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

Reportable

CASE NUMBER: CC46/2019

In the matter between:

**THE STATE**

and

**EDWARD AYUK**

Accused 1

**LEANDRE WILLIAMS AYUK**

Accused 2

**YANNICK AYUK**

Accused 3

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**JUDGMENT**

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**DE WET, AJ**

[1] Human trafficking is a dehumanising crime that reduces people to commodities. It is commonly referred to as modern-day slavery.

[2] In accordance with the Trafficking NPF's Policy on the sex work industry *"...trafficked persons should always be treated as victims of a crime and holders of rights. They should not be criminalised, re-victimised or re-traumatised as a result of their contact with law enforcement and judicial authorities. Too often, in fact, victims are treated as criminals or illegal migrants and are detained, charged or prosecuted for violations of immigration law or for activities committed as a direct consequence of their being trafficked (e.g. Prostitution, possession or use of fraudulent documents, ect.)"*<sup>1</sup>

[3] The accused were indicted in the Western Cape High Court on the following counts:

#### IN RESPECT OF ACCUSED 1 AND 3:<sup>2</sup>

3.1 Six counts of contravention of s 4(1) read with ss 1, 2, 11 and 13(1)(a) 14, 19, 29 and 30 of the Prevention and Combating of Trafficking in Persons Act 7 of 2013 (the "Human Trafficking Act") read with the provisions of s 51(1) and schedule 2 of the Criminal Law Amendment Act 105 of 1997 ("the CLAA") and read with the provisions of ss 94, 256, 257, 261 and 268 of the Criminal Procedure Act 51 of 1977 ("the CPA") further read with ss 1, 50(2)(a), 50(2)(b), 58, 59, 60 and 61 of the CLAA and further read with the provisions of ss 1 and 120 of the Children's Act 38 of 2005 ("the Children's Act") [Trafficking in persons]

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<sup>1</sup> The Department of Justice and Constitutional Development 2019 Prevention and combating of Trafficking in Persons National Policy Framework "Trafficking NPF" at page 43 and 46.

<sup>2</sup> At the outset I wish to make it clear that no disrespect is intended by referring to the accused as accused 1, 2 and 3 respectively or to the complainants and witnesses by using, as they called it, their "street names". It is done simply to avoid any confusion.

3.1.1 Count 1 is the recruitment, transportation, harbouring and receiving of another person, to wit [SM], an adult female person within the borders of the Republic, by means of:

3.1.1.1 deception or other forms of coercion to wit by supplying

the said [SM] with drugs; or work opportunity; and

3.1.1.2 the abuse of vulnerability, to wit the said [SM], was unemployed and desperate for work and was addicted to drugs and the accused saw to it that she was supplied with drugs for the purpose of sexual exploitation, to wit, by selling her to clients, whose names are unknown to the State for financial reward.

3.1.2 Count 7 is the recruitment, transportation, harbouring and receiving of another person, to wit [MA], an adult female person within the borders of the Republic, by means of:

3.1.2.1 deception or other forms of coercion to wit by offering the said [MA] monetary reward and or work, and

3.1.2.2 the abuse of vulnerability, to wit the said [MA], was unemployed and desperate for money when she was recruited to work as a sex worker and was addicted to drugs and the accused saw to it that she was supplied with drugs for the purpose of sexual exploitation, to wit, by selling her to clients, whose names are unknown to the State for financial reward.

3.1.3 Count 8 is the recruitment, transportation, harbouring and receiving of another person, to wit [CJ], an adult female person within the borders of the Republic, by means of:

- 3.1.3.1 the threat or use of force or other forms of coercion to wit by promising employment and supplying the said [CJ] with drugs; and
- 3.1.3.2 the abuse of vulnerability, to wit, the said [CJ] was unemployed and was addicted to drugs and the accused saw to it that she was supplied with drugs for the purpose of sexual exploitation, to wit by selling her to clients, whose names are unknown to the State for financial reward.
- 3.1.4 Count 15 is the recruitment, transportation and harbouring and receive of another person, to with [ND], an adult female within the borders of the Republic, by means of:
  - 3.1.4.1 the threat or use of force or other forms of coercion to wit by supplying the said [ND] with drugs; and
  - 3.1.4.2 the abuse of vulnerability, to wit, the said [ND] was very young when she was recruited to work as a sex worker and was addicted to drugs and the accused saw to it that she was supplied with drugs for the purpose of sexual exploitation, to wit, by selling her to clients, whose names are unknown to the State for financial reward.
- 3.1.5 Count 28 is the recruitment, transportation and harbouring and receiving of another person, to wit [SN], a 15-year-old female person, within the borders of the Republic, by means of
  - 3.1.5.1 the threat or use of force or other forms of coercion to wit by supplying the said [SN] with drugs; and

3.1.5.2 the abuse of vulnerability, to wit, the said [SN] was very young when she was recruited to work as a sex worker and was addicted to drugs and the accused saw to it that she was supplied with drugs for the purpose of sexual exploitation, to wit, by selling her to clients, whose names are unknown to the State for financial reward.

3.1.6 Count 34 is the recruitment, transportation, harbouring and receiving of another person, to wit [SD] an adult female person within the borders of the Republic, by means of:

3.1.6.1 the threat or use of force or other forms of coercion to wit by supplying the said [SD] with drugs; and

3.1.6.2 the abuse of vulnerability, to wit, the said [SD] was very young when she was recruited to work as a sex worker and was addicted to drugs and the accused saw to it that she was supplied with drugs for the purpose of sexual exploitation, to wit, by selling her to clients, whose names are unknown to the State for financial reward.

3.2 Five counts of contravention of s 5 read with ss 1, 2, 11, 12, 13(1)(c), 14, 29, 30 and 48 of the Human Trafficking Act read with the provisions of ss 1, 50(2)(a), 50(2)(b), 58, 59, 60 and 61 of the CLAA and read with the provisions ss 94, 256 and 270 of the CPA further read with the provisions of ss 1 and 120 of the Children's Act [Debt Bondage].

- 3.2.1 Count 2 is to engage in conduct that caused another person, to wit [SM] to enter into debt bondage by supplying her with drugs in lieu of repayment for her transport and accommodation.
- 3.2.2 Count 9 is to engage in conduct that caused another person, to wit [CJ] to enter into debt bondage supplying her with drugs in lieu of repayment for her transport and accommodation.
- 3.2.3 Count 16 is to engage in conduct that caused another person, to wit [ND] to enter into debt bondage supplying her with drugs in lieu of repayment for her transport and accommodation.
- 3.2.4 Count 29 is to engage in conduct that caused another person, to wit [SN] to enter into debt bondage supplying her with drugs in lieu of repayment for her transport and accommodation.
- 3.2.5 Count 35 is to engage in conduct that caused another person, to wit [SD] to enter into debt bondage supplying her with drugs in lieu of repayment for her transport and accommodation.
- 3.3. Five counts of contravention of s 7 read with ss 1, 2, 11 and 13(1)(c) 14,19, 29 and 30 of the Human Trafficking Act read with the provisions of section 51(2) and schedule 2 of the CLAA and read with the provisions of ss 94, 256, 257, 261 and 268 of the CPA [Using the services of a victim of trafficking]
  - 3.3.1 Count 3 is to benefit financially or otherwise from the services of a victim of trafficking, to wit [SM], by taking the money that she made from selling herself to unknown men, and the accused knew or ought reasonably to have known or suspected that the said [SM] is a victim of trafficking irrespective of whether the intended sexual exploitation or action occurred or not.

- 3.3.2 Count 10 is to benefit financially or otherwise from the services of a victim of trafficking, to wit [CJ], by taking the money that she made from selling herself to unknown men, and the accused knew or ought reasonably to have known or suspected that the said [CJ] is a victim of trafficking irrespective of whether the intended sexual exploitation or action occurred or not.
- 3.3.3 Count 17 is to benefit financially or otherwise from the services of a victim of trafficking, to wit [ND], by taking the money that she made from selling herself to unknown men, and the accused knew or ought reasonably to have known or suspected that the said [ND] is a victim of trafficking irrespective of whether the intended sexual exploitation or action occurred or not.
- 3.3.4 Count 30 is to benefit financially or otherwise from the services of a victim of trafficking, to wit [SN], by taking the money that she made from selling herself to unknown men, and the accused knew or ought reasonably to have known or suspected that the said [SN] is a victim of trafficking irrespective of whether the intended sexual exploitation or action occurred or not.
- 3.3.5 Count 36 is to benefit financially or otherwise from the services of a victim of trafficking, to wit [SD], by taking the money that she made from selling herself to unknown men, and the accused knew or ought reasonably to have known or suspected that the said [SD] is a victim of trafficking irrespective of whether the intended sexual exploitation or action occurred or not.

3.4 Five counts of contravention of s 20(1)(a) read with ss 1, 21 and 22 of the Sexual Offences Act 23 of 1957 also read with s 17(5) of the Sexual Offences and Related Matters Amendment Act 32 of 2007 (“the SOFMP”) [Living on the earnings of prostitution]:

3.4.1 Count 4 is to procure the services of [SM] unlawfully and intentionally as a sex worker for the purposes of monetary gain and in so doing, the accused lived wholly and/or in part on the earnings of prostitution.

3.4.2 Count 11 is to procure the services of [CJ] unlawfully and intentionally as a sex worker for the purposes of monetary gain and in so doing, the accused lived wholly and/or in part on the earnings of prostitution.

3.4.3 Count 18 is to procure the services of [ND] unlawfully and intentionally as a sex worker for the purposes of monetary gain and in so doing, the accused lived wholly and/or in part on the earnings of prostitution.

3.4.4 Count 31 is to procure the services of [SN] unlawfully and intentionally as a sex worker for the purposes of monetary gain and in so doing, the accused lived wholly and/or in part on the earnings of prostitution.

3.4.5 Count 37 is to procure the services of [SD] unlawfully and intentionally as a sex worker for the purposes of monetary gain and in so doing, the accused lived wholly and/or in part on the earnings of prostitution.

3.5 Six counts of kidnapping:



- 3.5.1 Count 5 is to deprive [SM] of her freedom of movement by means of locking the doors of the house and placing unknown men to watch her to prevent or deprive her from running away.
  - 3.5.2 Count 12 is to deprive [CJ] of her freedom of movement by means of locking the doors of the house and placing unknown men to watch her to prevent or deprive her from running away.
  - 3.5.3 Count 19 is to deprive [ND] of her freedom of movement by means of locking the doors and placing unknown men to watch her to prevent or deprive her freedom of movement.
  - 3.5.4 Count 21 is to deprive [UL] of her freedom of movement by means of locking the doors and placing unknown men to keep watch over her to prevent or deprive her freedom of movement.
  - 3.5.5 Count 32 is to deprive [SN] of her freedom of movement by means of locking the doors of the house and placing unknown men to watch her to prevent or deprive her from running away.
  - 3.5.6 Count 38 is to deprive [SD] of her freedom of movement by means of locking the doors of the house and placing unknown men to watch her to prevent or deprive her from running away.
- 3.6 Six counts of assault with the intention to do grievous bodily harm:
- 3.6.1 Count 6 is to assault [SM] by hitting her with open fists, an electric cord and kicking her with the intent to inflict grievous bodily harm.

- 3.6.2 Count 13 is to assault [CJ] by hitting her with open fists, a belt and electric cord with the intent to inflict grievous bodily harm.
  - 3.6.3 Count 20 is to assault [ND] by hitting her with open fists and kicking her with the intent to inflict grievous bodily harm.
  - 3.6.4 Count 27 is to assault [UL] by hitting her with open fists and threatening to kill her with the intent to inflict grievous bodily harm.
  - 3.6.5 Count 33 is to assault [SN], a 15-year-old female, by hitting her with open fists, a belt and electric cord with the intent to inflict grievous bodily harm.
  - 3.6.6 Count 39 is to assault [SD] by hitting her with open fists, a belt and electric cord with the intent to inflict grievous bodily harm.
- 3.7 Five counts of contravention of s 3 read with ss 1,50, 56(1), 57, 58, 59, 60 and 61 of ACT 32 of 2007 also read with ss 94, 256 and 261 of the CPA (rape) read with the provisions of s 51(1) and schedule 2 of the CLAA:
- 3.7.1 Count 22 is to commit an act of sexual penetration with the complainant to wit [UL], a female aged 16 years old, by penetrating her vagina with his penis without the consent of the said complainant.
  - 3.7.2 Count 23 is to commit an act of sexual penetration with the complainant to wit [UL], a female aged 16 years old, by penetrating her vagina with his penis without the consent of the said complainant.
  - 3.7.3 Count 24 is to commit an act of sexual penetration with the complainant to wit [UL], a female aged 16 years old, by

penetrating her vagina with his penis without the consent of the said complainant.

3.7.4 Count 25 is to commit an act of sexual penetration with the complainant to wit [UL], a female aged 16 years old, by penetrating her vagina with his penis without the consent of the said complainant.

3.7.5 Count 26 is to commit an act of sexual penetration with the complainant to wit [UL], a female aged 16 years old, by penetrating her vagina with his penis without the consent of the said complainant.

3.8 One count of contravention of s 6 read with ss 1, 2, 11 and 13(1)(cA) 14,19, 29 and 30 of the Human Trafficking Act read with the provisions of s 51(2) and schedule 2 of the CLAA and read with the provisions of ss 94, 256, 257, 261 and 268 of the CPA [Possession, Destruction, Confiscation, Concealment of or Tampering with Documents]

3.8.1 Count 14 is to possess or intentionally destroy or confiscate or conceal with any actual or purported identification document of a victim of trafficking to wit [CJ] for the purposes of facilitating or promoting trafficking in persons irrespective of whether the intended exploitation or action occurred or not.

3.9 In respect of accused 1 only: Contravention of the provisions of section (a) or 5(b) read with ss 1, 13, 17 to 25 and 64 of the Drugs and Drug Trafficking Act 140 of 1992 [Dealing in drugs] in that on or about 20 October 2016 and at or near Bothasig in the district of Cape Town, the accused unlawfully dealt in a dependence producing substance as listed in part 1 of schedule 2 of the said Act to wit, 8 grams of cocaine and 2 grams of CAT.

IN RESPECT OF ACCUSED TWO:

3.10 Three counts of contravention of s 4(1) read with ss 1, 2, 11 and 13(1)(a) 14,19, 29 and 30 of the Human Trafficking Act read with the provisions of s 51(1) and schedule 2 of the CLAA and read with the provisions of ss 94,256, 257, 261 and 268 of the CPA read with ss 1, 50(2)(a), 50(2)(b), 58, 59, 60 and 61 of the CLAA and further read with the provisions of ss 1 and 120 of the Children's Act [Trafficking in persons]

3.10.1 Count 1 is the recruitment, transportation, harbouring and receiving of another person, to wit [SM], an adult female person within the borders of the Republic, by means of:

3.10.1.1 deception or other forms of coercion to wit by supplying the said [SM] with drugs; or work opportunity; and

3.10.1.2 the abuse of vulnerability, to wit, the said [SM] was unemployed and desperate for work and was addicted to drugs and the accused saw to it that she was supplied with drugs for the purpose of sexual exploitation, to wit, by selling her to clients, whose names are unknown to the State for financial reward.

3.10.2 Count 7 is the recruitment, transportation, harbouring and receiving of another person, to wit [MA], an adult female person within the borders of the Republic, by means of:

3.10.2.1 deception or other forms of coercion to wit by offering the said [MA] monetary reward and or work, and

3.10.2.2 the abuse of vulnerability, to wit, the said [MA] was unemployed and desperate for money when she was recruited to work as a sex worker and was addicted to drugs and the accused saw to it that she was supplied with drugs for the purpose of sexual exploitation, to wit, by selling her to clients, whose names are unknown to the State for financial reward.

3.10.3 Count 8 is the recruitment, transportation, harbouring and receiving of another person, to wit [CJ], an adult female person within the borders of the Republic, by means of:

3.10.3.1 the threat or use of force or other forms of coercion to wit by promising employment and supplying the said [CJ] with drugs; and

3.10.3.2 the abuse of vulnerability, to wit, the said [CJ] was unemployed and was addicted to drugs and the accused saw to it that she was supplied with drugs for the purpose of sexual exploitation, to wit, by selling her to clients, whose names are unknown to the State for financial reward.

3.11 Two counts of contravention of s 5 read with ss 1, 2, 11, 12, 13(1)(c), 14, 29, 30 and 48 of the Human Trafficking Act read with the provision of ss 1, 50(2)(a), 50(2)(b), 58, 59, 60 and 61 of the CLAA and read with the provisions of ss 94, 256 and 270 of the CPA further read with the provisions of ss 1 and 120 of the Children's Act [Debt Bondage].

3.11.1 Count 2 is to engage in conduct that caused another person, to wit [SM], to enter into debt bondage by supplying her with drugs in lieu of repayment for her transport and accommodation.

3.11.2 Count 9 is to engage in conduct that caused another person, to wit [CJ], to enter into debt bondage supplying her with drugs in lieu of repayment for her transport and accommodation.

3.12 Two counts of contravention of s 7 read with ss 1, 2, 11 and 13(1)(c), 14, 19, 29 and 30 of the Human Trafficking Act read with the provisions of s 51(2) and schedule 2 of the CLAA read with the provisions of ss 94, 256, 257, 261 and 268 of the CPA [Using the services of a victim of trafficking]

3.12.1 Count 3 is to benefit financially or otherwise from the services of a victim of trafficking, to wit [SM], by taking the money that she made from selling herself to unknown men, and the accused knew or ought reasonably to have known or suspected that the said [SM] is a victim of trafficking irrespective of whether the intended sexual exploitation or action occurred or not.

3.12.2 Count 10 is to benefit financially or otherwise from the services of a victim of trafficking, to wit [CJ], by taking the money that she made from selling herself to unknown men, and<sup>3</sup> the accused knew or ought reasonably to have known or suspected that the said [CJ] is a victim of trafficking irrespective of whether the intended sexual exploitation or action occurred or not.

3.13 Two counts of contravention of s 20(1)(a) read with ss 1, 21 and 22 of ACT 23 of 1957 also read with s 17(5) of the SOFMA [Living on the earning of prostitution]:

3.13.1 Count 4 is to procure the services of [SM] unlawfully and intentionally as a sex worker for the purposes of monetary gain

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<sup>3</sup> The indictment states "and" whilst the act clearly states "or".

and in so doing, the accused lived wholly and/or in part on the earnings of prostitution.

3.13.2 Count 11 is to procure the services of [CJ] unlawfully and intentionally as a sex worker for the purposes of monetary gain and in so doing, the accused lived wholly and/or in part on the earnings of prostitution.

3.14 Two counts of kidnapping:

3.14.1 Count 5 is to deprive [SM] of her freedom of movement by means of locking the doors of the house and placing unknown men to watch her to prevent or deprive her from running away.

3.14.2 Count 12 is to deprive [CJ] of her freedom of movement by means of locking the doors of the house and placing unknown men to watch her to prevent or deprive her from running away.

3.15 Two counts of assault with intent to do grievous bodily harm:

3.15.1 Count 6 is to assault [SM] by hitting her with open fists, electric cord and kicking her with the intent to inflict grievous bodily harm.

3.15.2 Count 13 is to assault [CJ] by hitting her with open fists, a belt and electric cord with the intent to inflict grievous bodily harm.

3.16 One count of contravention of s 6 read with ss 1, 2, 11 and 13(1)(cA) 14,19, 29 of 30 of the Human Trafficking Act and read with the provisions of s 51(2) and schedule 2 of the CLAA and read with the provisions of ss 94, 256, 257, 261 and 268 of the CPA [Possession Destruction Confiscation and or tampering with documents]

3.16.1 Count 14 is to possess or intentionally destroy or confiscate or conceal with any actual or purported identification document of a victim of trafficking, to wit [CJ], for the purposes of facilitating or promoting trafficking in persons irrespective of whether the intended exploitation or action occurred or not.

[4] Counsel on behalf accused 2 raised a complaint that the indictment does not comply with the provisions of s 261 A of the CPA in her Heads of Argument. I deal with this complaint later in the judgment.

