

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: SS50/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
24/1/2025 DATE SIGNATURE	

In the matter between:

THE STATE

and

HABIB, ADAM QASIM LUCAS

ACCUSED

JUDGEMENT

Coertse CJ AJ

Before I start to read my judgment, I order that in the event of this judgment be reported in any media of whatever sort such as SAFLII or any media whatever, that the name of the complainant and her parents be protected and not to be published at all. In this judgment, I will refer to the complainant and not to her name and to her mother, who gave evidence, as complainant's mother and not to her surname.

Next point: notes to the typists: I have prepared a typewritten judgment which I will immediately hereafter forward to the State and the Defence and will request my registrar to forward it to the typists and the library for processing. In light of this I will not give instructions to the typist where certain portions are for instance highlighted – it can be seen in My typewritten judgment.

INTRODUCTION

1. The accused stands trial on

1.1. Count 1: human trafficking to which he pleaded not guilty and filed a plea explanation in terms of section 115 (3) of the Criminal Procedure Act as amended ["CPA"] as amended. He signed the original during this stage of the trial in open court and it is filed as Exhibit B. It was counter-signed by his legal representative Mr. J. C. Kruger.

1.2. Count 2: facilitating and or assisting the creation and or production of child-pornography, to which he pleaded guilty, and he filed a GUILTY PLEA IN TERMS OF SECTION 112 (2) of the CPA. This document, is filed as Exhibit A, and in para 6 under the heading RELEVANT FACTS OF THE CASE, he referred to the relevant facts of the case and at paragraph 7, under the heading: ADMISSIONS, he disclosed various Admissions. It was signed in the original by the accused and counter signed by his legal representative Mr J.C. Kruger in open court during the stage of pleading. The State's representative, Adv Ryan, accepted the plea. He was found guilty in accordance with his plea.

1.3. Count 3: possession of child pornography to which he pleaded guilty, and he filed a GUILTY PLEA IN TERMS OF SECTION 112 (2) of the CPA. This document filed as Exhibit A had reference in para 6 to Relevant facts of the case and at paragraph 7, he disclosed various Admissions. It was signed in the original by the accused and his legal representative Mr J.C. Kruger. The State's

representative Adv Ryan accepted the plea. He was found guilty in accordance with his plea.

- 1.4. Count 4: encourage, enable, instruct, or persuade a child to perform a sexual act [grooming] to which he pleaded not guilty and he filed a plea explanation in terms of section 115 (3) of the CPA. He signed the original during this stage of the trial in open court and it is filed as Exhibit B and it was counter-signed by his legal representative Mr. J. C. Kruger.
- 1.5. Count 5: compelled self-sexual assault to which he pleaded not guilty and filed a plea explanation in terms of section 115 (3) of the CPA. He signed the original during this stage of the trial in open court and it is filed as Exhibit B counter-signed by his legal representative Mr. J. C. Kruger.
- 1.6. Count 6: compelling or causing children to witness sexual offences, sexual acts or self-masturbation to which he pleaded guilty, he filed a GUILTY PLEA IN TERMS OF SECTION 112 (2) of the CPA. This document filed as Exhibit A had reference in para 6 to Relevant facts of the case and at paragraph 7, he disclosed various Admissions. It was signed in the original by the accused and his legal representative Mr J.C. Kruger. The State's representative Adv Ryan accepted the plea. He was found guilty in accordance with his plea.
- 1.7. Count 7 exposure or display of or causing exposure or display of genital organs, anus or female breasts to children [flashing], he filed a written and signed GUILTY PLEA IN TERMS OF SECTION 112 (2) of the CPA. He was found guilty in accordance with his plea. This document is filed as Exhibit A had reference in para 6 to Relevant facts of the case and at paragraph 7, he disclosed various Admissions. It was signed in the original by the accused and his legal representative Mr J.C. Kruger. The State's representative Adv Ryan accepted the plea. He was found guilty in accordance with his plea.

1.8. Count 8: sexual assault he filed a GUILTY PLEA IN TERMS OF SECTION 112 (2) of the CPA. This document is filed as Exhibit A had reference in para 6 to Relevant facts of the case and at paragraph 7, he disclosed various Admissions. It was signed in the original by the accused and his legal representative Mr J.C. Kruger. The State's representative Adv Ryan accepted the plea. He was found guilty in accordance with his plea.

2. Before I proceed with this judgement, I want to pause and say that during a very late stage of the proceedings, the legal representative for the accused filed his heads of argument wherein he stated that the guilty pleas in respect of counts 2 & 3, stands to be corrected in terms of Section 113 of the CPA. The heads of argument also stated that counts 5, 6, 7 & 8 were a duplication of convictions. The State dealt with these points. I am of the view that these are in essence points *in limine*, and it should be dealt with as such. I will however, not do so forthwith but will deal with it comprehensively in the body of my judgment.
3. The complainant was 14 years old at the time on different occasions from June 2021 to September 2022. She was born on 30 April 2007 which means that, at the time of writing this judgment, the complainant is still a child in terms of the Constitution.
4. The court warned the accused, prior to him pleading to the counts, that he is charged with contravening section 4 [1] of the PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS ACT 7 of 2013 ["the Trafficking Act"]. This section read with section 51 (1) and Schedule 2 of the Criminal Law Amendment Act ["CLAA"] deals with the minimum sentences a court is obliged to sentence a person found guilty or to a fine not exceeding R100 million or imprisonment, including imprisonment for life, or such imprisonment without the option of a fine or both unless the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter these circumstances on the record of the proceedings and must thereupon impose such lesser sentence.

PROCEEDINGS IN CAMERA AND IN TERMS OF SECTION 170 A (1) OF THE CPA

5. The state then applied that the evidence of the complainant, being a child, be given *in camera* and in terms of section 170 A (1)¹ of the CPA - that is, that her evidence be given through an intermediary ["the section 170 A application"].
6. The section 170 A-application was contested by the accused. His legal representative filed Heads of Argument opposing this and so did the State. The court subsequently, after both parties argued the matter eloquently, upheld the application and the evidence of the complainant, being a child, was led in terms of section 170 A (1) of the CPA. It is interesting to note that the attorney for the accused in his heads of argument on the merits, portrayed this aspect of the trial as if the court granted the application *mero motu* which was not the case as is set out herein. This view that the court acted *mero motu* is rejected as incorrect.

OBSERVATIONS OF THE COURT IN RESPECT OF THE PROCEEDINGS PERTAINING TO THE INTERMEDIARY ROOM AND THE PROCEEDINGS

7. Mrs T. L. Raphiri was sworn in by Judge C Moosa at Palm Ridge High Court as an intermediary, she does have experience as an intermediary and knows what is expected of her as an intermediary. She is a graduate with a B-degree and she is registered at the SA Council for Social Services and is in good standing and her fees are paid up. She is an experienced intermediary well versed in the protocols applicable on this facility that was created by the CPA. She informed the court that she does not know the complainant and she does not know the accused. She met the complainant the first time at Palm Ridge Court.

