between the dogs to frighten them away. He then wanted to

shoot next to Mr De Lange to frighten him and defend himself before he is hit again but because Mr De Lange must have moved the shot hit Mr De Lange in the cheek. It was further put that accused number 1 will say that he had no intention to shoot Mr De Lange or the dogs.

After Mr De Lange fell down he shouted to his wife, "run to the house and fetch the gun and shoot the kaffirs". Mrs De Lange then responded that they should please not harm them as she does not have any problems with him, "it is only the oubaas that has problems because he dislikes black people and he often killed black people and buried them on the farm".

Accused number 6 then asked her where the guns that the oubaas used to kill the black people with were, whereupon Mrs De Lange replied that it is in the house and that he should come along and she will hand it over to him. According to accused number 1, accused number 6 accompanied Mrs De Lange to the house and he and accused number 7 stayed behind.

It was further put on behalf of accused number 1 that accused number 6 returned with two guns and accused number 7 then said that he will take the two guns in view of the non-payment of his salary and sell them. They then left. Accused number 1 denies that he took anything from Mr De Lange or stole the sheep.

Mr De Lange denied all these statements.

On behalf of accused numbers 6 and 7 it was also put to Mr De Lange that they approached him peacefully in order to obtain accused number 7' s outstanding salary on the 24th March 1991. They also repeated the statements made on behalf of accused number 1 of the reference to them and further put it to Mr De Lange that they were with accused number 1 but a little bit behind him. Apparently they did not see how the shooting incident exactly occurred and approached Mrs De Lange as a result of her invitation after the alleged allegation that she will hand the rifles over. It was put to Mr De Lange that accused number 7 in fact took the rifles for two reasons namely, (1) That they would not be shot at when they leave and (2) as a sort of security for his outstanding payment. They denied that they took the rifles themselves and that it was handed over to them by Mrs De Lange voluntarily.

Mrs Petronella Aletta de Lange testified and also denied that accused number 7 either worked on the farm previously prior to the 7th March 1991 or that her husband owed him any salary. She confirmed her husband's evidence that he approached them on the 7th March 1991 in front of the Post Office and asked for work and that he had left their employ on Sunday the 10th March 1991. She also confirmed that they went to the sheep-kraal the morning of the 24th March 1991 and how it was discovered that one sheep was missing. She said that she saw three men running from the bushes in the direction of her husband. She was so shocked that she could not say or do anything. At that time her husband was walking in front of the sheep towards the gate to open it

for the sheep and she was some distance away. Her husband came walking towards her and indicated to her to run to the house and while she was running she heard her husband saying, "if the dog storms at you fall down and lie still and the dog will not bite you." She then saw accused number 1 pulling out a revolver and shooting at the dog, whereupon she called, "don't kill my dog". She did not recognise accused number 7 but when she heard another shot and saw her husband falling down, accused No 6 was suddenly at her side at the small gate where he took her by the arm and said, "I want your money and your rifles". She was then taken to the house and on the way she felt somebody beating her on her lower legs from behind. She assumed it was accused number 1 but did not see his face. She did not see with what he hit her but assumed that it was something like a stick. She said that if it had been accused number 7 she would have recognised him. She was taken into the house and to the bedroom where she showed him her husband's rifle. He took it and when he turned around he saw her husband's revolver in the holster and attached to a leather belt on the cupboard, which he also took. They returned to the kitchen where they found accused number 1 wiping blood from his face with a kitchen towel.

Accused number 6 took the rifle and revolver, ran out of the house towards the kraal while accused number 1 took her to the stoep where he kept pointing the pistol, as he did in the kitchen, in her direction and told her that they are from the police. At that time the telephone rang and accused number 1 enquired where it was. She indicated that it was

inside the house and when he went in she ran out of the house in the opposite direction of the kraal, through the bushes towards their neighbour's house. On the way a vehicle approached her and she tried to hide. She then saw it was her neighbour. She asked him to call the police and because the dog which was running with her he did not want to get into the vehicle, she remained walking while he drove away. It was at that stage that her husband, whom she did not recognise at first, found her and took her to the neighbour's house.

Cross-examination was mainly concentrated on the different versions of Mrs De Lange and her husband of how many people approached them, the way and the direction from which they were approached. She explained it by saying that she was some distance from her husband and that she does not know exactly when he saw these assailants. She also conceded that she and her husband talked about this difference and that she knew that he saw only two people and she saw three, as he told her that in hospital. The same statements were made on behalf of accused number 1 to Mrs De Lange as had been made to her husband. She also denied it. Nearly all the statements made on behalf of accused numbers 6 and 7 were also made on behalf of them which Mrs De Lange also denied.

Dr W.E.Birkenstock testified that on the 25th March 1991 he examined Mr De Lange at Medicity Hospital, Windhoek and

47

found him in a state of shock, severely bruised about the face with bleeding under the skin and further severe bruising over the neck, shoulders and back, as well as the back of the head. His left leg had a contusion just below the knee on the lateral side and there was a laceration of his right ear which was very deep and a further laceration across the dorsum of his right hand and left elbow. However, the most severe injury was a gun-shot wound which entered his left cheek just lateral to the nose and exited behind the left ear. It was also found on investigation that there was a compound fracture of the maxilla. The left jawbone was broken just in front of the ear and foreign bodies, apparently parts of the bullet, were scattered within his face. Subsequent examination proved that there was actual destruction of the nerve in the left side of the face. According to the doctor, the injury was caused by a smallish calibre bullet. The doctor described the injuries and in particular the gun-shot wound as very serious and had the track of the bullet diverted slightly it would have been fatal. The laceration of the right ear was a separate injury from the gun-shot wound and was caused by a sharp object as well as that on the right hand and the right elbow. These were deep wounds. Mr De Lange was hospitalised until the 8th of April, after which the wounds were reasonably healed. The injury to the left side of the face caused permanent damage and he is unable to open or close his left eye. The fibula which had a cracked fracture below the left knee was also caused by blunt force with something like a stick. The doctor further testified that his impression was that the bruises on the lower neck, shoulders

and knee were caused by various blows with a blunt instrument in the region of the neck and shoulder area, while the one on the knee appeared to have been caused by one blow.

Warrant Officer A.J. Blaauw testified that he was stationed at Windhoek attached to the Fingerprint Office and that he took the photos that form part of Exhibit EE. These photos were taken on the farm of Mr De Lange in the Outjo district. He also compiled a key to the photos and explained the photos and the key in evidence. The photos numbered 9 to 17 were not taken by him but by Sergeant Van Lill who subsequently left the Namibian Police Force which photos are also included in Exhibit EE. The points shown on the photos taken by Warrant Officer Blaauw were indicated to him by Mr De Lange on the 27th November 1991, the date when the photos were taken. Certain other points, namely G, N, O and T were indicated by Mrs De Lange on the same date to Warrant Officer Blaauw.

This concludes the evidence in respect of the different incidents by the claimants and the doctor's in respect of the first 13 charges. I shall now deal with the other evidence presented by the State.

Mr Mathias Maultius, a teacher from Otjiwarongo, testified that Primus Angula, who was originally accused number 2, but who escaped before this trial started, approached him on the 28th March 1991, looking for a lift to Oshakati. He obtained a lift with Mr Maultius' brother, Sagaria Katupa and left

a pistol for safekeeping with Mr Maultius. On the 29th March 1991 Warrant-Officer Ngoshi collected this pistol from Mr Maultius which was handed in as Exhibit 1 together with 12 cartridges. This pistol, Exhibit 1, with the same number was later identified by Mr Gunnar Voigts as being his pistol which was taken away from him when he was assaulted on his farm on the 16th March 1991 and which pistol was also the subject matter of charge 8.

Constable Cornelius Hindjou was on duty at the Otjiwarongo Police Station on the 25th May 1991 as charge office sergeant. He came on duty at half past one until half past nine. He was relieved by Constable Severus. At that time there were a number of persons held in custody in the police cells. This included accused number 1. He also identified a warrant of detention handed in as Exhibit V in respect of accused number 1. According to normal procedure when another person takes over as charge office sergeant the persons held in custody must also to be counted, handed over and this is then recorded. Constable Hindjou and Constable Severus went to the cells and to the third cell which was divided in two parts with three people sleeping in the front part. Constable Severus entered the cell with Constable Hindjou remaining at the door. Two prisoners, including accused number 1 ran out. Constable Hindjou managed to get hold of the other person which he identified as Primus Angula, accused number 2, who is not present at this hearing and he forced him back into the cell. They locked the door and pursued accused number 1, who jumped over a wall and escaped.

Constable Josef Severus testified that he had to take over as charge office sergeant on the 25th May 1991 from Constable Hindjou and that as part of the procedure they had to count the prisoners. He confirmed Constable Hindjou's evidence that in the third cell while he was counting the prisoners and walking towards the door dividing the two parts of the cell, two prisoners ran out. Constable Hindjou managed to apprehend one, namely Primus Angula, locked him up in the cell and they pursued accused number 1 who managed to escape by climbing over the wall.

These two witnesses testified in respect of charge 15, namely escape from lawful custody and involving only accused number 1. Constable Severus also testified that he was on duty on the 27th March 1991 at the police station in Otjiwarongo when certain exhibits were handed in and entered into the exhibit book, Pol 7. These weapons were handed in by Constable Nampolo and Sergeant Shitolepo and were a 7.9 Mauser rifle No. 38090 with a telescope as well as a Lima 9 mm pistol with number 70L/11270 together with 8 rounds of ammunition. Constable Severus also identified these two weapons as being respectively Exhibit Nos. 2 and 3 which were indicated on a copy of the Pol. 7 register and handed in as Exhibit W.

Mr J.H.Kriel identified these two weapons as being those that were stolen from him on the 9th March 1991 at his house in Otjiwarongo involving charge 6.

the investigation branch of the Namibian Police at Otjiwarongo, testified in respect of charges 10 to 13 and 14 as well as charges 6 and 7. He was on duty on the 27th March 1991 and accompanied a number of police officers to a certain house 0/94 in the Orwetoveni township. It was in the early evening. They found accused number 1 and accused number 6 in the house. Although Warrant Officer Marais was not in charge of the investigation he assisted in the search of the house and in particular the property of accused number 1. After nothing was found in the house the outside room or toilet as it became known later, was searched after the contents of the toilet were taken outside. A rifle, wrapped in dark brown trousers and a piece of plastic was found inside this toilet. The persons in the house were asked to take their own personal belongings and keep that with them. The inhabitants of the house were then taken to the police station. According to Warrant Officer Marais in evidence elicited by counsel in cross-examination accused numbers 1 and 6 were first taken to the office of Inspector Visser where their personal belongings and the exhibits were sorted out. Warrant Officer Marais found during the search of accused number 1's belongings in a black imitation leather bag a document which referred to him by name. In this bag were also 6 rounds of 12 bore shotgun cartridges which were identified by Warrant Officer Marais and handed in. These cartridges are the subject matter of charge 14. He was not involved in the search of the other accused's belongings. Warrant Officer Marais was asked by counsel for accused number 1 whether accused number 1 made any statement to him and he then confirmed that accused number 1

identified the brown trousers in which the rifle, which was found in the outside room, had been wrapped, as his property. The accused were then booked and the charge office sergeant had to enter their belongings into the Pol. 7 as well as another police register in respect of personal items that are not relevant to the investigation and not expected to become exhibits. These items are then normally locked into a room for that purpose and the keys kept by the officer-in-charge of the police station.

According to Warrant Officer Marais, accused numbers 1 and 6 were removed for further investigation in respect of another incident to Outjo Police Station.

On the 26th April 1991 a further search of the outside room or toilet was conducted after Sergeant Herridge of the Outjo Police contacted Warrant Officer Marais and informed him that accused number 1 wanted to point out a further fire-arm but would do so only at a time when nobody else would see this and only in the presence of Sergeant Herridge and Warrant Officer Marais. Warrant Officer Marais was informed that the fire-arm to be pointed out was one with which accused number 1 shot Mr De Lange on the farm Khairob.

It was then arranged by Sergeant Herridge that he would arrive with accused number 1 at Otjiwarongo at a quarter to six on the morning of the 26th April 1991, which he did. Warrant Officer Marais, Sergeant Herridge and an interpreter then went to the same house, namely house No. 0/94 in Orwetoveni, where the weapon was recovered in the toilet.

They approached the house quietly and went directly to the toilet where accused number 1 indicated that the pistol was hidden inside a motor vehicle tyre. Warrant Officer Marais found a tyre, brought it outside the room, but could not find anything inside, whereupon accused number 1 persisted that it must be inside a tyre. Warrant Officer Marais again searched the room, found another tyre and felt something inside the tyre. This was a .38 Special revolver wrapped in a red and purple plastic bag. There were also 15 .38 special cartridges inside the plastic bag. Warrant Officer Marais identified this weapon as Exhibit 3 by its engraved number which corresponded with the number on Exhibit 3 and which was handed in earlier and identified by Mr Kriel in respect of charge 6.

It was heavily disputed by accused number 1 through his counsel, Mr Grobler, that he ever pointed out such a weapon or even went to Otjiwarongo from Outjo to point a weapon out on that particular day.

Warrant Officer Marais, however, testified that this weapon, Exhibit 3, was in fact immediately entered on arrival at the police station at Otjiwarongo in the Pol.7 register and Mr Small, on behalf of the State, provided counsel with copies of the specific page of that register, which was handed in as Exhibit CC under inscription No.78 on the 26th April 1991 and where reference to the case book entry No.2044/91 also appears. In column 2 the Outjo MR-number which Warrant Officer Marais said he obtained from Sergeant Herridge was entered and in column 3 the particulars of the .38 Special

revolver with its corresponding number. It was also indicated in column 5 that the weapon was in fact found in a room at a house in Orwetoveni township.

In Exhibit BB, which is a copy of the occurrence book under the same number 2044/91, appears an inscription made by the charge office sergeant that Warrant Officer Marais handed this weapon in on the 26th April 1991 to the charge office sergeant and the time indicated was 6.15.

Warrant Officer Marais also testified that he established from the Fire-arm office in Windhoek that this weapon belonged to Mr Kriel, which information was also entered into the Pol.7.

Warrant Officer Marais also testified about four identification parades where he acted as a photographer. These parades involved respectively Mr and Mrs Schneider-Waterberg and Mr and Mrs Kriel. In respect the identification parade attended by Mr Schneider-Waterberg, Warrant Officer Marais described the proceedings. The witness entered the room and the procedure was explained to him by Inspector Kotze, who was in charge of the identification parade and who sat at a table opposite the line of persons. Only the procedure had been explained to the witness, whereafter Mr Schneider-Waterberg pointed out accused number 1 and Warrant Officer Marais then took a photograph. Exhibit Y, the identification parade form, in respect of both Mr and Mrs Schneider-Waterberg indicated who was in charge of the parade, the photographer's name and the

respective police officers who were also involved in keeping the witnesses apart and taking them separately into the identification parade room. The names of the persons included in the parade, as well as their positions are indicated. It is also apparent from Exhibit Y that the positions of the persons and in particular the accused were changed between the two identification parades involving the Schneider-Waterbergs.

This identification parade was held on the 2nd April 1991 and the times that the different witnesses entered are also indicated on the document Exhibit Y.

Mrs Schneider-Waterberg also pointed out accused number 1 and a photograph was taken thereof. She used a ruler as she did not want to touch the accused with her hand.

In respect of the identification parade involving Mr and Mrs Kriel, Warrant Officer Marais also acted as photographer and Exhibit Z was handed in as the identification parade form with all the relevant information in respect of that identification parade, indicating Mr Kriel as first witness and Mrs Kriel as second witness. The order of the persons in the line up were also changed between these two parades involving the Kriels. Mr Kriel indicated accused numbers 1 and 6 and Mrs Kriel could not identify anyone.

Mr Small handed in a photo as Exhibit AA which was taken by Warrant Officer Marais in the course of an identification parade involving a certain Mr Schickerling as complainant

and which had nothing to do with this case. The reason for handing it in was to indicate that part of this photograph was exposed to light. This, according to Warrant Officer Marais, destroyed the photos after Exhibit AA on the film, which were taken in respect of the identification parades involving the Schneider-Waterbergs and the Kriels and for that reason no photos in respect of those identification parades are available.

Two female police officers, namely Sergeant J.J.H.Oberholzer and Warrant Officer A.Davids testified briefly in respect of the identification parades involving Mrs Schneider-Waterberg and Mrs Kriel respectively. Sergeant Oberholzer, who is a financial clerk at the police station in Otjiwarongo, was ordered by Inspector Kotze to keep Mrs Schneider-Waterberg with her in her office and when she received the message she took Mrs Schneider-Waterberg to the identification parade room where she knocked on the door, Mrs Schneider-Waterberg entered and she waited outside for her until she re-appeared whereafter then took her back to her office. She did not see anybody else, including Mr Schneider-Waterberg during that time.

Warrant Officer Davids fulfilled the same duty in respect of Mrs Kriel and also confirmed that Mrs Kriel did not talk to or see anybody during the time that she was in the care of Warrant Officer Davids. No cross-examination was directed at any of these two police officers.