[5] Counsel on behalf of accused 1 and 3, also in his Heads of Argument, submitted that the State had not discharged their legal duty under s 19(10) read with s 1 of the Human Trafficking Act with reference to regulations 2, 3 and 4 as it did not meet the procedural requirements to have an assessment and letter of recognition issued. As Counsel for the State only received the Heads of Argument on the day the Court heard argument, she was afforded an opportunity to file further written submission in this regard. I also deal with this issue later in the judgment.

[6] As many of the charges against the accused fall under s 51 of the CLAA, the accused confirmed, prior to them pleading, that they understood the impact of the CLAA and that it was fully explained to them by their legal representatives. The accused were represented throughout the trial by the same legal representatives



and there was always an interpreter available during the trial due to accused 1 and 3 speaking Pidgin English.<sup>4</sup>

[7] Many of the complainants were Afrikaans speaking and consequently an Afrikaans/English interpreter was always available and assisted the witnesses and the court.

[8] The trial, due to many factors, including but not limited to, the nature of trial, the use of 2 interpreters, witnesses or complainants being in custody, witnesses and complainants not residing in the Western Province or as far away as Springbok for whom transport had to be arranged, counsel being involved in other part-heard criminal trials in the High Court, and medical reasons such as *inter alia* Covid, took a substantial period of time to be finalised and the running record finally amounted to almost 6 000 pages.<sup>5</sup> Every effort was made by all legal representatives involved to accommodate the multitude of difficulties experienced whilst not prejudicing the accused.

[9] It was confirmed that the case against accused 2 was transferred in terms of s 111 of the CPA to this Court.

[10] The accused pleaded not guilty and accused 1 and 3 did not provide any plea explanation. A plea explanation in terms of s 115 of the CPA and formal admissions in terms of s 220 of the CPA were tendered by accused 2 on 30

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<sup>4</sup> Pidgin English is a non-specific name used to refer to any of the pidgin languages derived from English.

<sup>5</sup> Many of the complainants and witnesses had to travel from either Springbok or East London using State resources. These logistical arrangements and the fragile mental and or physical state of some of the witnesses caused long delays in the finalization of the trial. At times witnesses were interposed in order to accommodate other witnesses and at times the court had to adjourn for the medical condition(s) of some of the witnesses.

November 2021. In summary she denied all the charges against her but made the following relevant admissions:

- 10.1 She was married to accused 1 on 10 September 2008 in Malmesbury, in community of property and is still so married. She instituted divorce proceedings against accused 1 on 28 March 2017 in Springbok through Legal Aid South Africa but was unable to serve the summons on accused 1 as he was in custody.
- 10.2 She has four children who were born on 25 November 2002, 28 March 2008, 4 March 2012 and 24 August 2016 respectively. Two of them are the children of accused 1.
- 10.3 She owns a property known as 18 B[...] Avenue, M[...], Springbok, Western Cape. According to accused 2 she bought the property from funds she received after claiming from the Road Accident Fund. Accused 1 resided at 2[...] P[...] G[...] Street, B[...], Cape Town (intermittently referred to herein as “the premises” or “the home”) prior to his arrest.
- 10.4 She worked as a sex worker at some stage and was prosecuted for prostitution. She pleaded guilty and was given a suspended sentence.
- 10.5 She knows [SM], [MA] and [CJ], the complainants from Springbok. They knew she previously worked as a sex worker.

- 10.6 She was with accused 1 when he was arrested on 20 October 2016 for dealing in drugs in Cape Town.
- 10.7 She was arrested in Springbok on 11 September 2018 under Springbok Cas 219/04/2019 and held in custody until she was released on bail by this Court on 20 August 2021.
- 10.8 In respect of [SM] accused 2 stated the following: They were friends, she brought [SM] to Cape Town and they both did sex work in Bellville during 2015. She left [SM] in Bellville after accused 1 found her and called the police. The next morning she asked [SM] to come to the premises in Brooklyn. She and accused 1 had a fight because she was drunk and because she brought [SM] to Cape Town. The next day accused 2 went back to Springbok but [SM] did not want to go back and she left her in Cape Town. They were still friends when [SM] returned to Springbok.
- 10.9 In respect of [MA] she stated that: She asked her on about 13 November 2016 to go with her children to Cape Town to look after them at the house of accused 1. [MA] told her that she did not know Cape Town and wanted to see “what it is like first and where they will be staying”. She went to Cape Town but it did not work out and she returned to Springbok.

[11] The state called 25 witnesses. All three of the accused testified and called further witnesses.

[12] It was in essence the defence of the accused that the charges against them were fabricated by the SAPS who were in cahoots with or under the influence of a Sergeant Felix ("Felix") whose brother, one Zain Samuels ("Zain"), was implicated in an armed robbery or carjacking reported by accused 1 at the Maitland Police Station on 19 August 2017.<sup>6</sup> According to the accused the charges were laid against them to put pressure on accused 1 not to proceed with charges against Zain.

[13] At the close of the State's case there was an application on behalf of the accused in terms of s 174 of the CPA for a discharge of all the charges.

[14] After hearing argument, I handed down judgment on 10 May 2023. Accused 1 was found not guilty and discharged in respect of counts 23, 24, 25 and 26. Accused 3 was found not guilty and discharged in respect of counts 1 to 14, 22 to 27, 33 and 39. The application on behalf of accused 2 was dismissed.

[15] I do not summarise all the evidence, although I have considered all of it. I do however summarise certain portions of evidence heard in more detail as it demonstrates the factual framework within which I decided the matter.

#### The State's case:

#### De Leeuw ("De Leeuw"):

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<sup>6</sup> The complaint was registered under Cas no 158/08/2017 on 19 August 2017. The vehicle was a blue Peugeot registered in the name of accused 1 with registration number CA 671982.

[16] The first witness called on behalf of the state was Sergeant De Leeuw ("De Leeuw"). De Leeuw confirmed that he was previously a member of the South Africa Police Services (the "SAPS") and held the rank of sergeant when he left the SAPS during April 2019. He had approximately 18 years of service. He was stationed at the Directorate of Priority Crimes in Bellville (the "DPCI") which is also commonly known as the Hawks. De Leeuw confirmed that he was involved in the Maitland CAS155/9/2017 matter.

[17] He confirmed that he was on duty on 12 September 2017 and was requested by Sergeant Pamplin ("Pamplin"), who was in his unit and the investigating officer, to assist him to locate a lady they believed was kidnapped. He accompanied Pamplin at about 09h30 that morning to the premises where they believed she was held.

[18] On arrival at the premises, they found an African male in front of the property. They introduced themselves as police officers and Pamplin explained the reason for the visit. A request was made to the gentleman that they be allowed to go and search for this specific lady inside the property. According to De Leeuw the gentleman was accused 1 and they went into the house with Pamplin.

[19] On entering the property, they observed three other gentlemen in the house and he proceeded to the room at the back of the property, it being on the further side of the room, which was a bedroom. De Leeuw requested one of the gentlemen to open the door as it was closed.

[20] On his entry he saw two females lying on the bed, one was a white lady, and the other was an African lady. He told them he was a police officer and the white lady threw her arms in the air and said “yes”. He identified the white lady as the one they were looking for as he had seen a photograph of her that morning. De Leeuw testified that the white lady was very relieved when the SAPS arrived whilst the African lady was very quiet while he was there. He did not have any conversation with them.

[21] He testified that he told the two ladies to stay in the room and he went out to call Sergeant Carelse (“Carelse”), a female officer, as he felt the ladies would be more comfortable to speak to a female. According to him Carelse then interviewed the white lady and during the conversation he heard that she kept saying “please don’t leave me here”. He further testified that after Carelse had spoken to the white lady, they turned around to leave the room but discovered that the bedroom was locked and that there was no doorhandle on the door. He requested the African female to open the door for him. She told him that the door could not open from the inside and that you had to ask someone from the outside to open the door. He knocked and somebody on the other side opened the door.

[22] According to him the person who opened the door later became known to him as Yannick, who he identified as accused 3.

[23] Carelse left with the white female and he called another female, Warrant Officer Durbaum (“Durbaum”) and requested her to speak to the African female to determine if she was a victim of any crime. He was not present during the interview in the room.

[24] Pamplin then arrested accused 1 and De Leeuw accompanied them to Maitland Police Station. According to him the ladies were later transported to Bellville and Durbaum and Carelse looked after them. De Leeuw went with Pamplin to Maitland to assist him.

[25] According to De Leeuw only accused 1 was arrested as he was leasing the premises.

[26] De Leeuw could positively identify accused 1 but was not certain about accused 3. It was confirmed during cross-examination that accused 3 was present on the day of accused 1's arrest.

[27] The state handed in as Exhibit "B" photographs of the property which depicted *inter alia* the lounge area, the door at the back and the door of the bedroom. It was not disputed that these photographs were indeed taken in the premises and were what they purported to be.

[28] De Leeuw confirmed that he was shown a photograph of a white lady, [ND] (also known as "Roxy"), which the SAPS was searching for on the morning of 12 September 2017. The African lady later became known to him as [UL].

[29] During cross-examination it was put to De Leeuw that he was not at the property on the day of the arrest and that accused 1 and 3 had never seen him before. He denied this.

[30] It was further put to De Leeuw that according to accused 1, he did not accompany the SAPS into the house but had seen a group of police officers going

into the property and then followed. The group, according to accused 1 and 3, consisted of two female police officers, Pamplin and an unknown-coloured male police officer. De Leeuw denied this. It was also put to De Leeuw that Pamplin had asked accused 1, if he had made a case at Maitland Police Station and showed certain documents to the female officers who were there with them. De Leeuw had no knowledge regarding this.

[31] It was further put to De Leeuw that the two ladies who were found in the premises, were not found in the back room but were sitting in the lounge. De Leeuw was adamant that they were found in the bedroom.<sup>7</sup>

[32] It was also put to him that accused 1 was not arrested at the premises and that Felix took him to the police station where he was taken into a small room and questioned. De Leeuw testified that he does not know a person called Felix and testified that accused 1 drove with him and Pamplin to the Police Station where he was processed.<sup>8</sup>

[33] It was put to De Leeuw that Felix had asked accused 1 who had taken his car and how it had happened, whereafter he told Felix it was Zain who had pointed a gun at him and taken his motor vehicle. According to accused 1, Felix laughed at him and said he would be in prison for a long time before he comes out. De Leeuw had no knowledge of such an incident.

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<sup>7</sup> Later during cross-examination it was put to De Leeuw that only [UL] was sitting in the lounge watching television when the police officers arrived.

<sup>8</sup> Pamplin testified that Felix, who was stationed at Maitland Police Station, transported the accused there.



[34] It was further put to De Leeuw that accused 1 told Pamplin that he wanted to make a statement but was told that he is only allowed to talk in court. De Leeuw could not comment. According to accused 1 he then asked Pamplin to take his phone from his pocket and call the white lady's father, as she normally phoned her father from his number, so her father could clarify the position. Pamplin declined to make the call. He did however write down the number of the white lady's father and told the accused not to tell him how to do his job. De Leeuw had no knowledge of these events. It was also put to De Leeuw that accused 1 was only charged with rape two months after his arrest. Again, De Leeuw knew nothing about this.

[35] It was further put to De Leeuw that there was an incident approximately three weeks before the arrest of accused 1, at about 04h00 in the morning. Accused 1 and 3, who were with friends called Alex, Moola and Robert were at the premises and heard a lady cry for help. They went outside and found her crying, saying that someone had jumped from their yard, stolen her bag and ran away. The 5 of them got into three motor vehicles and proceeded to look for the perpetrator. Accused 1 and 3 were together in a vehicle which is owned by accused 1. They drove around and saw a young man carrying a female bag and tried to apprehend them. He was carrying a firearm which he pointed at them. They climbed out as instructed and the young man took off with the car. The assailant was wearing a mask and they could not see his face. Accused 1 went to the police station the next day to open a case regarding the incident under case number 158/08/2017. According to accused 1, the day after he laid the charge, a lady named Pamela came to the shop next to his house and enquired as to where his car was. When he told her what had happened, she advised him that she had seen a guy called Zain driving the vehicle

and that Zain was accompanied by his girlfriend. According to accused 1, Pamela was approached by Zain and his girlfriend to keep a bag with her for them. Pamela saw official papers in the bag that showed the car belonged to accused 1 and she further told him that Zain is the younger brother of a policeman that lives further down the road.

[36] It was put to De Leeuw that accused 1, upon receiving this information went to the police station to tell the SAPS what he had learnt only to find that the same police officer, Felix, had been assigned to his case. He accordingly asked that Felix be removed from the hijacking case. The case was consequently removed from Felix and assigned to one Ntengeshe. Sometime later accused 1 received a call from Malmesbury Police Station telling him that the motor vehicle had been found. According to accused 1 arrangements were made the very same day for him to go to Malmesbury to fetch his motor vehicle. On the day he was due to go and fetch the motor vehicle, he was arrested, and Felix was present during his arrest. De Leeuw could not comment.

[37] It was put to De Leeuw that a spoon was used on the outside of the bedroom door to open it and that it would be the testimony of the accused 1 and 3 that anything could be stuck into the door to get a grip and open it. De Leeuw agreed. It was further put to De Leeuw that when he allegedly attended at the scene, there was in fact a handle on the door and there was no need for someone to open the door for him. He denies this.

[38] De Leeuw's evidence was that the door was locked and the three men that were sitting in the lounge were asked to open the door for him. He conceded that

the door could merely have been closed and that he did not know whether it was locked or not.

[39] It was further put to De Leeuw that there were no burglar bars on the window of the bedroom. De Leeuw could not confirm or deny whether there were burglar bars or not.

Booise:

[40] Mr Bertram Booise (“Booise”) testified that he knew [MA], one of the complainants and that she was previously his girlfriend. He lives in Springbok. He confirmed that during or about 2016 [MA] on a Sunday afternoon came to him and told him that she was on her way to Cape Town as accused 2 had requested her to collect drugs there and would pay her an amount of R2 000.00 for doing this.

[41] He further testified that on the Monday morning, he received a phone call from her and that her first words were “Bertram please help me”. He asked her what was going on and she told him that she used a phone which belonged to one [MS] to contact him as she was told by [MS] that she was not there to collect drugs but was sent to Cape Town for prostitution. According to Booise, [MA] said he must phone her mother, but he went to her aunt, V[...], and asked her to contact the mother. V[...] then phoned [MA]’s mother in his presence and told her what had transpired. [MA]’s mother later phoned him to obtain the number wherefrom she had phoned, which he provided. [MA]’s mother phoned him again and told him that

the number was simply going to voicemail. He then kept on trying to phone the number until he finally reached her. He then, on the mother's request, arranged a taxi for [MA] and told her she had to be ready at 03h00 for collection from the premises. She arrived back in Springbok by way of the taxi on the Tuesday morning and he collected her at the taxi rank.

[42] It was put to him on behalf of accused 2 that [MA] was requested to go to Cape Town to look after her children at the premises even though she used to drink a lot and do drugs. He knew nothing about this.

[SM]:

[43] [SM] confirmed that she lives in Matjieskloof in Springbok. She testified that she knew accused 1 as she had seen him twice in Springbok when he came to collect girls. She could not say when and she had never had a conversation with him. In her testimony in chief she stated that she saw accused 1 at the homes of [CJ] and [MA] who were both her friends. She further testified that she knew accused 2 but was no longer friends with her. She did not know accused 3.

[44] She confirmed that accused 1 picked the girls up in a blue car but could not say which make or model the car was. She confirmed that she had looked after accused 2's children in Matjieskloof for a period of about 2 to 3 months.

[45] According to [SM] accused 2 asked her whether she is not looking for a better job and further told her that work in Cape Town means more money.

[46] She testified that she was not up to it and accused 2 never told her what kind of a job it was that she was talking about. She however told the court that accused 2 wanted to take photos of her but she refused. She further testified that when [CJ] came back from Cape Town, she told her what in fact happened in Cape Town and that she was forced by accused 1 to sleep with various men and use drugs.

[47] According to [SM] accused 2 asked her a few times whether she did not want to work in Cape Town.

[48] During cross-examination it was put to [SM] that accused 1 and accused 3 did not know her, which she denied. It was further put to her that accused 1 admitted that he was the husband of accused 2 but that he denies that he ever fetched girls in Springbok. [SM] was adamant that she had seen him there. During cross-examination she changed her version and stated that he did not collect them at their homes. She said she made a mistake the previous day and that she was just talking to fast.

[49] The witness confirmed that she saw [CJ] on the day when she came to say goodbye at her house. She had her clothing with her and she was in a blue car with accused 1. It was put to her that accused 1 would say that this never happened.

[50] On further examination she advised the court that [CJ] was with her clothes in her mother's yard when she told her that she was going to get herself a better life. This was the day that she came to say goodbye.

[51] The witness had no knowledge of the relationship between accused 1 and 2 or what financial contributions accused 1 were making to accused 2 during that time. She was surprised when it was put to her to accused 2 had applied for a protection order against accused 1.

[52] It was put to the witness that accused 2 denies that she ever wanted to take photos of the witness and that she in any event would not have wanted to take pictures of her because she was pregnant at the time. [SM] stated that accused 2 asked to take pictures of her long before she was pregnant and was lying.

Carelse:

[53] Warrant Officer Carelse ("Carelse") confirmed that she has been in the service for 17 years and based in DPCI in Bellville. She confirmed that on 12 September 2017 she was on duty and assisted with an operation in the Maitland area.

[54] She testified that the SAPS received information that there was a lady by the name of [ND] who was kept at a house known as number 2[...] P[....] G[...] Street, Brooklyn against her will. She went to the premises with De Leeuw. They waited for backup. When the rest of the members of the team arrived, they proceeded to the premises. On their arrival there was a male standing in front of the house. Pamplin spoke to the male outside the house. After Pamplin spoke to him the team

proceeded inside the house. Once inside they saw three males sitting in the lounge area. De Leeuw went towards the back room and he managed to open up the door. He had a look inside the room and then he called her to come to the room with him.

[55] She was in the lounge area at the time. When she entered the room, she saw two ladies on the bed. One was a white female and the other was a black female. She immediately saw that the white lady had a cast on her leg. She regarded this as significant as the information to the SAPS was that one of the ladies' had a broken leg. According to her she identified herself to the two ladies and De Leeuw was with her. She closed the door and spoke privately to the ladies. The white lady was crying and just wanted to get out of the house. She identified herself as [ND]. According to the witness she was "hysterical". She testified that the white lady told her that she was kept against her will inside the house and that she had no freedom of movement. As she was crying Carelse tried to calm her down and asked her who the person was that was keeping them inside the house. [ND] advised her it was the short black male person by the name of Eddie who was in charge of the house.

[56] As she was so "hysterical" Carelse decided to rather get her out of the house. She confirmed De Leeuw's version that he could not open the door from the inside and that the black lady who she identified as [UL] told them that the door could only be opened from the outside. She confirmed that De Leeuw asked the people outside the room to open the door from the outside and she then took [ND] outside of the house where she met up with Colonel Chetty. When she left [UL]

was still in the room. She confirmed that after she handed [ND] over to Colonel Chetty she went back into the house and she assisted Pamplin by taking photos of the three male persons sitting in the lounge area. She took these photographs with her official cell phone. She did not know their names. She confirmed that she sent the pictures she took to the investigating officer but told the court that she no longer had these photos as she was pickpocketed, and her phone stolen at some point in time. She could not say with certainty when this happened.

[57] It was put to her that Moola and Alex were tenants at the premises and on the day in question Alex was not there but there was another friend called Robert who sometimes stayed over and that Moola was the boyfriend of [ND]. Carelse told the court that [ND] did not mention anything about having a boyfriend in the house. It was put to her that [ND] was only at the premises for a period of 2 weeks before the arrest and was staying there as she was Moola's girlfriend and that she at all times had access to their phones which she at times borrowed in order to contact her father. Carelse could not comment.

[58] It was put to her that accused 1's version of the day of the arrest is that the SAPS members who attended at the premises consisted of Pamplin, Felix, two female black woman and one other coloured male but not De Leeuw.