¹ "Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness under the biological or mental age of eighteen years to undue mental stress or suffering if he or she testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary."

8. Here are some of the court's observations in respect what happened in the intermediary room. The complainant gave evidence in camera in the intermediary room at Palm Ridge High Court. The complainant was sitting on the right hand of Mrs Raphiri. Both the complainant and the intermediary were wearing their respective earphones. Neither the complainant nor the intermediary could see thru the one-way window separating them from the entire proceedings of the court on the other side of it. The earphones on Mrs Raphiri's ears relayed to her [Mrs Raphiri] what was said inside the court room without the complainant hearing anything. The intermediary was obliged to transfer the questions put to the complainant by either the state advocate, or the defence lawyer or by the court. It happens once or twice where the intermediary was not certain of what was said or asked and she would then immediately ask that it be repeated, which it was. It was evident in how she conducted herself during her services as the intermediary, that she is well versed and up to it, to render her services impartially and professionally. Whenever there was a dispute or argument between the defence, the state and even with the court, she kept quiet and never conveyed it to the complainant at all. It was clear from the body language of the complainant that she could not hear what was being said.
9. The court, on occasion, tested whether the complainant could hear what was transpiring inside the court room, by loudly calling out her name and there was no sign whatsoever that she was aware that her name was called. The defence never once raised any concerns about the legalities or anything improperly or irregularly done during the entire process. The State also never registered a complaint as to the proceedings in the intermediary room. I am satisfied that it was entirely regular.

COMPLAINANT'S MOTHER'S EVIDENCE:

10. She was the state's first witness and is the mother of the complainant. She confirms that the complainant is her biological child who was 14 years at the time her daughter met the accused on a social platform called OMEGLE.

11. My impression of complainant's mother is that she is an impressive, truthful witness and an extremely worried mother of her daughter's behaviour. If I describe her as being "extremely worried," I hasten to add that she never described herself as that. It is an observation by the court. The observation by the court of her evidence is that she did not try to impress with her parenthood or to paint an untruthful picture of the situation. She assisted her child as best she could under completely unknown territory to her and her husband. Her daughter's well-being was her primary concern. It was a happy family who were a close knitted family and suddenly her daughter changed for the worse and both she and her husband could not understand what was going on. They sought help and assistance. The relationship between complainant and her parents deteriorated rapidly to such an extent that this child, who once was vocal about her love and admiration for her parents and familial relationships, shouted at them that she hated them and that they did not care for her. Complainant accused her doting parents that they hated her and did not give her a chance in life.
12. She told the court that complainant approached her during December 2021 that she met a boy on a social media platform and she, complainant, thought she did something wrong. Complainant's parents had always had an open-door policy with their children and they tried always to reserve judgment on matters to see where this is going to lead. Complainant said she felt she did something wrong by sending him, who was 16 years of age, photos of her, she testified that she immediately went worse-case scenario thinking nude images. This was in fact confirmed by complainant and the images form part and parcel of the bundle of documents that were handed in as Exhibit "D" and to which the accused pleaded guilty to in respect of counts 2 & 3 of the indictment.
13. She identified the images in exhibit D. Her instinct as a mother, she also referred to it as her "gut", told her that something was wrong and she told her husband about it. She asked complainant what the boy's name was and the name kept on changing from Adam to Qas[im] to Lucas. She was under the impression that it was different people and, in her own words, she thought that this person was a "catfish." She did

not know that these names were actually correct and that it referred to the accused. She started searching on social media for this man *inter alia* on Facebook and was not successful tracing him and that lead her to believe that he actually is a "catfish" meaning the person is not existing. A "catfish" refers to someone who creates a false identity for use on social media or online dating platforms, typically to deceive others by using fake photos, personal details, or even pretend to be an entirely different individual. The term became well known after a documentary and subsequent TV show called Catfish.

14. They, mother and daughter, were fighting almost daily. She did everything in her power not to lose what trust complainant still had in her as her mom and she insisted to see this person on her screen. One of the reasons why they did not take her cell phone from her is to keep complainant's trust and to keep an open channel of communication. Then they were informed that accused would be visiting SA, but complainant was always very vague about the details and she, the mother, kept on insisting for more and better details. Suddenly complainant told her parents that the accused is in SA. That was during the long weekend March 2022.
15. Complainant told her that the accused is at the Monté Casino Hotel and they went there to meet up with him. Complainant and her father eventually went to the room that was allegedly his room number but could not find him as it was occupied by a lady. Later on, when complainant's mother saw the accused the first time, she was shocked; he looked young but not sixteen.
16. After the accused left SA, complainant's behaviour towards them did not change. He wanted to come again during July 2022 but that did not materialise and he only came September 2022 [See Exhibits F {accused's itinerary} & G {accused's reservation confirmation}]. She and her husband still did not approve of the so-called relationship that caused her to change so dramatically towards them and it changed her as a person too.

17. A person who purportedly was accused's mother sent a copy of the accused's passport [see Exhibit E] by WhatsApp and she noticed that certain information was redacted out. These redaction marks are such that it is impossible to read the information that was blacked out. Accused admitted during his evidence in chief that he redacted the copy of his own passport. The reason accused advanced was that he wanted to make himself younger because he didn't want to lose the complainant. She testified that she never saw his original passport. It is clear to the court that it was the explicit intention of the accused, who redacted that passport, to make the information completely illegible and furthermore it was done intentionally to deceive as was testified by the accused.
18. She told the court how she noticed a drastic change in complainant's behaviour in respect of *inter alia* the following:
 - 18.1. Her loving relationship with her parents and brother; it changed to a hate relationship from complainant's side. She shouted at them that she hates them.
 - 18.2. Her school work suffered to such an extent that she failed her Grades and had to repeat it. Prior to the relationship, complainant averaged 70% in school. She told the complainant that the relationship with this person is toxic and she reiterated this during her evidence in chief.
 - 18.3. Whereas complainant was always a happy go lucky young girl, she became withdrawn and started to stay at home, hiding away in her room.
 - 18.4. She was always meticulously neat in her room; it became increasingly untidy and she describes the complainant's room as being "a mess."
 - 18.5. Her daughter was suddenly living in squalor.
 - 18.6. She lost all of her friends.

- 18.7. She was not speaking to her parents any longer and she fought almost daily with her mother.
- 18.8. She became withdrawn.
- 18.9. She pretty much gave up all her extra-mural activities that she used to love.
- 18.10. She suffered from low-self-esteem.
- 18.11. She closed up as if she was hiding inside herself [these were complainant's mother's actual description] and she became self-conscious about her body. She told her mother that accused was body shaming her: he said she is a slut, a whore and she is only good for the streets.
- 18.12. She told her mother when she talks to other boys at the school, she felt guilty as if she was unfaithful to the accused. She told her daughter that at 14 years of age, she can talk to any boy she wanted to.
- 18.13. She was having problems sleeping as she was on the phone all hours of the night, sometimes, she was still up at 05:00 in the early mornings. This is borne out by the WhatsApp messages that were handed in as an exhibit. I will discuss this below.
- 18.14. She cried because he apparently broke up with her and complainant's mother testified that they [her parents] were fearing for her life.
- 18.15. One day complainant was "high" and the next day she was "low."
- 18.16. Complainant's mother was doing her level best to keep her daughter safe.