Constable Nampolo of the Namibian Police and stationed at

Otjiwarongo testified that on the 24th March 1991, while he was off-duty, he received certain information from an informer, whereupon he and another police officer. Constable Shitelepo, approached accused number 7 and introduced themselves as police officers. They were then taken by accused number 7 to his own house in Orwetoveni where they at first could not gain entrance as accused number 7's wife, who had the keys to the house in her possession, was not present. When they could not obtain the keys, accused number 7 broke the door of his own house and during investigation a rifle was found, which was confiscated and taken to the police station. Accused number 7 was also taken to the police station but when he got into the police van, Constable Nampolo noticed something behind his back under his overall and upon investigation found it to be a pistol. This was also confiscated. These two weapons were then taken to the police station and handed over to the charge officer sergeant who entered it into the Pol.7 register which are reflected in Exhibit W.

When further information was received by Constable Nampolo he approached his senior officers with that information whereupon a number of policemen under the command of Chief Inspector Ekandjo went on the evening of the 27th March 1991 to the house 0/94 in the Orwetoveni township. Constable Nampolo also confirmed that at this house a rifle wrapped in long trousers was discovered in an outside toilet and that accused numbers 1 and 6 together with a certain Heiki, who was also an inhabitant of that house, were taken to the police station where they were first taken to Inspector

Visser's office and thereafter were booked in and taken to the cells. He also confirmed that Warrant Officer Marais, who was a part of this group of investigating policemen, accompanied them to this specific house. According to him, he and Warrant Officer Marais took accused numbers 1 and 6 to Inspector Visser's office and then left together. The two accused remained there for quite some time while he himself went out to the police vehicles. He was later called and he and Warrant Officer Marais again went up to Inspector Visser's office and collected accused numbers 1 and 6 and took them to the charge office where they were booked. He also confirmed that accused number 6 had a briefcase with him which was entered into the relevant register, but does not know what happened to that afterwards.

Heiki Mathias testified that he was an inhabitant of house 0/94 in the Orwetoveni township in Otjiwarongo during March 1991. Accused numbers 1 and 6 also stayed in that particular house which belonged to Johannes Paulus. On the 27th March 1991 he was at home after he finished his work for the day when the police arrived. The house was searched and according to him a rifle was found. He was then taken together with accused numbers 1 and 6 to the police station and travelled with the two accused in the same police van. He recognised the trousers in which the rifle was wrapped and according to him he thought it belonged to accused number 6 because he saw accused number 6 wearing it. He also testified that approximately a week before the police arrived he saw another rifle which was brought to the house

by accused number 1. Accused number 1 explained that they went to the house of a "boer" where they "made like young men" and tied the "boer" and took the rifle. This was explained to mean that they went there to steal and then tied up the owner of the rifle and took his rifle. He only saw the rifle wrapped in a blue cloth which looked like a bedspread. Approximately a week before accused number 1 brought the rifle to their home he saw a black briefcase of the type with combination locks as well as a radio cassette player which were brought there by accused number 1. No explanation was given in respect of these two items. According to this witness he was not at home all the time and accused numbers 1 and 6 also came and went.

During cross-examination it was elicited from the witness that accused number 1 said while they were in the back of the police vehicle on their way to the police station on the 27th March 1991 that the reason why they were arrested was perhaps the things that they had stolen. Accused number 6 said nothing. At the police station they were separated and he was locked up. He was apparently held in custody for approximately a week as a suspect and then released. Mr Mathias also formed part of an identification parade at Otjiwarongo but was not identified by anyone.

Inspector F.J. Kotze, the station commander of the police at Outjo, testified that all the registers at the police station in Outjo was under his control. He testified according to Exhibit FF, being page 85 in the occurrence

book, that Sergeant Herridge went with a police vehicle POL.3051, an Isuzu bakkie with a canopy, to Otjiwarongo on the 26th April 1991. He also identified the inscriptions in the register with the relevant O.B.numbers in respect of the return of Sergeant Herridge at 06h50. This appears from Exhibit HH. He further identified inscriptions in the vehicle register for the particular vehicle which left at 5 o'clock on the morning of the 26th April 1991 and returned at 06h50 that same day and driven by Sergeant Herridge.

Inspector Kotze also confirmed that he was in command of a number of identification parades in respect whereof Exhibits BB, Y and Z were completed. He explained at the hand of these exhibits how each identification parade was put together and set up. All these documents were completed by himself. They involved a certain Mr Schickerling, Mr and Mrs Schneider-Waterberg and Mr and Mrs Kriel respectively. He as commanding officer determined how many people should form the line up. They were selected so that they have certain similar physical features as the suspects. These persons were then set up in a line in the identification parade room. Their names were entered chronologically from 1 to 10 in paragraph 23 of the particular form. They were then informed that they have the right to change their positions if they so wish and if they do, this is then entered in paragraph 17 while their original numbers are also indicated.

In respect of the Schneider-Waterbergs, for instance, this line up had been changed after the first witness. Mr

Schneider-Waterberg, finished his identification and it is also apparent from Exhibit Y that the witnesses identified by him in fact changed their positions before his wife entered the room. The same happened in respect of the Kriels. Inspector Kotze also testified that when the witnesses who are kept separate are brought separately to the identification parade room, the witnesses are let in and then it is explained to him or her that they should look at the people in the line up and if they identify anyone that they should put their hand on the person's shoulder and give the photographer an opportunity to take a photo. According to Inspector Kotze it would be dishonest and unfair to let the witness out and give him another opportunity to identify and he adamantly denied that this ever happened in respect of any of the witnesses relevant hereto.

The only information conveyed from the identification parade room to the outside is when the line up is ready and Inspector Kotze then by radio inform the investigating officer that they are ready and that the witness can be sent in, in the words "parade is ready, send in first witness". According to Inspector Kotze, Exhibits BB, Y and Z are respectively true reflections of what did in fact occur during these identification parades. He confirmed that Sergeant Vilho Simeon acted as interpreter and Warrant Officer Marais as photographer respectively, during all these identification parades.

Inspector Kotze also testified that he personally went to the De Lange' s farm when he received a report of possible

attempted murder. He found Mr De Lange in a badly injured condition at the neighbour's farm. He and approximately eight policemen then went to the farm Khairoob where he made certain observations and found certain footprints. He instructed his men under the command of Sergeant Herridge to follow the footprints which lead into the hills. They also followed the footprints which lead to different directions, inter alia to a slaughtering place in the veld near a fence and to the house. Three different sets of footprints were clearly distinguishable and Inspector Kotze drew a sketch of each of these footprints which were handed in as Exhibits JJ1, JJ2 and JJ3. JJ1 depicts a footprint described as a "tekkie" footprint while JJ2 depicts a smooth footprint and JJ3 also a smooth footprint with a worn heel. These footprints were found in the kraal, outside the kraal and also in the vicinity of the house. The footprints which led to the house were only those reflected in Exhibits JJ2 and JJ3, while the footprints reflected in JJ1 were in the vicinity of the place where Mr De Lange was assaulted and near the water trough. All three set of footprints also lead to and from from the slaughtering place.

At the slaughtering place part of a carcass of a sheep was found hanging from a tree, tied with a nylon rope, handed in as Exhibit 19, which rope had been shown to Mr De Lange and he was positive that he did not have such a rope of this type on his farm. The rope was identified by Inspector Kotze as the same type of rope as Exhibit 4, which was used to tie up Mr and Mrs Kriel. Inspector Kotze also found at the slaughtering place other pieces of meat and because there

were three legs of sheep thighs, as well as two back-pieces he concluded that more than one sheep had been slaughtered there. According to the blood found and the condition of the meat, it was not older than 24 hours. He also found a place indicated on photo FF2 where the ground was cleared and an obvious observation place was made with a clear view of the homestead and the kraal. On this spot branches were clearly broken and chopped off from the bushes and a number of fresh broken branches were also found in the vicinity of the kraal and the place of assault on Mr De Lange. On that spot keys on a holder belonging to Mr De Lange was found. He also found the receiver or the ear-piece of the telephone behind the fridge in the kitchen which was clearly pulled off by force from the telephone itself which is situated in the corridor. He also found Exhibit 17, the sharpened oryx horn, and confiscated it as it appeared like a weapon. Pieces of bark and sticks were found in the vicinity of the place of assault on Mr De Lange, where the hat of Mr De Lange was also found.

Inspector Kotze also testified that since he became station commander on the 21st August 1990, he established certain procedures to be followed whenever employees complained about wages not being paid by their employers. This entailed that an entry is made in the register containing the name of the complainant and the circumstances of the complaint, whereupon he then contact the employer personally and put the complaint to him. In most cases the employer

acknowledges that he owes the employee money but could not pay him because he left his employ and arrangements are then

made for payment. He also informs the Labour Department at Otjiwarongo in respect of the complaint. If it should happen that there is a disagreement between the complainant and the employer then he himself as police officer cannot take the matter any further and he then assists the complainant to obtain legal representation and regard the matter as being sorted out between him and the complainant. No such complaint was lodged between the 7th March and the 23rd March 1991 by accused number 7 in respect of wages not paid to him.

Sergeant Gordon Nanda of the Namibian Police and stationed at Otjiwarongo testified that he was an investigating officer at the time and was not involved in the investigation of this particular matter. On the 2nd April he was asked by Inspector Visser to take Mr Kriel to his office. He stayed with Mr Kriel in the office until approximately 3 o'clock until half past three. He was then informed by radio to take Mr Kriel to the identification parade room. This he did and after delivering Mr Kriel at that room he returned to his office where he stayed until he was called again a few minutes later through the radio to go and fetch Mr Kriel. He went to the investigation parade room to collect Mr Kriel, took him back to his office and kept him there until he was informed that the identification parade was completed. This office does not look out into the square inside of the police station. He saw Mr Kriel leaving the police station, standing at his car and getting into it.

Sergeant Jakobus Johannes Erasmus testified that he was employed as a stores clerk in the Namibian Police and stationed at Otjiwarongo. He was not involved in the investigation of this case. He did not know any of the suspects or how they looked. On the 2nd April 1991 he was asked to keep Mr Schneider-Waterberg in his office until he was informed that he should take Mr Schneider-Waterberg to the identification parade room, which he did. While Mr Schneider-Waterberg was in his office nobody talked to him. At the identification parade room he handed Mr Schneider-Waterberg over to a guard who opened the door of the parade room and Mr Schneider-Waterberg entered while this witness remained outside. After the identification parade Mr Schneider-Waterberg was again handed over to him and he took him back to his office. He remained in the office until he was informed that the parade was over. During the time that Mr Schneider-Waterberg was in his presence he did not talk to anybody including his wife. His office also does not look out into the square inside the police station.

Warrant Officer B.A.Malan testified that he was section commander during April 1991 at Omaruru but was not involved in the investigation of the Gramowsky case. Sergeant Zeelie was the investigation officer in that case. On the 12th April 1991, after he was requested to conduct an identification parade at Okahandja, he took Mrs Gramowsky as well as Sergeant Zeelie with him to Okahandja. On arrival at Okahandja he requested the station commander to put an office at his disposal as well as staff to assist him with the identification parade. Mrs Gramowsky was placed in an

office with a witness to supervise her. At his request Inspector Du Rand, the station commander of Okahandja, furnished him with the names of three suspects who he had previously identified and whom he did not know at all. He and the photographer as well as Inspector Du Rand went to the cells where the suspects were identified. Inspector Du Rand then left the cell and Warrant Officer Malan inspected the persons previously selected and participating in the identification parade which were another 13 in number and after satisfying himself that they matched approximately the looks and appearance of the suspects and after letting one of the persons leave the parade, he compiled the line up, consisting of 15 people, including the three suspects. The guard outside the door never entered the room where the parade was held and only himself and the photographer remained inside.

Mrs Gramowsky entered the parade room after a knock at the door. Warrant Officer Malan explained to her that there may possibly be one of the persons who assaulted her in the room as part of the parade and if she should recognise anybody she should touch his right shoulder and afford the photographer an opportunity to take a photograph. According to him Mrs Gramowsky identified Matheus Tjapa, accused number 3, after 43 seconds which time he also indicated on the identification parade form. She requested one person to straighten but did not identify any other person.

Warrant Officer Malan was intensively cross-examined about the time that Mrs Gramowsky identified accused number 3 and

in particular in the light of her evidence that she carefully walked down the line, looked at every face and eventually identified accused number 3. Warrant Officer Malan remained adamant that he noted the time and that he checked his watch so to ascertain that he entered the correct time on the form. According to him Mrs Gramowsky was the only person on that date who participated in the identification parade as a witness and that he himself did not attend any other identification parade at Okahandja. He denied statements made to him on behalf of the accused that he had some time before the parade stood in the corridor with some of the witnesses and that indications were made by police officers indicating accused number 3 and making remarks which could lead to his identification. He was also cross-examined in respect of Exhibit LL, the identification parade form and certain paragraphs that were not completed as well as signatures that were not made where it was required on the second last page but which was not necessary according to Warrant Officer Malan because the people involved did sign next to their names on page 1 of the form. He explained that he did not enter the names of the suspects because he did not know whether they in fact were involved before the identification parade was completed. He explained that this people were brought down from Outjo after identification parades held there and that this parade was held in an effort to establish whether any of them were possibly involved in the Gramowsky incident. Warrant Officer Malan also denied that Mrs Gramowsky could not identify anybody on the parade and was taken by a police officer or himself into a bathroom and that when she

returned she immediately identified accused number 3. According to him there was no bathroom in the cells save for an open part without a door containing a toilet and a shower. He denied that Mrs Gramowsky was ever taken into that space by himself or anybody else. He repeated that she identified accused number 3 within 43 seconds and never left the vicinity of the parade before doing that. She left the room after the photo was taken.

Sergeant Michael Booyesen testified that he assisted in the identification parade held on the 12th April 1991 at Okahandja where he was stationed at the time. He led Mrs Gramowsky from the station commander's office to the identification parade room. He was not involved in the investigation of this case in any way. He took her to cell number 1, where the parade was held, knocked on the door, delivered her and then returned to his office.

Warrant Officer Jeanette Mostert testified that she was stationed as a constable in the Namibian Police at Okahandja on the 4th April 1991. She testified that she supervised witnesses, namely Mr and Mrs Schneider-Waterberg in the office of the station commander before they were taken to the identification parade room. From this office you cannot see the police cells and in particular cell number 1 where the parade was conducted. While the two witnesses were under her supervision nobody entered and spoke to them. She was not involved in the investigation of this case in any way, whatsoever. She did not see them looking at personal items at any stage on that day.

Sergeant Willem Janse van Rensburg testified that he was a station commander's clerk at Okahandja and on the 12th April he supervised Mrs Gramowsky in an office so that no other witness could communicate or get in touch with her. She was collected by Sergeant Booyesen and taken to the parade. While she was under his supervision nobody entered the office. According to him the office where he supervised her does not have a view onto the cells. This sergeant was also involved in the identification parade in respect of Mr and Mrs Schneider-Waterberg and he collected them one after another from the parade room to an office where they were supervised separately. That was the office of the branch commander. On the way from the parade room to that office while conducting Mr Schneider-Waterberg he did not meet Mrs Schneider-Waterberg. He was also involved in other identification parades inter alia in respect of Mr and Mrs Voigts. He took Mr and Mrs Voigts as well as two other people separately from the parade room to an office.

Warrant Officer Rudolf Heydenrych testified that he was employed in Windhoek at the Fingerprints Office as a photographer and attended an identification parade at Okahandja on the 4th April 1991 after he had been requested to do so in his capacity as photographer. He identified the photos in Exhibit Q as being taken by him at that particular identification parade involving Mr and Mrs Schneider-Waterberg. He also took photos on the same day of Mr Schneider-Waterberg identifying certain items which this witness also identified in Court, namely a measure-tape, two pistol magazines and a firearm holster. These exhibits were

photographed and the photos are contained in the bundle marked Exhibit S.

In cross-examination it was put to Sergeant Heydenrych on behalf of accused number 3 that he and other witnesses were standing in a corridor during the time when police officers brought prisoners, including accused number 3, from the cells and on which occasion police officers made statements and gave indications which would enable the witnesses to identify accused number 3. Sergeant Heydenrych rejected these statements and said that he was called from the office and went directly to the cell where the parade was held and did not see any other witness in the corridor or anywhere else. He also said that people in custody in the cells had been brought to cell number 1 where the identification parade was held. They did not pass through the police station or the corridors of the police station at all.

Constable D. Claassen testified that he was stationed at Outjo during April 1991 and was on duty on the 26th April 1991 as charge office sergeant. He identified Exhibit HH as a photocopy of a page in the occurrence book and said that he made the entry number 1722 himself on that page on the 26th April 1991 and that he also signed underneath the entry. This entry refers to what occurred at 6h50 on that morning and in particular to a previous entry in the occurrence book, namely number 1712 which appears on Exhibit FF which is a copy of another page in the occurrence book under the same date. According to Constable Claassens the purpose of his entry was to indicate that the particular

persons with Sergeant Herridge, who are referred to in the previous entry, returned at 6h50 that morning in a safe and healthy condition and that Sergeant Herridge signed for these persons underneath entry number 1712 as the sergeant who accompanied the prisoners. Constable Claassens was not on duty when the entry in Exhibit FF was made. He also confirmed under cross-examination that he himself was in the charge office when Sergeant Herridge returned with the two prisoners referred to in the earlier entry number 1712 and that he himself took the two prisoners to the cells. He said he knows both John Tjiza and accused number 1.