[59] Carelse testified that she did not know anyone called Felix and confirmed who was present. She also denied that they entered the house on their own and confirmed her previous version which corresponds with that of De Leeuw. She



denied that [UL] was in the lounge when they arrived and denied that [UL] told the SAPS that accused 1 was her boyfriend.<sup>9</sup>

[60] It was put to her that she only arrived later and after [UL] was taken into the bedroom. She denied this.

[61] It was also put to her that there was a door handle on the inside of the bedroom on the day of the arrest. She denied it.

[62] Carelse testified that [ND]'s leg was broken, that she could not open the door from the inside and according to her observations the women were locked inside the room. She explained that the door could not open from the inside and that they could not get out of the room.

[63] Carelse knew nothing about the case made by accused 1 against Zain or about any car hijacking. She did not know that Zain is allegedly the brother of Felix and testified that she did not know Felix. She persisted that accused 1 must have been taken away by someone else.

Nyawo:

[64] Mr Nyawo ("Nyawo"), is the owner of the premises and he confirmed that he had rented the premises to accused 1 since 2009. He confirmed that he knew accused 2 but could not remember her name. To his knowledge she lived in Springbok and visited the premises with the children during holidays.

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<sup>9</sup> [UL] stated in her evidence that she did tell the police that accused 1 was her boyfriend.

[65] According to this witness accused 1 lived with 2 or 3 other men at the premises and there were regularly ladies. The amount of people at the rental premises was problematic for him. He recounted a meeting held with accused 1 to discuss his concerns during which the accused became so angry that he pulled out a knife and had to be held down by one of the other tenants until he had calmed down.

[66] He confirmed that he saw many “girls” who came and went and he was of the view that they were not girlfriends. He confirmed that he went to the property almost every second week and once found 3 women inside who could not open the door for him as they told him they did not have keys.

[67] During cross-examination it was put to the witness that accused 1 will testify that there was a meeting between them but that he was intoxicated and that accused 1 therefore wanted the meeting to be reconvened. He denied this.

Durbaum:

[68] Captain Durbaum (“Durbaum”) confirmed that she has been in the service of the South African Police for 30 years and was stationed at Elsies River CID when she testified. She was previously stationed at DPCI (the Hawks) in Bellville.

[69] She testified that on 12 September 2017 she was a warrant officer and on duty. She was asked to assist at an address called 2[...] P[...] G[...] Street, Brooklyn and the request came from the human trafficking section, by way of

Pamplin and Colonel Chetty, who was the head of the section that stage. She was advised that information was received that there was a young lady named [ND] who was kept at a certain premises against her will. When they arrived at the premises De Leeuw went inside whilst she was still outside. Shortly after they went in, Carelse came out with a lady with a cast, who was walking with crutches. De Leeuw said there was another lady inside the room and asked if she would go speak to her. She entered the house and was shown the last door where she found an African girl lying on the bed. The room was pointed out to her by De Leeuw. She produced her police ID to the girl and told her that they were there to help them. The girl then became known to her as [UL]. According to the witness the first words [UL] said to her was that that she is not working on the street as a prostitute. [UL] further told her that she had been at the premises since the previous Friday and that she met a girl called Z[...] at a club in Brooklyn and that this girl had brought her to the premises.

[70] Durbaum testified that she asked the girl whether she wanted to go home and was advised by her that she did ask "Eddie" if she can go home but he said she must first tell him where her friend Z[...] was. [UL] said she did not know where Z[...] was but he still did not allow her to go home. Durbaum testified that she then requested her to get dressed and to come with her to the Bellville offices. When they arrived at the Bellville offices another colleague collected the girls to obtain their statements. She confirmed that when they spoke it was only her and [UL]. She further confirmed that when she first went into the premises, she saw men in the lounge area but could not remember how many. She confirmed that [UL] looked scared to her and that she had no discussions with [ND].

[71] During cross-examination it was put to her that accused 1 denies seeing her on the scene but that he could have been gone by the time she arrived and that accused 3 also did not recall seeing her there. It was put to her that there was a coloured male police officer on the scene. The witness denied seeing such a person and stated that it was De Leeuw that was present.

[72] It was put to the witness that accused 1 will testify that he met [UL] at a club in Maitland called Stephanies, about two weeks before the day of his arrest.

[73] It was further put to her that accused 1 will testify that she came on her own accord to his house and would sleep there if she was out clubbing because it was easier to stay at his home. It was put to her that accused 1 denies that he at any stage prevented [UL] from leaving the house.

[CJ]:

[74] [CJ] was 27 years old when she testified, and her evidence related to charges 18 to 40. She confirmed that she completed grade 9 at school and that she is originally from Matjieskloof in Springbok and unemployed.

[75] [CJ] confirmed that she knew accused 1 as he was married to accused 2 who lived in her district and that she had met him there during January 2017. She

confirmed that she was friends with accused 2 and that their mothers had worked at the same guest house. Accused 2 was a “house friend”.

[76] She did not know accused 3. [CJ] confirmed that she was no longer friends with accused 2 as she no longer wanted to be friends with her. She was never friends with accused 1. She explained that about a week before the 10<sup>th</sup> of January 2017 she had an altercation with her mother which resulted in her being “kicked out” of her home. She went to live with her aunt who lived three houses away from accused 2’s house in Springbok. According to her she was reckless at that point in time as she was using drugs and alcohol. She testified that she told her story to accused 2, and particularly her difficulties at home, and that she told her that she wanted to go to Cape Town in order to get away from Matjieskloof. According to [CJ] accused 2 offered her a lift to Cape Town with accused 1 when he brought the children back to accused 2 after the holidays.

[77] On 10 January 2017 accused 1 brought the children back from the holidays and she was at accused 2’s house when she asked accused 1 if she could get a lift to Cape Town. She intended to go to a friend in Cape Town.

[78] Accused 2 had her called on the day that accused 1 arrived and there was a party at accused 1’s house. She returned to her aunt’s house and the next morning accused 1 arrived on his own and told her that accused 2 did not treat him fairly and that they had fight. They did not go back to accused 2’s house and she left with accused 1 to Cape Town. She took her clothes, toiletries, phone and ID and they arrived the following morning. She advised accused 1 that she wanted to go to her friend, Calvin’s house, but he was not there. According to the witness accused 1

told her that she must sleep at his house as it was safe and as she did not suspect any foul play due to accused 1 being the husband of her friend, she stayed. He promised her he would take her to her friend's house in the morning. However, the next morning he had his own errands to run, and she simply stayed there for about 4 days. She testified that when she arrived at accused 1's home there were two other men. Accused 1 told her that he was busy and that she must not go anywhere as it was not safe. She did not see him for approximately 2 days and spent her time with one of the men that lived there called Alex. The other man at the house was known to her as Roberto.

[79] Other people also arrived at the house during these 4 days and there were men who came to play cards and they spoke in their own language. On 14th or 15th of January 2017, accused 1 and his brother arrived at home with a Xhosa and a coloured girl. She saw that the coloured girl was very emotional and was crying excessively.<sup>10</sup> She did not know why and the girl left with the brother of accused 1. The Xhosa lady became known to her as Z[...] and she started partying that day with Z[...]. She stated that Z[...] told her that she met accused 1 at a shop in Port Elisabeth. They were drinking beer and wine and accused 1 gave them "rocks" to smoke. She felt a warm feeling in her chest (she explained it felt like her breasts were swelling) and she had a prickling sensation in her vaginal area. She started to take off her clothes and then realised that there were other people present as well. According to her everything happened around accused 1 and everything was under his supervision. She felt like she wanted to have sex and she in fact had sex with 2 men while under the supervision of accused 1. She had thought that there was

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<sup>10</sup> "Sy het vreeslik gehuil".

something in her drink. She did not feel normal, and the “rocks” made her more sexually active. She could not remember how many people were there, but the sex took place in the room. According to the witness accused 1 told her and Z[...] whilst they were smoking “rocks” that they were now going to work for him. This was after she had sex with the two men.

[80] Accused 1 told them that they should ask R200.00 for a “quickie” and R300.00 or R350.00 for an hour. He told her that they would work as prostitutes. She understood that what she had to do was to sell her body by way of sex for money and would then have to give that money to accused 1. She stated that accused 1 explained to her how the prostitution would work and that there were rules such as that she could not leave the house and had to hand over all the money she received to either him, Alex or from time to time Roberto. She testified that accused 1 told her that clients will come and that she had to give the money to him and he would give them a rock piece or a blue pill. She did not know what was in a blue pill but it gave her the same feeling that she felt on the day she had sex with the two men when he told her that she would now work for him as a prostitute.

[81] She explained that during the day clients would come to the house from time to time, between 2 to 3 a day, and during the night they worked from 19h00 in the evenings till 07h00 the next morning. At night they would either walk or be taken to a specific corner where accused 1 told them it was safe. Accused 1 decided on what clothes they had to wear, such clothes came either from the cupboard in their room or he would buy clothes for them in the form of short dresses and/or skirts. They never got any money and could not buy their own clothes or food. They were

not allowed to leave the house without supervision. According to her she started working as a prostitute for accused 1 on the day she started smoking the “rocks”.

[82] She confirmed that during the night when they picked up clients on the specific corner, she would either perform sexual acts with the client in the client’s car or they would go to accused 1’s house, a guest house or a hotel. The preferred place was accused 1’s house and the work were either oral sex or penetrative sex. She had to hand over all the money to accused 1 or Alex and he would give her a “rock” piece every night before they went out, every time they brought a client home and every time they handed money over to him.

[83] On the 20<sup>th</sup> or the 28<sup>th</sup> of January 2017, after working for accused 1 since the 15<sup>th</sup> of January 2017, she told him that she wanted to go home. His response was extremely aggressive. He told her not to mess up his business. She testified that she just kept quiet and carried on performing his instructions which was that she had to carry on, follow the rules and carry on working. She testified that at the end of January 2017 she tried to escape for the first time. She explained that she went out with one of her clients to whom she explained her situation and he agreed that she could stay with him for a while. She had the cell phone which accused 1 gave her with her and after about 2 or 3 days he contacted her and told her that he knew where she was and that she had to come back or there would be trouble. She then went back to accused 1’s house.

[84] On her arrival he assaulted her by slapping her and pushing her around. She did not have any injuries but was not allowed to leave the house for about a week. She was not given any “rocks” and was not allowed to work. She decided to



start working again to try and take some of the money for herself so she could go home. She would for example tell accused 1 that she only had 3 clients but in fact had 5 clients, but he always knew when she was lying to him as he knew exactly the amount of men she saw during the night and he even knew the number plates and make of the cars they used. If ever he found any money on her he would become extremely aggressive.

[85] During February 2017 she tried running away for a second time, this time to Bloubergstrand. She testified that she realised what was happening at accused 1's home was not who she is, and she did not want to be part of it. She again told one of her clients her situation and he took her with him and undertook to look after her and wanted to have a relationship with her. She stayed there for about 3 to 4 days when accused 1 found her again. This time he had someone phone her pretending to be someone she knew, and she agreed to meet with this person. She thought it was one of her clients. She however told her friend in Bloubergstrand, one Joe, that she had a friend coming to his house and she left her contacts and home address on a piece of paper in case something happened to her.

[86] She testified that a "gold car" arrived in the parking area and as she was getting into the car, she realised that it was one of accused 1's people. As she opened the door of the car accused 1 was standing next to the car with a long knife. She was forced to climb into the car and accused 1 followed in his blue Peugeot. She was taken back to his premises. At the premises accused 1 went to the kitchen and came back with 20 litres of warm water in a bucket which she had to balance on her head whilst kneeling on a broomstick. Whilst recounting this incident [CJ]

became extremely emotional and was crying. She testified that she asked him what was in the bucket and that he told her that it was her demons and that they were causing her to make trouble. She testified that she begged him to stop, and she swore to him that she would never run away again. According to her Z[...] was present during this assault and had asked accused 1 to stop by saying: "Daddy that is enough now, please stop".

[87] According to the witness, accused 1 just laughed at them and became hysterical. Her perception was that he found it exciting and that he was showing her that she could not run away. According to her accused 1 then went through her personal belongings and took her identity document, her contact numbers and family photos. He told her that she would never see her family again. Accused 1 further assaulted her with an electrical cord by hitting her with the cord on her lower legs which caused severe swelling. According to her the bruises were there for 2 to 3 weeks after the incident and when she finally got home to Springbok the doctor who examined her could still see the marks. She testified that after this incident the accused told her to hang up her wet clothing and to go and rest in the room. The next morning accused 1 told her to get dressed and they went to Bloubergstrand where he had found her. Accused 1 told her friend Joe to stay away from her and to stop all contact with her. On their return to accused 1's home he told her that everything would be fine and she only needed to listen to him. She stayed at home for the week and was not allowed to go out to work. She explained that she was extremely emotional at the time, that she felt accused 1 was manipulating her as he was constantly telling Z[...] that she was his baby and his queen which made her feel unwanted and casted out. She testified that on the following Friday or Saturday

she knelt on accused 1's feet and told him "Daddy I will not run away again" to win his favour.

[88] She testified that this was a turning point for her as she knew that she simply needed a chance to break away. After she promised not to run away again accused 1 gave her a "rock" piece to smoke and told her to put on her white dress. She was allowed to go out to see a client in Brooklyn that evening. She testified that she told this client about her situation, and he advised that he did not want to get involved and she had to get out of his car. She finally met a female in a park and explained her situation to this female who took her to her home. This woman did not have money to pay for her ticket back to Springbok but she booked a ticket for her on the basis that the people in Springbok would pay for the taxi. She was picked up the following morning from this woman's house by Bezuidenhout Taxi's who took her to Springbok.

[89] When she arrived in Springbok her aunt was not there, and she went to her mother's house where she told and showed her sister what had happened to her. As her mother was still of the view that her conduct was reckless, she moved in with her aunt who provided her with accommodation. She also showed her aunt her bruises and explained to her that she did prostitution work in Cape Town. Her aunt then paid for the taxi and also took her to a doctor who provided her with medication for her infections and wounds, and also took her to the police station. At that point she only wanted her clothing and possessions back. She testified that whilst she was there a constable contacted accused 1 who was furious that she was in Springbok. She was then asked questions by a Mr Jonas as to what had

happened to her and as she was shy and embarrassed about what she had done. He referred her to the sexual offences section of the police, and it was explained to her that what happened to her amounted to human trafficking. According to the witness she was in Cape Town for about 2 to 3 months as she saw the doctor in Springbok on 9 March 2017.

[90] [CJ] confirmed, with reference to exhibit “B”, that she stayed at accused 1’s house and that she lived in the bedroom as depicted in photos’ 3 and 4. According to her accused 1, Alex and Z[...] lived in the house whilst she was there and some of accused 1’s brothers also slept there on occasion. She shared the double bed with Z[...]. She testified that the house was a mess and dirty. People would arrive to buy drugs and would also smoke there. This would happen any time during the night and day. The drugs were sold by accused 1 or Alex.

[91] She testified that herself and Z[...] did not cook and was fed twice a day by either accused 1, Alex or on occasion Roberto. They ate fish and some kind of beans which she was not familiar with. They were never left alone in the house and was always under supervision. When they brought clients home, they would have sex with them in the room and accused 1 would ask clients whether it was a quickie or an hour session and would receive the money. Accused 1 or his friends would lie on the couch outside the room where she was busy and they could hear everything that happened inside the house.

[92] She testified that she believed that she was also watched whilst on the street as accused 1 on occasion phoned her and said that she was not on the corner and

even knew how many clients she saw an evening and the make of their cars and registration numbers.

[93] They did not have any off days and if she did not want to work accused 1 would give her more “rocks” to smoke and would tell her to work. This happened night and day but mostly during the night. During the day accused 1 would phone Alex and told him to get the girls ready as the clients were on their way. During the night she would service approximately 20 clients and all the money she received she had to hand over to accused 1 or Alex or Roberto. She never received any money of her own and if she did not hand over any money, accused 1 would physically aggressive. She explained it by stating that he would hit her and push her around. She testified that accused 1 only once gave her R5.00 with which she could buy 2 cigarettes. She did not receive any salary or compensation for her work. She explained that she got the “rocks” and the blue pills from accused 1 as it caused her to become sexually excitable and was extremely addictive. She just wanted more. She admitted that she had on one or two occasions experimented with “rocks” in Springbok prior to starting her work with accused 1 but did not know what the blue pills consisted of as she was only given these pills on two or three occasions. According to her recollection he gave her these pills after she ran away for the first time but did not know why he gave it to her. Accused 1 told her that if she ran away he would know where she is and threatened her that if she did not want trouble she had to come back to his house. She admitted that when accused 1 told her that she would now be working for him after the 15<sup>th</sup> of January 2017 she agreed thereto. She said she agreed to work for him as she was under the

influence of alcohol and drugs and did not really care because she had the altercation with her family at home.

[94] She testified that she worked under a lot of stress. She found the working conditions not acceptable and told him that she wanted to go home. She testified that what she did there did not feel right to her and she did not want what happened her. The witness testified that there were once two other girls which accused 1 brought to the house but that they only slept there for two nights. She did not know them. According to her Z[...]’s role at accused 1’s house was the same as hers, prostitution. She also did not have money and did not buy her own toiletries. Accused 1 would buy soap and roll-on for them.

[95] When asked whether she had any contact with accused 2 while she stayed at accused 1’s home she testified that accused 2 was in Cape Town during the period she was there and had slept in the car according to accused 1 whereafter he had sent her to Springbok with a taxi. She said accused 2 did not make contact with her nor did she try and find out how she was.

[96] She testified that she saw accused 2 again the day after she had been to the doctor and the police and had told her what was happening at accused 1’s house and had shown accused 2 her bruises. According to the witness accused 2 wanted nothing to do with accused 1 and his things.

[97] According to the witness accused 2, when she found out there was a pending matter against her and accused 1, asked her to withdraw the charges against them. The witness admitted that she took bribe money from accused 2 and

that she told the investigating officer that accused 2 had bothered her regarding the matter and that she did not want to proceed with the matter. The bribe money that accused 2 gave her was R50 or R60 and a couple of beers and she was told that if she brought confirmation that she would withdraw the case she would receive R1 500.00. She testified that she took the money as she had felt that accused 1 had sent the money she had earned working as a prostitute in Cape Town to accused 2, as she was not working and that in essence it was her work that supported the accused and their children.

[98] She confirmed that she knew [SM] who also lived in Matjieskloof and grew up with her. [SM] noticed that she was walking with difficulty, and she also told her what had happened to her in Cape Town as well as her aunt and neighbour.

[99] The witness again confirmed that she does not blame accused 2 for what she had done as she was already reckless and irresponsible, but she feels that accused 2 had taken advantage of her circumstances.<sup>11</sup>

[100] She confirmed that what had happened to her had changed her life and had caused her in 2017 to use more and more drugs and she was feeling alone and confused. She admitted with difficulty that after her sister had accused her and used words such as prostitute and that she is HIV positive that she grabbed a knife, that her mother had come in between them and that she had stabbed her mother who died in the process.

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<sup>11</sup> "Sy het my huislike omstandighede uitgebuit".

[101] According to her accused 2 was aware of her circumstances in Springbok and was aware that she was taking drugs and abusing alcohol and had an issue with her mother and her sister. She admitted that the time that she was in accused 1's house, it was not the first time that she slept with men for money. She however explained that previously she received the money for her services whilst she had to hand over any monies earned whilst staying with accused 1. She also confirmed that she previously did not have to stand on the street and find clients. She confirmed that while she was in Cape Town, even though she intended to go and stay with a friend Kenny (also known as Calvin), she never saw him during the period she was staying at accused 1's house.

[102] During cross-examination she conceded that she had lived during late 2015 early 2016 with Kenny and that he was also from Cameroon and that she had previously known accused 1. She stated that she had met Kenny then as accused 2 had sent her to Cape Town and that she was in a relationship with him. It was put to her that accused 1 would say that she and Kenny was in a relationship and during 2016 they stayed opposite or near the Seven Eleven in Brooklyn. She denied that she and Kenny and accused 1 were good friends. According to her accused 1 came to her and Kenny's place of residence on one or two occasions and she did not speak to him. She further conceded that while she was in a relationship with Kenny she worked as a prostitute and that she shared the money she earned with him.