- 18.17. The parents experienced that their child became alienated from them and it worried them a lot.
19. She admitted that they were living a good life and an upmarket life at that.
20. The cross-examination of complainant's mother started off by Mr Kruger extending his shock and dismay of what this family endured: he said that this is something no family should go thru and it is a sad and bad chapter in "... your book." She agreed with Mr. Kruger.
21. During cross-examination she repeated that their daughter gradually changed from being an innocent little girl, a happy girl enjoying life and loving her family, that is her father, mother and brother to someone who shouted and screamed at them that she hates them. And that they were not caring for her. Prior to her meeting the accused online she did not even go to school parties.
22. Complainant's mother answered all of the questions lucidly and self-assuredly and never flinched or refusing to respond to questions or submissions that she and her husband were not good parents. She was standing her ground that they were good parents. Complainant was already traumatised when she showed her mother the photographs she sent to the accused. She decided not to traumatise her daughter further in respect of the images. She told the court that the complainant wanted to get out of the relationship. Her mother was very explicit that it is a toxic relationship. Her daughter would break it off just to be "... reeled in back into the relationship." These were Complainant's mother's own words. I asked her to repeat these words and I confirmed with her that I recorded it correctly.
23. She was not discredited at all and the court accept her evidence in totality.
24. Never once was complainant's mother cross-examined that she and/or her husband "coached" complainant to give evidence to incriminate the accused. She was never cross-examined to the extent

that she influenced complainant in respect of her testimony. Or that complainant was "spoon-fed" by anybody.

Complainant's evidence:

25. The ways of love to the heart of a woman or to a girl-child are strange and sometimes it defies a man's logic and I want to add it defies the logic of a lawyer. If the subject matter of what a girl-child perceives to be a love-relationship, if that comes into focus, it becomes really troublesome. To lawyers everything should be reasonable and we want to explain everything and to eventually understand it logically. Everything in a court of law should be "reasonable" and if it is not, then it is classified as unreasonable and therefor it should be rejected. Another aspect is how to understand a girl-child's heart – how does her heart work? One of the points whether the complainant have acted "reasonable" is that the complainant could have taken reasonable steps to stop the accused to make contact with her. Mr Kruger suggested that the complainant could have blocked the accused's cell phone not to have contact with her. She explicitly testified that she did exactly that, but that he nevertheless phoned her from the prison from an unknown cell phone and continued the abusive conversations.

26. Yet, this is what this court is, *inter alia*, confronted with and the court is called upon to adjudicate these matters and more. We had the opportunity of observing, hearing and seeing a girl-child giving evidence, withstanding vigorous cross-examination by probably one of our country's most experienced attorneys who specialises in criminal matters. She did not flinch one moment to answer his incisive questions. She answered to the best of her abilities even when he "admonished" her not to be sarcastic when he confronted her during cross-examination informing her that the accused is of the Muslim religion and she answered saying, that, if he is such a devout Muslim, he should not even be talking to her that is not a Muslim. When Mr. Kruger said to her not to be sarcastic she answered saying that she is not sarcastic she is only answering that question – the court does not agree with the defence that she was sarcastic nor that she started asking questions. Her answer was more in the vein of a rhetorical question and it is treated as such. She was confronted, on behalf of the

accused, that when he said to her that she was a slut, a whore and good only to be a street woman, he said it from his background as a Muslim. Her answer again was that if he is such a devout Muslim, he should not even have spoken to her. The court agrees with the complainant that she was not sarcastic, that she was merely answering his questions to the best of her abilities.

27. She was calmly giving her evidence in chief and she retained her composure even when the cross-examination became extremely personal; for instance, the accused legal representative requested her to not only tell the court about her self-masturbation, but also to show the court from the intermediary room how it was done. She had to describe how she self-masturbated with her hairbrush and had to tell the court whether she made sounds resembling sexual gratification. She never flinched for one moment. She responded immediately and graphically.
28. She was requested to put the intermediary's headphones on and to identify the accused's voice that was played to the court; the sound clip was handed in as Exhibit 1. This WhatsApp sound clip was recorded by the accused while he was in prison from a cell phone. It is noteworthy that she had blocked his access to her cell phone, but he managed to get to her on the phone from inside the prison. She told the court she gave him her password[s]. He was then able to log onto her devices and continue as if he was the complainant. He could have done anything on her devices because he logged onto it using her password[s]. Complainant was explicit in respect of this possibility. Unfortunately, it was never disclosed how he got hold of a cell phone while has in custody awaiting trial.
29. Counsel on behalf of the accused put to the complainant various, what he called "reasonable options" such as she could block his access to complainant's cell phone, she could have told her parents, she could have refused to do the things he asked her to do such as self-masturbating. He was thousands of kilometres away in the UK and she in her parents' home under the care and guidance of her loving parents. Why did she continue to get back to the accused? Her constant answer

to every such "reasonable options" was that it was his, Mr Kruger's opinion that it was reasonable. She was but 14 years old and the accused was 26 years old and an adult at that. He, as an adult should have known better not to do this with an underage girl-child. Besides this, she kept repeating that the accused alienated her from her parents and all her friends and he further convinced her that her parents were not caring for her and they are actually not having her best interests at heart; he is the only one who had her best interests at heart. This looks to the court as part and parcel of the Stockholm syndrome

30. The complainant was confronted with the proposition that she was trying to lay all the blame and fault at the accused's door – she denied it every single time it was put to her; in fact, she then would state where she was at "fault." She even admitted quite frankly where she outright lied and misled the accused – and she continued to state where he misled her and lied to her as well. Very early on in the so-called relationship he knew her age and that she is a minor. He knew or ought to have known he was trespassing the line and he was committing crimes against her. The sound clip that he sent her from the prison, is in point – therein he advances his reasons why there are numerous incidents even internationally where there is a big age difference between couples. And he sees nothing wrong with that. It seems as if the accused portrays himself an expert on love-relationship internationally and that is rejected straightaway. This court is concerned with this matter within my jurisdiction that happened as disclosed in the indictment and nothing else. I am not sitting as an international tribunal to pass judgment on international love relationships.

31. It was denied on behalf of the accused that he alienated her from her family and friends. Her answer to that was she was trapped in that the accused completely alienated her from her family and she had no friends left. She felt as if the accused was the only person in the world who cared for her – accused convinced her that he is the only one who had her best interests at heart even more so and better than her parents. He even threatened, according to the complainant, to take her parents out. Prior to meeting her in person, he never laid eyes on her

personally and yet he portrayed himself as this uppermost caring lover of this child. He portrayed himself, as is evident from the barrage of WhatsApp messages, that he was going to have sex with the complainant come what may and she better prepare for it because when he meets up with her, he does not want to have any difficulties – this will be dealt with in greater detail below.