Constable G.Gomeb testified that he was the charge office sergeant on the early morning of the 26th April 1991 who made the entry number 1712 in the occurrence book as appears in Exhibit FF, a copy of the particular page in the occurrence book. He was requested by Sergeant Herridge to bring the two prisoners from the cells and made the entry which Sergeant Herridge signed as the person accompanying the prisoners. The reason given to him by Sergeant Herridge was that he was investigating a case on MR 39/3/91.

Sergeant R.C. Herridge testified that he was in fact the investigating officer in respect of the De Lange case and that he was present on the 24th March 1991, after receiving a report, with Inspector Kotze when footprints were found on the farm in the vicinity of the homestead of Mr De Lange. They first went in separate cars to the neighbour at the farm Abyssinia where Inspector Kotze attempted to talk to Mr De Lange. From there they went to the De Lange's farm. He

said that three separate sets of footprints were found on the farm and he identified Exhibits JJ1, 2 and 3 as being an identical reproductions of the footprints found. He was not involved in looking for the footprints around the scene but had instructions to follow the footprints leading from the farm. According to him they found these footprints entering a camp and leaving it also. They followed the footprints up to a place where it was clear that animals were slaughtered and from there in a southerly direction and later in an eastern direction. The eastern direction eventually lead to the main road. At the time when persons were arrested in respect of this particular incident on the De Lange's farm Sergeant Herridge was on leave and found the suspects in the Outjo police station cells when he returned from leave.

On the 26th April 1991, after receiving information from accused number 1 during interrogation that a pistol which he used to shoot Mr De Lange with, was in the house where they were arrested in Otjiwarongo, he went with another prisoner, who acted as an interpreter, John Tjiza and accused number 1 to Otjiwarongo to search for this firearm. He informed Warrant Officer Marais in advance that he will arrive early in the morning of the 26th April and on arrival at Otjiwarongo they went to the particular house which was indicated by accused number 1. Sergeant Herridge also testified that when he left Outjo with the two persons an entry was made after the prisoners were fetched by the charge office sergeant from the cells, in the occurrence book and he identified both the entry and the signature on Exhibit FF. It was still dark when they left and when they went to the house in

Otjiwarongo. On arrival at a house accused number 1 indicated the toilet in the backyard as the place where the pistol was. Sergeant Herridge related how Warrant Officer Marais first went into the toilet and that could he not find the pistol whereupon accused number 1 said it must be there. Warrant Officer Marais returned and conducted a further search whereafter he found the revolver which was a .38 Special as well as 50 rounds of ammunition in a red-purple plastic bag. The revolver was taken to the Otjiwarongo police station and entered into a Pol.7 register as an exhibit, together with the cartridges. Thereafter Sergeant Herridge returned to Outjo with John Tjiza and accused number 1 and handed them over to Constable Claassen, who was on duty as charge office sergeant. The latter entered this into the occurrence book. Sergeant Herridge also confirmed the inscription in Exhibit GG, the vehicle register of the particular vehicle used that morning and read out the entry in the record, which indicates that he left with this vehicle that morning and returned later with it.

Certain statements were made on behalf of accused number 1 by Mr Grobler in respect of statements that Sergeant Herridge would have made towards accused number 1 and which were denied by Sergeant Herridge. It was also put to Sergeant Herridge that accused number 1 will deny that he was ever taken on that particular morning to Otjiwarongo or that he pointed out the firearm. This was denied by Sergeant Herridge and he then confirmed his evidence in this regard. He also said that he did not take accused number 1 to any other place on that morning. It was put to Sergeant

Herridge that accused number 1 was later in Outjo confronted with the revolver as being the one found in Otjiwarongo but Sergeant Herridge denied this and testified that this particular revolver, as appears clearly from Exhibit CC, had been handed over to the owner thereof, Mr Kriel, already on the date it was found and that any transfer of a firearm to Outjo would in any event have to be entered into the Pol.7 register.

Detective Warrant Officer N.Becker testified that he is stationed in Windhoek and was involved in this matter only in respect of an identification parade which he was asked to conduct in Okahandja. He identified Exhibit 00 as a typed version of the handwritten and completed form in respect of the identification parade that he held where Mr and Mrs Voigts acted as witnesses. After completion of the identification parade he handed his handwritten form to Warrant Officer Kurz. Four suspects as well as seven other persons were lined up in a cell in Okahandja. A police photographer, Constable Van Lill, acted as photographer and there was also an interpreter present. He obtained the names of the suspects from the investigating officer and entered them onto the form. After the charge was put to the suspects, they were informed of the identification parade and their rights as well as their right to change positions. Accused number 3 asked to change his position and in fact changed with Primus Angula. Thereafter everybody was satisfied and the first witness, Mr Voigts was called. He entered the cell and Warrant Officer Becker explained the procedure to him, whereupon he identified suspects 5,11 and

1 and photos were taken separately of each suspect's identification. Mr Voigts left the cell and the suspects were given another opportunity to change their positions but they remained in the same positions except for accused number 3 who changed with Michael Angula. This was also entered onto the identification parade form, paragraph 17. Mrs Voigts then attended the parade but could not identify anybody. The suspects were again given an opportunity to change their positions but remained in the same position and the third witness, Johannes Eiseb entered the room. He was explained the procedure and he identified person number 5, whereupon a photo was taken. The suspects were again given an opportunity to change but remained in the same position and the fourth witness, Pricilla Keinkos entered and also identified a suspect, whereupon a photo was taken. After the parade was completed the form was handed to Warrant Officer Kurz. According to Warrant Officer Becker he arrived at the parade when it was already set up but was satisfied that the persons on the parade were similar in appearance and build. He said that he would not have conducted a parade if he was not satisfied.

Warrant Officer Becker also confirmed that the part of the building where the police cells are is a complete separate building from the police station and that the cells cannot be seen from the corridor or vice versa. He also did not see the suspects before the parade.

Inspector J.L. Knouws testified in respect of charges 10 to 13. He was an inspector in the Namibian Police, stationed

at Grootfontein at the time. He conducted an identification parade at Outjo where the two De Langes were present as witnesses. Accused number 7 was, according to him, in the line up, but was not identified by Mr or Mrs De Lange. Mrs De Lange, however, identified two other persons but mentioned that she recognised accused number 7 as Martin because he worked on the farm. The inspector could not remember the reaction of accused number 7. He was not involved in the investigation of the case at all.

Sergeant H.M. Zeelie testified with relation to charges 1 and 2, that is the Gramowsky incident. He was the investigating officer in that case and took Mrs Gramowsky to an identification parade at Outjo. He was not present in the parade room and did not know whether any of the accused were on the parade. In respect of the second parade at Okahandja, where Mrs Gramowsky was involved, he and Warrant Officer Malan, who presided over that parade drove with Mrs Gramowsky from Omaruru. He understood that certain suspects connected with similar incidents would be on that parade, but has not seen any of them before and did not expect any of them there. He did not consider it out of order to drive with Mrs Gramowsky to Okahandja because he did not know any of the suspects and could consequently not influence her in any way. He also stayed with her in Okahandja in her room before Mrs Gramowsky was taken to the parade room.

Mr Fillemon Kanaele testified with relation to charges 3, 4 and 5. He said he was "a CID in Katutura", but did not want to confirm that he was an informant. Later in his

evidence he said he was a warrant officer. It later transpired that he was merely a student policeman but were previously during the liberation struggle involved as a policeman in Angola with the rank equal to that of a warrant officer. He was involved with accused number 4 in the investigation of the case. According to him, he obtained information after a person was killed, apparently the person shot by Mr Voigts. He informed Sergeant Piatt that accused number 4 worked at the Breweries and they went together to the single-quarters of the Breweries in Katutura.

According to him a number of things were found including a revolver and a toy-gun. In his evidence-in-chief he described how they found these items, but later said that he and accused number 4 stayed in the car but could see from the car into the room where Sergeant Piatt was searching. He also described that documents were found belonging to Primus Angula and identifying him. He also testified that he went to Owamboland with Warrant Officer Ngoshi, after information was obtained from accused number 4, where they searched for accused number 3 and Primus Angula. According to him they attempted to search the house where accused number 3 stayed with his mother. He confessed that he assaulted accused number 3's sister to obtain information, but later changed this and described how he and Sergeant Ngoshi were in fact attacked by the mother and sister of accused number 3 and that they assaulted them only in defence of themselves. However, after the arrest of accused number 3 he was taken to his father's house where a rifle was handed over by the father and this rifle was

identified as the shotgun, Exhibit 9, which was previously stolen from the farm of Mr Schneider-Waterberg. Accused number 3 also informed him that the pistol identified as Exhibit 8 was with his brother. The pistol which was handed over the next day by accused number 3's father after he obtained it from accused number 3's brother. This pistol also belongs to Mr Schneider-Waterberg, while Exhibit 7 was the revolver found in the room of accused number 4 at the single-quarters of the Breweries in Katutura, according to Kanaele. The witness was severely cross-examined in respect of which room the pistol was in fact found in Katutura and it was put to him that it was in fact found in Primus Angula's room and not in accused number 4's room.

On behalf of accused number 3 it was disputed that the firearms. Exhibits numbers 8 and 9, were in fact the pistol and shotgun handed over by accused number 3's father and it was put to the witness that other firearms belonging to accused number 3 were confiscated by the police. It was also disputed that accused number 3 was present when the firearms were handed over to this witness and Warrant Officer Ngoshi. The witness, however, remained adamant that he was informed by accused number 3's sister where to find him and that she accompanied them to the mahango-land where accused number 3 was found and arrested and that they then went to the house of accused number 3's father where accused number 3 requested his father to hand over the rifle, Exhibit 9, which was done. Because the brother was not there the pistol could not be obtained on that day and

accused number 3 was taken to the police station where he remained the next day because they could not obtain permission from the station commander to take him along as it was feared that accused number 3 would escape. They did not find the brother but the pistol was handed over by the father to the witness and Warrant Officer Ngoshi. This was Exhibit 8. The witness also testified that a number of other things were collected from the house where accused number 3 stayed and that a list of those items was compiled, which was handed in as Exhibit QQ. The witness also recognised the items that appeared in the photos contained in Exhibit S and in particular those in the suitcase as some of the items which were found in the house where accused number 3 stayed. He further testified that he was present when the photos contained in Exhibit S were taken at the police station in Okahandja when Warrant Officer Ngoshi and other police officers opened the suitcase. The witness also testified that he was present when the revolver, Exhibit 1, was obtained from the witness Mathias Maultius, which apparently belonged to Primus Angula. He identified Exhibit 1 as being that revolver.

Inspector F.J. Du Rand testified that he was the station commander of the police station at Okahandja during the time of the incident that occurred at Mr Voigts' farm and that he went out to the scene but did not investigate the case. He was in his office where he supervised the Voigts family when they attended an identification parade at Okahandja and identified his signature on Exhibit 002 in this respect. All four persons, namely Mr and Mrs Voigts, a black man and

a black woman were supervised by him in his office. They were taken by Sergeant Haccou from the office and he confirmed that nobody talked whilst under his supervision in the office.

Sergeant J.Piatt testified in respect of charges 3,4 and 5 and said that after obtaining information from Fillemon Kanaele who was no more than an informer, he went to the single-quarters of the Breweries in Katutura. He took accused number 4 with him but the witness Fillemon Kanaele remained in the car as he did not want to be seen. Where the car was parked it was in such a position that Fillemon could not see from the car into the room of accused number 4. Sergeant Piatt said accused number 4 went with him to his room and unlocked a locker with his own keys and in this locker inter alia a pistol, Exhibit 7, was found. Accused number 4 identified the locker to be his. Accused number 4 said that he did not have a licence for the revolver available as it was in Ovambo. Because Sergeant Piatt did not believe him he was taken to the police station and a number of other items were taken along too. During cross-examination it became clear that other policemen also assisted in this operation and that some of them also assisted in taking some of the property from the room. A list was made in the office of Colonel Smit and all the items taken from the room were entered into that list. Sergeant Piatt denied that the witness Fillemon was ever present or could see into the room or that he ever searched another room. It appears from the Exhibit SS, namely the list compiled of the items found, that there were inter alia

documents belonging on the face of it to other persons than accused number 4. Sergeant Piatt did not have anything further to do with the investigation of this case.

Sergeant Leonard Beukes testified that he is employed by the Namibian Police as an official draughtsman and stationed at the fingerprints office in Windhoek. He identified Exhibits F and G as a bundle of photos taken by himself and a key thereto compiled by himself. These photos reflect inter alia the livingroom of the Schneider-Waterbergs as well as certain objects and the study. Constable Beukes also took photos contained in Exhibit U in respect of the scene where Mr Gunnar Voigts had been attacked on his farm. He identified certain points on the different photos reflecting inter alia spent cartridges, the tools used by the assailants to repair a tyre and certain other spots.

The next witness was the branch commander of the Okahandja Detective Branch, Mr. J.A. Myburgh. He testified in respect of the CZ pistol which belonged to Mr Voigts as well as a shotgun and an airgun. These weapons were brought to the Okahandja Police Station and he also saw suitcases, sportbag and clothing that were brought together with the weapons. He established from the weapons office that the CZ pistol belonged to Mr Gunnar Voigts. He asked Mr Voigts to bring his licence to the police station and he compared it with the fire-arm which he then booked it as an Exhibit in the case. This was Exhibit 1 which was also identified by Mr Myburgh. He obtained it from Inspector Terblanche. Mr Myburgh also identified Exhibit 9 as the shotgun that he

received and Exhibit 2 8 as the airgun, respectively. He was accompanied by Sergeant Haccou when he brought these exhibits to Okahandja and Exhibit QQ1 was identified by him as a list which was compiled by his wife, Sergeant Myburgh.

Detective Constable C.J.Ralph testified that he is an official drawer of plans, photographer and attached to the fingerprints branch in Windhoek. He identified Exhibit N as a bundle of photographs taken by himself at the Outjo Police Station in respect of an identification parade indicating certain persons on the parade and witnesses identifying person number 10 on those photos.

Sergeant R.C.Maletsky identified his signature on Exhibit LL in respect of the identification parade where Mrs Gramowsky was a witness and which parade was held on the 12th April at Okahandja. He testified that he took Mrs Gramowsky from the identification parade-room to another room where she was supervised by somebody else. He said he did not know anything about the Gramowsky incident. He further testified that on the 4th April and on the request of Sergeant Haccou, he accompanied Mr and Mrs Schneider-Waterberg separately from the place where they were supervised to the identification parade-room. The two witnesses did not have any contact with each other between the parades that they attended. He identified his name and signature on Exhibit MM, the identification parade form of the 4th April 1991.

Johannes Eiseb testified that he was a worker employed by Mr Gunnar Voigts on his farm on the 16th March 1991. He was off

duty on that particular day and at home. At approximately 1 o'clock certain men arrived at his house and asked the way to the homestead of Mr Voigts. They parked their vehicle in the road and walked up to his house. He identified the vehicle as the same Izusi bakkie with a canopy which was later found after the incident on Mr Voigts' farm. They talked about the old Mr Voigts and he informed them that he moved to Okahandja. The people then left his house and his observation was that they knew Mr Gunnar Voigts. The people set off in the direction of Mr Voigts' homestead and later returned, took their bakkie and drove away in the direction of Windhoek. He also testified that he identified a person as one who was at his house that particular day at the identification parade held in Okahandja. This person was accused number 4. He didn't notice anything strange during the evening of that day, except that he later heard shots and on the Sunday morning he went to the home of Mr Voigts, where he saw the same vehicle that was there the morning of the 16th March 1991. He identified the vehicle also as the one that appears on the photos U1 to U7. He explicitly denied under cross-examination that he identified accused number 4 as one of the persons who was on his farm on that morning to Mr Voigts, neither did he discuss that with Mr Voigts. He also denied that he told Mr Voigts how this person looked after he identified him at the identification parade. He said that he only told Mr Voigts after he saw the white bakkie on the farm that three men visited his house, who were two short men and one tall man, but didn't talk to him about their looks.

Sergeant Petrus Johannes Haccou testified that he was attached to the Criminal Investigating Department of the Namibian Police as a detective sergeant and stationed at Okahandja at the time of the Voigts' incident. He was informed about the incident and went out to Mr Voigts' farm. Simultaneously the Station Commander, Inspector Du Randt and Warrant Officer Myburgh also went out to the farm. Sergeant Haccou took certain photographs which he identified as Exhibit C and D, containing the photographs on the Voigts' farm as well as a key to the photos. He explained every photo in Exhibit C and indicated which photos were taken the previous evening and which the next morning. This included photos of the scene, the incident, the deceased as he was found as well as the vehicle. The deceased died on his way to the hospital. Sergeant Haccou also testified in respect of an identification parade which he conducted on the 20th March 1991, Exhibit NN. The parade was already set up by Warrant Officer Kurz, the investigating officer. There were nine people on the parade. Sergeant Haccou explained to the suspects that they were entitled to have legal representation.

None of them wanted legal representation. He also filled in the form in respect of the identification parade. Exhibit NN. Witnesses were brought separately into the identification parade room. The first witness was Johannes Eiseb. He identified suspect number 4 and Sergeant Haccou took a photo of the parade himself, which photos are contained in Exhibit T. Two other witnesses were brought into the identification parade room, namely Mr and Mrs

Voigts. Neither of them identified anybody on that parade.