[103] It was put to her that Kenny had problems with the landlord at the place that they were staying with rent and that Kenny had asked accused 1 whether they



could not stay with him until he managed to sort things out. This was denied by the witness. It was further put to her that Kenny and her then moved into accused1's place for about two weeks and that during this two-week period she became involved in a relationship with Alex who was also living with accused 1. The witness denied these allegations. She however did agree that she did have sexual relations with Alex from time to time during the period in 2017 when she was staying in accused 1's house. It was put to her that after the two weeks in 2016 that her and Kenny stayed with accused 1, they moved out.

[104] It was further put to her that approximately two months after they had moved out the witness contacted accused 1 telephonically and requested him to return her goods. She denied this. According to accused 1 he would not agree to give her goods as he felt that it belonged to both her and Kenny and that Kenny would have to accompany her to collect the goods.

[105] It was put to the witness that accused 1 denied that she came to Cape Town with him during 2017, denied telling her to stay in the house, denied giving her drugs at any time, denied that there were sexual encounters with men in his presence, denied that he told her that she must work for him as a prostitute, denied that he took money from her at any stage, denied that he watched or had control over her at any time, denied assaulting her and denied threatening her or anyone else.

[106] During cross-examination she confirmed that Joe, the person who she went to after her second escape, was someone she encountered on the street and would have done business with. She went with him to his flat and confirmed that he was a

white man and worked as the caretaker at the Infinity Complex at Bloubergstrand. This was also where he lived. She provided very detailed information and confirmed that she told the investigating officer about Joe and that they even went to his house and that Joe was willing to make a statement about what happened.

[107] She even remembered the logo on the 20-litre fish oil can with which accused 1 threw the water at her.

[108] Counsel for accused 1 took further instructions upon the court asking clarification as to the period during which the witness allegedly stayed with Kenny at his house, as it was previously put to her that it was during 2016. Counsel was uncertain and after a long discussion between himself and accused 1 put it to the witness that it is accused 1's version that they lived near him during 2015/2016 but that they lived with him for the two-week period during February or March 2017 and that it was during this time that she had the relationship with Alex. This was not the same version that was put to the witness on the previous day. The witness denied that she ever saw Kenny during 2017 or stayed at accused 1's house. It was further put to the witness that she was encouraged and/or persuaded by the police to lay charges against the accused even though she did not intend doing so. She agreed with what was put to her and confirmed that it was only after the investigating officer told her that she must think of other children and even her own child before not agreeing to testifying.

[109] It was put to the witness that the police persuaded her to lay charges against the accused specifically accused 1 because of the fact that he had laid charges against another police officer's brother. She denied this.

Mpayipeli ("Mpayieli"):

[110] Captain Mpayipeli testified that his in service of the SAPS stationed at the Hawks in Springbok. He became aware of a docket of possible human trafficking in April 2017. After perusal of the statement on [CJ], he noticed that the statement was made by the complainant on 9 March 2017. He took it upon himself and started with the investigation which led him to various other complainants. His investigation also led him to the premises in Brooklyn which he went to observe. He was not aware of a case that was investigated by the Cape Town Hawks. There was a request for the docket to be transferred to Cape Town in May of 2018. He testified that there was an occasion when he went to the house of accused 1 and the ID of [CJ] was handed over to him by a lady. He took the ID and gave it back to [CJ]. When the docket was taken over by the Hawks in Cape Town, he was no longer part of the investigating team.

[MS]:

[111] [MS] testified that she knows both accused 1 and 2 but she does not know accused 3. She stated that she met accused 1 at the house of accused 2. She further placed on record that she got to know accused 2 when accused 2 befriended her.

[112] The reason she came to Cape Town was because accused 2 had approached her and informed her that accused 1 had a prostitution business in Cape Town. She was asked by accused 2 if she was interested and she said yes. Thereafter she came to Cape Town with accused 1 and [SM]. She stated that this

was her first-time doing prostitution and her first time being exposed to the drugs named rocks.

[113] She testified when she arrived in Cape Town at the house of accused 1, [SM] explained to her how the prostitution was going to work. It was explained that she must bring client's back to the house of accused 1 to do business. After four days she went out onto the road to get clients with [SM]. They would bring the client back to the house and have sex with them. She testified that she charged R150, R50 would be given to either Moola or Alex for use of the room and the other R100 would go towards purchasing rocks. She confirmed that both her and [SM] did the prostitution work.

[114] Before she started with prostitution on the road, she was given two pieces of "rock" for free for her to get energy to go out and work. Afterwards when she was done with a client she usually came back to the house and then she would receive another piece of rock. She told the court that rocks leave your system quickly and that you would require more rocks for you to have energy to go out and do prostitution for the night.

[115] The money they made from the prostitution was given to the person who gave them the rocks. The money no longer belonged to them. She told the court that sometimes accused 2 would phone accused 1 and that she would then greet accused 2 over the phone.

[116] One evening two guys approached her and [SM] for business. When they got to the house of these guys, they informed them that they are looking for girls to

work for them. They told these guys that they are not interested. As they left the house of the guys accused 1 drove past. He reversed and told them to get into the vehicle. Once they got home accused 1 did not believe them when they told him they hadn't known that these guys wanted to recruit them. Accused 1 then started to assault them.

[117] She indicated that accused 1 assaulted [SM] with a cable wire over her body and that she obtained ugly marks on her back, stomach, and thighs because of the assault. She told the court that he made her sit on her knees for a very long period and threw cold water over her. He also hit her on the tips of her fingers.

[118] She explained that sometimes [SM] would be unhappy and complain. She would go to accused 1 telling him she wants to go home. Accused 1 would then tell her that she must wait as there was no money for taxi fare. She testified that once [SM] ran away to Kenilworth.

[119] She confirmed that during the time that she was at accused 1's house, [CJ] would visit her as she was living with a person by the name of Kenny. She stated that at the time [CJ] visited, [SM] had already run away from the house of accused 1.

[120] She also told the court that before coming to Cape Town her personal circumstances were not good, that work was scarce and that she was using drugs tik and mandrax. Her relationship with her mother was also not good. She testified that there was a time when she was living at the house of accused 2.

[121] She identified the premises and the room she stayed in with [SM]. She indicated that this room's door had to be opened with a spoon. She further also identified the spots she stood at when doing business on accused 1's instructions.

[122] It was further put to the witness that she assisted clients during 2015 at accused 1 house with internet dating. She would deal with the Afrikaans speaking clients and that money would be deposited at Shoprite for their services. The witness confirmed this.

[123] It was put to the witness that accused 1 denies that she would bring men home and have sex with them for money at his house. She confirmed that it indeed happened and at the end of the night when accused 1 came home the money that was made would be given to him.

[124] It was put to the witness that accused 1 denies that drugs were ever sold at the premises. The witness stated that this did happen.

[125] During cross examination the witness confirmed that [SM] was at accused 1's house during 2015 and she stated that she knew [CJ] visited at the house, she is not aware if she ever worked for accused 1.

[126] She testified that she does not know of an occasion where she was in a vehicle of accused 1 with [CJ] in Springbok nor does she know of Ms [MA] being at the house of accused 1.

[127] It was put to the witness that accused 2 met her through accused 1. The witness stated that this cannot be true because she lives in Springbok and accused

1 lived in Cape Town. It was further put to the witness that accused 2 denies ever asking her to go to Cape Town to work. The witness stated that accused 2 together with accused 1 had asked her to come to Cape Town to do prostitution work.

[128] The witness confirmed that accused 1 had told them they would no longer be able to smoke tik and that they should rather smoke “rocks”. It was put to the witness that accused 2 denies that she ever stayed at the house of accused 2. The witness confirmed that she did in fact stay at the house of accused 2.

[SM]:

[129] [SM] testified that she is from Matjieskloof, Springbok and that she knew accused 1 through accused 2 after accused 2 had taken her for a holiday in Cape Town during a December holiday. She stated that she does not know accused 3.

[130] She testified that she and accused 2 became good friends when accused 2 was living in Matjieskloof and that she may have been between the ages of 16 and 17 years old at that time. She was unemployed and that her sister was taking care of her. She told the court that her mother had passed away when she was 11 years old. She testified that she used alcohol and later started smoking tik. Accused 2 knew her personal circumstances.

[131] When she came to Cape Town for the first time, she may have been between 17 and 18 years old. She testified that they came for a good time, went out a lot and that accused 2 showed her how to sell her body on the street.

[132] On the last night when they were supposed to leave, accused 2 did not want to pay for her taxi fare back to Springbok. She further stated that accused 1 hit her with a broom that evening because she did not want to do prostitution for him. She then ran away and managed to get hold of her sister who paid for her taxi back to Springbok.

[133] She stated that when she returned to Matjieskloof she was angry at accused 2 at first but later they became friends again. She testified that there was another occasion accused 1 came to Springbok to visit accused 2. On this occasion accused 1 and 2 had asked her and the witness named [MS] to go and do prostitution in Cape Town for accused 1. She and Monique agreed to do so as at that stage she knew how the prostitution worked.

[134] [MS] and her left Matjieskloof with a taxi and accused 1 travelled with them. She stated that she was promised that she could smoke tik and drink alcohol when she got to Cape Town but that once she arrived at the house of accused 1, he only wanted her to smoke "rocks". She testified that once you smoked rocks you would be willing to go out and sell your body for R50.

[135] She was told to go out and do prostitution every night and the money that she made she had to hand over to accused 1 and in return she would get a "rock". She never had money for herself as she had to give all the money she earned to accused 1. She stated that accused 1 would drop her off at the spot where they were supposed to stand. She testified that if she brought in little money then accused 1 would be rude and he would also assault her with either a belt or a



wooden spoon all over her body. On occasion he would also throw her with water and then assaulted her with a basket or pushed her head into the water.

[136] She testified that before she went out on the street she would receive a piece of “rock” as a “wake up”. Thereafter she would receive a piece of “rock” every time she brought accused 1 money. She testified that sometimes she would run away from accused 1’s house, but he would always find her and bring her back to the premises and assault her. One night he assaulted her and because she had enough, she decided to run away to Kenilworth. She testified that one night accused 2 phoned her and informed her that she is in Cape Town and that her family is looking for her. Accused 2 told her that she and accused 1 would come pick her up and that she would pay for her taxi fare back to Matjieskloof. She was then picked up and returned to Matjieskloof with accused 2 and her children.

[137] She testified that the third time she came back to Cape Town with accused 2 they stayed in Bellville. Accused 2 had sold her to someone in Bellville for taxi fare home and left her there. While she was out on the street accused 1 found her again and took her back to the premises where he made her sit on her knees for three to five hours. Afterwards he asked her to work for him again, she agreed. Whilst working for him she ran away.

[138] It was put to the witness that the first time accused 1 met her might have been between 2015 and 2016 when she came to his house in Brooklyn with accused 2. This was the morning after he had found accused 2 inebriated on the streets in Bellville and had call the police to assist him. He stated that he and

accused 2 had an argument and then accused 2 and the witness left. The witness denied the version put to her.

[139] It was put to her that the second time accused 1 saw her was in Bellville during 2016 at a complex. She was with a person named Emmanuel who was dealing in drugs and working with prostitutes and who is alleged to have been her boyfriend. The witness denied this and stated she does not know a person called Emmanuel.

[140] It was put to her that the third time accused 1 saw her was in Springbok, and they just greeted each other. It was put to her that the last time he saw her was at the same complex in Bellville towards the end of 2016 and she was pregnant. The witness denied this and stated that the time she was pregnant was the period that accused 1 came to accused 2's house in Springbok with [MS] in his blue vehicle.

[141] It was put to the witness that she was never inside the house of accused 1. The witness stated that the statement is untrue. During cross examination it came to light that prior to the witness coming to Cape Town for consultation with the prosecutor she had been asked by accused 2 to say nothing regarding the allegations and that the witness must think about the children of accused 2.

[142] It was put to the witness that the reason why she knows about the bedroom door which needed a utensil to open was because she probably spoke to [CJ]. The witness denied this and testified that the reason she knows about the door was because she was inside the house.

[143] It was put to the witness that she and accused 2 had been good friends. Further that before she came down to Cape Town with accused 2, she and accused 2 had gone to the club in Springbok to sell their bodies for money. The witness states that she can't really recall but that that they did go to the club to have fun. She added that it may have been so.

[144] It was put to the witness that the reason she and accused 2 came to Cape Town that December was to come and do prostitution to make some money. They went to Bellville to do prostitution work there. The witness responded that it was the second time when she came to Cape Town that she and accused 2 had decided to come and do prostitution. This did not happen on the first occasion.

[145] She stated that the first time she came to Cape Town they came with the children of accused 2. They went to a house in Brooklyn where they smoked "rocks". Accused 1 came to fetch them there and accused 2 had to begged him not to beat her. Accused 1 took them home and he assaulted accused 2.

[146] The second time they came to Cape Town they went to Bellville and they stayed with a Nigerian lady and had to pay R50 if they wanted to use a room for prostitution. It was put to the witness that one evening accused 1 found accused 2 on the street where she was very drunk, and he called the police. She was forced to leave with accused 1. The next morning, she arranged to meet the witness at the seven eleven and then they went to accused 1's house. According to accused 2 this was then the first time that the witness had been at the house of accused 1. According to accused 2 she and accused 1 had an argument and he wanted to hit accused 2 with the broom, the witness intervened and accused 1 ended up injuring

the witness in the process. The witness states that she can't remember such an incident.

[147] It was put to the witness that after this incident accused 2 and the witness left and went to a person by the name of Omar who lived in Brooklyn. The witness responded that she knows she was there the first occasion she came to Cape Town with accused 2 because they only stayed in Brooklyn. They never went there on the second occasion.

[148] It was further put to the witness that accused 1 had given accused 2 taxi fare money to return to Springbok. It came to light during the cross examination that accused 2 had taken the witness to a man in Parksig and had left her there. She had sold her to this man for her to get taxi fare back to Springbok. The witness testified she does not remember that accused 1 gave accused 2 money for taxi fare.

[149] It was put to the witness that after the broom incident she didn't want to go home to Springbok but wanted to stay at Omar place. The witness stated that she does not remember such an incident. The only time she stayed at Omar's house was the time she ran away from the house of accused 1 and that this was after he chased her with the broom, during the first time she came to Cape Town with accused 2.

[150] In relation to questions about [MS] the witness testified that she came to the house of accused 2 and had in fact slept over one weekend.

[151] The witness once again reiterated that the first time she came to Cape Town with accused 2, they were mostly in Brooklyn. After accused 1 had chased her with the broom she ran away to Omar's house where she also worked. At some stage she got in contact with her sister who then arranged taxi fare for her to come home to Springbok. She did not return with accused 2.

[152] It was put to the witness that accused 2 will testify that the witness only came with her on one occasion to Cape Town when they stayed in Bellville with the Nigerian lady.

[MA]:

[153] [MA] testified that she had known accused 2 since the time she moved to Matjieskloof, Springbok. She also stated that she knew accused 1 as the husband of accused 2. She testified that she and the brother of accused 2 were friends and that is how she got to know accused 2.

[154] She stated that accused 2 had asked her during 2016 if she was interested in going to Cape Town to fetch drugs from accused 1 and that she would pay her R2000 to do so. Initially she said no as her boyfriend was very jealous and he would not allow her to go. When accused 2 asked her a second time she also said no. This request was made in the presence of her boyfriend Bertram (Booise), and he also felt that the witness should not do it.

[155] As time went by the witness explained that things were not going well in her life. She was using drugs excessively, neither she nor the boyfriend were working,

and they had little to no food. That is when she and Booise discussed it and agreed that she would take accused 2 up on her offer to fetch the drugs in Cape Town and get paid R2000.

[156] She testified that she went to accused 2 and asked if the offer still stood to which accused 2 replied yes. Accused 2 told accused 1 that a lady is coming. They waited for accused 1 to deposit money to Shoprite for taxi fare for the witness and when he did, a taxi was booked for her. The witness left Sunday afternoon from Springbok to Cape Town. Accused 2 had informed her that she must just collect the package and that she would be returning the next day.

[157] She arrived at the house of accused 1 after 10 pm the Sunday evening. When she got there accused 1 was not at home yet. When he eventually arrived, she told him that she was told by accused 2 to collect a package from him. She testified that at that stage accused 1 did not want to talk about the package. She went to the bathroom and when she came out, she saw a girl by the name of [MS] who was also from Springbok. She asked [MS] what she was doing there, and [MS] also wanted to know what she was doing at the house of accused 1.

[158] She informed [MS] that she came to collect drugs for accused 2 and take it back to Springbok and [MS] then informed her that she was in fact there to help her with the prostitution work. She further stated that accused 1 had informed accused 2 that he needed another girl to assist her with the prostitution work and this is the reason the witness was sent.

[159] She testified that she then tried to ascertain from accused 1 what she was meant to be doing here in Cape Town but that he did not want to talk about it. She testified that later [MS] came back with a man, and they went into the bedroom. After a while [MS] came out with a R50 and gave it to accused 1 who then gave [MS] a piece of rock. The witness also purchased a piece of rock from accused 1. She further informed the court that accused 1 told her he does business in one of the rooms and that she had assumed he meant prostitution.

[160] She testified that the next morning at about 5am she once again had a conversation with [MS] who again confirmed that accused 1 needed another girl to do prostitution work for him. Apparently, according to [MS], this witness was not one of girls whose photos accused 2 had sent.

[161] She testified that after [MS] fell asleep, she took her cell phone and contacted Booise to assist her. She told him that she had discovered that accused 2 had actually sent her to come and do prostitution work. She asked him to contact her mother.

[162] She was contacted by Victoria and informed that they had booked her a taxi to come back to Springbok. At a later stage accused 2 also phoned her about the story she was telling people and asked whether she couldn't stay till the end of the week to help out because who was going to pay for her taxi fare now. She then informed accused 2 that her mother will pay her taxi fare.

[163] The taxi collected her from accused 1's house and took her back to Springbok the Tuesday. She informed the court that prior to this incident, she

abused drugs, was unemployed and did not have a good relationship with her family. She indicated that accused 2 knew this information. She further confirmed that she never at any stage looked after the children of accused 2.

[164] It was put to the witness that the reason she came to Cape Town during 2016 to accused 1's house was to look after the children of accused 1 and 2 and not to collect drugs. The witness denied this by responding that as a drug user how could she be trusted to look after children. Furthermore, the children were living in Springbok, why would she need to go to Cape Town to look after them.

[165] It was put to the witness that accused 2 wanted to send the children to Cape Town for a period of two weeks as she needed a break. The witness denied this version of events and enquired why the children weren't sent with her the Sunday night.

[166] It was further put to the witness that the reason she went down to Cape Town that Sunday was to have a look at the place, meet accused 1 and satisfy herself that she was comfortable with the place before she committed herself. The witness denied this.

[167] It was put to the witness that the first thing she wanted to know when she arrived at the house of accused 1 was whether there was a place close by which sold tik. The witness admitted that because she was a drug user, she enquired this but that it was not the first thing she asked.



[168] It was put to her that accused 1 found out about her request for drugs and realised she was not suitable to look after the children and decided to send her back. The witness responded by stating that she was never suitable to look after the children. Accused 1 booked her a taxi. The witness denied this and stated that the witness Victoria booked the taxi. It was further put to the witness that she left the early hours of Monday morning. The witness denied this and stated she left the Tuesday.

[169] The witness was asked whether she was not afraid that she would be arrested and sent to jail if she was caught with the drugs which accused 2 allegedly sent her to go fetch. The witness replied yes which is why she initially said no, but because she was desperate at the time she agreed to go.

[170] During cross-examination it came to light that accused 2 had told the witness that accused 1 only sells rocks.

[171] It was put to the witness that the agreement between her and accused 2 was that she must look after the two middle children of accused 2. The witness responded by saying she would have said no if she had been asked this.

[172] It was further put to her that accused 2 wanted a break from the children and that is why she was sending them to Cape Town. The witness had never been to the place of accused 1 and she first wanted to ascertain how the set up was. This is the reason she went to the house of accused 1. The witness denied this.