32. On page 3 of the indictment there is a definition of "abuse":
 "Any abuse that leads a person to believe that he or she has no reasonable alternative but to submit to exploitation, and includes but is not limited to, taking advantage of the vulnerabilities of that person resulting from: 3.1 ... 3.5 being a child; 3.6 social circumstances; or 3.7 economic circumstances" and on page 4 of the indictment "para 5 defines sexual exploitation as the commission of 5.1 any sexual offence referred to in the Criminal Law [Sexual Offences and Related Matters] Amendment Act; or 5.2 any offence of a sexual nature in any low."
33. These aspects referred to above covers the entire spectrum of the counts, whether the accused pleaded guilty to some and not-guilty to others, and it should be seriously taken into account in deciding the matter.
34. Another very important and crucial aspect that the court considered is that the complainant is a minor – she is sixteen going on seventeen. Section 28 (2) of our constitution prescribes that:
 "A child's best interests are of **paramount importance** in every matter concerning the child." [the court's emphasis].
35. Section 28 (3) of our constitution defines who a child is, namely a "child" means a person under the age of 18 years."
36. I want to reiterate that the child's best interests are of paramount importance in every matter concerning the child – these are very strong words and I intend to give expression to that. As a judge of the High Court of South Africa I am the upper guardian of a minor and in this matter, I am the upper guardian of the complainant.

37. The court considered the summary of substantial facts, which is just a snapshot of some of the facts, to be revealed by the evidence that the state will present:

37.1. Complainant was 14 years old at the time of the alleged offences

37.2. He misled her about his age [the court is aware that she also misled the accused about her age]

37.3. She heard him masturbating

37.4. He recruited her over a period of time to take photos of herself in a state of undress and to send him photos of her naked breasts

37.5. He masturbated and made her to watch him

37.6. He persuaded her to perform oral sex and masturbation on herself with a hairbrush and he would then masturbate.

38. The court also considered the facts disclosed in the accused's:

38.1. guilty plea [Exhibit A] in terms of section 112(2) of the CPA.

38.2. plea explanation [Exhibit B] in terms of section 115(3) of the CPA.

39. The following exhibits were submitted and I will deal with the evidence of the specific witnesses as they gave evidence in respect of the specific exhibit.

40. Exhibit A: Accused's guilty pleas to counts 2, 3, 6, 7 & 8. This document also contains at Para 6 relevant facts of the case and Para 7 admissions.

41. Exhibit B: Accused's plea explanations in respect of counts 1, 4 & 5 of the indictment and it contains admissions in terms of section 220 of the CPA.

42. Exhibit C: a certified copy of an unabridged birth certificate of the complainant dated 7 December 2007. She was born on 30 April 2007 which means that as at 27 January 2025 she is still under 18 years old and in terms section 28 (3)² of the Constitution, she is a child.
43. Exhibit D: undated colour photos printout from WhatsApp images; these photos were found on the accused cell-phone.
44. Exhibit E: undated colour photo of the accused's passport with heavily redacted black marks over certain information that is completely blocked out by heavily black marks. He admitted during his evidence in chief that he blocked the particulars to obscure his age as he did not want to lose the complainant. This document was received by complainant's mother what she described as from his "mom". She was not impressed with the truthfulness and the authenticity of this document.
45. Exhibit F: accused's itinerary disclosing the following crucial aspects, namely the dates he would be in South Africa and the date he will leave the country:
- 45.1. 22 September 2022 departure from Birmingham in the UK *en route* Amsterdam to Johannesburg:
- 45.2. Arrival of the accused in Johannesburg on 22 September 2022 [that was the day he was arrested].
- 45.3. Departure of the accused from Johannesburg to Amsterdam on 1 October 2022.
- 45.4. Arrival of the accused via Amsterdam in Birmingham in the UK on 2 October 2022.
46. Exhibit G: The reservation was booked on 18 September 2022. Reservation Confirmation number 5309* with the remainder of the

² "3) In this section "child" means a person under the age of 18 years."

number missing of the accused at StayEasy Eastgate for arrival on 22 September 2022 and departure 2 October 2022. This was handed in without any objection from the accused and he was cross-examined on the contents of it.

47. Exhibit H: Omegle "Terms and Service Agreement" handed in by the accused with emphasis on paragraph 2 thereof, the state did not have any objection to this document. I will refer to this as "the/this Omegle document."

48. The court is of the opinion that this document is heavily suspect for the following reasons:

48.1. Anybody can create anything and publish it on the internet and it happens regularly. This is actually a truism of such general application that it is almost trite to repeat it. I am of the view that I can take judicial notice of these matters because the internet and more particularly social media platforms are so notoriously pervasive and well known in society. Social media and the influence it has on the general populace and more particularly on children are regularly main features on the internet and radio programmes. The creator of that document can proceed and give it any name that comes to mind for instance, in this matter we read the heading OMEGLE TERMS OF SERVICE AGREEMENT – that sounds really impressive. The legal question is, however, is it in legal terms the terms of a service agreement?

48.2. Perusing this document, it is obvious that it was not signed by any party for the very simple reason that there was no space on the document for any person to sign or if a person is below 18 years of age, for that person to be to be assisted by parents or guardians. The court was told from the Bar by Adv Ryan that by clicking a certain box on the screen, it shows that it is warranted that the person is of age. *Ex facie* the document it remains a fact that there is no place for any signatory even electronically induced.

48.3. Any litigation flowing from any consequence of this document is subject to clause 11.8: in short, it confines the jurisdiction to the state of the federal courts of Portland, United States of America. For all practical purposes and especially for litigation purposes, this is of no consequence. It is unenforceable in light of the facts of this matter and therefore the court finds that this document is not worth the paper it was printed on and I attach no value to it at all. Therefore to state that the complainant "lied" to the accused about her age and that he "lied" to the complainant about his age being 16 years old is of no value at all – to hold that they were "lying" about their respective ages would be tantamount holding them to the "terms of the agreement."

49. The accused relies heavily on the contents of para. 2: USE OF THE SERVICES BY MINORS AND BANNED PERSONS. Both the accused as well as the complainant "lied" to one another about their respective ages. My provisional view of H is that the court should hesitate to put too much weight to it – the name of the document being OMEGLE TERMS OF SERVICE AGREEMENT should not detract the court's attention. Is it a real agreement? Are the so-called "... terms of service ..." enforceable against users? The court's views are that it is a farcical portrayal of having legal status and that it have legal consequences – which are only enforceable in the state of the federal courts of Portland, United States of America.

50. The complainant was extensively and incisively cross-examined on the fact that it is only for 18 years and older people. She was heavily criticized for "lying" about her age. It is common cause that this social platform was closed by the owner apparently on during November 2023.