Sergeant Haccou identified Exhibit 001 as the identification parade form of another similar parade held at Okahandja on the 4th April 1991. Four witnesses attended this parade and Sergeant Haccou was the person who took the witnesses individually, one after the other to the parade room. According to him, he never entered the identification parade room and none of these witnesses had contact with each other after he had taken any one of them to the room.

Sergeant Haccou also conducted another identification parade on the 4th April 1991. The parade was set up by the investigating officer and contained eleven people. Warrant Officer Heydenrych was the photographer. Sergeant Haccou again explained to the suspects that they are entitled to legal representation and they all declined to make use of this. He testified that the witnesses took their positions after their rights of changing positions, if they wish to, were explained to them. The first witness was Mr Schneider-Waterberg. After Sergeant Haccou explained to him the procedure, he identified persons numbers 10,8 and 1 in the line-up. Person number 10 was Nakali Matheus, who had nothing to do with the incident as it was established later that he was at the time of the incident in custody on another charge. Matheus Tjapa was person number 8 and person number 1 in the line-up was Primus Angula, accused number 2, who is not present in this trial. Sergeant Haccou also identified the photos taken of this parade as they

appear in Exhibit Q. According to Sergeant Haccou the suspects remained of their own choice in the same positions whereafter Mrs Schneider-Waterberg entered the parade room and after her rights were explained to her as well as the procedures to be followed, she identified accused number 3, as appears on photo number 5 in Exhibit Q, by pointing him out with a stick. Sergeant Haccou denied having assisted anyone with identification in this parade. Sergeant Haccou also testified that he as well as Warrant Officer Myburgh took certain exhibits which they received from Inspector Terblanche in Windhoek to Okahandja. These items were entered into the Pol.7 register, except Exhibits 8 and 9, as these were handed to Mr Schneider-Waterberg on the same day. The exhibits handed to Mr Schneider-Waterberg were specified on Exhibit TT and signed by Sergeant Haccou, Mr Schneider-Waterberg as well as accused number 3, who gave permission that the fire-arms could be handed to Mr Schneider-Waterberg, the owner of it, after he established his ownership by way of his fire-arm licences. A further exhibit was handed in, namely Exhibit 28, an air-gun, which was also obtained from Inspector Terblanche.

Sergeant Haccou identified Exhibit QQ1 as pages from the Pol. 7 register in which other items, except the weapons, which he received from Inspector Terblanche, were entered in. The Pol.7 register, Exhibit QQ1, was completed by female Sergeant Myburgh.

In cross-examination Sergeant Haccou conceded that the damage to a part of the cooler and indicated on photo 1 in

Exhibit C could have been caused by something else than a bullet. He also found only rifle bullets and no rifle cartridges and no spent cartridges of a handgun in the vicinity. He testified that he was only involved in a preliminary investigation and was not the investigating officer, which did not disqualify him to conduct the investigation parades. He also said that Mr Voigts, on the first parade, seemed nervous and he did not identify anyone. He also denied statements by the defence that he called accused number 3 to his office where other people were sitting and denied any suggestion that he in any way attempted to influence any of the witnesses to identify accused number 3. Sergeant Haccou also denied statements in respect of accused number 3's allegations that he, Sergeant Haccou, was the police officer who was standing outside the identification parade room in the corridor of the police station at Okahandja in the company of other policemen and witnesses and that he made remarks which could indicate accused number 3 to witnesses as being the person who was involved in the Voigts' incident.

On behalf of accused number 3, it was put by Mr Kasuto to Sergeant Haccou that Exhibit TT was signed by accused number 3 after he was brought under the impression that he was signing a statement indicating that he did not want to make any statement at all. This was denied by Sergeant Haccou.

Mr Small then handed in without objection from the defence, the record of the section 119 proceedings in the Magistrate's Court in respect of accused numbers 1,4,6 and

7, as well as another person who was not charged eventually. This document was handed in as Exhibit UU. I shall refer to this document when I consider the evidence in this matter.

Detective Warrant Officer Walter Kurz testified that he was stationed at Okahandja Police Station at the relevant time. He was the investigating officer in the Voigts' incident. He testified in respect of the exhibits found on Mr Voigts' farm and referred to Exhibit W, which is an extract of the Pol. 7 register, into which exhibits were entered. These exhibits were found at the scene or in the vehicle left on Mr Voigts' farm. According to this list there were more than enough tools to fix a tyre on the vehicle. These specific exhibits were also handed in and numbered during the trial. He also testified in respect of Exhibit QQ1, a copy of the register Pol.7 of Okahandja Police Station. He identified certain objects on that list as Exhibits 23 to 27 in respect of the items identified later by Mr Schneider-Waterberg as his property, as were also reflected in Exhibit S and which were found by Warrant Officer Ngoshi and Phillemon Kanaele at the house of accused number 3's mother in Ovambo. He also testified that he was not involved in the identification parade in any way in Okahandja, except that he assisted in lining the people up in one of the parades. He denied that the accused were not afforded the opportunity to get legal representation and said that he in fact assisted accused number 4 to get hold of his attorney.

Inspector Terblanche testified in respect of a statement by accused number 3 which document was admitted after a trial

within a trial was completed in this regard. Inspector Terblanche read out paragraph 7 which contains the statement in Afrikaans and which was translated in English in Court. This statement as translated is the following:

"I wish to give the following statement and explanation.

This robbery story on the farm near Okahandja was not my plan. It is the short man, Shimbulu and the deceased's business. I landed in it coincidentally. Two days before the Saturday a friend of mine, Katema, told me that the abovementioned two people were planning to rob a White man called Lister, who owns clothes in a shop, to go and rob him. The plan was also to take his Land Cruiser and load the goods onto it. That Saturday at about 12, four of us went to the farm, it was myself, Katema, Shimbulu and the deceased. We took the deceased's car to the farm. I know the driver had a weapon but not one of the other three carried a weapon. When we approached the farm I told the others that I know the farm as well as the White man. I stayed behind in the car and sat and slept. The other three, Katema, Shimbulu and the deceased went to the farm. They were going to check the place with Katema. I told them to leave the plan, I know the "lani" and it won't "tol". That was when they returned. The driver slapped me against the leg, laughed and said that I was just too much of a coward and that they would "tol". We then returned from the farm to Windhoek. The same day at about 6 o'clock in

the evening we returned to the farm. Another man accompanied us, namely Katema's brother-in-law. All five of us had weapons. I had a pistol which I handed over to the police in Ovambo. This pistol I bought a long time previously from a Baster in the single quarters for R250. I don't have a licence for it. It has 10 bullets and it looks like a police pistol. Before we left, we took a bottle of Richelieu brandy from the deceased's home as well as two bottles of Coke and 4 glasses. We left 2 glasses because 4 glasses were too many. I saw that there were bullets loaded. Thereafter we put in R50's worth of petrol at Hakahana Service Station. Shimbulu, Katema and his brother-in-law each gave R10's petrol and the deceased put in R20's worth. We then went to the farm and got there. We stopped approximately 600 metres from the farmstead. Here we all had a drink. Katema then took off the spare tyre which was broken (sic) and we went to the farmstead under the pretence that we were looking for help to have it fixed. The farmer gave us a tyre lever and a hammer; I saw that the "lani" carried a revolver in his belt. I told the others in Ovambo language that the man was carrying a revolver and that we should leave the plan. We must just fix the tyre and then leave. The "lani" then said that he just had to go and stop the machine that pumps water and put in pills for the horses. After a while he returned and asked if we had not finished. We told him that we needed another piece of iron. He then gave us a tommy-bar. The person who is now deceased then tackled the White man

from behind by grabbing his arms. Katema took the man's pistol from its holster and grabbed the man's legs. They threw him on the ground and I caught his arms. When the man was down, Shimbulu hit him in his face with his pistol. The "lani" then asked us not to shoot him, he would talk nicely. I asked everyone not to shoot the man. Suddenly I heard shots from the homestead and saw the man's wife standing next to the door at the lawn. Shimbulu immediately fired at the woman who was standing by the door. We let go of the White man. Katema then shot at the White man. The White man then shouted for his wife to bring the gun. I then began running; behind me were Shimbulu and Katema's brother-in-law. I did not see where Katema and the deceased had run. I suddenly heard automatic fire and kept on running. Myself, Shimbulu and Katema's brother-in-law then ran through the veld to Kapp's Farm. We waited only a few minutes when Katema also came back. Katema then told us that the driver of the car may have been shot, because he was still behind. I then told the people that if the driver had just been shot through the leg, the "lani" would kill him. I then also saw that Katema had two fire-arms with him. We then went to Windhoek, we did not see Shimbulu again. We heard that the police were at Katema's house and we went up to the North. Katema and his brother-in-law stayed behind in Tsumeb and I went to my place in Ovambo where the police arrested me at my mother's place."

Inspector Terblanche also testified that he took a similar statement from accused number 4 on the 19th March 1991 which statement was handed in as EXHIBIT XX and of which paragraph 7 was also translated from Afrikaans to English in Court. The content of this statement is the following:

"I wish to make the following statement and explanation.

I worked together with a person called Erastus Muunda at the breweries. We have been working there together for approximately 5 years at the brewery. On Saturday, 16 March 1991, I was at my room at the quarters at the brewery. While I was busy there, this friend of mine, Erastus, arrived there and told me there is a man who asked him to fetch his things, namely 2 arc-welders and gas bottles and a cutting torch, on a farm. This was approximately 15:00. As I had nothing in particular to do, I decided to go along. The person who had made the request to Erastus was at the room of Johnny. We picked up two men there, the one's name was Katema and the other was unknown. A short distance from there at the road we picked up another two men. One's picture was in a white frame. The vehicle was driven by Erastus and another person unknown to me sat in front with me. This is the person who said his things were on the farm. We drove from Wanaheda to Kapp's Farm. Before we left we took a bottle of Richelieu and two bottles of cool drink from Erastus'

home in Shandumbala. At Kapp's Farm we turned off onto a dirt road and took instructions from the person who said his things had to be fetched. We came to a certain farm and stopped next to the road. I could see the farmstead from where we were standing, it was approximately 18:30. We then drank some of the brandy and cool drink, we had about half a bottle. I closed it and put it back in the car. I then saw that Katema had a pistol which he had put in his jacket pocket. The other two men as well as Katema each had a pistol as well. One did not have a pistol. They also gave Erastus a pistol (a small one). The four then said that Erastus must accompany them to the farm. I still said to Erastus don't go along. Leave the men to fetch their own things. He didn't want to listen and he went along. They left me at the car alone. A short while after they'd left, two returned and took the spare tyre and left with it. I don't know if the spare tyre was flat, because I didn't feel it. I don't know the farm. I have never been there before. Not long after they had left, I heard a shooting at the farm. After a few minutes a Land Rover came along the dirt road. I moved away from the car and went and hid behind a tree. The Land Rover came and stood at the car and I could see two men in the car. They did not get out at the car and proceeded to the farmstead. I then saw that they were returning. I ran away from the car. I was approximately 200 to 300 meter away from the car, when I heard shots at the car. From there I just kept on walking all night long. The next morning I reached the

tarred road at the airport, of the airport. At the road I also found Katema and two of his friends. Erastus was not there. And the one other person unknown to me was also not there. I then enquired what had happened at the farm. Katema said no, the farmer had shot us. I asked the whereabouts of Erastus and the other man. Upon which Katema informed me that the two had run in a different direction. All three still had their pistols. I then suggested that we walk to Windhoek. Katema and his two friends didn't want to walk, because it was approximately five o'clock, 5h00. I then walked alone to a service station in Klein Windhoek. I took a taxi from there to my house, where I went to sleep. Monday I went to work at 5h30. I then sent another man to Erastus' home. Erastus didn't go to work on Monday. Tuesday I went to Erastus' house myself. There I learned from another man that Erastus had been killed. Yesterday I saw Katema as well, but I didn't speak to him. Katema and his friends often go to Johnny's house where the detectives found certain goods in Johnny's house, which belonged to Katema. Saturday was the first time that I went along, that I drove with Erastus, I went along with Erastus."

Inspector Visser testified that he took two statements from accused number 7 which had also been the subject matter of a "trial within a trial" and which statements were admitted as evidence by the Court. A statement made in Afrikaans which was translated in English in this Court was handed in as EXHIBIT YY:

"In answer to the above which has been read to me, and which I've signed, I wish to state the following: I have no knowledge of the robbery. I simply received the 7.9 mm rifle from Venasius Ameho which allegedly was stolen from the Plaintiff."

The next statement handed in was EXHIBIT ZZ and was translated in this Court from Afrikaans to English. It reads as follows:

"In answer to the above which has been read to me and which I have signed, I wish to make the following statement: The certain fire-arm, the relevant firearm, which I went to fetch in a certain home in Blikkiesdorp in Otjiwarongo, is not my gun. This gun was given to me late one night by Venasius Ameho, alias Shavatangu, alias Kamauha, to keep it for him. It was given to me approximately a month ago. I can't remember the specific date. I merely kept the said gun for Venasius with me. Venasius also didn't tell me where he had got the gun. Venasius also didn't tell me for how long I should keep the gun for him. Venasius also did not give me a letter of consent to keep the gun with me. I am not in possession of a fire-arm licence for the said fire-arm. When the police asked me for the gun, I told them where it is. The police found the gun under the mattress of the bed where I sleep. I can make no further statement about the said fire-arm."

The State then closed its case, whereafter both Mr Grobler and Mr Kasuto applied on behalf of their clients for discharge on several charges. After hearing argument the Court unanimously dismissed the applications.

Mr Grobler called accused number 1 to testify. After testifying in respect of his personal circumstances accused number 1 said that although he stayed in the North he used to stay over occasionally in the house of Johannes Paulus No. 0/94 in Orwetoveni in Otjiwarongo. He also visited Windhoek occasionally. According to him he didn't know any of the accused previously except for accused no. 6 with whom he stayed occasionally in the house at Otjiwarongo. He only met accused number 7 on the 24th March 1991, the day of the De Lange incident. Accused number 1 also didn't know the deceased, Erastus. He denied any knowledge of the Schneider-Waterberg incident or that he was involved in that incident at all. According to accused number 1, he also went on the 2nd February 1991, the day before the Schneider-Waterberg incident, from the North to Windhoek via Otjiwarongo and was accompanied by a certain Japhet Nghifikepunye, after they have heard over the radio that former PLAN soldiers could apply for work at the Defence Force in Windhoek. After arriving at Windhoek, he stayed at the house of one Kondja with a certain Jason who was with him nearly all the time. Japhet also stayed there. He never left Windhoek until the 13th March. He also testified that he doesn't know anything about the Gramowsky incident, neither was he there on the 29th December 1990. He testified about the identification parades at Otjiwarongo

and that he wasn't afforded the opportunity to have legal representation. According to him Mr Schneider-Waterberg couldn't identify anyone, left the room and after he returned he immediately identified accused number 1. The same happened to Mrs Schneider-Waterberg who couldn't identify anyone but was encouraged to try again and then she pointed him out with a stick. Similarly Mr Kriel couldn't identify him, left the room whereafter they changed their positions and Mr Kriel entered again and then identified him and accused number 6. Accused number 1 denied any knowledge or involvement in the Kriel incident. According to him he was on that day with (Simeon) Kamati in Katutura. In respect of the evidence of Heiki Mathias, he said that they were not on good speaking terms and that Heiki Mathias left the house whenever he was there. He also denied that he had any rifles in his possession which anyone could see or that he told Heiki Mathias anything about robbing certain boers either in the house, or in the police van. He also denied having had a radio tape of Mr Kriel, in fact he said that he only had his own radio tape. In respect of the six shotgun cartridges, he testified that he bought them on the 13th March in Windhoek from a certain Damara-speaking person. He didn't have a licence for it or for a weapon to use it. He denied that he identified the brown trousers in which the rifle that was found in the outside room on the premises of house 0/94, in the office of Inspector Visser to Warrant Officer Marais. He said he was taken immediately to the cells and not to Inspector Visser's office. According to him he stayed for almost a month with his one hand chained to his neck and was treated badly which caused him to

escape. During cross-examination he had difficulty to explain why he escaped from Otjiwarongo where he was not treated as badly as in Outjo and wasn't chained anymore. Accused number 1 denied that he was taken to Otjiwarongo to point out a revolver in the outside room. He said this particular pistol was only later showed to him by a short man, but who was not Sergeant Herridge. This happened while he was in custody in Outjo. He, however, admitted that the particular pistol with which he said he shot Mr De Lange was in fact inside a tyre in the outside room in Otjiwarongo. He also admitted that the rifle was found there in the outside room. However, he said he bought both the pistol and the rifle from a White man near the single quarters in Otjiwarongo for R700.