[173] It was put to the witness that the same evening she arrived at accused 1 house, accused 2 had phoned her and asked her how everything is and that the witness had responded that everything is fine. The witness denied that this conversation ever took place. It was also put to the witness that accused 2 was very surprised to see that the witness had returned the next day.

[SD]:

[174] [SD] also referred to as Z[...]) testified regarding counts 34 to 39. She confirmed that she stays in Port Elizabeth, had completed standard 3 at school, could not read and write English, but could speak it. At the time of the hearing, she was working in Port Elizabeth at an hotel for approximately a year.

[175] She confirmed that she knew all three of the accused.

[176] She described to the court that she met accused 1 in an area called Central Port Elizabeth where she was staying with a Nigerian guy. She went outside to find drugs and was approached by two guys in a grey Polo vehicle. The driver was accused 1. She went outside so she could find a customer to get money to smoke drugs. She confirmed that she sold her body to get money to buy drugs. She further confirmed that she smokes “rocks” and that that was her drug of choice.

[177] The driver of the vehicle, accused 1, asked her whether she knows of a place where he could buy a pipe and “gosh”. That, according to the witness, is “a soft gold steel wool” which is used inside a pipe and which you need to smoke.

Accused 1 and his friend was looking for rocks. They asked her to get inside the car and when she was inside the car accused 1 told her that he had booked an hotel in East Central.

[178] The three of them went to the hotel and once inside, accused 1 told her that he lived in Cape Town and that he wanted her to come to Cape Town with them. He promised her he would treat her well and he would do everything for her. She testified that she was desperate at the time and had also never been to Cape Town. While she could recall that the driver was accused 1 she could not recall the name of the other guy. According to her testimony accused 1 cut her six pieces of rock whilst they were at the hotel which she smoked there. Thereafter, and because he said he would treat her well she agreed to go with accused 1 to Cape Town.

[179] Accused 1's friend asked her if she doesn't have a friend, but her friend had already left with a client. After they left the hotel, she told them that they could look for girls outside. She saw a coloured girl on the street and approached her on the request of accused 1's friend to join them in the car. She didn't tell the coloured lady, whose name she cannot recall, that they were going to Cape Town. She then told the coloured lady that they were going to the hotel to "do business" (business according to the witness is when you sell your body for money). The coloured girl agreed to go to the hotel and got inside the car.

[180] Whilst in the car, accused 1's friend provided the coloured girl with tik, her drug of choice. and the witness testified that they drove towards Cape Town. They were smoking in the care, drinking whiskey, listening to music and eating KFC. Accused 1 cut two more pieces of rock for her whilst they were driving, which she

smoked in the car. The coloured girl did not know that they were going to Cape Town. The witness however knew that they were going to Cape Town and that they would be working for accused 1. According to her the work required of her was to get clients, give the money she made to accused 1 and he will buy her drugs on the basis that he would treat her well and look after her. She perceived accused 1 to be very nice as he spoke to her very gently and very nicely. She did not tell a single soul that she was going to Cape Town and took no clothes with her. She stated that they were very high and further that the coloured lady was not happy at all. She was crying and the witness told her that everything will be ok.

[181] In the car towards Cape Town accused 1 was very nice to her and even allowed her to sleep against his legs. When she woke, they were in Cape Town and they stayed in accused 1's house. The witness was shown photographs of the premises and confirmed that it was accused 1's home where she had stayed. She testified that initially when she arrived at the house, she was scared that they were going to be killed as there were lots of "males in the house". The coloured lady was still crying and was not happy. She did not know that they were taking her to Cape Town. The coloured girl was called by a friend of accused 1 and she left with him. Accused 1 took her into one of the bedrooms and she met another coloured lady who was busy smoking in the room.

[182] The witness identified this coloured lady as [SM]. According to the witness accused 1 told her that the coloured girl would be her roommate. He went to go fetch something for her to smoke and after that the witness and the coloured girl basically did everything together. They would bath together, sleep together and go

out to work on the streets together. The routine would be that they would wash, then be given rocks which she calls “wake up”, and then they would go out on the street to get customers.

[183] From her evidence she was completely addicted to rocks. She showed an intense liking for smoking rocks. She explained that this drug gave you a lot of energy, made your body strong and enabled you to do “business the whole night”. She was only allowed to leave the house once she had a cellphone provided to her by accused 1. During the first two days of doing business she had no customers but on the third day she made a lot of money. Accused 1 was very proud of her performance and called her “a machine”. The witness became extremely emotional when she testified about the name given to her by accused 1 and why she was given this name. According to her accused 1 at that stage still treated her well and called her his daughter and she called him “father” or “daddy”.

[184] She testified that accused 1 explained to her what to charge for her work: R100 for a blow job and R200 for a blow job and sex. If a customer wanted to stay longer, they had to pay more than the standard R200. She listened to him and obeyed him because she didn’t want to disappoint him as he looked after her.

[185] Accused 1 told her to put on the clothes of [SM] whom she found there, and she agreed to do so. She continued doing business and got many clients. She would give accused 1 the money she earned, and he would give her something to smoke. According to her the drugs made her lose her appetite and accused 1 was not happy about this which caused them to start fighting. He was worried that she was getting too thin and encouraged her to eat. He pushed her to earn more and

more money. When she asked him to buy clothes. he would not buy her the clothes she wanted, but would rather convince her to buy something less expensive. She was extremely unhappy that she was making so much money for him but could not buy nice clothes with the money she had made. Even though she was unhappy she could not talk or complain too much as he would motion towards her that she would get a smack.

[186] She confirmed that the persons staying in the house whilst she was there were accused 1 and 3, the coloured girl called [SM] and another person whose name she could not remember. Apparently, there were also two other ladies, the girlfriend of accused 1 and the girlfriend of a fifth person in the house whom she could not remember. They did not work for accused 1. In her view the other girls were being kept from the money she earned as they were provided with toiletries, food, clothes and everything else they desired. She was not happy about the situation at all.

[187] She also complained that accused 1 would play her and [SM] off against each other by comparing them to each other based on how much money they had earned. She didn't like the competition he created between them.

[188] Accused 1 would tell the witness to go out and work even if she didn't feel well or if it was cold and windy outside. This is according to her when she first saw his cruelty and true colours. She fell ill and begged accused 1 to stay at home but he still forced her to work. She finally became so thin and exhausted that she was taken to a clinic as he did not want to take her to hospital. Accused 1 didn't even want her to drive to a clinic and told her to walk there. The witness was visibly

upset when explaining her situation. She was diagnosed with TB and as being HIV positive and provided with medication. According to her accused 1 had no sympathy for her situation and had no heart. She simply had to fatten up and start working again. As soon as she had picked up sufficient weight she had to work for accused 1 again.

[189] After a night out with a client she took him to the taxi station and was involved in a motor vehicle accident. She was taken to hospital. At the time of the accident, she described herself as being “sober like a judge”. According to her the accused told her not to tell anyone where she comes from and had instructed her to lie to the staff at the hospital. The ambulance took her to Somerset Hospital where she stayed for a period. She could not explain for how long. According to the witness, Alex, the brother of accused 1 and his girlfriend came to the hospital to visit her with gifts from accused 1 and accused 1 also later came to visit her with gifts. He insisted that she make up a story and that she does not tell the lawyer or the doctor about what she was doing.

[190] She was repeatedly told not to say anything. Accused 3 also visited her at the hospital and told her not to say anything to anyone about what she was doing. After she was discharged from hospital, she was taken back to the home of accused 1. [SM] looked after her mostly while she was recovering and she heard a story that [SM] did not come back one morning after sleeping over with a client. Accused 1 could also not get hold of her on her cell phone and she was nowhere to be found. Accused 1 was extremely angry as no one was making money for him.

[191] When accused 1 found [SM] he brutally assaulted her. She saw and heard accused 1 slapping the girl, hitting her with his fists, hitting her with a broom until it broke, hitting her with the buckle of his belt and further forcing her to put boiling water on her head in a bucket whilst holding two glasses in her hands. The witness became extremely upset and shouted to accused 1 that she hates him for what he did to that girl. Accused 3 and Alex was present during the assault. Accused 1 also hit the coloured girl with a white electric wire. The girl was told to stay inside according to her for one or two months and later begged her to talk to accused 1 as she wanted to go outside. She did so and the coloured girl was allowed to go outside and work on the basis that if she did not come home again, he would assault her again.

[192] The girl went out and never came back again. According to the witness accused 1 could not find her and said that if he finds her, he would kill her.

[193] Accused 1 told the witness that he was going away to look for girls, that she must not tell anyone and that she had to look after the house. She then became a drug dealer in the premises. The witness explained that Alex would cut the rocks for her and she would sell the cut pieces to customers.

[194] Accused 1 returned and advised her that he had found two girls whom he would be bringing to the premises. He arrived at the house with a very young Xhosa girl, still a child according to the witness, and a white girl who was introduced to her as Roxy. Both girls stayed with her in her room and she had to teach the Xhosa girl to smoke rocks rather than tik which she did. She shared her clothes and everything else with them as she did with the coloured girl that previously lived



in the house. According to her accused 1 explained the same story to the girls as he had to her that they must make lots of money. He warned the Xhosa girl not to speak to Nigerians or Cameroons as she was beautiful and sexy and they would try to take her from him. Accused 1 explained the rules to them, for example that they can't go outside without a phone. Both these girls worked for accused 1. Accused 1 would always give them a "wake up" rock before they went out. Roxy was also injecting drugs and placed her own safety at risk.

[195] The Xhosa girl also ran away one night and accused 1 found her staying with another Nigerian. Accused 1 assaulted the Xhosa girl in the same way he assaulted the coloured girl. This time she did intervene and shouted at accused 1 to stop. He told her to shut up or he would break her other leg. She kept quiet and he continued beating the Xhosa girl. When the Xhosa girl was finally allowed outside again, she ran away never to be seen again.

[196] The witness was contacted by the lawyers for her claim against the Road Accident Fund and she then told the lawyer her full story. This time she told the truth about her situation and that she was working for accused 1.

[197] Roxy was also involved in a car accident and had a broken leg. It was in white cement from her hip to her foot.

[198] One night she went out to a client's house and as she was having a good time there, she did not go home. The next morning, she realised that she would be in trouble and was scared that she would get beaten like the other girls that she had seen. She went to a drug dealer, Monday's, house and he agreed that she could

stay there. She agreed to sell drugs for Monday. Accused 1 found out that she was working for Monday and arrived at his house. As he was threatening to hurt Monday, she intervened and agreed to go home with him. Accused 1 started shouting and calling her names from the moment they got into the car. On their arrival at home, she received a beating similar to that of the other girls. He slapped her, hit her with his fists, hit her with an electric wire, hit her with the buckle of his belt, hit her with a broom and had her balance boiling water on her head. After the assault she stayed in the house for about two days and thereafter she had to start working again. She testified that she still had the bruises on her body and even offered to show them to the court. She did not receive any medical attention but was given rocks to smoke as it takes the pain of your body away according to her. After the beating and on the first occasion that she was allowed out, she ran away to Monday's house where she remained selling drugs for him. Accused 1 was then arrested.

[199] After the arrest of accused 1, accused 3 and Alex was still looking for her in the blue car of accused 1.

[200] She was contacted by Pamplin, whilst she was living with Monday, who wanted her to make a statement. She agreed to go with him and did so. Everything she told him he wrote down and it took days to complete the statement. She then decided that she didn't want to go back to Monday and Pamplin called a shelter for her where she stayed and was attended to by social workers. She was looked after well with the assistance of Pamplin and thereafter the police took her home to Port Elisabeth where she stayed at home with her sister and aunt.

[201] Whilst in Port Elisabeth accused 1 telephoned her and told her that if the police questioned her, she should not tell them anything and should tell them that she was looking after his daughter and his son. She lied to him and told him he need not worry, she would do so. He also asked her who she was working for in Port Elisabeth and she told him that she was not working for anyone and will never go back again. She was also called by accused 3 who begged her to come back but she refused.

[202] She received various messages from accused 3 but no longer had them. According to the witness accused 1 also told her she must lie about Pamplin and say that Pamplin told her to say the things she testified about in court and that Pamplin forced her to make the statement. She confirmed very robustly that it was not Pamplin who made her say things; it was she who wanted to tell the truth. She looked at accused 1 and said that here she is telling the truth.

[203] She identified a girl [SN] as the Xhosa girl who came to the house with Roxy and being the one that accused 1 assaulted. She identified [SM] as the coloured girl she stayed and worked with when she was brought to Cape Town.

[204] She also confirmed that she knew a girl named [UL] as being a girl who was staying at accused 1's house. She was not doing business according to the witness and was sleeping with accused 1.

[205] She confirmed that accused 1 never gave her any of the money that she earned by selling her body. He took everything.

[206] She confirmed that she knew accused 2 as she is accused 1's wife and she saw accused 2 on two occasions at his home. Once she came alone and once she brought her children with whom she played. She confirmed that accused 3 was staying at accused 1's house and helping him with the business and that he was also selling drugs and would regularly come home with very young girls. She recalled a specific young coloured girl with whom he slept and whom he tried to teach to smoke drugs. According to the witness accused 1 and 3 was telephoned by a sister who had a client who was smoking and wanted a girl. The girl was taken to the client and when she came back she reported that she didn't like it.

[ND]:

[207] [ND] (also referred to as "Roxy") testified that she obtained grade 6 at school and was born and bred in East London. She is currently self-employed and works as a motor mechanic. She is in the process of getting divorced and has three children, aged 13, 11 years, and 4 months. She confirmed that she knows accused 1 by the name of Eddie and accused 3 as Yannick. She had seen Yannick once at the house of accused 1. [ND] confirmed that she was working as a sex worker in East London when she met accused 1. She explained that one evening whilst she was working, a black car approached her and accused 1 was in the car. He asked her to get in and they went to the beachfront where he asked her to come work for

him in Cape Town as a sex worker. She was not certain but recalled that that a person called Moola was with accused 1.

[208] She testified that she had never been to Cape Town before and was a bit “sceptic”, but he explained to her that it was so much nicer in Cape Town and that she will make so much more money there. He dropped her off and picked her up again the next day and took her to the place where [SN] was, it being a bed and breakfast in East London. According to [ND] accused 1 told [SN] to get ready because they were getting on a bus to go to Cape Town. They booked two bus tickets at the Windmill for herself and [SN] whereafter they went to Oxford Street where accused 1 bought heroine for her to take on the bus. She went with him to buy the heroine. She needed the heroine as she was using at the time.

[209] Accused 1 gave her the heroine to use and he sat two seats behind them. She had no clothing and he bought her an outfit at Pep Stores. [SN] had luggage. They were picked up by Yannick, accused 3 who met them at the station whereafter they, by way of taxi, went to accused 1’s house in Koeberg Road known as P[...] G[...] Street. At the premises accused 1 gave them their first rocks to smoke. According to her a person named Z[...] was at the house. As [SN] had never smoked rocks before, accused 1 asked Z[...] to train [SN] to smoke rocks.

[210] As accused 1 did not have her drug of choice, heroine and he had to go and buy her heroine so she could work that evening. When he came back, he gave it to her and she went out to work on the first evening. He explained to her where she must stand every evening and he drove up and down the whole night. According to her [SN] stayed at the premises. She confirmed that every time she made money,

she had to give everything to accused 1. The procedure was that when she was finished with a client, she handed the money to accused 1 and she would receive a piece of rock and a bag of heroine in exchange. Accused 1 told her to charge R300 for a so-called “full house” (both sex and blow job) and R200 for either a blow job or sex. She explained their work schedule as being: they would start getting ready between 5 and 6 in the evening. He would give them a “wake-up” (a piece of rock and to her a bag of heroine). They would use it whereafter they would go to work. After every customer she would receive another bag of heroine and a piece of rock. They were not allowed to go out during the day and if they didn’t make money accused 1’s attitude would change towards them in the sense that he would become rude. He always wanted them to make money.

[211] During May 2017 she was knocked over by a vehicle. According to her it was the same make of vehicle that knocked over Z[...], a Polo. She was taken by the ambulance to Somerset Hospital and had a plaster on her right leg. She was aggrieved that accused 1 didn’t visit her once while she was in hospital. She contacted her father who stayed in East London and as a result of withdrawal symptoms from the heroine she booked herself out of the hospital after two to three days.

[212] Accused 1 and Alex fetched her and took her home. Accused 1 did not want to give her “stuff” and told her to contact her father to send money. He father sent R100, of which Alex took R50 for petrol and gave her R50 for a bag of heroine. Accused 1 told her to ask her father for a R1000 in order for him to take care of her

as she was not working. He father did not agree and she then asked him to send a bus ticket so she could go back to East London.

[213] She testified that they could not get out of the room as it only opened from the outside. She was kept at accused 1's house against her will. Her father sent her a bus ticket but accused 1 did not allow her to catch the bus. She told one of accused 1's customers who attends at the house to smoke rocks to go to Maitland Police to tell them what was going on, but nothing happened. She contacted her father again who contacted the Hawks to get her out of the house. She did not know whether they would come or when they would come. She was in the room when they arrived and she was taken to a safe house. A girl called [UL] was with her in the room and she was also taken to a safe house.

[214] [UL] came to the house one night with Z[...]. [UL] stayed there but Z[...] disappeared. [UL] was staying with accused 1 in his room for a few days and they were having sexual relations. She did not do prostitution work.

[215] According to [ND] the reason accused 1 kept [UL] there was because he thought she knew where Z[...] was, even though she did not. Her recollection was that [UL] was there for about a week.

[216] [SN] ran away to another dealer but came back the following day. Accused 1 made her stand on her knees with a cup similar to a coffee cup with water on her head. He beat her with a kettle cord across the back. A day or two after the assault [SN] ran away again.

[217] Accused 3 sold drugs on behalf of accused 1 to them. She confirmed that if she did not get heroine, she would have terrible withdrawal symptoms which included pain, stomach aches, a runny tummy and hot sweats. Accused 1 was fully aware of the fact that she got sick if she did not receive drugs. She had to work, sell her body, for her to receive heroine and drugs. A bag of heroine cost R 50.00 and she would inject the heroine. She confirmed that even if she gave accused 1 R200 to R300 for the services that she had rendered, she would still only receive one rock and one bag of heroine. She worked with a phone that was given to her by accused 1. He would often check the phone to make sure that she did not have other dealers' numbers on the phone.

[218] She used the clothes in the wardrobe that she assumed were Z[...]’s clothes and accused 1 would buy basic toiletries and female products for them. With reference to the exhibits, she confirmed that she was indeed in accused 1’s house and in the room as depicted therein. The period she stayed at accused 1’s house was a period of less than a year. At some point she shared with Z[...] and [SN] and this is the same room where they would do their business. Accused 1’s friends would also come over on occasion to buy rocks and then they would spend the night with them. These customers were called smoke customers. She knew no one else in Cape Town.

[219] She testified that she would have liked money for herself but that it was not allowed. She did tell accused 1 occasionally but he didn’t care and he simply told her to “f” off. She confirmed that her and [SN] wanted to run away to East London but it never happened, even though [SN] did manage to get away from accused 1.



She asked him if she could go to East London and he said no. She further testified that she did not run away because he told her that he had people watching her. They were also not allowed to speak to police officers. They were not allowed any choice in clients they saw. She confirmed that she didn't have a life whilst living with accused 1. She further confirmed that accused 1 was aggressive towards her at times. He for example threw a mug at her but it didn't hit her.

[220] During cross-examination it was put to her that accused 1 and 3 says that she was Moola's girlfriend and that accused 1 saw her for the first time when he came back one night from a club in Cape Town and then again one night when she arrived at their premises wet and with a cast and crutches.

[221] The witness was visibly agitated hearing accused 1's denial of the circumstances under which they met. She was amazed that he could make these statements as she knew no-one in Cape Town and would not have known where to go or to stay had he not brought her to Cape Town. She denied being Moola's girlfriend and the version of how they met as put on behalf of accused 1. She denied only being at the premises for 10 days.

[222] It was also put to her that the case against accused 1 was because of an officer with the name of Felix, who is the brother of the man called Zain, who is the suspect in a carjacking case made by accused 1. She confirmed that she was aware of accused 1's car being stolen but that was all. When put to her that accused 1 and 3 denies providing her with drugs she stated: "that's how he kept me there".