51. The court is of the view that the name of a baby does not determine its colour. By saying this, it means that you can preface this document as you want, it does not mean that it is that specific document. The court should have regard to the entire document to ascertain whether it is what it is purported to be: namely a binding agreement between the parties. And the conclusion I reached is that it is not binding upon

the complainant, nor is it binding on the accused and I consider it *pro non scripto* and of no value at all. Another aspect that warrants mention, is that nothing material hinges on this document.

52. Exhibit J: consisting of two pages of the intermediary's oath executed on 7 February 2024 and the Certificate of Competency to appear as an intermediary in the High Court of South Africa Gauteng Division, Pretoria and Johannesburg issued on 7 February 2024 by Judge Moosa at Palm Ridge High Court. I dealt with this aspect earlier on in this judgment.
53. Exhibit K: Statement of the complainant dated 25 September 2022. On 29 August 2024 it was provisionally admitted and I hold that it is now admitted. It is a handwritten statement of 12 pages of the complainant. Each page of this document contains at the bottom of it the signature of complainant and some-one else. She was cross-examined on it and my views are that she was not discredited.
54. It was this document that was the trigger for the legal representative for the accused to inform the court that he wishes to call Captain Veronica Banks to give evidence on behalf of the accused. The State made her available to the defence, but in the end, she was not called. The legal representative did not disclose any reason why Captain Banks was not called to give evidence in connection with this document. I hold that it is then uncontradicted and is consequently allowed.
55. Exhibit L: it seems to be a print of snapchat [a social media platform] messages between the accused and the complainant. All of these snapchat messages were undated. Complainant disputed the authenticity and truthfulness of this document.
56. Accused provided the codewords to his cell phones to enable the prosecution and the defence to access it and to get the original WhatsApp messages. This matter was then postponed to Johannesburg High Court for the State to update the court on the progress of this procedure and on 7 March 2024 the court was informed

by Mr Kruger that the accused is no longer pursuing this line and consequently he withdraws Exhibit L. What is the status of this exhibit L because the complainant was cross-examined strenuously on this and the authenticity and truthfulness was put in question by the complainant. The complainant was accused of not telling the truth when she disputed the authenticity and the truthfulness of this document. I hold that the complainant's evidence is uncontradicted and be and is hereby accepted by the court.

57. Exhibit M: WhatsApp messages between the accused and the complainant send from prison to complainant [8 pages].
58. Exhibit N: Competency Assessment Report: Complainant dated 28 May 2023. This report was compiled by Captain K Botha and it was provisionally ruled admissible. I now rule that the report is admissible. The fact that I provisionally allowed it, is that it is subject to an application by Mr Kruger for the state to disclose the working notes of Captain Kruger. This application was initially launched orally on 28 March 2024. The history of this application is important to note comprehensively because it have an impact on the assessment of the evidence.
59. On 20 May 2024 he requested the court to proceed with the trial as he is not proceeding with this application and requests the court that this stands over till the completion of Capt. Botha's evidence. According to Adv. Ryan, Mr Kruger was in possession of this report since inception of the case and he never requested disclosure of Capt. Botha's working notes. It was only when she started with her evidence that the legal representative of the accused requested these notes. At the conclusion of her evidence, nothing further happens and the application was abandoned. I held on 29 March 2024 that it is admissible.
60. On 28 March 2024, Captain Botha gave evidence of what constitutes "grooming." During the cross-examination of Captain Botha the legal representative for the accused gave oral notice that he is going to launch a formal application to force the State to disclose to the

accused, documents and information in the possession of Captain Botha's report. It was agreed that the parties should file their respective heads of argument and that it would be formally argued on 30 April 2024.

61. On 30 April 2024 that application was argued by both parties, and the court requested further heads of argument from the accused and the application was then postponed to 20, 22 and 23 May 2024. It was further argued on 20 May 2024 and then further postponed to 22 May 2024 when Mr Kruger requested that this application to stand over until after cross-examination of Captain Botha. Still on 22 May 2024, Mr Kruger informed the court that he does not want to prolong the matter and he has instructions from the accused not to proceed with this application. At that time there was no court order on this application. On 22 May 2024 Mr Kruger cross-examined Captain Botha even on Exhibit O.1, and concluded his cross-examination and informed the court that he is done. He refrained from referring to his application even in the face of his undertaking during the previous hearing that he will continue with the application at the end of Captain Botha evidence. In light of what transpired, my ruling is that Exhibit N is admissible and her testimony is uncontroverted.
62. Exhibit O.1: An undated document with the heading: "Explanation notes" compiled by Captain K Botha and handed into court on 22 May 2024. This exhibit gives a summary of her evidence about:
 - 62.1. A definition of grooming is that it "builds an emotional connection with a child to lower the child's inhibitions with the **objective of sexual abuse**. Grooming helps the offender gain access to the victim, and sets up a **relationship grounded in secrecy** so that the crime is less likely to be discovered." [the emphasis by the court].
 - 62.2. What the core functions of grooming are namely to befriend a victim and to establish a relationship.
 - 62.3. What the stages of grooming include namely the identification of the victim by gaining trust and access, playing a role in the child's

life, isolating the child, creating secrecy around the relationship, initiating sexual contact and lastly controlling the relationship.

63. She was at pains to stress that these functions and stages do not necessarily appear in this order but it is clearly identifiable.
64. Captain Botha further testified that there are five categories of child sexual abuse syndrome and it presented in the complainant. She listed it in Exhibit O as follows:
 - a. Secrecy
 - b. Helplessness
 - c. Entrapment and accommodation
 - d. Delayed, conflicted and unconvincing disclosure
 - e. Retraction

She is of the opinion that it is clear that all of these categories of the child sexual abuse accommodation syndrome were found in the complainant. Not only did she give specific instances of these categories, but complainant's mother as well as Ms Tage gave clear and convincing evidence about this. I find that Captain Botha is an expert witness.

65. Exhibit O.2: An undated document with the heading "What is Online Child Grooming?"; prepared by Ms Tabitha Tage and she handed it in on 5 June 2024. Therein she *inter alia* refers to the Stockholm Syndrome. This is a psychological response that causes survivors of abuse to sympathize with their abusers. The different stages she sets out in O.2 are fundamentally in line with that of Captain Botha's stages. She was adamant that all of these stages were clearly evident in the complainant's psychological make-up. And I accept her evidence as truthful, to the point and without any bias at all. I also find that she is an expert on these matters.
66. Exhibit P: document handed in by Ms. Thabitha Tage discussing the child sexual abuse accommodation syndrome in greater depths which is accepted by the court. She considers herself to be an expert on human trafficking. There was a most interesting exchange between Mr

Kruger and Ms Tage. He bluntly put it to her that she is not an expert. It was telling the way the witness's response to this submission was: She sat calmly and when he finished his submission she retorted: "I am an expert." Mr Kruger left it at that. He did not give facts or reasons why he made this submission – he just made this submission. Kruger never attacked her during his cross-examination by confronting her with adverse views by experts on human-trafficking. The court pointed out to Mr Kruger that, in spite of his submission to her that she is not an expert, he cross-examined her as if he cross-examined her as an expert. I am of the view that she gave pertinent answers to pertinent questions. She was clear, concise and consistent in her answers. She would not volunteer an answer flippantly; she took time to think and even asked the court to give her time to think and then she would answer. She did not hesitate to either agree with Mr Kruger or to disagree with him if needs be.