In respect of the De Lange incident he testified that he met accused number 7 in the early morning hours of the 24th March. They went to a place in the vicinity of Mr De Lange's farm to catch caterpillars which they wanted to sell for money. When they were in the vicinity of the farm accused number 7 said that the owner of that particular farm owed him money and they then went to the farm. They approached Mr and Mrs De Lange who had two dogs with them. Mr De Lange asked what are you Kaffirs doing on my farm and encouraged the dogs to attack them. Accused number 1 said he himself walked straight to Mr De Lange and told him that they were there in peace and only wanted to talk. Mr De Lange still encouraged the dogs to bite them and told him to lie down and the dogs would then not bite him. Accused number 1 then picked up stones and threw it at the dogs who ran away. He

was suddenly hit on the mouth and nose by Mr De Lange with a walking stick which broke. Accused number 1 then took out his pistol and shot two bullets in the ground at the dogs, and then fired another shot which according to him, somehow hit Mr De Lange in the cheek. After Mr De Lange fell down he again said to his wife to take the rifle and come and shoot the Kaffirs. According to accused number 1, accused number 7 went to the wife and told her not to take the rifle because they were there in peace. The wife of Mr De Lange then said, they shouldn't harm her because it is the old man who used to kill Black people and bury them on the farm. Accused number 6 asked the wife for the rifle or pistol with which Mr De Lange shot the Black people and she invited him to come into the house and take the rifle and pistol. This accused number 6 did while accused number 1 and accused number 7 remained outside. According to accused no. 1 he didn't attempt to assist Mr De Lange who was lying on the ground. Accused number 7 asked for his money and Mrs De Lange said they can't pay him and he should take the rifle and the pistol. Accused number 1 denied that he was ever in the house or that Mrs De Lange was ever assaulted by him or the others with a stick. He also denied that they slaughtered any sheep or was ever at the slaughtering place. Accused no. 1 also denied that any of the tracks as indicated by Inspector Kotze on EXHIBIT JJ1 - 3 was his, but said that he wears no. 7 shoes and indicated that it was a type of leather shoe, which sole had a smooth surface. Accused number 1 denied any knowledge of/or involvement in the Voigts' incident. Under cross-examination he admitted having been trained in the use of fire-arms and being a good

shot as such. He also said if they wanted to attack the farmers he would erect an observation post to observe their movements.

Accused no. 1 called Japhet Nghifikepunye to testify on his behalf. Japhet testified that they travelled together from the North after a call on the radio in respect of employment at the Namibian Defence Force. Because they couldn't get a lift together, Japhet arrived first in Windhoek. He arrived on the 3rd of February in Windhoek and saw accused no. 1 that day. They didn't stay together in Windhoek. He later learned that accused number 1 was in prison. He said he and accused number 1 went to the Defence Force on the morning of the 3rd of February and that they were told that they will be called later.

Jason Handyengo was also called to testify and according to him he saw accused no. 1 on the morning of the 3rd of February and they stayed together at his brother's house and were in each other's company for most of the time until accused no. 1 left on the 13th March 1991. When asked under cross-examination in respect of specific dates he could describe what they did on each and every day. He also said that they went to Defence Head Quarters on the 3rd February and on the 7th February. Later he said they went there on the 3rd February, again on the 6th, the 7th and the 8th February. Each time accused number 1 was told to wait. Later under cross-examination he said that accused number 1 and himself only went on two occasions to the Defence Force and that those dates were the 6th and the 7th February and

on no other dates. He also doesn't know anything about shotgun bullets bought by accused no. 1 at the single quarters.

Accused no. 3 testified in his own defence. After he gave evidence in respect of his personal circumstances he denied any knowledge of the Gramowsky incident and said he was not present on that farm on the 29th December 1990. In respect of the identification parade involving Mrs Gramowsky, he denied that he was offered legal representation. He further said that Mrs Gramowsky was one of the witnesses standing outside in the corridor when police officers clearly indicated accused number 3 by describing his clothes and appearance and that he was involved in the Voigts incident. These witnesses included Mrs Gramowsky as well as Mr and Mrs Schneider-Waterberg and Mr Voigts. Under cross-examination he was adamant that this all happened on the same day. He also testified that even after he had been so pointed out, all of these witnesses had problems to identify him in the identification parade room. Accused number 3 denied that the two firearms, EXHIBITS 8 and 9 were the ones confiscated by Fillemon Kanaele and the late Warrant Officer Ngoshi at his father's house and said that they in fact confiscated his own weapons for which he had valid permits. He said that his rifle was a shotgun with one barrel and his pistol had a white grip and was not at all similar to EXHIBIT 9. He denied that he was arrested at the place and in the manner, as Kanaele testified, or that he was taken along to his father's house where the rifle was handed over by his father. Accused no. 3 said he was taken directly to

the police cells after being arrested. He testified that certain personal belongings of his as well as his mother's pension money were taken by the police officers. During cross-examination in respect of EXHIBIT TT namely his consent that Mrs Schneider-Waterberg's weapons found in his possession could be handed over to him, he denied that he was shown the weapons or that he signed a document for that purpose. According to him he signed the document so that fingerprints could be taken from him. He also denied having been involved in the Kriel incident. In respect of the Voigts incident he admitted that he was on the farm after being approached by the deceased and accused number 2 to accompany them to the farm for innocent reasons. Accused numbers 4 and 5 were also part of the group. Accused number 5 stayed behind at the motor vehicle and accused number 4 accompanied them to the homestead where they asked for equipment to fix a tyre. According to accused number 3 they asked for further equipment when Mr Voigts returned from the water pump. Then the deceased grabbed Mr Voigts' arm from behind and was assisted by accused number 2, also known as Katema, but he, accused number 3, attempted to stop them from attacking Mr Voigts. Mrs Voigts then fired a few shots after which they ran away. He also saw that the deceased took Mr Voigts' fire-arm. They ran away from the farm and met on their way to Windhoek. During cross-examination Mr Small questioned accused no. 3 about his statement to Chief Inspector Terblanche and dealt with it thoroughly, sentence by sentence. Accused no. 3 conceded the correctness of certain sentences in the statement but denied others, mainly those incriminating him and then said it wasn't interpreted

The next witness that was called on behalf accused no. 3 was his sister Caroline Tjapa who significantly knew that accused no. 3 had the guns for 1 1/2 year and could describe the guns that were allegedly taken by Kanaele, exactly as accused number 3 did. She denied having been present when accused no. 3 was arrested. She testified that she was beaten by Kanaele to tell them about the weapons but not about the whereabouts of accused no. 3. According to her, both weapons were handed over on the same day, although she later admitted that it wasn't on the same occasion. She also confirmed that the clothes and items that appears on photos 1 and 2 in Exhibit S were taken by the police from her mother's house.

The next witness was accused number 4 who testified that he worked together with Katema or accused number 2. He was asked on the particular day of the Voigts incident, namely the 16th March 1991 by Katema, to accompany them to the farm of Mr Voigts. They arrived there at about 12 o'clock and saw Johannes Eiseb and the female worker of Mr Voigts who testified for the State. They returned to Windhoek and he was dropped off at his room. He was later picked up again by Erastus, the deceased, and Katema who with accused no. 3 and 5 as well as two other persons returned to the farm. They again parked a distance from the house. Accused number 2, together with the deceased and accused number 3 went to the farm while he and accused number 5 stayed behind. The three persons took the spare wheel with them. He was

initially informed by Katema that they wanted to pick up the property of one of the persons being two welding machines and gas cylinders. He saw that several of the persons were armed with pistols. It became apparent under cross-examination that he knew that something was not right and therefore stayed behind. When he heard the shots he hid away and in particular when a motor vehicle approached. The vehicle approached again and he remained hidden and heard shots in the vicinity of their motor vehicle. He and accused no. 5 then ran away in different directions. All the people met on the road to Windhoek or in Windhoek and he went back to his room. He was picked up later by the police and taken to his room in Wanaheda in the Brewery's Single Quarters. According to him, he and Kanaele stayed behind in the motor vehicle while the police officers searched his room and if I understand his evidence correctly, after certain things were taken by the police, they returned and found other items in accused number 2' s room whereupon accused number 4 was taken to his room and again the room was searched but only certain documents concerning nature conservation were taken from his briefcase. He was arrested and was in custody when the De Lange incident occurred. He testified about the identification parades when he was identified by Mr Voigts and also about the identification parades during which Mr Schneider-Waterberg and Mrs Schneider-Waterberg as well as Mrs Gramowsky identified accused number 3. He said neither had any difficulty to identify accused number 3. No witnesses was called by accused no.4.

Michael Angula, accused number 5 testified that he is 18 years old and also informed the Court of his personal circumstances. Primus Angula, alias Katema, accused number 2, who was not present during this trial, is his brother-in-law. At the time of the incident, accused number 5, was working in his brother's Cuca shop in Wanaheda, Katutura. He met accused number 3 for the first time when they went to the farm of Mr Voigts on the 16th March 1991. He also met accused number 4 on that day and also the deceased, Erastus Muunda. He met accused numbers 6 and 7 in prison. He denied any knowledge of or involvement in the Gramowsky incident.

In respect of the Voigts' incident he testified that the deceased, Erastus Muunda, Primus Angula, accused number 3 and accused number 4, came to his place on the 16th March 1991. From there they went to Shandumbala where they stayed for a short while and the deceased obtained a bottle of Richelieu. From there they went to Hakahana Service Station and then to Klein Windhoek where they picked up two other persons and then drove to Mr Voigts' farm where they parked in the road. According to him he was asleep when they stopped at Mr Voigts' farm. He was told by Muunda, the deceased, to stay behind and three men went to the farm, taking the spare wheel of the vehicle along. The two persons picked up at Klein Windhoek followed the three men. He didn't notice any weapons on anyone. He heard shots and he and accused number 4 who also stayed behind at the car, moved away from the car. Primus Angula and Matheus Tjapa came and they kept on walking waiting for Muunda to come.

They walked through the night and the deceased never turned up. According to him, he didn't run away, he only walked away because of the shooting. He testified about the identification parade of the 3rd April when neither Mr and Mrs Voigts identified him but Mr Voigts identified accused numbers 3 and 4. He denied any knowledge of or involvement in the Schneider-Waterberg incident. Similarly he denied any involvement or knowledge of the Kriel and the De Lange incidents. He was arrested on the 27th March 1991. During cross-examination by Mr Small accused number 5 first said that he fell asleep in the back of the vehicle before they turned off the tarred road onto the dirt road near Kapp's farm, but later changed that and said that he fell asleep after they turned onto the dirt road. He denied that he ever travelled on that road to the vicinity of Mr Voigts' farm, before or after the incident and had problems in explaining how he knew which way to run after the shooting as he was asleep when they arrived on the farm. During cross-examination he also changed his evidence to the effect that accused number 3 and the others joined him and accused number 4 in the vicinity of the car just after the shots were fired and that they then moved away together from that farm even before the neighbour arrived by car. He couldn't explain why accused number 4 stated to Chief Inspector Terblanche that he remained behind alone at the car. Accused number 5 said that he was just asked to go along on that particular day and that he thought there may be a party or something like that. He was told that Mr Voigts was a friend of Katema. He said if accused number 4 told the Court that he remained at the car until the time that the

shots were fired at the car, he's not telling the truth because according to him, after accused no. 3 and Primus Angula came running they moved away and only saw the neighbour's vehicle's lights in the distance. He said he saw Mr Voigts' pistol, EXHIBIT 1 on the way to Windhoek when Katema showed it to him. He did not see the other two unknown people again on their way to Windhoek. It was put to accused number 5 by Mr Small that there were no such persons and that it was in fact only the 5 of them who went to Mr Voigts' farmhouse and that it was in fact, he and accused number 4 who went there as well as accused numbers 2, 3 and the deceased. He denied this. He further testified that he was arrested in the North, because he left for the North during the Easter weekend.

Accused number 5 called one defence witness, namely his brother Immanuel Angula, who testified that accused number 5 used to stay with him in Windhoek before he was arrested and that he worked for him in his Cuca shop while he himself worked as a petrol attendant in Okahandja. He testified that during approximately the last two weeks of December 1990, accused no. 5 left for the North and returned at the end of January 1991. After that he stayed in his room in Windhoek and worked for him in the Cuca shop. Primus Angula was his brother-in-law and used to come to his Cuca shop in Windhoek as well as accused no. 3. During the time of the Voigts incident accused no. 5 was the only one working for him at the Cuca shop and he couldn't support the evidence of accused number 5 that he himself and accused number 5 worked shifts on that particular Saturday.

Accused no. 6 testified that he is 40 years old and informed the Court about his personal circumstances. According to him he stayed at his employer, Rossing's camp at a mine near Otjiwarongo but he used to go over weekends to Otjiwarongo where he then stayed at the house of Johannes Paulus, namely house No. 0/94 in Orwetoveni. This is the house where he and accused no. 1 were arrested on the 27th March 1991. Of the other accused he only knew accused no's 1 and 7 and met the others in custody. He testified that he knew nothing of the Gramowsky/Schneider-Waterberg/Kriel and Voigts incidents. In respect of the Kriel incident which occurred on the 9th March 1991 he testified in his evidence-in-chief that he was on duty on that day at the mine busy sifting mealie meal. Later during cross-examination he said he came to the house of Johannes Paulus on Friday, but when he was further questioned in respect of his earlier evidence, he said he left at 7 o'clock that morning again for the mine and that he was on duty until 6 o'clock the afternoon. He was clearly very uncomfortable because it was put to him that accused number 1's absence whom he initially said was not at Johannes Paulus' house on that day could then not be vouched for the rest of the Saturday, the 9th March 1991. He denied that they ever had any rifles at house 0/94 as Heiki Mathias testified. He testified that EXHIBIT 12 was not found in his possession and that he never had this rifle in his possession. When it was later shown to him during cross-examination, he admitted that this was the rifle that he obtained at Mr De Lange's farm and handed over to accused number 7. He also testified about the identification parade on the 2nd April 1991 and initially said that Mr Kriel

entered the parade-room, but couldn't identify anyone and was asked to look again but when he still couldn't identify anyone and shook his head, he left the parade room. Then a Damara person entered and pointed a person out. On that day Mr Kriel did not point him out. After resumption of the proceedings the next morning while accused number 1 was still testifying in chief, he suddenly remembered that he made a mistake the previous day and said that Mr Kriel returned the same day and then identified him and accused number 1 after the police moved him and accused number 1 to the first two places in the line and a Black policeman came and stood behind them. After the statements by his Counsel were put to him in respect of this identification parade namely that Mr Kriel couldn't identify accused no's. 1 and 6 and then left the room, whereafter Mrs Kriel entered and couldn't identify anyone, thereafter re-entered and then identified him and accused number 1, it was clear that accused number 6 had difficulty in describing what happened during that identification parade. In respect of the De Lange incident accused number 6 testified that he, accused number 1 and accused number 7 went to look for caterpillars, which they wanted to sell, early that morning and when they were in that vicinity, accused number 7 suddenly realised that they were near Mr De Lange's farm where he used to work and that Mr De Lange still owed him his salary. According to him they collected a number of caterpillars and left it in bags behind. They saw Mr and Mrs De Lange coming out of the house. They approached them and Mr De Lange asked: "You Kaffirs, what are you looking for at my farm?". Accused no. 1 then passed through the fence and Mr De Lange

called the dogs to attack accused no. 1 and told them that they must lie down so that the dogs wouldn't bite them. Accused no. 1 then said that they were coming in peace. When the dogs ran at accused number 1, he picked up stones and threw it at the dogs. Mr De Lange further incited the dogs to bite accused number 1. He then just saw that accused number 1 had taken the pistol out of his jacket and he fired two shots into the ground at the dogs whereupon the owner of the farm approached him and hit at him with his walking stick. Accused no. 1 then fell back onto the fence and then shot at Mr De Lange. He saw that Mr De Lange fell down while he and accused no. 7 were still standing on the other side of the fence, some 3 to 4 metres from Mr De Lange. When he fell Mr De Lange screamed to his wife to fetch the rifle and come and shoot the Kaffirs. When Mrs De Lange started running to the house, accused number 6 called her back and said: "Miesies, we are just here in peace". He also told her that they had come in peace that accused number 7 could collect his money. They then approached her and accused no. 7 asked whether she still remembered him and said that they were just looking for his money. Mrs De Lange appeared very scared and asked them not to kill or harm her and said that she had no difficulties with Blacks, it was just her husband who used to shoot Blacks. Accused no. 6 then asked with what did he shoot the Blacks and Mrs De Lange replied with rifles, whereupon he asked where those weapons were. Mrs De Lange said it was in the house and invited him to come into the house and said she will hand it over to him. He, Mrs De Lange and the other two accused then went to the house and while accused no. 1 who was

cleaning his face with his shirt and accused no. 7 waited outside, he went into the house where she showed him the weapons which he took. He went out of the house. Outside he found the other two accused. Accused no. 7 then said that they came in peace and now they had encountered difficulties while he only wanted his money. Upon this Mrs De Lange said she didn't have any money but it was better that he take the guns and go and sell it, whereupon accused no. 6 handed the two fire-arms to accused no. 7 and they then left the farm. He denied that Mr De Lange was assaulted except for the shot by accused no. 1. He denied any knowledge of a slaughtering place and said he has nothing to say about the stolen sheep. He denied that his shoes made tracks similar to that of EXHIBIT JJ1-3. He indicated the shoe that he was wearing at the time, which had a sort of zig-zag pattern and was a number 8, could have made any of the tracks found by Inspector Kotze. When his plea and answers to questions of the magistrate in respect of the Section 119 proceedings of the Magistrate's Court was put to him, he denied most of his answers, but admitted some of it which didn't incriminate him.