[The father of ND]:

[223] He testified that his daughter, [ND], advised him that she wanted to go to Cape Town with a white gentleman. He did not see this person. She contacted him occasionally and she told him she enjoyed it in Cape Town. During September 2017, she told him she wanted to come home and then later she phoned him again from hospital and told him that she had broken her leg and that she desperately wanted to come home. She released herself from hospital and went back to where she was previously staying and phoned him again from someone else's phone. She said she urgently needed to come home, she could talk to him on the phone anymore and was held captive in a room with a locking device on the outside.

[224] She phoned him again and asked him to contact the police which he did by going to the Fleet Street Police Station in East Londer where he spoke to Warrant Officer Wood who directed him to the Hawks. He provided the court with the handwritten note he made pertaining to the contacts he received and the people he spoke to until his daughter was rescued on 12 September 2017, which reads as follows:

*"MESSAGE FROM SAPS Case Registration on 2017/09/12. At Maitland  
Ref no Cas 115/9/2017 Contact Detail: 021 506 940014h39*

*W/O Wood: 043 7070732. Saw W/O at Fleet Street Police Station on  
2017/9/04 for assistance and he referred me to Rudi Van Dyk at FCS Unit.*

*W/O Rudi Van Dyk: [cell number omitted]. Saw Rudi Van Dyk in connection  
with [ND] and he referred me to HAWKS Capt Jack.*

*Capt Jack HAWKS: [cell number omitted]. Human Trafficking Unit and she arranged with Colonel Chetty of HAWKS Cape Town and arrest was made on 12/09/2017.“*

[SN]:

[225] [SN] was 18 years old when she testified. She confirmed that her date of birth is 14 October 2003. She left school in grade 8 and is not working. She knew accused 1 and 3 but had never seen accused 2. She knows accused 1 as Eddie and met him one evening outside a tavern called Bonhako in East London, where he was with a friend called Omega. They greeted her and asked her if she wanted to join them and drink with them. She said no she didn't want to, and they left with another girl that was there. Omega gave her their numbers as she said she was leaving soon and that it was late at night. Omega phoned her the next day and she told them that she can't leave as she was already home. After she spoke to him on the phone she went to the shop and on her way from the shop she met them at the tavern together with a man called Moola. She was asked by accused 1 to help him look for girls who can work for him in Cape Town. They drove around in a black motor vehicle looking for girls in the residential area where she lived. They first encountered a girl named Aneeka but she was not willing to work for accused 1 in Cape Town. The next person they encountered was a girl called Roxy [ND] who got into the car. When they were done talking, Roxy said she did not want to go with them as she was already on duty on the corner. That night she stayed in a guest house called Thule's Guest House. During that night she was left with Moola who tried to touch her, but she refused him.

[226] Accused 1 arrived at the Guest House on the third day she was there with Roxy in a black vehicle, and it was said that they were going to book tickets and that she was not going to go home as they were going to Cape Town. Accused 1 phoned accused 3 to arrange for money to buy tickets for the three of them to go to Cape Town. On their arrival in Cape Town, they were collected at the bus station by accused 3.

[227] On her arrival she found a girl named Z[...] [SD] at the house. She was fed and told to relax after the long trip as they had to go out to work that night. Accused 3 made the food. She had never smoked rocks before and was taught how to use it by Z[...] on accused 1's instructions.

[228] After they had finished smoking, they slept and was woken up to go and work. Accused 1 first took Roxy and dropped her off on a corner. He then came back to fetch her. Accused 1 told her that she must never talk to the police. She was also told not to talk to the Nigerians because they were dangerous or to the other girls on the streets. He drove a blue Peugeot.

[229] They were told by accused 1 that they were not allowed to come home with less than R800 or R1000.

[230] The first time she tried to escape, she ran away to Monday's brother's house. Accused 1 found her there and brought her back to his house. When Monday and his brother arrived, they were told that if she wants to stay with them, they must pay accused 1. Monday and his brother did not have money and they left her with accused 1.

[231] Later the evening, accused 1 told her that he is going to punish her. He slapped her with an open hand, let her get into a bath with water in and thereafter assaulted her with an electric cord.

[232] The second time she ran away she ended up at a Bed and Breakfast where she continued to do prostitution. Accused 1 eventually found her and took her back to his house. Once they got to the house accused 1 told her that because she was disobedient all the men in the house were going to sleep with her. He also wanted to assault her but accused 3 and Z[...] intervened.

[233] The third time she ran away she managed to escape with the assistance of her uncle who pretended to be a client. He booked her a bus ticket back to East London and this is how she got away from accused 1.

[234] She testified when she initially arrived at the house of accused 1 with Roxy and started working for accused 1, she was selling her body for money. She would either take the clients to the house of accused 1 or go to different places which were booked. She testified she was told by accused 1 how much to charge for her services.

[235] After she received money from the clients, she would go back to accused 1's house and give him the money. He would then give her drugs. She never received money for herself.

[236] Before they went out at night to do prostitution, they would be given a piece of rock by accused 3 as a “wake up”. Accused 3 would sell these drugs to them as well.

[237] During the day they were not allowed to go outside. They had to use the time to rest and sleep. She confirmed there was a door of a room which they were sleeping in which could not open from the inside and that when they went out to see clients, accused 1 would follow them by car.

[238] She explained that she ran away from accused 1 because he would hit her and make her sit like a frog with a glass of water on her head.

[239] It was put to the witness that both accused 1 and 3 will testify that they don't know her and that they deny all the allegations made by her against them.

[240] It was also put to the witness she had never been inside the premises of accused 1. The witness denied this and stated she had been there for 2 months and that is why she was also able to identify the house on the photographs shown. The time frame placed by her on when she was brought to Cape Town was around May 2017.

[241] It was further put to the witness she was just given a statement to sign, and the information contained therein did not come from her. The witness denied this and stated what is contained in her statement is what she told the police.

[242] During re-examination she confirmed that she lived in the premises for a period of about 2 months and that this is way she knew that accused 1 is married to a coloured lady with children.

[243] She further stated that there was also a girl named Zinthle who slept over at the house and that at the time she ran away Z[...]’s leg was broken.

[244] Based on [SN]’s date of birth, she must have been 14 years old when she was living at the premises.

Pamplin:

[245] Warrant Officer Pamplin (“Pamplin”) was the investigating officer in this matter. The SAPS received information pertaining to a girl that was held against her will and needed assistance at a house in Brooklyn on 12 September 2017. Based on the information a team was put together to assist. They arrived at the house and accused 1 was standing outside. He introduced himself to accused 1 and informed him of the reason for their visit. Accused 1 took them into the house and there were three other males sitting in the lounge area. De Leeuw proceeded to the back room and found two ladies in the room. He called Carelse for assistance and [ND] was brought out. The other officer, Durbaum, went in the room and brought out another female now known as [UL] and informed him that she had reported that she was raped.

[246] Accused 1 was arrested and transported to Maitland SAPS by Felix. He was from the uniform unit at Maitland and assisted them at Pamplin’s request. He

remained on the scene and requested Carelse to take photos of the remaining gentlemen. Later that day, at the Maitland Police station he processed accused 1. At that stage he got the statements of [UL] and [ND]. His investigation led him to other complainants.

[247] Z[...] was found at Monday's house and at a later stage he went to East London to obtain a statement from [SN]. He became aware there was a docket in Springbok with similar allegations against accused 1 and 2 and the docket was transferred to Cape Town. Based on the allegations by the complainants accused 2 and later accused 3 were arrested.

[248] In cross-examination it was put to Pamplin that the only reason why the accused was arrested was because of the carjacking case which accused 1 had made against the brother of Felix and the charges were fabricated. The witness denied this.

#### Dealing in drugs (Count 40):

##### Jacobs:

[249] Colonel Jacobs ("Jacobs") testified that he has been in the SAPS for 35 years and has been stationed as the Mispel Commander at Brackenfell Police Station since May 2021. He was previously the Station Commander at Bothasig for approximately ten years. During 2016 he was stationed at Bothasig.

[250] During 2016 he was involved in an undercover operation during about October/November. He applied for authority to conduct an undercover operation in



respect of trafficking in drugs and later applied for an extension of such authority which he received from the NPA in terms of a section 252 request. The authority to conduct the undercover operation was not placed in dispute and the relevant documents entered into the record as exhibits. He explained that they used informants and sources to link up with so called drug dealers. Captain Botes was also part of this operation. As part of the undercover operation, they made use of one Jennifer Smit ("Smit") who Captain Botes searched for drugs or money prior to her meeting the suspect to which the operation pertained. They also used a male agent, who would drive Smit to the collection point after a thorough search.

[251] Smit was tasked with contacting accused 1 and she placed an order of 6 or 8 grams of cocaine and 2 grams of Cat. At that stage the tendency was to make use of the so called "dial a pop" modus operandi. This meant that you would contact the number of a drug dealer and place an order. The buyer is then notified where the pickup point would be by the dealer. During this operation it was known to the SAPS that the particular drug dealer only wanted to deal with woman hence they involved Smit. After it was ascertained where the identified pickup point would be, Captain Botes and Constable Jaftha was posted at McDonalds in Kleinbos Street, in Kleinbos. This is opposite De Grendel Farm. Captain Botes informed him telephonically that a blue Peugeot pulled up in the parking area whereafter she advised him that the transaction had been done and he was requested to move in. He arrived at the scene and identified himself as a police officer in SAPS and saw the money between the two seats which was handed by Smit to the dealer for payment of the drugs. He confirmed that prior to Smit placing the order he showed her the R6000.00 cash and certified copies thereof. He confirmed that the copies

corresponded with the numbers on the cash. Smit handed the drugs to him which he then booked in. The people present at the scene was himself, Captain Botes, Constable Jaftha and Warrant Officer Smit.

[252] In the car was a then unknown black male to him and an unknown-coloured female. Smit identified accused 1 as the dealer. He took the money which was still in the state in which it was when he handed it to Smit. The money was then put on a table in a conference room in McDonalds and it was confirmed to be the same money handed to Smit. According to Jacobs, Smit told him that the unknown female, which was later identified as accused 2, had nothing to do with the sale of the drugs to her.

[253] The drugs and accused 1's cell phone were handed into SAP13. The female, now known as accused 2, was crying the whole time and said she had nothing to do with this incident and that she only got a lift from the person in the car and that she is from Springbok. The operation took place between 19h00 and 23h00. Jacobs confirmed that numerous photographs were taken by Captain Botes at the scene which photographs were admitted by agreement between the parties into evidence as exhibits. The photographs depicts where the money was found, the drugs that were bagged and the location of the operation. It further confirmed that it was accused 1 who was in the car with accused 2. Jacobs confirmed the chain of evidence in that the drugs were put in a serial bag and booked into the SAP13 register under serial number 991/2016. It was confirmed that accused 1 lived at 2[...] P[...] G[...] Street, Brooklyn. Colonel Jacobs confirmed that he was provided with a cell phone number, which number was phoned by Smit to contact

the dealer, by members of the community who used the number to buy drugs. He confirmed the cell phone number and that it was the number used by Smit. He further confirmed that accused 1 was present when the copies of the cash were compared with the cash itself. He confirmed that he is well known with these kinds of operations and had conducted approximately 85 operations in that year alone. The copies of the R 200 notes used in the operation was handed in by agreement as an exhibit. The street value of the cocaine was about R1 200.00 a gram and the value of Cat is approximately R300 to R500 a gram. This was so then and is still more or less the same.

[254] The evidence of Jacobs was not disputed.

Botes:

[255] The state then called Captain Botes ("Botes") who confirmed that she has 30 years' service in SAPS and has been stationed at Bothasig Police Station since 2008. She was present at the incident on 20 October 2016 when accused 1 was arrested for dealing in drugs.

[256] Botes confirmed that she was the handler of Smit, the female in the 252 operation and that she was the person responsible for the administration pertaining to Smit. She confirmed that she searched Smit before the operation commenced and that she had no drugs or money on her. She further confirmed that the money given to Smit was checked against the certified copies and that it corresponded. She confirmed the evidence of Jacobs in all regards and I therefor do not repeat her evidence regarding her role in the operation.

[257] The evidence of Botes was not disputed.

Smit:

[258] Jennifer Smit (“Smit”) testified that she is employed by the City of Cape Town as a Safety and Security Senior Inspector and has been so employed since 2014. Since July 2021 she has been a senior inspector. She confirmed that she was part of the operation of Jacobs during October 2016 and that she was asked by him to assist with an undercover operation.

[259] She explained her brief and confirmed the evidence of Botes regarding the safety measures that was put in place pertaining to the operation’s execution. She confirmed that she placed an order for cocaine and Cat in terms of a s 252 drug operation.

[260] She explained how the contact was made with the suspect and how he handed her the drugs after she handed him the notes. She identified accused 1 as the person who handed over the drugs.

[261] Smit’s testimony was not disputed and the state proceeded to hand in the section 212 report which complied with section 212(4) as an exhibit with the consent of the legal representative of accused 1.

Accused 1:

[262] In summary his evidence was that on the day of his arrest, 12 September 2017, he was at the shop when members of the SAPS arrived at the premises and entered without any introduction. He followed them inside and then Pamplin, with reference to him, asked the two female officers whether this is the person, to which they answered in the affirmative. Pamplin asked him for his permit which he provided whereafter he was arrested and taken away by Felix to Maitland Police Station. Felix questioned him about the carjacking case that he had made against Zain.

[263] He admitted that he knew [ND] as she was the girlfriend of Moola. She came with Moola one evening to the premises and thereafter, on a second occasion, she arrived at his premises drenched and with a cast on her leg. Moola had asked him if she could stay for a few days and he agreed. This was why she was at the premises on the day of his arrest. He denied all the allegations made by [ND].

[264] He testified that he met Z[...] in East London when he went with a friend to buy a vehicle. The next day when they were driving back to Cape Town, Z[...] told him her story and revealed she was ill. His friend left Z[...] and he brought her to his house. Whilst she was at his house, he took her to church crusades to pray for her illness and she also attended church with him. He denied all the allegations made by Z[...] against him.

[265] He testified that he does not know [SN] and that she was never at his house.

[266] He testified that he met [CJ] through a friend called Kenny and that she and Kenny use to visit his house. She was Kenny's girlfriend and at one stage she and

Kenny came to stay at his house. It was only for a short period of about two weeks and in that time, she and Alex got involved in a relationship. Because of this relationship the situation became tense in the house, and he told them to move out. He testified that after some time [CJ] contacted him and asked for her belongings that was still at his house. He however told her that he was not sure what belonged to her. He denied all the allegations made by [CJ] against him.

[267] He testified that he met [SM] only once and that was when she came to his house with accused 2. He was busy sweeping outside when accused 2 and [SM] arrived. Accused 2 argued with him and he threw a broom at her and then accidentally hit [SM] with the broom. He denies all the allegations by [SM] against him.

[268] He got to know [MA] when she was sent to his house by accused 2. Accused 2 contacted him because she wanted to send the children to Cape Town as she was going through a difficult time. He told her that it would be difficult for him, and she said that she was going to send someone to look after the children whilst in his care. Accused 2 did not mention who this person was or when this person would be coming. He testified that one evening whilst he was not at home, he was contacted by Alex who told him that [MA] was at the premises. He went home and they had a short conversation, whereafter she contacted her family from his phone. According to him Alex told him that she was not a suitable person to look after the children as she was asking for tik on her arrival. Due to this information, he immediately made arrangements for her to go back to Springbok with the taxi. He

denies that she was there to do prostitution work or to collect drugs as stated by accused 2.

[269] [MS] stayed at his house at some point, and she was involved with one or other scam with two other gentlemen. She was staying in the backroom with them. He told her one evening that he doesn't want her to be involved with these gentlemen and that she must go back to Springbok. She agreed and he took her back to Springbok and left her there. After that he never saw her again. He denied all the allegations made against him by her.

[270] He met [UL] outside a club one evening and they went to a club later with accused 3. After they left the club, she ended up sleeping over at his house. She slept in his room, but nothing happened between them. A few days later she came to his house again, but he did not speak to her. Roberto told her that his girlfriend was with him. She was outside with the other ladies where they were drinking and listening to music. The next occasion when he saw her, was when she arrived at the premises with dirty clothes. He gave her some of his clothes to wear and she told him that she was not sleeping at home. He left her in the lounge where she was playing cards with the other gentlemen. Later she came to his room, undressed herself and climbed into his bed. They had consensual intercourse.

[271] The next morning, she was up early and sitting in the lounge when the police came to the premises and arrested him. She said to the police that he was her boyfriend. He denied raping her or keeping her at the premises against her will. He further testified that the charges against him was fabricated and that he had been framed by the SAPS because of the case he opened against the brother of Felix.

[272] Accused 1 insisted that Pamplin (and all the other SAPS members involved in the matter) conspired with Felix and had influenced and or told all the complainants and [MS] to make the allegations against him.

Accused 2:

[273] She confirmed her marriage to accused 1. The relationship between them soured after the birth of her daughter, and she moved out in 2012. She went back to Springbok and stayed with her grandmother for a while and then moved to two other places, before she bought the house in Boumeesterlaan, Springbok.

[274] The complainants from Springbok are all known to her, and they stayed in close proximity of each other at some point. She knew [SM] since 2014 and they were best friends and got into mischief together. They used to go to the clubs in Springbok to meet up with men and would take them to her house where they performed sexual favours in return for money.

[275] At one stage [SM] and her decided to go to Cape Town to do prostitution work to get money. They went to a place in Bellville and rented a room from a Nigerian lady and made money for a few days. [SM] started using drugs and their plans went awry. Whilst outside one evening accused 1 found her and called the police who told her that she must go with him. Accused 1 then took her to the premises and she slept in his vehicle.

[276] Early the next morning she got [SM] at a shop and went back to accused 1's house. An argument ensued. Accused 1 accidentally hit [SM] with a broom and they



left. This was the only time she came to Cape Town with [SM], and she denies the allegations made by [SM].

[277] She was friends with [MA] whom she met through her brother Byron. [MA] did not do prostitution like the other girls. She contacted accused 1 because she wanted to send the children to him. She asked [MA] to go to Cape Town to look after the children. [MA] at first was hesitant. She offered to pay for a trip to Cape Town for [MA] to ascertain whether she is comfortable with the set up at the house of accused 1.

[278] [MA] left for Cape Town on a Sunday, and she saw her the next day back in Springbok. [MA] did not speak to her, she herself never asked accused 1 what happened, and she made alternative arrangements for the children. She denied that she asked [MA] to fetch drugs in Cape Town or to do prostitution work at the premises of accused 1.

[279] She testified that she was a family friend of [CJ] and visited her house often. She knew about her problems and circumstances at home. [CJ] went to Cape Town on her own accord and Kenny paid money for her to come. She never introduced her to accused 1 and does not know how she ended up at his house. She also never arranged a lift with accused 1 for her to Cape Town.

[280] She met [MS] through accused 1 when he brought the children to Springbok and on one occasion [MS] came to ask for accused 1's phone number. She denied taking or attempting to take photographs of [SM]. She denied further all the allegations made by the witnesses against her.

Accused 3:

[281] Accused 3 testified that he arrived in Cape Town during May of 2017 and went to stay with his uncle before he moved in with accused 1 at the premises. There were other people staying at the premises rented by accused 1 and a lot of people use to frequent the house. He used to work at the club of his uncle in Long Street doing small jobs but did not work when he was staying with accused 1 at the premises.

[282] He testified that he met Z[...] one evening when they went to a church crusade. The two of them became good friends and spoke about their personal lives. When he became involved with girls, Z[...] became jealous and this was the reason, according to him, why she left the house of accused 1. He denied all the allegations made by her against him.

[283] He met [ND] when she came to the premises with Moola and spent the night. Accused 1 was not at home at the time and only came later. [ND] came again with Moola and this time she was on crutches. At one stage both [ND] and Z[...] were living at the premises. He denied all the allegations made by [ND] against him.