67. Furthermore, Mr Kruger put to her that she coached the complainant and influenced her what to say in court. Once again, she calmly and clearly said to him that she disagrees with him and he left it at that. The court accepts that she is an expert and her evidence is accepted in totality.

68. Exhibit Q: Printouts of WhatsApp messages between accused and the complainant [57 pages] which is an extract from Exhibit 1 an USB containing the WhatsApp messages on soft copy. Q and S are extracts from Exhibit 2 with 2596 pages printout. These messages will be dealt with below.

69. On 18 July 2024, the accused handed in Exhibit R & R.1 containing certain admissions, consisting of 6 pages, in terms of Section 220 of the CPA. Mr Kruger read paragraphs 1 – 3 into the record. It was stated by Mr Kruger that the contents of R.1 [pages 3 – 6] were too vulgar to read. I took advice from the Deputy Judge President, and it was decided that the contents of R.1 should not be read into the record and these pages were duly handed in as exhibit.

70. Exhibit "RA": On Monday 10 June 2024, Adv Ryan handed in this exhibit. Mr Kruger objected to it and then the state played the entire oral version into the record. Mr Kruger did not have any problem with the handing in of this document after Advocate Ryan played the oral version of the entire conversation in court and the parties were satisfied with the transcript and the typed version.
71. Exhibit S: colour prints of WhatsApp messages between accused and the complainant which are prints from the USB Exhibit 1 the 2596 pages in bundles 1, 2 & 3.
72. Exhibit 1: This is a USB sound recording on Exhibit 1. Accused sent the complainant this sound recording from inside the prison in SA from a cell phone that was unknown to the complainant. It is shrouded in mystery how the accused got hold of a cell phone from within the holding cells. This happened after the complainant blocked him to get in touch with her from his cell phone. And yet he got hold of her. This sound recording Exhibit 1 got lost between the High Court sitting in Palm Ridge and the High Court in Johannesburg and the State provided another copy of it also marked Exhibit 1.
73. Exhibit 2: The State handed in Exhibit 2 containing soft copy of hundreds and hundreds of WhatsApp messages that were retrieved from the accused's cell phone. These messages were printed [2596 pages] by Mr Kruger, which were paginated and dated to facilitate the use thereof. Exhibit S [Bundles 1, 2 & 3] contains the hard copy. The court will refer to only some of the pages that is sufficient to underscore the court's view that Exhibit S is a litany of profanities, besides the rest. To refer to each and every page would be a waste of energy and a repeat *ad nauseam* what can be read on all of the 2596 pages. The court is indebted to Mr Kruger and his office for making it available in hard copy, paginated and dated.
74. The accused was called back to the witness box to give evidence under oath in respect of the bundle of WhatsApp messages [2596 pages]. The court is of the opinion that this is the crux of the accused's evidence. Adv Ryan really cross-examined the accused in detail on the

despicable language and suggestions the accused levelled at the complainant. His standard and pat response to almost each and every question was that he said that in jest or that it was a joke or that it is part and parcel of his dark humour. Or another answer that he loved to use is that this is how young people communicate with each other; this is how it is done in the UK, where he comes from. This is how it is and he expects adults to come on board. At times, during the strenuous cross-examination, the accused just kept on talking at such a rapid pace that the court could not keep up taking notes. Often, after such a flurry of "babbling" I would ask Mr Kruger what to make of it or what am I supposed to write down. He was also at a loss. Mr Kruger once or twice informed the court that the accused is under a lot of stress and it is the first time he has the opportunity to tell his side of the story.

75. I now pay attention to only a handful of WhatsApp messages contained in Exhibit O. I want to point out that it is really difficult to comprehensively read the WhatsApp messages because the structure of the sentences, the abbreviations used by both the accused and the complainant. I will try my best to read it as comprehensively as is possible.
76. Page 3: He: "... just demonstrate you are capable of holding a stick ... they must be desperate for players if they have you what position you playing? Somewhere in defence I would have thought nobody getting that fat ass." He was body shaming the complainant constantly as will be evident from some of the quotations lower down. It will be borne in mind the complainant's mother, and complainant testified that the accused was constantly body shaming her; Captain Botha and Ms. Tager referred to that as well.
77. Page 4: He: "... why can't I be both I kinda like the idea of being ur English teacher in a sadistic way and u the skwl [shool] girl I have the urge just to just ask u what ur willing to do for a good grade nah u better suck me off in ur skwl outfit one of these days [unclear emoji] she won't be flying she doesn't have wings like u [this is an insult to your arm fat and how they are saggy looking like wings just in case it went over your fat head] ..." His inuendo's are clearly sexual in nature and his body shaming of the complainant is clear and to the point by his reference to her arms and her head. He was explicit about oral sex

by his reference to her sucking him off whilst she is still in her school uniform.

78. Page 5: He: "... hockey is more tiring than masturbating and why tf [the fuck] you doing it for 2 hours ..."
79. Page 7: He calls the complainant "... a fat bitch ..." Once again, he is body shaming her and according to him it was all said in jest, or it was a joke or it was part and parcel of his dark humour.
80. Page 12: He: "... just make sure you take off your helmet that forehead would provide much better protection ..." Once again, he is body shaming her forehead. The complainants' mother told the court how their daughter became almost obsessed about her body.
81. Page 15: Once again body shaming her when he said the following: "... I'm still puzzled as to why you take a shower every night not as if you got anyone to impress but, in the morning, when you actually do go out you decide to smell like shit ..."
82. Page 17: He: "... in case of their death who's ur godfather do they just expect u to go into care [emoji] catch and release hmm sounds like sex game nah fr I want u to catch my cum [his semen] in your mouth then spit it back out on my dick then carry on sucking I swear if u did that, I'll put some respect on that forehead ..." He turns every conversation into either explicit sexual talk or it is with sexual innuendos. This is disgusting to the extreme.
83. Page 19: He once again calls her a fat bitch.
84. Page 30: She is pleading to him to listen to her by saying the following: She: "Listen to what I'm saying for once."
85. Page 31: He constantly refers to her forehead in a derogatory way: He: "... I wanna see u without [emojis] jeez you must have enlarged it to the max to cover that forehead ..."