Accused number 7 testified about his personal circumstances. He denied that, except for accused number 6, he had known any of the other accused previously. He testified as was put to Mr and Mrs De Lange by counsel, that he in fact worked for Mr De Lange during the first four months of 1990 and said that despite promises of payment, he was never paid. He said that that was the reason why he accepted Mr De Lange's invitation on the 7th March 1991 to go to the farm

to receive his payment. As he was again not paid and only promised payment, he left on the afternoon of the 9th March 1991 and reported Mr De Lange' s attitude to the police on Monday. After Inspector Kotze phoned Mr De Lange and was told that he refused to pay him because he just left the farm without working, there was nothing else that he could do. On the morning of the incident, in the early hours, he accused no. 6 and accused no. 1 left to search for caterpillars. When they arrived at a particular place, accused no. 7 told the other accused that he used to work on that farm but his salary was not paid. They then went to Mr De Lange's house to ask for his payment. He said he met accused no. 1 only that morning when he came to fetch accused no. 6 to go and look for caterpillars. Throughout his evidence in chief, he testified that the three of them went to look for caterpillars, but later in cross-examination when he was asked why he now suddenly realised he was near Mr De Lange' s farm and as he was the one who took the lead to go and look for caterpillars, he said that three other ladies accompanied them and that they were the people who knew where the caterpillars were. When they arrived at the farmstead, they stayed for a short period at the room where he used to live in, drank some water and then saw Mr and Mrs De Lange coming out of the house. They went to meet Mr and Mrs De Lange. Accused no. 1 walked in front and Mr De Lange just called the dogs to come and bite them. Mr De Lange said something about: "What are you Kaffirs doing on my farm." He said accused no. 1 then climbed over the fence while they remained behind. The dogs were running towards accused no. 1. Accused no. 1 picked up stones and

threw it at the dogs. Accused no. 1 then said: "We are just here in peace." Mr De Lange walked towards accused no. 1 and he suddenly saw that Mr De Lange hit accused no. 1 with a "kierie". Accused no. 1 fell on the fence and he saw that he then took a pistol from his jacket and fired two shots into the ground. He just saw Mr De Lange going down. He said Mr De Lange woke up a bit and then called his wife to get the pistol and "shoot the Kaffirs". Accused no. 6 walked towards Mrs De Lange and said she must not run away but wait to be told something. Mrs De Lange waited for him and he and accused no. 6 approached Mrs De Lange. Accused no. 6 told Mrs De Lange that they had no problems or difficulties with her. Accused number 7 asked her whether she remembered him. He said he just came to collect his money. She was standing there and moving nervously around. Mrs De Lange said she has no problems with Black people, it is just her husband, who used to kill them. Accused no. 6 asked, with what? And she said with fire-arms whereupon accused no. 6 asked where those weapons were. She then invited them into the house to come and fetch the weapons. He waited outside for accused no. 1 while accused number 6 and Mrs De Lange entered the house and accused number 6 returned with the fire-arms, which included a pistol and a rifle. He asked Mrs De Lange again for his money and she said he must just take the two weapons. They then left. Under cross-examination he said he didn't want to sell the weapons but would have kept it and when Mrs De Lange came and asked it, he would exchange it for the money that they owed him. He also said he would have had no problems if the police would ask him what happened to the weapons, to

explain it and the reason for taking it. He identified EXHIBIT 12 as the rifle that he took from Mr De Lange's farm as well as EXHIBIT 14 the pistol. He denied any knowledge of a slaughtering place or the theft of the sheep. He also denied that his shoes made tracks similar to that indicated by Inspector Kotze on JJ1-3. He said he wears a no. 7 shoe and indicated that it was the same shoe that he had on in Court which shoe has a sole with a smooth surface. He admitted that EXHIBIT 14 was found on his person when he was arrested and that the rifle was found in his room. He denied that it was EXHIBIT 2, the rifle of Mr Kriel and said that it was EXHIBIT 12, the rifle that he obtained from Mr De Lange's farm. According to him he was taken to the Police Station and the two fire-arms were put on the desk in the Charge Office before he was locked up and that there were no other fire-arms on that desk at that stage. He denied the contents of the statements that he made and which was allowed earlier by the Court. He denied that he pleaded guilty of robbing Mr and Mrs De Lange or that he didn't make any statement during the section 119 proceedings. He said that he only explained that he took the rifles which were given to him by Mrs De Lange.

This concluded the evidence for the Defence and all the cases for the accused were closed by the respective Counsel. Mr Grobler indicated that he was still looking for a particular witness and with the consent of Mr Small and Mr Kasuto the Court indicated that Mr Grobler will be afforded the opportunity to re-open accused no. 1's case for that particular witnesses' evidence if he was available on the

10th August at 09:30. The case was then postponed for argument on the 10th August 1992.

At the resumption of the trial on the 10th August 1992, Mr Grobler applied for re-opening of accused number 1's case to call Mr Simeon Kantondokwa, the witness who could not be found earlier. This was allowed and Mr Kantondokwa testified that he knew accused number 1 since 1989 when the latter assisted during the election process. He saw accused number 1 again last year on the 8th March in Windhoek and met him at Jason * s house where there was a party. He saw accused number 1 again the next morning and he gave accused number 1 R200 just out of gratitude for the latter" s assistance during the election. He saw accused number 1 also on the 13th March 1992 at the single quarters in Katutura where the latter was looking for a lift and he took accused number 1 along to Otjiwarongo.

During cross-examination he couldn't remember the day of the week when he met accused number 1 for the first time since 1989. Mr Kantondokwa, who wore a prisoner's garment, admitted that he was in prison but refused to answer Mr Small's question why he was in prison.

Arguments on behalf of the various accused then ensued based on written heads of argument which all three counsel had submitted to the Court in advance and the Court wish to express its gratitude to counsel in this regard. I also wish to express my gratitude to my assessors for their tremendous assistance.

I have dealt with the evidence of the various witnesses for the State and Defence extensively and shall consequently not refer to those witnesses' evidence in detail except when it is necessary.

It is necessary to make the following observations before considering the evidence in respect of the different charges.

10. The trial in this matter lasted for 40 days and 48 witnesses were called to testify on behalf of the State. Several days were also spent in respect of the trials within a trial with regard to three statements made by accused numbers 3 and 7 respectively and at the conclusion of that part of the trial, during which I sat without assessors and I handed down a detailed judgment and accepted the three statements as admissible evidence. After the State closed its case, applications on behalf of the accused for acquittal were made, but these were refused. All the accused then decided to testify in their own defence and they called 5 defence witnesses.

11. The incidents which gave rise to the different charges in this case occurred over a period of 3 months.

12. There were five incidents where people were held at gun point at their respective homes and robbed:

district;

Schneider-Waterberg incident - 3 February

1991 Otjiwarongo district;

Kriel incident - 9 March 1991 - Otjiwarongo;

Voigts incident - 16 March 1991 - Okahandja district;

De Lange incident - 24 March 1991 - Outjo district.

Approximately the same modus operandi was followed in each case:

13. more than one person approached the victims;

14. usually one or more persons remained in the background or not visible to the victims;

15. the victims were suddenly confronted and overpowered;

16. the victims were either assaulted or tied up or later locked up;

17. in more than one instance sticks and pangas were in the hands of the assailants and in some instances the sticks were used to assault the victims;

18. In all the incidents, except the Voigts incident where the attack was interrupted, the receiver of the telephone was cut off or ripped off;

19. in all the incidents the assailants wanted money and rifles;

(h) in all the incidents the assailants took fire-arms after threats or assaults and in some also money and other commodities.

(i) in the assaults the age or sex of the victims did not matter to the assailants;

(j) in more than one instance the impression was created to the victims that the assailants were police officers or as being from the police (Kriel, Gramowsky and De Lange.)

20. Except in the De Lange and Voigts incidents the accused denied being present at the scene of the incident. Consequently cross-examination in the other incidents were mainly directed at the identification of the assailants and in particular at the identification parades that were held.

21. As the State's case against the accused depended to a large extent on identification of the respective accused to link them with a particular incident, many identification parades were held and many witnesses were called to testify in this respect.

22. Other evidence was presented to link certain accused to certain incidents, e.g. that fire-arms, etc., were found in possession of a particular accused.

23. Certain of the accused made sworn statements and a trial within a trial ensued to determine the admissibility of these statements.

24. The State relied on common purpose in respect of every accused's involvement in a particular incident, but not that every accused was also involved in all the incidents on the basis of common purpose.

10. As identification played an important and to some extent a decisive role in the State's case against the accused, the Court again acquainted itself with the law in respect of identification and in particular identification parades as well as the applicable principles that were kept in mind throughout the trial and in particular during the evaluation of the evidence.

Before dealing then with the evidence in respect of identification, it is necessary to reflect briefly upon the principles laid down in various authorities in this regard:

"It is well recognized that the identification of an accused person as the criminal is a matter notoriously fraught with error, and in recent years the Appellate Division has frequently directed trial courts to exercise caution in testing identity evidence. To this end, matters such as the identifying witnesses' previous acquaintance with the accused, the distinctiveness of the alleged criminal's appearance or clothing, the opportunities for observation or recognition, and the time lapse between the occurrence and the trial, should be investigated in detail, since without such careful investigation a reasonable doubt as to the identity of the accused must persist."

Landsdown & Campbell, South African Criminal Law and Procedure, Vol. V at 935.

Evidence of identity is treated by our courts with caution. S v

Mtewa. 1972(3) SA 766 (A) AT 768; S v Molapi, 1963(2)

SA 29(A) at 32.

Various factors like the witnesses' previous acquaintance with the accused, accused's clothing, specific features, opportunity for observation, time lapse between the incident and the trial should be properly investigated to reject any reasonable doubt as to the identity of an accused person. In this regard the Court is more concerned about the witness' accuracy than his sincerity.

Previous identification at a properly organised identification parade, taking every precaution into account to prevent any indication to the witness in respect of the suspect's identity, will of course carry more weight in evaluating the witness' evidence. Certain guidelines in respect of identification parades have been recognised by the authorities and they should be implemented to ensure that an identification parade is fair and that the witness is not influenced at all. Certain rules are also usually followed by police officers conducting such parades.

See: Hiemstra: Suid-Afrikaanse Strafproses, 4th ed. , 73 - 74.

Du Toit. et al, Commentary on the Criminal
Procedure Act, 3/6 to 3/12.

"An identification parade is not only an effective investigative procedure, but also serves an important evidential purpose in that it can provide the prosecution with evidence which is of far more persuasive value than an identification in court, i.e. the so-called 'dock identification'". Du Toit, et al (supra) at 3/5.

I have dealt with the evidence of all the police officers involved in the various identification parades. Counsel for the defence have levelled serious criticism in respect of several of these identification parades and have requested me not to accept them.

I shall deal with the weight that I attach to the identification of the witnesses in respect of the various identification parades when I evaluate the involvement of each and every accused separately and individually in respect of each and every charge regarding the respective incidents which occurred.

Although identification, as mentioned before, plays an important part in the evaluation of the involvement of each and every accused in the various incidents, the identification on the identification parades only forms a part of the evidential material against the respective accused involved in certain incidents as there were also other factual evidence connecting the accused to those incidents and consequently the relevant charges. However, in certain other incidents the identification of certain accused were crucial to connect them to the relevant charges.

It is therefore necessary to distinguish between the De Lange and Voigts incidents on the one hand where some of the accused admitted to have been present and the Gramowsky, Schneider-Waterberg and Kriel incidents where they deny to have been involved and where identification or other factual

evidence is necessary to link any of them to that particular incident or the relevant charge.

The Court remained aware of the cautionary rule in respect of the evidence of a single witness.

I shall first deal with the De Lange and Voigts incidents and then with the Gramowsky, the Schneider-Waterberg and the Kriel incidents.

Before dealing with the various incidents it is necessary to consider the arguments presented by Mr Grobler in respect of the possible duplication of convictions. Mr Grobler referred me to the two tests to be applied either separately or in combination to determine whether there is a splitting of convictions in our law as set out in R v Van der Merwe, 1921 (TPD) at p.5 and R v Sabuyi, 1905, TS 170 at 171, which were cited with approval in S v Grobler & ' n Ander, 1966(1) SA 507 (A) at 518 F - 519 A:

It is clear from the wording of section 83 of the Criminal Procedure Act, No.51 of 1977 that the prosecutor may charge an accused with all the offences which might possibly be proved by means of available facts. The section reads as follows:

"83. Charge where it is doubtful what offence committed.

If by reason of any uncertainty as to the facts which can be proved or if for any other reason it is doubtful which of several offences is

constituted by the facts which can be proved, the accused may be charged with the commission of all or any of such offences, and any number of such charges may be tried at once, or the accused may be charged in the alternative with the commission of any number of such offences".

This may be done even if the charges may overlap and may lead to a duplication of convictions.

See: S v Grobler. (supra) p. 522 E-F.

Although the accused may not object to the charge sheet because of the numerous charges which may lead to a duplication of charges by virtue of the authorization provided for in section 83, it remains the task of the Court to see to it that an accused is not convicted of more than one offence.

See: S v Grobler. (supra) p.513 E-H.

The rule against duplication of convictions is to prevent that an accused is convicted and sentenced twice on the same culpable fact.

Du Toit, et al. (supra) 14-7.

In respect of the "evidence test" and "single intention test" the authors Du Toit, et al say on 14-7:

"Two such indicators are the test of a single intention and the evidence test. However, it must be emphasized that neither of these guiding principles is infallible and that they do not necessarily deliver the same results in regard to every set of facts. (R v Khan & Others. 1949 (4) SA 868 (N)) nor are they equally

applicable in every case (R v Johannes, 1925 TPD 782 785-6).-

The two tests are the following: The

evidence test

".....if the evidence necessary to prove one criminal act necessarily involves evidence of another criminal act, those two are to be considered as one transaction. But if the evidence necessary to establish one criminal act is complete without the other criminal act being brought in at all then the two are separate crimes." R v Van der Merwe, (supra) at p. 5.

The single intent test is formulated as follows:

"Where a man commits two acts of which each, standing alone, would be criminal, but does so with a single intent, and both acts are necessary to carry out that intent, then it seems to me that he ought only to be indicted for one offence; because the two acts constitute one criminal transaction."

R v Sabuyi, (supra) at 171.

Although these guiding principles were established in our law, as referred to by Mr Grobler, there exist no infallible formula to determine accurately whether or not there may be a duplication of convictions. Consequently, it has to be decided on the basis of sound reasoning and fairness. See: R v Kuzwavo. 1960(1) SA 340 (A) at 344 B;

S v Mavuso. 1989(4) SA 800 (T) at 804 G-H.

At page 523 F of the Grobler case, Wessels, J. said the following:

"The test or combination of tests to be applied are those which are on a common sense view best calculated to achieve the object of the rule".

In every instance where there may be a duplication of convictions in this particular case, one of the charges is robbery with aggravating circumstances and the others are either attempted murder, assault or impersonating a police officer. The definition of the charges are always relevant.

Robbery is defined as follows:

"Robbery consists in the theft of property by intentionally using violence or threats of violence to induce submission to the taking of it from another."

Hunt - S. A. Criminal Law and Procedure - Vol. II - Revised 2nd ed. - p. 680.

Aggravating circumstances in relation to robbery or attempted robbery are defined as follows in section 1(1)(b) of the Criminal Procedure Act:

- (i) The wielding of a fire-arm or any other dangerous weapon;
- (ii) the infliction of grievous bodily harm; or
- (iii) a threat to inflict grievous bodily harm by the offender or an accomplice on the occasion when the offence is committed, whether before or during or after the commission of the offence."

While it may be competent for the State to formulate separate charges for robbery and attempted murder which

arise from the same continuous transaction the Court should be careful not to convict a person on both charges, unless it is proved beyond reasonable doubt that the accused had the intent to kill and not only to use violence.

In S v Moloto, 1982(1) 844 (A) at 854 E, Rumpff, J. said the following:

"Na my mening is die Staat dus geregtig om, na gelang van omstandighede, 'n beskuldigde aan te kla van roof en van poging tot moord en is 'n hof bevoeg om die beskuldigde skuldig te bevind aan die twee afsonderlike misdade mits dit bo redelike twyfel bewys is dat die beskuldigde ook die opset gehad het om te dood en nie slegs om geweld te gebruik nie."

In the same judgment, when dealing with S v Benjamin en 'n Ander, 1980(1) 950(A), where it was found that there were a duplication of convictions, he said on page 856 E:

". Ofskoon daar volgens die feite in die Benjamin-saak aanwending van buitensporige geweld (vis major, excessive force) ten aansien van die klaer was, is daar aan die hand van die besondere omstandighede tereg beslis dat daar geen opset was om die klaer te dood nie. "

See also: Du Toit. et al, (supra), 14-12:

I shall return to this aspect after evaluating the evidence in respect of what occurred in each of the incidents:

THE DE LANGE INCIDENT:

This involves charges 10-13 and accused numbers 1,6 and 7.

Accused numbers 1,6 and 7 admitted during their explanation of plea that they were on the farm of Mr De Lange on the particular date. They had provided a reason for being on this farm and the reason advanced was that accused number 7 previously worked on the farm but was never paid by Mr De Lange and that the purpose for their visit was to request the salary that was still owed to him.