[284] One night when all the other people were at the club, he was contacted by accused 1 who wanted to know what he was doing. When accused 1 came to pick him up he had a girl with him, and she became known to him as [UL]. The three of them went to a garage to buy some food and from there they went to a club. [UL] said she was looking for her friends. [UL]'s friends did not come with them and the three of them went home. On their way home [UL] told him that she will organise a

lady for him next time. When they got home Alex, Moola and Roberto was playing cards. Accused 1 and [UL] went into the room and she left early the next morning.

[285] [UL] came back a few days later when accused 1's girlfriend was there. Roberto stopped her from going into the house and she sat outside with the other girls. [ND] and Z[...] were also present. The third time she came was the day before the arrest of accused 1. She slept over the evening in the room of accused 1. He denied that the evidence of [UL] pertaining to the time she was at the premises was true.

[286] On the day of accused 1's arrest he was at home together with Moola and Roberto. [UL] was sitting with them in the lounge when the police arrived and accused 1 was arrested.

[287] He recounted that on the day of his arrest in November 2017, there was a lady at his house which Roberto had brought there. According to him the police took the lady away and when she came back, she shouted at Pamplin that they can't force her to make a case against him. He testified that he believed that he was only arrested because he was a witness in the carjacking case and because he was family of accused 1 and because the investigating officer wanted to put pressure on accused 1.

[288] Accused 3 called a witness who testified she does not know him and the police never forced her to make a case.

### Legal framework:

[289] Human trafficking is explained as being a criminal process rather than a criminal action. As a process, trafficking has several phases namely the act, the means and the purpose. The typical human trafficking process starts off with the recruitment or receiving of victims, followed by moving the victims to a place where they are exploited.<sup>12</sup> Traffickers may also transport or transfer victims within a country or across national borders to an unfamiliar or another environment.<sup>13</sup> The transportation phase is where the victim is moved from origin to destination. The purpose of transport is to alienate the victim so that they become more vulnerable and thus easier to exploit. Their vulnerability arises from the fact that they do not have close relatives at their destination, do not have money or means to return home and sometimes cannot speak the language, are disadvantaged by their legal status (for example being a minor or female) or do not know the environment they find themselves in.

[290] The exploitation stage is at the heart of the crime. The exploitative activity usually begins soon after arrival at the point of destination. Sexual exploitation is most common. According to the US State Department (June 2008) 'Trafficking in Persons Report *Violence and Health*. Geneva: World Health Organisation,' trafficking perpetrators control their victims by means of psychological and financial

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<sup>12</sup> UNODC 2006: xiii-xiv; Truong and Angeles 2005:2; Lee 2007:1; Di Nicola 2007:49-50. Without mentioning recruitment or transportation, the 2007 US TIP Report states that the common denominator of trafficking scenarios is the use of force, fraud or coercion to exploit a person for profit – US Department of State 2007:8.

<sup>13</sup> UN. GIFT 2008c:11, 12.

control mechanisms which minimize or eliminate the need for physical violence or confinement.<sup>14</sup> Often the victims are prevented from any kind of communication.

[291] The United Nations 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime', of which the Republic of South Africa is a signatory, and which is more commonly known as the Palermo Protocol, came into being in the year 2000. The Palermo Protocol was the first international instrument that comprehensively addressed all aspects of trafficking and provides the first universally agreed upon and legally binding definition of human trafficking.<sup>15</sup>

[292] Article 3 of the Palermo Protocol defines trafficking as:

*“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.*

[293] The Palermo Protocol definition makes it clear that trafficking covers the actions of *any* person involved in the movement of another person for the purpose of exploitation and can be divided into three parts:

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<sup>14</sup> S v Palan and Another, Case no RC 6/2014 in the Port Shepstone Regional Court.

<sup>15</sup> M Dottridge and A Jordan 'UN Trafficking Protocol: An Imperfect Approach' 2010 (1) *Centre for Human Rights and Humanitarian Law, Washington College of Law* 3.

- 294.1 The action of recruitment, transportation, transfer, harbouring or receipt of persons;
- 294.2 By means of threats, use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim;
- 294.3 For the purpose of exploitation: this includes at a minimum, exploiting the prostitution of others, other forms of sexual exploitation, forced labour or services, slavery or similar practices and the removal of organs.<sup>16</sup>

[294] At least one component from each of these three sections must be present for the definition of trafficking to be applicable,<sup>17</sup> and these elements must be proved in criminal prosecutions.

[295] The South African definition of trafficking is wider than the definition offered by the Palermo Protocol as it covers a broader and more comprehensive list of actions and means, but the common denominator is the interconnected elements of the trafficking process namely the action, the means and the exploitative purpose in order for a case to qualify as a trafficking offence.

[296] The words '*for the purpose of*' brings in a *mens rea* element into the trafficking definition, implying that trafficking occurs where the perpetrator *intended* that the action would lead to one of the specified end results,<sup>18</sup> such as sexual exploitation. It was submitted that proving the *mens rea* element does not require that the intended aim is actually attained, and trafficking can happen without actual

<sup>16</sup> UNODC 2006 *Trafficking in Persons: Global Patterns* Anti- Human Trafficking Unit 51

<sup>17</sup> Ibid.

<sup>18</sup> Gallagher AT Gallagher 2010 *The International Law of Human Trafficking* at 34.

exploitation taking place.<sup>19</sup> “It is sufficient that such exploitation was the intention of the conduct”.<sup>20</sup>

[297] I am in agreement with the submissions by the State that actual exploitation need not be proved by the prosecution nor is it required to be present for purposes of a conviction on human trafficking.

[298] It appears from the literature provided that traffickers generally have different roles and motives for committing trafficking and are generally divided into three parts, namely the recruiter’s, the transporter’s and the exploiter’s environment.<sup>21</sup> “The logical start of a trafficking ring is the recruitment of victims through promises of work, marriage, a better life or any number of other schemes, and arrangements for their travel”.<sup>22</sup> The recruiter’s objective is to guarantee a steady supply of victims of trafficking and their undetected delivery to those working within the transporters environment.<sup>23</sup> These criminal groups prey on vulnerable persons such as children, the poor, the uneducated and the unemployed.<sup>24</sup>

[299] The aim of those functioning within the transporters environment is to ensure the safe delivery of victims to those working within the exploiter’s environment.<sup>25</sup> “After relocation, victims are enslaved and held in place through *inter alia* debt

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> SALRC (2006) SALRC (2006) 2006 Trafficking in Persons Project 131 (Discussion Paper 111) available at <http://www.justice.gov.za/salrc/dpapers/dp111.pdf> at 76.

<sup>22</sup> Andreas P in Friesendorf C (ed) 2009 Strategies against Human Trafficking: The Role of the Security Sector available at [http://www.bmlv.gv.at/pdf\\_pool/publikationen/trafficking\\_mit\\_fn-2608.pdf](http://www.bmlv.gv.at/pdf_pool/publikationen/trafficking_mit_fn-2608.pdf), at 129.

<sup>23</sup> SALRC (2006) op cit note 26 at 76.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

bondage, physical threats and drug dependency”.<sup>26</sup> “Other tactics include the use of armed guards and the creation of the perception that the criminal syndicate has close links with the police, threats of violence towards the victims and or members of their families, and rape and physical assault to maintain a constant state of fear”.<sup>27</sup>

[300] On the aspect of vulnerability, I was referred to various papers where the factors that contribute to a person’s vulnerability to being trafficked are explained. It includes but are not limited to poverty, lack of education, drug addition, the trafficker’s ability to gauge people’s vulnerability, taking advantage of people’s weaknesses and available resources or alternatives within a socio-economic context.<sup>28 29 30</sup>

[301] There is no specific definition of abuse of power. However, this term has been equated with abuse of authority and should be understood to include the power male family members might have over female family members in some legal systems and the power that parents might have over their children.<sup>31</sup>

[302] I was referred to the Moldovan Supreme Court of Justice where it was affirmed that abuse of a position of vulnerability encompassed “any kind of vulnerability: mental, affective, family, social or economic. It encloses the range of

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<sup>26</sup> Peter Andreas op cit note 27 at 129.

<sup>27</sup> Ibid.

<sup>28</sup> Dotteridge M and Jordan A 'UN Trafficking Protocol: An Imperfect Approach' 2010 (1) Centre for Human Rights and Humanitarian Law, Washington College of Law 3 available at <http://rightswork.org/wp-content/uploads/2012/05/Issue-Paper-1.pdf> at 3.

<sup>29</sup> MA Rahman 'Human Trafficking in the era of Globalization: The case of Trafficking in the Global Market Economy' (2011) 2(1) Transcience Journal 54 at 64.

<sup>30</sup> [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL\\_FEMM\\_ET\(2014\)493040\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL_FEMM_ET(2014)493040_EN.pdf)

<sup>31</sup> Ibid at p 21.



desperate situations that may make a human being accept his/her own exploitation.”<sup>32</sup> The abuse of a position of vulnerability is also seen as involving subtle manipulation of the victim through, for example, the creation of an image of care and support for a person who has less control over his or her life and/or who is looking to escape their present circumstances. After having achieved the trust and consent of a victim traffickers may then use coercion to control and exploit victims.<sup>33</sup>

[303] Human sex trafficking has been described as “exploitation in its rawest form”.<sup>34</sup> Sexual exploitation is the most common form of trafficking in human beings<sup>35</sup> and is the largest specific sub-category of transnational trafficking.<sup>36</sup> Sexual exploitation implies the act of misusing or mistreating another person through sex.<sup>37</sup>

[304] The Human Trafficking Act came into operation on 11 August 2015 and defines ‘trafficking in persons’ as follows in section 4 of the said Act:

*“(1) Any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases, or receives another person within or across the borders of the Republic, by means of-*

- (a) a threat of harm;*
- (b) the threat or use of force or other forms of coercion;*
- (c) the abuse of vulnerability*
- (d) fraud;*

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<sup>32</sup> UNODC Issue Paper “Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons” available at <http://www.endvawnow.org/en/articles/550-abuse-of-a-position-of-vulnerability-.html?next=551> at p 35.

<sup>33</sup> Ibid at p 36.

<sup>34</sup> CP Keleher 2010 The Illinois Predator Accountability Act: A Sleeping Giant.

<sup>35</sup> UNODC 2014 *Human Trafficking FAQs*.

<sup>36</sup> US TIP Report (2007) at 27.

<sup>37</sup> TM Luya 2012 *Human Trafficking of Young Women and Girls for Sexual Exploitation in South Africa* at 7.

- (e) *deception;*
- (f) *abduction;*
- (g) *kidnapping;*
- (h) *the abuse of power;*
- (i) *the direct or indirect giving or receiving of payments or benefits to obtain the consent of the person having control or authority over another person; or*
- (j) *the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons.”*

[305] Abuse of vulnerability for purpose of section 4(1), means any abuse that leads a person to believe that he or she has no reasonable alternative, but to submit to the exploitation and includes but is not limited to, taking advantage of the vulnerabilities of that person resulting from *inter alia* addiction to the use of any dependence producing substances, social circumstances or economic circumstances.

[306] Debt bondage means the involuntary status or condition that arises from a pledge by a person of his or her personal services, or the personal services of another person under his or her control as security for a debt owed, or claimed to be owed including any debt incurred or claimed to be incurred after the pledge is given, by that person if: the debt owed or claimed to be owed, reasonably assessed is manifestly excessive; the length and nature of those services are not respectively limited and defined; or the value of those services, reasonably assessed is not applied towards the liquidation of the debt or purported debt.

[307] Section 11 of the Human Trafficking Act states as follows:

“11. Liability of persons for offences under this Chapter:

*(1) It is no defence to a charge of contravening section 4, 5, 6, 7, 8, 9 (1) or 10 that-*

*(a) a child who is a victim of trafficking or a person having control or authority over a child who is a victim of trafficking has consented to the intended exploitation, or the action which was intended to constitute an offence under this Chapter or that the intended exploitation or action did not occur, even if none of the means referred to in section 4 (1) (a) to (j) have been used; or*

*(b) an adult person who is a victim of trafficking has consented to the intended exploitation, or the action which was intended to constitute an offence under this Chapter or that the intended exploitation or action did not occur, if one or more of the means referred to in section 4 (1) (a) to (j) have been used."*

[308] In *S v V* 2000(1) SACR 453 (SCA) the position pertaining to the onus of proof in criminal matters were aptly stated as follows:

*'[3] ... It is trite that there is no obligation upon an accused person, where the State bears the onus, "to convince the court". If his version is reasonably possibly true he is entitled to his acquittal even though his explanation is improbable. A court is not entitled to convict unless it is satisfied not only that the explanation is improbable but that beyond any reasonable doubt it is false. It is permissible to look at the probabilities of the case to determine whether the accused's version is reasonably possibly true but whether one subjectively believes him is not the test. As pointed*

*out in many judgments of this Court and other courts the test is whether there is a reasonable possibility that the accused's evidence may be true.'*

[309] The onus which rests on the State to prove the guilt of an accused is beyond reasonable doubt and not beyond a shadow of a doubt.<sup>38</sup>

[310] In *S v Mbuli* 2003 (1) SACR 97 (SCA) at paragraph 57 and *S v Hadebe and Others* 1998 (1) SACR 422 (SCA) at 426 f-h the Appellate Court, with approval, followed the reasoning in *Moshepi and Others v R* LAC (1980 – 1984) 57 on 59 F-H where the following was said:

*“The question for determination is whether, in the light of all the evidence adduced in the trial, the guilt of the appellants was established beyond reasonable doubt. The breaking down of a body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it. But, in doing so, one must guard against a tendency to focus too intently on the separate and individual part of what is, after all a mosaic of proof. Doubts about one aspect of the evidence led in a trial, may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say a broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood for the trees.”*<sup>39</sup>

### Credibility:

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<sup>38</sup> See: *S v Ntshela* 1998 (2) SACR 178, *R v De Villiers* 1944 AD 493 at 5 and *S v Toubie* 2004 (1) SACR 530 W at 533 and 534.

<sup>39</sup> See *S v Radebe* 1991 (2) SACR 166 (T) on 183 c-e; *S v Ramulifho* 2013 (1) SACR 388 (SCA).

[311] The complainants presented (and confirmed) that they are persons who had not had the benefit of substantial formal education. They further all testified that they found themselves in challenging socio-economic circumstances prior to coming to Cape Town, to live and work for accused 1 at the premises. All the complainants admitted to using drugs prior to meeting accused 1 and most of them, bar [MA], admitted to selling their bodies for money at some point in time. It was however painfully clear from the evidence by the complainants that although they were anxious and unfamiliar with the court process, that they were traumatised by the manner in which they were held and treated at the premises by the accused. Save for [UL], who I will deal with below, I found them all to have been truthful, credible and reliable witnesses.

[312] The complainants evidence considered with that of [MS] and [SM] painted a clear picture of the *modus operandi* of the accused. The complainants from East London and those from Springbok did not know each other previously, had no reason to corroborate the versions of the other complainants and did not seek to implicate the accused on events they had no knowledge of. The few instances where they contradicted each other as pointed out by the legal representatives of the accused, are minor and immaterial in the broader context of the evidence before Court.

[313] On the issue of the inconsistencies pointed out by counsel on behalf of the accused, I refer to the matter of *S v Mkhle* 1990 (1) SACR 95 (A) 98f-g where Nestadt JA stated as follows:

*“Contradictions per se do not lead to the rejection of a witness' evidence. As*

*Nicholas J, as he then was, observed in S v Oosthuizen 1982 (3) SA 571(T) at 576B-C, they may simply be indicative of an error. And (at 576G-H) it is stated that not every error made by a witness affects his credibility; in each case the trier of fact has to make an evaluation; taking into account such matters as the nature of the contradictions, their number and importance, and their bearing on other parts of the witness' evidence. Williamson J obviously did this. In my view, no fault can be found with his conclusion that what inconsistencies and differences there were, were of a relatively minor nature and the sort of thing to be expected from honest but imperfect recollection, observation and reconstruction'. One could add that, if anything, the contradictions point away from the conspiracy relied on."*

[314] I am of the view that the contradictions alluded to are not material and does not detract from the complainants and the other state witnesses' credibility. If anything, it points away from the conspiracy alleged by the accused.

[315] The evidence of the complainants, considering the time that had passed since their respective ordeals in Brooklyn and the amount of substance abuse that had occurred, were remarkably good.

[316] There is no legal provision requiring corroboration of the evidence of children or single witnesses, but it is settled law that the evidence of children and a single witness should be approached with caution and considered having regard to all the strengths and weaknesses of such evidence.<sup>40</sup>

[317] Section 208 of the Criminal Procedure Act 51 of 1977 states that an accused person may be convicted of any offence on the single evidence of a competent witness.

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<sup>40</sup> See for example S v Sauls and Others 1981 (3) SA 172 (A) at 179G-180G and S v Webber 1971 (3) SA 754 (A) at 759D-E.

[318] The evidence of the state witnesses was corroborated by other independent witnesses and by the accused themselves in many respects as set out later.

[319] Contrary to the witnesses on behalf of the State, accused 1 did not impress as a credible witness and his testimony was simply unbelievable. The most incredible aspect of his testimony is the statement that no drugs were sold at his house despite him being caught dealing drugs, for which he offered no explanation, during October 2016 whilst accused 2 was with him in his vehicle.

[320] He could also not offer any explanation as to why all these women, who was according to him simply told what to say by members of the SAPS, would harbour such strong and distressing feelings about him. In my view the feelings and emotions displayed by the witnesses during the trial were real.

[321] Whilst it is clearly true that accused 1's car was stolen during a carjacking in August 2017 which he reported to the police and that one Zain was charged for such incident, there is simply no evidence, other than the word of accused 1, that Zain is the brother of Felix<sup>41</sup>, to indicate any suspicious conduct by Felix. The fact that he was originally assigned to the case is also of no relevance as he was on the version of accused 1 replaced with another member of the SAPS when he complained about the alleged relationship between Felix and Zain, which member succeeded in finding his vehicle and arrested Zain.

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<sup>41</sup> They don't have the same surnames and no explanation was tendered as to their family ties other than that they are brothers. During the evidence of accused 1 and 3 they often referred to friends as brothers.

[322] Accused 1's version that the charges against him were fabricated, by all 7 complainants and the other State witnesses, because of the carjacking case he made against the brother of Felix, is simply far-fetched and rejected. Even if Felix for some unknown reason had the power and influence to mobilise the human trafficking unit of the Hawks to do his bidding, it is not what happened on the undisputed facts. What did happen is that [CJ], already in March 2017, made a statement against the accused in Springbok which complaints were independently investigated by Mpayieli. His investigation led him to [SM] who made a statement in Springbok on 11 September 2017. Pamplin on the other hand became involved with the matter when he was requested, after a report by [ND]'s father on 12 September 2017, that she was held captive at the premises and then, only in 2018, became aware that similar complaints were levelled against the accused by the women from Springbok.

Did the State prove the remaining charges against accused 1:

[323] For good order I deal with each complainant separately:

[324] In respect of [CJ]:

324.1 He transported her to the premises with the full knowledge and intention that he is going to exploit her to earn money by way of prostitution. He kept her at the premises for days under the pretext that she would be unsafe anywhere else and then exposed her to the drug called "rocks". After she had sex with two men, he declared that she



will work for him which she simply accepted due to her vulnerable state.

324.2 He kept [CJ] enslaved by supplying her with the drug “rocks” so much so that she became addicted. The money she made from the prostitution regardless of the amount was substituted for a piece of rock which enabled her to carry on working for him. If on occasion she did not work, he would deprive of her of the drug and used the acquisition thereof as a method for her to continue with prostitution for his benefit.

324.3 [CJ] was under constant supervision by the accused or one of his brothers or friends and he knew exactly how many clients she had when she went out. It is immaterial in light of her vulnerable state if the door to the room could be opened with a tool from the inside or whether or not there were burglar bars on the windows.

324.4 He used fear and addiction as a method to keep [CJ] to continue working for him. When she expressed the desire to leave, he become aggressive. When she managed to escape, he traced her, brought her back to his house against her will and assaulted her. Thereafter the threat of physical assaults was used as a method to prevent the complainant from attempting to run away again.

324.5 After her attempted escape he denied her freedom of movement by keeping her confined to her room, preventing her from working and

also depriving her of drugs. This was the punishment the accused used as a tool to further his exploitation.