86. Page 148: Once again, he refers to her forehead in a derogatory way by saying: "... and get beaten with it your forehead provides better protection rely on that instead ..."
87. Page 154 referred to by the State Advocate in her heads of argument: She: "All I'm saying is I'm can't do it." He: "Sex doesn't scar you for life, especially when he was probably loving it at the time. And I said that's fine." She: "Over the phone is fine but irl." "Irl" was explained to the court that it means: in real life.
88. The State Advocate quotes from page 161: He: "It sucks all these fucking people at my school being intimate with each other and then there's me with a gf who can barely kiss me." She: "I'm not the intimate type Qas. I just wanted to spend time with you."
89. Page 437: On this page there is a conversation between the accused and the complainant about oral sex and he introduced it by saying: "complainant" [The court substituted her name that he used with the "complainant"] so when you said you'd give me head as a compromise was that a lie?" It was explained to the court that the expression "give me head" is actually reference to have oral sex. Her response to him was: "No, it's just something I seriously don't wanna do yet, but I would have for you even if I forced myself." He, later during the same conversation, said that she told him that she would feel "... disgusted by it." The complainant's reply was that: "... I'd force myself to do it." He: "You literally said you'd find it fun." She: "I never said that." He went on relentless: "Why brag about it than if you felt disgusted by it?" It is clearly one of many instances where this child was forced into acts that are "disgusted" to her.
90. Page 438: The conversation about oral sex and she giving him "head" continues from page 437 He: "Like how can you find something so gross when you haven't tried it? I thought you would have felt comfortable trying it with me?" She: "I don't feel completely yet. I don't wanna remind myself I did that at 15." He: "Don't you think I've been fair when it comes to you losing your virginity and you can't do this one thing for me. But its not about you being 15. If we're going to spend our lives together, why does it matter when we do it?" She: "No because my virginity is mine not yours. I decide when it gets taken Qas that's not a compromise." He: "It is not yours it's ours get it right." She: "No factually it's

mine.” This conversation reveals a lot about the accused and how he applied relentless pressure on a child to have sex with him. It is clear from this conversation that the complainant is adamant that she is only 15 and that her virginity is hers and not the accused's. Complainant even said to the accused in so many words that, in future looking back at her life when she was just 15 years old, to have done such a thing that she now found to be against her wishes and she was disgusted to do. The court does not understand on what basis can the accused now claim that everything between them happened consensually and that she gave him consent. It is clear that she has drawn the line, but he would have none of it. He was forceful and manipulative. It is so simple to see that the accused never accepted that she is refusing him sex.

91. The conversation continues on page 439: He: “You can take as long as you want with the virginity.” She: “It’s like my body for instance it’s mine too.” He: “But tell me are you willing to at least try to give me head?” She: “Sharing yes, but my body is my temple, ffs” [for fucks sake]. He: “Wtf who told you that ...? Sounds like something my Indian mates would say. Did you get that out of religious studies? Complainant [the court substituted her name for complainant], just tell me the thought of you giving me head how does that make you feel.” She: “Weird. And yes, my body is mine.” It is abundantly clear that the complainant is adamant that her body is sacrosanct to her, and she will protect that, but he would not or could not understand that she, as a 15-year-old child is disgusted by the thought of having oral sex.
92. And the conversation continues on page 440: He: “If you want to spend your life with me why does it matter when we explore sexual stuff?” She: “Because I don’t wanna do it if one of us is uncomfortable.” He: “So your uncomfortable. Because ik [I know] sure I’m very comfortable.” She: “I’m not.” He: “Don’t do it then. I wanted you to be as comfortable with me as I am with you physically but you can’t even try.” She: “I’m not comfortable yet ok.” He: “You’re never going to be.” She: “I will eventually.” He: “If you can’t start now it’ll take you forever.” She: “What’s so hard about waiting?”
93. And this conversation does not stop, he keeps at it as it is revealed on page 441: She: “Sexually I’m not comfortable.” She: “You should learn how to control those hormones. I don’t want it yet I’m still young I want to have fun and not worry about that stuff.” It is clear that he is applying his utmost pressure

and cunning but she was standing her ground because she realises that she is still a child and wants to have fun but not the sort the accused was applying pressure for. He is wearing her out. It is clear that it is grooming on steroids. It is clear to the court, that he is the aggressor as well as the instigator of it all.

94. Page 947: He applies undue pressure on the complainant to show him who she is having conversations with. The court bears in mind that her mother, the first state witness, told her daughter that she is free to socialise with other boys as she likes. He forced her to send him screenshots of the people she is having conversations: He: "Show me Complainant [the court substituted complainant's name] I asked multiple times." She: "I'm talking to multiple people." He: "Complainant [the court substituted complainant's name] screenshot now. Show me your chats."
95. Pages 1525, 1526 and 1527 there are photographs of the complainant's breasts and conversations going on between them about this. On page 1525: He: "you told my dick to die quicker wtf are you talking about ... Babe, I want BOOBS." On page 1527 He: "Won't need to imagine in September when I cum all over them" The sexual innuendo is clear. That is a reference to her breast. And he continues: "Babe your body looks so sexy. It's a shame it won't look like that after our first child." This is an adult man talking to a girl child of 15 years after having seen her only once.
96. Page 1530: He: "You gonna let me rub your pussy with the tip of my cock in September."
97. He said everything they did was consensual and he was under the impression that she gave consent. He repeatedly stated that everything he said was in jest, or it was a joke or that it was part and parcel of him having such a dark humour. Or that the complainant asked him for it.
98. Page 1827 and 1828 where he expresses his wish to "finger" her: He: "... you not wearing something that short unless we are in your room that pussy needs to be easily accessible only then or if your parents are assholes and don't let me come to Hoedspruit then I'll have to make an exception and finger you whilst you eat a curry."

99. And on page 1828: He: "... the thought of riding my dick got you too excited you mentioned it enough times last night ... your head hurt because she triggered you so hard you guys were talking about who'd be riding my dick first like it's a race ..."
100. Page 1872 quoted by the State Advocate: He: "I don't need practice I do effortlessly but I would suggest you practice anal so you don't get hurt in September. ... you're not that tired because the thought of my dick is like a monster drink fills you with excitement and energy ... yh we're gonna send wendy some more masturbation material she will probably finger herself ..."
101. Page 1872 is also chilling. He had a mouthful of scorn about complainant's grandmother who was apparently on her deathbed, and I hasten to add that he has not even seen the dear old lady and he had this to say: "Your gran is going through her own near death experiences every day. I'm pretty sure her phone is engaged most of the time she be on the line to the ambulance got those mofos on speed dial." On Page 1883 he continues bashing complainant's grandmother: "I'm talking about your gran before she becomes irrelevant let's be honest a few days after the funeral she'll be forgotten." He is a callous as it can get and then he relies piously on the saying "let's be honest.?"
102. Page 1883: He: "If you're only trying anal once then my dick's going to stay up that ass for a lifetime I ain't pulling out especially when I'm not going to get another opportunity."
103. On page 1955 there is the sexual conversation between the accused and the complainant: He: "You're going to pre-cum ik that for sure." She: "So." He: "Idc I want that pussy dripping only tonight." She: "Please like a little bit." He: "How long you want to do it for?" She: "Up to you." He: "30 seconds boom." She: "Ok." He: "Wtf you're that desperate fucking horny bitch. What you going to be thinking of?" She: "Ye. Riding your dick." He: "My dick being deep inside you?"
104. What we see here is commonly known as sexting. It refers to the act of sending or receiving sexually explicit messages, photos, or videos, typically through mobile devices or social media platforms. It usually involves the exchange of intimate content between two people, often

in a romantic or flirtatious context. This is what I refer to as a litany of profanities.