Both Mr and Mrs De Lange denied that accused number 7 worked on that particular farm for four months in the beginning of 1990. I do not believe that he worked there for one moment. Accused number 7 would never have remained on the farm for more than one month if he wasn't paid and definitely not for four months. He said he went to the police to report it but on the evidence of Inspector Kotze definite procedures are followed when they receive such a complaint. Furthermore, accused number 7 had other means available to him where he could complain. It is even more ridiculous that he decided to return to the De Langes' farm on the 7th March 1991 without any definite guarantee that he would be paid.

Inspector Kotze denied that he received any complaint as was alleged by accused number 7 after accused number 7 left on this occasion.

The whole explanation becomes even more ridiculous when the

three accused attempted during their evidence to provide another reason for their presence in the vicinity of the farm of Mr De Lange when they said that suddenly, without any prior acquaintance of each other, accused number 1 accompanied accused number 6 and 7 in the early morning of the 24th March 1991 to a place where they wanted to catch caterpillars to sell it. They had to make use of various means of transport to get there and then suddenly accused number 7 realised that he was now near or on the farm of his previous employer, who never paid him what was due to him. Accused number 7 was the leader and the man who knew where the caterpillars were. This had to be so, otherwise accused numbers 1 and 6 could not explain why they suddenly found themselves on or near the farm of Mr De Lange. However, when accused number 7 had to replay this ball which was put in his court by the other two accused and was asked why didn't he realise that he was in the vicinity of Mr De Lange's farm if he was the person who knew where the caterpillars were to be found, he suddenly and out of the blue, explained that he was not the one who knew where the caterpillars were but that they were accompanied by three ladies, one of whom knew that caterpillars would be found there and that he only then realised Mr De Lange's farm was in that vicinity.

The evidence of these three accused in this respect is so blatantly untrue that it need no further examination. Without a purpose of going to Mr De Lange's farm, namely to ask for the money that was owed to accused number 7, the question arises what were they doing on that farm? The

three accused arrived in the early hours of a Sunday morning and accused number 1 was armed, certainly not to shoot caterpillars. I reject the evidence that they only met in the early morning of that day. Apparently the real situation was that accused number 7 who worked for approximately three days for Mr De Lange knew that there were only two old people on the farm and probably also knew that Mr De Lange was in the possession of fire-arms and that there were no other farm workers. This made them easy targets to be robbed.

I have no doubt that the three accused set out to Mr De Lange's farm with this intention to rob them and were armed for that purpose. That that was their purpose is also corroborated or supported by the evidence found by Inspector Kotze, Sergeant Herridge and other policemen of an observation post established for the purpose of observing the farmhouse to launch their attack at the most convenient opportunity. Accused number 1 testified that if he wanted to fight or steal he would establish an observation post. I am also satisfied that they arrived at least the previous day and stole a sheep from Mr De Lange's kraal, where the tracks were found and took it to the slaughtering place where the same tracks were also found. Here they slaughtered the sheep and probably ate some of it. They may even have stolen sheep from other farmers in the vicinity. In the early morning they waited at the observation post for Mr and/or Mrs De Lange to appear. I also have no doubt that the footprints found by Inspector Kotze were indeed the footprints of accused numbers 1, 6 and 7, as there were no

other footprints on the farm and on the relevant spots that even the accused alleged they were, than those and the footprints of Mr and Mrs De Lange. It is also clear from the photos that the observation post was made at a place where they could easily observe Mr and/or Mrs De Lange, coming from the house towards the kraal, where accused number 7 must have known they would go on that morning. They also approached the spot where Mr De Lange was encountered from the direction of the observation post and not as it was testified by the three accused. I am also convinced that accused number 7 in fact hid his face in order not to be recognised because he knew Mr De Lange would recognise him. Mr and Mrs De Lange had no reason not to identify him if he was in fact seen by any of them.

It is also significant that accused number 1, who was armed, took the leading role and he, who had nothing to do with the salary owed by Mr De Lange and only had met accused number 7 earlier that morning, suddenly became the spokesman on behalf of accused number 7 and fearlessly pursued this role despite the danger of vicious dogs and the insults of the farm-owner. I have no doubt that the story of the outstanding salary was a blatant concocted lie.

It is further clear that the best version for accused number 1's defence of self-defence is to be found in the evidence of Mr De Lange and not in the evidence of himself or any of the other two accused. On their version the attack by Mr De Lange with his walking-stick on accused number 1 was finished and Mr De Lange's only weapon was already broken at

the time when accused number 1 took out his pistol and first shot at the dogs and then "accidentally" shot Mr De Lange. At the time when he did shoot Mr De Lange, who is an old man who walked with the aid of a walking-stick, there was no threat to accused number 1 and his two friends anymore and they could have easily overpowered him without any necessity to shoot at him. According to him he threw stones at the dogs and they ran away. I accept the version of Mr De Lange that he was only approached by accused number 1 while the other accused were placed in other positions to be able to attack them more efficiently, if necessary.

I do not accept the evidence of the accused, which was denied by both Mr and Mrs De Lange, of the derogatory remarks allegedly made by Mr De Lange. The accused overdid it by testifying that even after Mr De Lange was shot and he had fallen to the ground in a severely injured condition he continued with such remarks. Accused number 6 also forgot about this when he testified in cross-examination that Mr De Lange went to sleep after he was shot.

I have no doubt that Mr De Lange was attacked and assaulted all over his body as was found by his wife and Dr Birkenstock and that he was robbed of his personal belongings, such as his watch, pocket-knife, etc. The culprit was most probably accused number 1 and it is clear that accused numbers 6 and 7 witnessed and associated themselves with this.

The accused approached Mrs De Lange and took her into the

house where Mr De Lange's rifle. Exhibit 12, as well as his pistol. Exhibit 14, were taken. I accept Mrs De Lange's evidence that she was assaulted by accused number 1. She did not recognise accused number 7 and said it was not accused number 6 who assaulted her. I also accept the evidence that accused number 6 had a panga. I totally reject the evidence of the accused that Mrs De Lange voluntarily handed over the weapons or invited accused number 6 into the house to come and fetch the fire-arms, as well as the obvious concocted story that Mr De Lange used it to shoot Blacks whom he buried on the farm. It is also clear from the different versions of the accused in respect of the reason why the weapons were taken that it cannot reasonably possibly be true. I accept Mrs De Lange's

evidence that accused number 1 was in the house where he wiped blood from his face with a kitchen towel, that he presented himself as a policeman and that he damaged the telephone. It is significant that the mouthpiece of the telephone was found hidden behind the freezer. Accused number 7's version that he took the fire-arms to keep them so that it could be collected by Mrs De Lange and that he would then demand his outstanding salary, is so blatantly untrue that it needs no further attention.

I also accept Mrs De Lange's evidence of how she managed to escape, which is also supported by the condition that she was found in by her husband. It is also significant that the three accused who allegedly came in peace and who received the fire-arms without any resistance fled into the opposite direction into the hills, as was testified by

Sergeant Herridge, who followed their tracks.

Returning to the charges with regard to this incident the State has proved beyond reasonable doubt that accused numbers 1, 6 and 7 stole one sheep which belonged to Mr De Lange and should consequently be convicted on charge 13.

In respect of charges 10 and 11, I agree with Mr Grobler only to the extent that the accused set out with the purpose to rob the De Langes and carefully executed that robbery. They made an observation post and then conducted the robbery by using force and weapons and as a result of that robbed Mr and Mrs De Lange of the items alleged in both charges.

Mr Grobler submitted that the accused should only be convicted on one charge of robbery in order to avoid a duplication of convictions. I do not agree with this submission. Although they went to the farm to rob they clearly committed robbery in respect of both Mr and Mrs De Lange. After Mr De Lange was shot, he regained

consciousness and attempted to get up, he was hit from behind and again lost consciousness. When he came to one of the persons, pulled off his Rolex and took his pocket-knife and pen. Mrs De Lange was beaten and taken into the house where the rifle and Colt pistol was taken. Clearly both alleged offences were committed and the three accused, acting with common purpose, should be convicted on both charges.

I am also satisfied that the State proved that appropriation

circumstances as defined in section 1 of Act 51 of 1977, were present.

In respect of charge 12, namely that of attempted murder, I disagree with Mr Grobler's submissions that the State did not prove that accused number 1 had the intent to kill Mr De Lange and neither do I agree that Mr De Lange was shot in self-defence. I have accepted Mr De Lange's evidence and on his version accused number 1 took his gun out, shot at the charging dog and then changed the position of the gun to between him and the dog. Mr De Lange then hit the accused with his walking-stick which broke and he was shot in the face. The accused admitted that he was trained, inter alia, in the use of handguns and was a good shot. Mr De Lange is an old man who walked with the aid of a walking-stick while the accused was a young strong man and armed with a revolver. There can be no other inference drawn on the proved facts than that the accused in shooting this old man at a short distance in the face with a pistol in the face had the intent to kill him and not merely to use force.

Referring to the Moloto case (supra) the authors of Du Toit, Commentary on the Criminal Procedure Act say the following on 14-12:

"For a conviction to follow, the State will have to prove beyond reasonable doubt that the accused intended to kill and not merely to use force (854E). Once the violence used with the aim of temporarily disabling the victim so as to rob him exceeds those limits and

amounts to a potentially fatal act, yet which does not in fact cause death, both robbery and attempted murder are committed and appropriate convictions may result. (852H-853B-E).

I am satisfied that to convict the accused number 1 on charge 12, namely attempted murder, would not constitute a duplication of convictions.

The next aspect to be considered is whether accused numbers 6 and 7 can also be convicted on charge 12. The questions to be answered are whether accused numbers 6 and 7 knew that accused number 1 had a fire-arm in his possession and that he would use it during the execution of their common purpose to rob the De Langes. Unfortunately, these questions were not asked and there is no evidence to that effect on record. Consequently, I cannot convict accused numbers 6 and 7 on charge 12.

THE VOIGTS' INCIDENT:

The next incident that should be considered is that of Mr Gunnar Voigts on the 16th March 1991. This incident involves charges 8 and 9. Initially the accused denied any involvement in this incident. This incident was preceded by a visit to Mr Voigts' farm earlier during that specific day by accused number 3, 4, the deceased and Primus Angula. According to accused number 3 they went to Mr Voigts' farm to collect the belongings of Primus Angula and the deceased and they then left with two other accused, namely accused numbers 4 and 5.

In his statement to Inspector Terblanche, accused number 3 said that accused number 4 and Primus Angula had a plan, two days before the particular day, to rob a man called Lister and that they went to the farm that particular morning. He knew that the driver had a weapon. The purpose for this visit was to check out the place. In his evidence in Court he denied what happened there earlier in the morning or knowledge of any such plan to rob anyone or that he knew that anyone was armed. Accused number 4 admitted in evidence that he was on the farm earlier in the day but didn't mention this at all in his statement to Inspector Terblanche. His reasons for going to the farm was to collect arch-welders and gas- bottles, etc. The witness Johannes Eiseb recognised accused number 4 who was one of the persons who arrived around 1 o'clock on the farm and asked about the old Mr Voigts and the direction to the farmhouse and also enquired about a shop on the farm. Accused number 4 did not deny this in his evidence. Accused number 5 denied that he was part of the group who went to the farm earlier that day.

On the same day later in the afternoon accused numbers 3,4,5, Primus Angula and the deceased again left for Mr Voigts' farm. They parked the vehicle driven by the deceased some distance from the farmstead on the road leading thereto. Accused numbers 3,4 and 5 agree that a spare wheel was taken and accused number 3 and others went to ask for tools to fix it, although the undisputed evidence is that there were enough tools and equipment to fix it in the vehicle.

Mr Voigts testified that he was first approached by three persons for assistance and tools so that they could fix a tyre. When he returned from the waterpump there were five persons. According to accused number 4 the deceased, Primus Angula and accused number 3 initially left with a tyre and two persons whom they picked up in Klein Windhoek followed later. Accused number 5 also testified that two strangers were picked up in Klein Windhoek and they followed the first three to the farmhouse. In his statement to Inspector Terblanche accused number 4 testified that five persons including the deceased left for the farmhouse and returned to fetch the tyre and then left with it. He then stayed behind alone. Neither accused numbers 4 or 5, who alleged in this Court that they remained behind, even mentioned the two strangers after the shots were fired. Accused number 5 said that although he, Primus Angula as well as accused numbers 3 and 4 ran away and/or met on the road on their way to Windhoek, he did not notice the two strangers after the incident. I have no doubt that the two strangers that were allegedly picked up in Klein Windhoek did not exist at all and were only brought into the story by accused number 4 and 5 in order to substitute two persons for themselves at the scene of the incident. Accused number 3 also mentioned in his statement to Inspector Terblanche that the five of them went to the farm that afternoon and all five had weapons. He did not mention the two strangers at all. Initially in his evidence-in-chief accused number 3 also only mentioned that it were himself, the deceased, Primus Angula as well as accused numbers 4 and 5 who went to the farm that afternoon. At a later stage at the end of his

evidence-in-chief he mentioned for the first time that there were also two other persons whom he didn't know. Their evidence of who exactly remained at the car is so contradictory that it cannot be accepted and supports no other conclusion than that none of them remained at the car when the incident occurred.

Accused number 4 was placed on the scene by accused number 3 while, as mentioned before, accused number 4 in his statement to Inspector Terblanche, which was never attacked, as being incorrect, save for this aspect, said that he remained alone at the car. Accused number 5 testified that he remained there with accused number 4. Accused number 5 never noticed any weapons in the possession of any of the other accused, while accused number 4 noticed the weapons and according to him, attempted to discourage the deceased to go to the farm. Mr Barth found nobody at the car when he arrived. If accused numbers 4 and/or 5 had been there, they were hiding, as they said. If they were innocent the question remains for what reason did they have to hide when a car approached.

I am convinced that the only people who left for the farm of Mr Voigts were the deceased. Primus Angula, accused number 3,4 and 5. Three of them arrived there when they met Mr Voigts the first time and the other two joined these three a little bit later. However, at the time of the assault and the robbery all five of them were at the scene.

The only inference that can be drawn on all the evidence is

that the five of them planned to go and rob Mr Voigts, as accused number 3 alleged in his statement to Inspector Terblanche and that they took the spare-wheel to pretend that they needed assistance in order to get hold of Mr Voigts and then overpowered him. It is also apparent from the evidence of accused numbers 4 and 5 of the manner that they fled from the car that their evidence cannot be true and that they in fact fled after the incident from the farmhouse.

Their different reasons for going to Mr Voigts' farm also supports the only inference that can be drawn on all the established facts, namely that they planned together to rob Mr Voigts. According to accused number 3 they went to collect belongings of Primus Angula and the deceased. According to accused number 4 they went to collect welding machines, etc., but parked so far from the house that that this reason is not cogent. According to accused number 5 he thought they were going to a party at Mr Voigts' house.

As indicated earlier I have no doubt that accused numbers 4 and 5 were present at the scene of the incident. This is further supported by the identification of accused number 4 by Mr Voigts on the identification parade of the 3 April 1991 held at Okahandja. There has been criticism of Mr Voigts identification of accused number 4 and it was suggested that he did so because he received information from Johannes Eiseb in this regard. Although Mr Voigts honestly conceded that he talked with Eiseb about his identification earlier on the 20th March 1991 of a person

who had been on the farm, it was denied by Eiseb that he discussed the appearance, etc., of that person with Mr Voigts.

I am satisfied that the identification parades had been properly conducted and all the necessary precautions to prevent prejudice to the suspects properly followed.

The facts that the suspects were afforded the opportunity to change their positions between witnesses, that the witnesses were kept apart and taken separately to the identification parade room as well as that when a witness didn't identify anyone it was recorded proves this. Even if Johannes Eiseb could describe accused number 4 to some extent to Mr Voigts before the parade of 3 April 1991, which I find did not happen, it would have been virtually impossible to assist the latter as there were different persons in the line up than on the 20th March and Eiseb had no indication at the time that Mr Voigts would be called to another identification parade, whether accused number 4 would be in the line up, what he would have on, or in which position he would stand. It must be remembered that Mr Voigts was so emotional that he could not identify anybody including accused number 3 whom he has encountered before a fact that he remembered the evening of the incident as was corroborated by Mrs Voigts and Mr Barth. On the second parade he identified both accused numbers 3 and 4. Even if Eiseb could describe the person he identified after the parade of the 20 March it must also be remembered that he identified him only as a person who was there the morning

and he had no idea that accused number 4 was there that evening. Mr Voigts identified both accused numbers 3 and 4 as persons who attempted to kill him.

In respect of what happened at the scene of the incident I accept the evidence of Mr Voigts who was an excellent witness. The only other version is that of accused number 3 which not only differed from his statement to Inspector Terblanche but was also changed during the course of his evidence, even during his evidence-in-chief. There is no doubt in my mind that the five accused persons, including numbers 3,4 and 5, had the common purpose to rob Mr Voigts and preceded to his farm with that intention which they carried out by overpowering him and taking his pistol, but were prevented to go any further when Mrs Voigts fired shots. All these three accused should be convicted on charge 8.