324.6 [CJ] was solely reliant on the accused for shelter, food and basic necessities. She lived like a slave.

324.7 During the second assault the accused terrorised her into submission and confiscated her identity document in the furtherance of his intention to imprison her at the premises.

[325] In respect of [SM]:

325.1 [SM] was given false information by accused 1 as to how the prostitution would work if she agreed to come to Cape Town to work for him. She was told that she would have free will and work for herself. However, when she got to Cape Town, she discovered that the accused made the rules, and she was not allowed to deviate from it.

325.2 She was transported to Cape Town under false pretences as the accused had every intention of enslaving her. This is further borne out by the fact that he immediately gave her the drug “rocks” to smoke instead of her drug of choice, it being tik.

325.3 He enslaved her by supplying her with the drug “rocks” to the extent that she became addicted. The money she made from the prostitution regardless of the amount was substituted for a piece of rock. If on occasion she did not work, the accused would deprive her of the drug and used the acquisition thereof as a method to motivate her to continue with the prostitution.

325.4 She was under constant supervision as the accused knew exactly how many clients she had per night.

325.5 He used fear and addiction as a method to ensure that she would continue working for him. When she expressed the desire to leave, he become aggressive. When she ran away, he traced her, brought her back to his house against her will and assaulted her. The threat of physical assaults was used as method to prevent her from attempting to run away again.

325.6 After her attempted escapes, he denied her freedom of movement by keeping her confined to her room, preventing her from working and also depriving her of drugs. This was the punishment the accused used as a tool to further his exploitation.

325.7 She was, as the other complainants, solely reliant on the accused for shelter, food and basic necessities. She was kept like a slave in the premises.

325.8 On the occasions [SM] managed to escape, he managed to find her and would force her to work for him again. She had no choice but to do what was demanded.

[326] In respect of [MA]:

326.1 She was sent to the premises under the false belief that she would collect drugs from him to take back to accused 2 in Springbok.

326.2 On her arrival she realised that she was in fact transported to Cape Town to be sexually exploited by the accused.

326.3 She managed to make arrangements and escaped the being enslaved.

[327] In respect of [SD]

327.1 She was given false information by accused 1 as to how the prostitution would work if she came to Cape Town to work for him. When she arrived in Cape Town, she discovered that the accused made the rules, and she was not allowed to deviate from it. She was transported to Cape Town under false pretences as the accused had every intention of enslave her.

327.2 The complainant was solely reliant on the accused for shelter, food and basic necessities. She was kept as a slave. When she fell ill and could not continue working as a prostitute the accused withheld his affection as a form of punishment as he knew she regarded him as a father.

327.3 She confirmed the assaults which the accused perpetrated on [CJ] and [SN]. She further confirmed that the accused would become aggressive when they brought in too little money. He regarded her as his property and was happiest when she was working like “a machine”.

[328] In respect of [ND]:

328.1 The accused transported [ND] and [SN] to Cape Town with the sole intention of exploiting them. This time he used the drug heroine, [ND]'s drug of choice, as the tool to enslave her. He kept her addicted to it and used the drug and rocks as a method to keep her working as a prostitute for him.

328.2 She was enslaved by the accused through the use of drugs which fed her addiction. The money she made from the prostitution, regardless of the amount, was taken in return for more drugs.

328.3 She was solely reliant on the accused for shelter, food and basic necessities. She lived like a slave.

328.4 After she was in an accident the accused deprived her of drugs and used the acquisition thereof as a method to entice her to continue with the prostitution. He kept her against her will confined in the premises, more particularly the backroom of his home, and did not allow her to leave.

[329] In respect of [SN]:

329.1 She was given false information by accused 1 as to how the prostitution would work if she came to Cape Town to work for him. However, when she got to Cape Town, she discovered that the accused made the rules, and she was not allowed to deviate from it. She was transported to Cape Town under false pretences as the accused had every intention of enslaving and exploiting her. She was immediately taught how to use “rocks” rather than her drug of choice, it being tik.

329.2 She was enslaved using the drug rocks to which she became addicted. The money she made from the prostitution regardless of the amount she had to hand over and would be given a piece of rock.

329.3 He used fear and addiction as a method of motivating her to continue working for him. When the complainant ran away, the accused traced her, brought her back to his house against her will and assaulted her. The threat of physical assaults was used as a method to prevent her from attempting to run away again.

329.4 After her attempted escape, he denied her freedom of movement by keeping her confined to her room, preventing her from working and also depriving her of drugs. This was the punishment the accused used as a tool to further his exploitation.

329.5 The complainant was solely reliant on the accused for shelter, food and basic necessities. She was held as a slave.

329.6 [SN] was no doubt a child in terms of the definition of the Children's Act, when she was held at the premises.

[330] The following evidence by the accused supports the State's case: Accused 1 admitted to knowing [CJ], [SM], [MS] and [MA] who are all from Springbok, where accused 2 lived. He admitted that [CJ], [MS] and [MA] had been inside his premises. He further admitted that he knows [SD], [UL] and [ND] and that they had been inside the premises. He did not dispute the evidence regarding the dealing in drugs charges against him.

[331] He had regular contact with accused 2 even though she was living with the children in Springbok.

Did the State prove the charges against accused 2:

[332] Accused 2 was evasive and very reluctant to answer the questions posed to her. She, in my view, was not a reliable witness.

[333] In respect of [CJ]:

333.1 She befriended [CJ] and after discovering her vulnerabilities arranged that she be transported to Cape Town by accused 1 under the pretence of getting a lift to Cape Town where she could pursue a “better life”. The trip from Springbok to Cape Town was at the accused’s direction.

333.2 She exploited the trust relationship which existed between her and [CJ] by sending her with accused 1 to Cape Town knowing the business he conducted.

[334] In respect of [MA]:

334.1 She knew the vulnerable circumstances of [MA] and the extent of the addiction problem which she faced. She sent the complainant to Cape Town under false pretences and by way of a fraud in order to be exploited by accused 1.

334.2 She exploited the trust relationship which existed between her and [MA] (who was a friend of her brother) by sending her to the premises in Cape Town knowing the business of accused 1. She was fully aware of the vulnerability of [MA] as a result of her socio-economic circumstances and addition to drugs.

[335] In respect of [SM]

335.1 She befriended this young vulnerable woman at a difficult time in her life. She brought [SM], when she was still very young to Cape Town



and taught her the business of prostitution. She later used her influence, to the detriment of [SM], to exploit her and to make her more compliant.

335.2 She placed [SM] in a position which would have left her with no choice but to work for accused 1 when she abruptly informed her that she had no taxi fare money for her to go home back to Springbok.

335.3 She was instrumental in [SM] coming to work for accused 1 as a prostitute, as she used her relationship with her to her own and accused 1's advantage. I agree with the state that quite conveniently the offer of employment at the premises of accused 1 only followed after accused 2 had shown her the business of prostitution on a previous occasion.

335.4 The relationship between accused 2 and [SM] came to an end when she sold her to a person involved in the exploitation of woman for taxi fare home.

335.5 The accused contention that she was not aware that [SM] was at the house of accused 1 is rejected as she knew exactly how to get hold of [SM] when her family started looking for her by contacting her on the cellular phone which accused 1 had purchased. She clearly knew where [SM] was and what she was doing.

[336] The following evidence by the accused supports the State's case: Accused 2 admitted to introducing [SM] to prostitution. She admitted to practising prostitution from her home in Springbok during 2016 and being convicted thereof.

[337] She admitted to sending [CJ] with accused 1 to his premises in Brooklyn. She admitted to sending [MA] to the premises in Brooklyn 1 albeit to collect drugs.

[338] She knew accused 1 was dealing in drugs as she was with him when he was caught selling drugs in October 2016 whilst she was with him.

Did the State prove the charges against accused 3?

[339] Having regard to the definition of trafficking, the involvement of accused 3 is clear.

[340] According to [ND], [SD] and [SN], accused 3 was the person who collected them from the station on their arrival in Cape Town with accused 1 from East London. He was staying at the house and sleeping in the lounge. They testified that they would give the money that they made on the street to accused 3 if accused 1 was not at home and that accused 3 would sell the drugs to them. The selling of drugs appears to be the drugs they were given when they handed over the money they had earned doing prostitution.

[341] [SN] confirmed that accused 3 would give them the "wake-up" drug before they went on the street.

[342] [ND] testified that accused 3 would sell the drugs to her, [SD] and [SN] when accused 1 was not at the house. Sometimes she would hand the money that she made from sex work over to accused 3 and further that when she brought clients over to the premises accused 1 and 3 would be in the lounge. According to her accused 3 was aware of what was going on and assisted in the business at the premises.

[343] [SD] testified that accused 3 sold them drugs and she gave money to him if accused 1 was not around.

[344] From the aforesaid evidence accused 3 was the enforcer when accused 1 was not around. He was part and parcel of the trafficking operation with accused 1 and 2. His role was to collect the girls and accused 1 on arrival, he provided them with the “wake-up” drug before they started working and he collected the money which the girls made on a particular night and would in turn supply them with more drugs to feed their addiction. He also cooked for them.

[345] Accused 3 admitted to knowing [SD], [UL] and [ND] and that he had lived at the premises albeit only for a short period according to him. He admitted that he did not work whilst he lived at the premises.

General:

[346] It was not the case of any of the accused that the complainants had consented to exploitation. Accused 1 and 3 denies any drug use or prostitution work at the premises. In fact, the version of accused 1 was that [SM] was never inside

the premises, that [MA] was sent away as he was not satisfied that she could look after his children due to her drug use, [ND] was a girlfriend of Moola, [SD] went to church and on a church crusade with him and was sick and he did not know [SN].

[347] Accused 2's version was that she had no idea why [SM] and [CJ] was at the premises and that [MA] was sent to the premises to look after her children there. The suggestion during argument that the girls consented to be exploited is not supported by the evidence of the accused.

[348] In respect of [MA], I point out that the fact that the intended exploitation did not happen, is not a defence in terms of s 11(1)(a) and (b) the Human Trafficking Act. In the matter of *S v Coetzer*<sup>42</sup> the accused was convicted of trafficking although the complainants were rescued prior to any exploitation accruing.

[349] In the matter of *S v Bheki Wellington Nxasana and Others*<sup>43</sup>, with reference to s 11(1)(a), Goosen J confirmed that *"..Now this section when it is read with section 4(1) suggests that where the victim is a child it is not necessary to establish that one or more of the elements as defined by the section was employed and in any event section 11 precludes consent to the exploitation as a defence"*. In respect of [SN] (who was according to my calculations 14 years old when she was held at the premises), the state did not have to prove that one or more of the means referred to in section 4(1)(a) to (j) had been used. Consequently, by accepting the evidence of [SN], accused 1 and 3 must be found to have committed the offence of trafficking in terms of s 4(1) read with s 11(1)(a) of the Human Trafficking Act.

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<sup>42</sup> See unreported North Gauteng High Court Judgment under case number CC 76/2021.

<sup>43</sup> Unreported decision by Goosen J under case number CC 16/2018 in the Eastern Cape Local Division.

[350] Having regard to the definition of recruitment, accused 2 clearly furnished accused 1 and 3 with a fresh supply of girls to work for them from time to time. [SM], [CJ] and [MA] not only had pre-existing drug addiction issues but also had serious issues with their families. They in my view were coerced and deceived by accused 2 to work for accused 1 in Cape Town and had no idea to what they would be subjected to at the premises.

[351] It was argued that the State could not proceed with the charges of trafficking against the accused due to the absence of a certificate in terms of the Human Trafficking Act. The Human Trafficking Act contains no requirement that a certificate must first be obtained before the State can charge a person with trafficking in persons. Section 19, which deals with reporting of and dealing with adult victims of trafficking, sets out processes which should be followed when there is an encounter with or it is suspected that a person might be a victim of trafficking.

[352] Section 22 deals with the criminal prosecution of a victim of trafficking and sets out the procedure that needs to be followed. Section 22(1) deals with decisions whether to prosecute a victim of trafficking, as it stipulates that a prosecutor must give due consideration to whether the offence was committed as a direct result of the person's position as a victim of trafficking. Section 22 (2) states that if, during a criminal prosecution of a person the prosecutor, on reasonable ground, suspect that that person is a victim of trafficking and that the offence was committed as a direct result of the person's position as a victim of trafficking, the prosecutor must apply to the court for a postponement and, in the prescribed manner, refer that person to the provincial department of social development which must conduct an assessment in

terms of ss 18(6) or 19(8) as the case may be. Section 22 (3) requires a letter of recognition that an adult person is a victim of trafficking or that a child is a victim of trafficking which serves as a ground for the withdrawal of the criminal prosecution or the discharge of the victim of trafficking, if the prosecutor is satisfied that the offence was committed as a direct result of the person's position as a victim of trafficking.

[353] No criminal prosecution may be instituted or proceeded with against a person suspected to be a victim of trafficking without the written authorization of the Director of Public Prosecution.

[354] Section 22 is not applicable in this matter as none of the accused were victims of trafficking.

[355] On the issue of the wording of the indictment, the State was criticized for an error on the indictment as it used the word "and" and not "or" in respect of the means employed by the accused with reference to s 4 of the Human Trafficking Act. As set out previously the trial took an inordinate amount of time due to the nature of the charges and the circumstances of the victims. The legal representatives of the accused were fully apprised of the wording of the Act, which leaves no room for any doubt as to the requirements, and had not raised any objection to the indictment prior to the accused pleading. In the circumstances there was no prejudice in my view to the accused as a result of this error.

[356] It is correct that s 261 A (2) of the CPA provides possible competent verdicts where a person is charged with trafficking in terms of s 4 of the Human Trafficking

Act, or where the charge is the offence of involvement in trafficking as provided for in s 10 of the Act. The indictment did not include any alternative charges to the counts levelled against accused but they were all charged with debt bondage, using the services of a victim of trafficking, living on the earnings of prostitution, kidnapping and assault.

[357] It is an accused's Constitutional right to be informed of any charge in sufficient detail to enable him or her to formulate a defence and this includes the right to be properly informed of competent verdicts before he or she pleads.<sup>44</sup> It has been held that a failure to explain a competent verdict to an unrepresented accused is not in itself a fatal irregularity as the main consideration is whether the accused received a fair trial.<sup>45</sup>

[358] The accused knew exactly what the charges and the under-pinning facts were that they faced and denied all the charges against them.

### Conclusion:

[359] In my analysis of the evidence, the State has proved beyond reasonable doubt that the accused had trafficked the complainants as alleged and further that accused 1 and 3 had lived of the proceeds of prostitution.

[360] I accept the evidence of the complainants that they were assaulted by accused 1. Accused 3 was not charged as a co-conspirator and I, on the evidence

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<sup>44</sup> See *S v Kester* 1996 (1) SACR 461 (B) at 469h-470c

<sup>45</sup> See *S v Masita* 2005 (1) SACR 272 (C) at 277a-b.

before me cannot find him guilty of assault or on the remaining charge of rape. The same applies to accused 2 in respect of these charges.

[361] The state did not prove in my view, that accused 2 had lived of the proceeds of prostitution and she must accordingly also be found not guilty in respect of these charges.

[362] On the evidence of [CJ], I accept that accused 1 confiscated her identity document for the purpose of promoting his exploitation of her and to keep her enslaved and dependant.

[363] This leaves the remaining charge of rape against accused 1 in respect of [UL]. Even though I found corroboration in her evidence in respect of the charges made by the other complainants and accept that the events occurred a long time ago, her account of how she was kidnapped and raped leaves me unable to find that the State had proved these charges beyond reasonable doubt. Her testimony was that she reported the rape to Durbaum, but Durbaum did not confirm her version. She also gave a different version at the hospital to what she testified in court, which version also differed from her statement which was placed before Court.

[364] As in the matter of *The State v Angelo Francisco Muambo* (Unreported matter in the High Court of Gaugteng under case number CC 98/2018) the totality of the evidence show that trafficking took place because of the co-operation between accused 1 and 2 in respect of the complainants from Springbok. Accused



3 similarly co-operated and assisted accused 1 to recruit and transport the complainants from East London to Cape Town in order to exploit them.

[365] I, for the reasons stated above find as follows:

1. In respect of accused 1:

[The Human Trafficking Charges]

Count 1: Guilty

Count 7: Guilty

Count 8: Guilty

Count 15: Guilty

Count 28: Guilty

Count 34: Guilty

[Debt Bondage]

Count 2: Not guilty

Count 9: Not guilty

Count 16: Not guilty

Count 29: Not guilty

Count 35: Not guilty

[Using the services of a victim of human trafficking]

Count 3: Guilty

Count 10: Guilty

Count 17: Guilty

Count 30: Guilty

Count 36: Guilty

[Living on the earnings of prostitution]

Count 4: Guilty

Count 11: Guilty

Count 18: Guilty

Count 31: Guilty

Count 37: Guilty

[Kidnapping]

Count 5: Guilty

Count 12: Guilty

Count 19: Guilty

Count 21: Not guilty

Count 32: Guilty

Count 38: Guilty

[Assault with the intention to grievous bodily harm]

Count 6: Guilty

Count 13: Guilty

Count 20: Guilty

Count 33: Guilty

Count 39: Guilty

[Rape]

Count 22: Not guilty

[Possession, Destruction, Confiscation, Concealment of or Tampering  
with documents]

Count 14: Guilty

[Dealing in drugs]

Count 40: Guilty

2. In respect of accused 2:

[The Human Trafficking Charges]

Count 1: Guilty

Count 7: Guilty

Count 8: Guilty

[Debt Bondage]

Count 2: Not guilty

Count 9: Not guilty

[Using the services of a victim of human trafficking}

Count 3: Not guilty

Count 10: Not guilty

[Living on the earnings of prostitution]

Count 4: Not guilty

Count 11: Not guilty

[Kidnapping]

Count 5: Not guilty

Count 12: Not guilty

[Assault with the intention to grievous bodily harm]

Count 6: Not guilty

Count 13: Not guilty

[Possession, Destruction, Confiscation, Concealment of or Tampering  
with documents]

Count 14: Not guilty

3. In respect of accused 3:

[The Human Trafficking Charges]

Count 15: Guilty

Count 28: Guilty

Count 34: Guilty

[Debt Bondage]

Count 16: Not guilty

Count 29: Not guilty

Count 35: Not guilty

[Using the services of a victim of human trafficking]

Count 17: Guilty

Count 30: Guilty

Count 36: Guilty

[Living on the earnings of prostitution]

Count 18: Guilty

Count 31: Guilty

Count 37: Guilty

4. [Kidnapping]

Count 19: Guilty

Count 21: Not guilty

Count 32: Guilty

Count 38: Guilty

[Assault with the intention to grievous bodily harm]

Count 20: Not guilty

Count 33: Not guilty

Count 39: Not guilty

5. [Possession, Destruction, Confiscation, Concealment of or Tampering with documents]

Count 14: Not guilty

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**A De Wet**

**Acting Judge of the High Court**

Dates of Hearing: 02 November 2021, 9 -11 November 2021, 17 and 18 November 2021, 22 and 23 November 2021, 29 and 30 November 2021, 24 - 27 January 2022, 31 January 2022, 21 – 24 February 2022, 14 - 18 March 2022, 22 and 23 March 2022, 18 – 21 July 2022, 25 July 2022, 31 August 2022, 01 September 2022, 21 – 24 November 2022, 23 - 25 January 2023, 30 January 2023, 02 February 2023, 06 February 2023, 8 and 9 February 2023, 13 – 15 February 2023, 27 March 2023, 29 and 30 March 2023, 11 - 13 April 2023, 25 April 2023, 22 and 23 May 2023, 25 May 2023, 29 – 31 May 2023, 01 June 2023, 07 June 2023, 10 and 11 June 2023, 15 June 2023, 10 – 14 July 2023, 14 – 16 August 2023, 18 – 20 August 2023, 24 August 2023, 28 August 2023, 29 and 30 August 2023, 21 and 22 September 2023, 26 – 28 September 2023, 14 November 2023, 16 November 2023, 26 January 2024, 14 February 2024, 28 March 2024, 30 April 2024 and 3 May 2024.

Date of Judgment: 17 May 2024 and 24 May 2024

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