In respect of charge 9, Mr Grobler argued that there was no evidence that shots were in fact fired in the direction of Mr Voigts, as it was not clear whom of the accused fired such shots and because there were no spent cartridges of any hand-weapon, neither could it be proved beyond reasonable doubt that the hole in the cooler was caused by a small calibre bullet. According to him, even if any shots were fired by any of the assailants, it is not the only inference that can be drawn that such a person fired at Mr Voigts, because he may have fired in the air. Mr Barth, as well as Mrs Voigts, heard and could distinguish shots coming from a small calibre fire-arm between those of the heavy rifle

fire. I am convinced that shots were in fact fired by using either a pistol or a revolver by at least one of the assailants. I can, however, not find that the State has proved beyond reasonable doubt that any shots were fired at Mr Voigts, or by whom it was fired, or that there was any intention to kill him. If any shots were fired at the scene of the assault on Mr Voigts, while he was running away, there would have been spent cartridges of a handweapon found by the police but none was found. Consequently, the State has not proved beyond reasonable doubt that the accused jointly or individually attempted to kill Mr Voigts by shooting at him as is alleged in charge 9. Although some of them, in particular accused number 3, when he was overpowered and pinned to the ground, as Mr Voigts testified, coupled with the attack it is not enough to prove such intent separate from the intent to rob. I am not satisfied that what happened at that stage of the attack can be separated from the robbery itself. Consequently, these three accused must be acquitted in respect of charge 9.

Before I turn to the Gramowsky, Schneider-Waterberg and Kriel incidents, I must state it quite clearly that all the accused who were involved in the De Lange and Voigts incidents are not credible and reliable in any way and cannot be believed at all.

The Gramowsky incident: This incident involves charges 1 and 2, namely robbery with aggravating circumstances as well as assault with the intent to do grievous bodily harm in respect of Mrs Kahl. As both the accused linked with these

two charges, namely accused numbers 3 and 5 denied that they were present, the evidence of Mrs Gramowsky of what occurred on the particular evening of the 29th December 1990 could not and was not attacked and should consequently be accepted. The only matter in dispute is the identity of accused numbers 3 and 5. Mrs Kahl did not testify and Mrs Gramowsky was consequently a single witness and her testimony should be treated with caution. According to her, three people attacked them but accused number 3 was the one who remained with her throughout and for most of the time he held her by her clothes at her throat, choked her and in the process she also lost her spectacles. She noticed the person who attacked her mother also on the verandah and later in the bathroom where she saw him assaulting her mother. She described him by his straight hairline, curly hair and broad nose. At the identification parade held in Okahandja she did not identify him but said she was 98% certain that it was him, but because she was not 100% sure, she did not identify him as one of the assailants.

Various arguments were advanced by Mr Grobler in respect of the identification of accused number 5 in Court as being the assailant of Mrs Kahl. I must have certain doubts that he was in fact the person, who was one of the three assailants and the one who attacked Mrs Kahl. Consequently, I cannot hold that the State has proved beyond reasonable doubt that accused number 5 is guilty of any of the offences he was charged with in respect of this incident.

In respect of accused number 3, Mrs Gramowsky remained

adamant that she was one hundred percent certain that he was the assailant who attacked her and robbed her. She was in his presence for a reasonable long time and had every opportunity to observe him and have his face imprinted in her mind. She was also very clear in her evidence in respect of the identification parade of the 12th April 1991 at Okahandja that she didn't entertain any doubt as to the identity of accused number 3 and, in fact, identified him. This identification parade was severely attacked as being unfair, prejudicial and not proper by Mr Kasuto. His attack on the identification parade was based on several grounds. In the first instance he alleged that it was improper that Mrs Gramowsky travelled with Warrant Officer Malan, who conducted the parade and Sergeant Zeelie, who was the investigating officer in her case from Omaruru to Okahandja. Both testified that they saw nothing improper in that as they didn't know any of the suspects and consequently could not assist her in any way in this respect on their way to Okahandja. On the evidence neither had any knowledge that could be conveyed to her to help her in identifying anyone. For the same reason the criticism levelled at Sergeant Zeelie's presence in the room where Mrs Gramowsky was waiting, could not prejudice accused number 3. Warrant Officer Malan was also criticised for not filling in the names of the suspects on the identification parade form, Exhibit LL, but his explanation, to my mind it is quite reasonable, namely that at that stage he did not know who the suspects were exactly in the line up. He was also criticised for taking Mrs Gramowsky to an identification parade where there may be people involved in the incident

and thereby exposing the accused to being possibly wrongly identified. It seems quite natural that where a similar incident occurred and people were apprehended that witnesses in another similar incident may be asked to look at those people on an identification parade and see whether they may have been involved in that incident too. There cannot be anything wrong or prejudicial to the accused in this respect. However, accused number 3 also averred that Mrs Gramowsky was part of a group of witnesses when he was brought from the cells to the identification parade and that police officers pointed him out by the clothes that he wore and the Voigts' incident that he was involved in, in order to assist the other witnesses in the identification. If this was true, and I shall deal with this soon, Mrs Gramowsky wouldn't have had any problems in identifying accused number 3, as he was clearly indicated to her before the parade. Accused number 3, however, went further and averred through statements made to Mrs Gramowsky and Inspector Malan that she first couldn't identify him and was then taken into a bathroom by a police officer and when she returned she immediately identified him. It was denied by Inspector Malan and this was not put to the photographer. Constable L.Beukes.

It was further testified by Inspector Malan and Warrant Officer Becker that the police cell where the identification parade was in fact held, was not part of the police station. The corridor referred to by accused number 3 in the police station did not exist or could not afford anyone the opportunity to see what happened outside the cell where the

identification parade was held. Furthermore, Mrs Gramowsky was not at the Okahandja Police Station for an identification parade on the same day as the Schneider-Waterberg, who were allegedly part of the witnesses to whom accused number 3 had been indicated. I am satisfied that the State has proved beyond reasonable doubt that the identification parade of the 12th April 1991, when Mrs Gramowsky identified accused number 3 was properly conducted and not prejudicial in any way to accused number 3 and that he was in fact positively identified by Mrs Gramowsky as her assailant on the 29th December 1990. Accused number 3 must consequently be convicted on charge number 1 involving the items as listed in Annexure 1.

Mr Grobler submitted that charge 2 represents a duplication of convictions if there is a conviction on charge 1. Applying the approach required in our law in this regard as set out before, I cannot come to any other conclusion that Mr Grobler's submission must be accepted. On the evidence of Mrs Gramowsky accused number 3 didn't participate in the assault on her mother and the only way that he can be convicted on the second charge is on the basis of common purpose. If there was common purpose and the indications are that the three assailants attacked Mrs Gramowsky and her mother with the common purpose to rob them by using violence, then the assault was part and parcel of the robbery. Consequently, accused number 3 cannot be convicted on the second charge.

The Kriel incident: In this incident accused numbers 1,6 and an unknown person were involved. Similarly neither of the accused could attack the evidence of Mr and Mrs Kriel of what occurred on that particular day and relied on attacking the Mr Kriel's identification of them, as well as calling certain alibi witnesses. Mr Grobler indicated certain unsatisfactory aspects in Mr Kriel's evidence, but I am satisfied that Mr Kriel who made a very good impression with his direct and strong evidence was an honest witness with keen observation and good recollection. He is also supported in his evidence by his wife, Mrs Doreen Kriel and according to her he remained calm and controlled during the course of the events that occurred on that day.

In respect of the identification parade of the 2nd April 1991 I am satisfied that it was conducted in a fair and proper manner without any prejudice to any of the accused.

In respect of the identification parade itself, it was put on behalf of accused number 1 to Inspector Kotze, the officer-in-charge, that Mr Kriel couldn't identify anyone. He was given a further opportunity and then left the room but returned later and then identified accused number 1 and 6 who were conveniently placed at that stage in the first two positions in the line up. This was denied by Mr Kriel.

Accused number 1, during evidence, on the one hand averred that Mr Kriel only returned on another day to identify him and at a later stage that he returned after another witness and then identified him. If it was the intention of the

officer-in-charge of the identification parade to assist the Kriels to obtain an identification and later a conviction, the question is why wasn't Mrs Kriel assisted in the same manner. It clearly appears from the evidence and the identification parade form, Exhibit Z, that Mrs Kriel did not identify anyone. I accept the identification by Mr Kriel of accused numbers 1 and 6 and that they were in fact the two prominent persons of the three who arrived at Mr Kriel's house on the 9th March 1991 and who confronted them, tied them up and stole the items listed in Annexure 3 to the charge sheet with the use of force. This is further supported by the fact that Exhibit 3 was found at house 0/94 in Orwetoweni, Otjiwarongo where accused numbers 1 and 6 stayed from time to time and were present when these weapons were found. Exhibit 2 was found in the house of accused number 7, who tried to aver that it was in fact Exhibit 12, Mr De Lange's rifle, that was found in his home. There can be no doubt that Constable Nampolo found Exhibit 2 in accused number 7's house and that it was properly entered into the Pol.7 register, Exhibit W. Accused number 7 said in his statement to Inspector Visser, Exhibit ZZ, that this rifle was given to him by accused number 6 to keep for him. He also referred to the same 7,9 mm rifle as one that he received from accused number 6 in another statement. Exhibit YY, when he was accused of robbing Mr Kriel. It is further supported by the evidence of Heiki Matheus who saw a rifle in the possession of accused number 1 which rifle was wrapped by a bedspread. Both Mr and Mrs Kriel testified that Exhibit 2 was wrapped in a bedspread when it was removed. A radio-tape and a briefcase with combination

locks, were seen in the presence of accused number 1 by Heiki Matheus. A radio-tape and a briefcase with combination locks were removed from the Kriel's premises. Accused number 1 also told Heiki Matheus that the rifle was taken from "boers" who were tied up in their home.

Accused number 6 testified that he worked on the particular day outside Otjiwarongo but in an attempt to keep accused number 1 from the scene, he testified that he was at home that day. When he was confronted with his previous evidence he alleged that he left early in the morning to go to work.

Accused number 1 testified that he arrived in Windhoek in February 1991 and was in Windhoek on the 9th March 1991. He relied on the evidence of Simeon Kantondokwa who said that they had a party the previous evening at Jason's house where both he and accused number 1 were together and that he also saw him around 10 o'clock on the morning of the 9th March in Katutura. The witness Jason Handyengo testified that he was together with accused number 1 from the 2nd February until the 13th March 1991. This witness' evidence in respect of dates cannot be relied on. In the first instance he could testify what happened on each date, but later he was confused in respect of the dates that he and accused number 1 went to the Defence Force Office. I do not accept his evidence at all and Simeon Kantondokwa made a similar bad impression on the Court in his attempt to cover up for accused number 1 and to provide him with an alibi. I also do not believe his evidence of his recollection of specific dates more than a year ago while he cannot even remember the

particular day of the week during which the incidents would have occurred.

I am satisfied that the State has proved beyond reasonable doubt that accused numbers 1 and 6 were in fact the persons who robbed Mr and Mrs Kriel and that they should be convicted of charge 6. I cannot agree with Mr Small that because accused number 7 was found in possession of Mr Kriel's 7,9 mm Mauser, Exhibit 2, he was the third person who was at the Kriel's house on that day. He still worked on that date for Mr De Lange. According to his statements to the police he kept that rifle for accused number 7. I am, however, satisfied that he knew that the rifle was stolen as he himself said in his statement. Exhibit YY, and he should be convicted of receiving stolen property, knowing it to have been stolen, which is a competent verdict on a charge of robbery in terms of section 260 of Act 51 of 1977.

In respect of charge 7, I am not satisfied beyond reasonable doubt that on the evidence before me that accused numbers 1 and 6 presented themselves as members of the Namibian Police to gain entry into the Kriels' house. In any event, even had this charge been proved, it was done in furtherance of the purpose to rob Mr and Mrs Kriel. Consequently, this would constitute a duplication of convictions and they can therefore not be convicted on this charge when convicted on charge 6.

See: R v Malako. 1959(1) SA 569 (0) at 570 H.

This incident led to charges 3,4 and 5. Four to five persons entered the house of Mr and Mrs Schneider-Waterberg on the 3rd February 1991 and attacked them by assaulting both of them as well as Mrs Merckens, the mother of Mrs Schneider-Waterberg, whereafter their possessions as listed in Annexure 2 were taken. Also in this matter all the accused denied any involvement or that they were present on Mr Schneider-Waterberg's farm on that particular date.

Mr and Mrs Schneider-Waterberg both identified accused numbers 1 and 3 as being part of the assailants as well as Primus Angula and the deceased. Several of the possessions of Mr and Mrs Schneider-Waterberg that were taken from their farm were found in Ovambo at the house of accused number 3 * s mother. This included items that were photographed when they were identified by Mr Schneider-Waterberg at the police station at Otjiwarongo, namely Exhibits 23 to 27. There were also other clothes that were identified as appears on the photos 1 and 2 in Exhibit S. Two fire-arms of Mr Schneider-Waterberg, namely Exhibits 8 and 9 were found in Ovambo at the house of accused number 3's father. Accused number 3 denied that he had any of these items in his possession and alleged that the fire-arms confiscated by the police were in fact his own and not Exhibits 8 and 9. He called his sister Caroline who supported this and who gave exactly the same descriptions of the fire-arms as he did. It was also alleged that it was only a single witness who was not too reliable, namely Fillemon Kanaele, who testified in respect of the confiscation of these fire-arms. Warrant Officer Ngoshi who was with Kanaele, died subsequent to this

event. The fact remains that Exhibits 8 and 9 were stolen on the 3rd February from Mr Schneider-Waterberg's house and were recovered by the police, were identified by Mr Schneider-Waterberg and handed in to Court. If it wasn't found by Fillemon Kanaele and Warrant Officer Ngoshi where did the police obtain these weapons? One thing that is certain, however, is that the items that appear in photos 1 and 2 on Exhibit S and identified by Mr Schneider-Waterberg as possessions which were stolen from his farm were found in the house of accused number 3's mother. This is confirmed by Fillemon Kanaele as well as Caroline Tjapa, that it was in fact the same items that were taken from accused number 3's mother's house. This clearly renders support to the evidence of Fillemon Kanaele that the weapons handed over by accused number 3's father and which were brought by him from Ovambo were the weapons handed in as Exhibits 8 and 9.

Accused number 1 shot Mr De Lange with a small calibre revolver, a .22, according to the evidence of Dr Birkenstock, who examined the wound and found a part of the bullet still imbedded in the face of Mr De Lange. Mr De Lange also said it was a .22 target shooting revolver. Accused number 1 averred that he shot Mr De Lange with the fire-arm that was found by Sergeant Herridge, although he did deny it in this Court that he pointed it out. It is clear from the evidence that Exhibit 3 was found by Sergeant Herridge and Warrant Officer Marais after he pointed it out as Mr Grobler concedes. That was a .38 Special revolver which could not have been used to shoot Mr De Lange. A .22 target shooting pistol was stolen from Mr Schneider-

Waterberg's house, identified as Exhibit 7, but was recovered in the room of either accused number 4 or Primus Angula. However, it was not proved that Exhibit 7 was in fact used to shoot Mr De Lange.

Exhibit TT was signed by accused number 3 and he gave permission in terms thereof that three fire-arms belonging to Mr Schneider-Waterberg could be handed back to him. This was denied by accused number 3. During statements by counsel in respect of Exhibit TT accused number 3 alleged that he was brought under the impression that he signed a statement reflecting that he did not want to make any statement to the police and said he wasn't shown the weapons at all. In his evidence in Court he later said that he thought he was giving permission to be fingerprinted by signing this document and later he denied that it was his signature. I am satisfied that this exhibit proves what it purports to be, namely permission by accused number 3 that these exhibits which were in his possession may be handed over to Mr Schneider-Waterberg and I accept the evidence of Sergeant Haccou that accused number 3 was in fact shown the fire-arms before signing this document. I have no doubt that accused number 3 obtained these fire-arms when he and others robbed the Schneider-Waterbergs on the evening of the 3rd February 1991.

It was further proved by way of identification parades that accused numbers 1 and 3 had been identified by both Mr and Mrs Schneider-Waterberg. Mr Schneider-Waterberg also identified Primus Angula as one of the assailants. Severe

criticism was levelled against these identification parades and mainly because Mr Schneider-Waterberg also identified another person who was not involved at all. He explained the reason why he identified this person as the latter had been involved in criminal offences that Mr Schneider-Waterberg apparently knew of and it was later proved that he could not have been at the time on the farm when the incident occurred. It was also argued that Mr Schneider-Waterberg was injured, faint consciousness and could not observe his assailants properly in order to identify them later and that he could not give specific descriptions of any features whereby he identified them.

Mrs Schneider-Waterberg identified accused number 3 at Okahandja on the 4th April 1991 by pointing him out with a stick and accused number 1 at Otjiwarongo by pointing him out with a ruler. She had every opportunity to observe her assailants. I am satisfied that both identification parades that involved the Schneider-Waterbergs were conducted properly and that all the necessary precautions were taken to ensure that the accused were not prejudiced. In this regard I also reject the arguments in respect of all the identification parades that because there were no legal representation at the parades that the parades were improper. In every instance it was indicated that the suspects did not require legal representatives to be present. I am satisfied that the identification parades were conducted in a proper and fair manner. The identification of accused numbers 3 and 1 by the Schneider-Waterbergs, supports the other evidence linking the accused