105. During cross-examination, he said that she was not a pushover. She pushed back, that means in essence that he tried his utmost to push her over with his sexual messages and sexual innuendos. That is quite clear from the extracts that I have referred to. Bear in mind that at that time the complainant was still a child. He said they kept each other awake. He explained to the court that "cum" means to have an orgasm. It is the slang term commonly used in informal or explicit contexts. He knows full well that the conversations were continuously of a very explicit sexual nature and he knew from the beginning of their contacts that she was under age. During some of these WhatsApp messages, he himself referred to her age as being 15.

106. His evidence in chief on Bundles 1, 2 & 3 ended by him admitting pushing his hand under her T-shirt and she never pushed his hand away.

107. Cross examination by Adv Ryan: He admitted that he was an adult male and being sexually active for 7 years already when he met complainant. He knew she was under age. He admitted that he asked complainant to stick her tongue out so that he can masturbate.

108. The court asked the him that his answers to the cross-examination are peppered with "jokes" "dark humour" "jest" and "sarcasm". His answer was an unequivocal YES.

109. At the restaurant she called her mother to come and fetch her because she is uncomfortable. Ryan: you made her uncomfortable. She remained in contact because you threatened her.

110. During cross-examination, he conceded that they were in possession of each other's passwords for social media platforms. Then it came out that he had her passwords long before she obtained his passwords. He admitted that the biggest reason why he wanted to have her passwords, is that he wanted to check on her what she was doing.

He even "reprimanded" her. He admitted that he probably said that she was a bitch. He said during cross-examination: "I didn't want her to have contact with anyone else." This is a clear admission of him isolating her from other people.

111. He complained that the State Advocate kept on with her questions about him accusing complainant being a slut. She had to ask this question numerous times without getting a clear and concise answer out of him.
112. Adv Ryan said to him that he was stalking her, which he denied by stating that it is the Advocate's opinion. The court agrees with the allegation that he is stalking her; that is how it appears from looking at the 2596 pages of WhatsApp messages. Complainant tried her utmost to stop him, but he came back relentlessly and forcefully.
113. Complainant pleaded with accused: "Please stop violating me." He constantly referred derogatorily to her forehead and that she is fat, a bitch and her arms are fat too.
114. Ryan puts his private messages to him, that is his conversations between him and others, and it was clear that he never spoke to his friends in this manner. The only message to a friend where he spoke derogatorily was when he was referring to complainant.
115. He referred to the complainant as a "hoe" which means whore: In slang it is used in a derogatory sense to describe someone, usually a woman, who is perceived to engage in promiscuous sexual behaviour. It is an offensive term and is often used in a disrespectful or demeaning ways. It is clear to the court that the accused knows exactly what this word means and that he used it deliberately to attack the complainant.
116. Complainant asked him numerous times to stop controlling her but he did not stop. He admitted during cross-examination that she asked him to stop stalking her, to stop violating her. She said that she hated you because of your demeanour. She goes for a haircut and he was demeaning it.

117. He said that he speaks to every-one he cares for like this. When he said this, I made a note consisting of only two words: MY WORD. This is loathsome.
118. Ryan told the accused that he never came clean about his age and he had no answer to it.
119. The court is of the firm view that these WhatsApp messages are vulgar and utterly disgusting. Mr Kruger on behalf of the accused submitted Exhibit R – R.1 and when he was pressed by the court to read the contents into the record, he was clearly highly embarrassed and requested that it not be read into the record because it is far too vulgar. I took some counsel from the DJP Judge Sutherland and after a discussion with him, I decided that it is sufficient that it is handed in as an Exhibit and as such it forms part and parcel of the court record.
120. The courts are places where matters should be discussed openly and with candour. Yet, the accused lawyer objected to read his own client's document in court. The State Advocate at more than one occasion complained that the *dignitas* of the court is at stake. These are the levels of profanities and filth that the court had to deal with only to be met by the accused's constant refrain that he said that in jest, or jokingly or it should be understood to be his sense of dark humour.
121. He was a most difficult witness. On Monday 10 June 2024 the court made a note that he is very argumentative. He was cross-examined in depth and at length on the contents of Exhibit Q which is a printout of WhatsApp phone calls between him and the complainant while he was in custody awaiting trial. This is an extract from Exhibit 1 the sound recording about one year after his arrest while he is in prison and the complainant was 16 years old.
122. I will now quote verbatim from Exhibit Q:
123. page 6: "He: "Do you know how I got your number?" She: "IDC" [meaning: I don't care]; He: "You have no idea how easy I can get to your parents your

actually clueless." She: "You threatening me?" He: "No. Just saying it's easy in such a corrupt country. Very cheap surprisingly too." She: "Threatening me isn't funny ok." He: "50k and all my issues would just vanish. Pfft. Putting me in prison isn't funny neither but you seem to think that it is hilarious."

124. page 7: "He: "Your parents have done some real sly shit that ruined my life do you understand that at least?"
125. page 8: "She: "Ok just don't hurt us. ... You want to hurt my family wtf Qas. He: "Complainant [the court substituted complainant's name] stop okay. They hurt me [followed by emoji's] Oh yeah you don't care about that."
126. page 9: "He: "These people are sitting at home thinking they can't be touched [followed by a smiling emoji] One phone call is all it would take. You're so lucky I love you." She: "You like scaring me?" I made a note when he was cross-examined by Adv Ryan when she told him to look at page 9 because he wasn't looking at the specific page. He refused to look at it.
127. page 11: "He: "Their [to make sense of this quote, it should have been: "they are" the biggest liars of all]. Your dad opened up a full-on investigation on me. His the one that hired Tabitha. What do you mean? She: "If you loved me, you won't do anything to them, please. Fucking kill me if you have to just not them." He: "... But your fucking asshole parents just couldn't drop it."
128. page 12: "He: "Have you met Veronica yet. Veronica Banks." She: "I did. She was hella mean to me." He: "I can deal with her. Why was she mean to you? ... I called her a bitch. And then told her to shove her paperwork up her ass."
129. page 13: "He: Who took your statement? Colleen Ryan maybe? Kirsten Clark?" She: "Idk [meaning I don't know]. Ok just please stop scaring me." He: "You don't know the person who took your statement I find that hard to believe? She: "I don't remember there's been a lot of shit happening. He: "Colleen is a right bitch tho you spoke to her?" She: "Please stop I'm scared."
130. page 17: "She: "The kiss was just awkward for me and like the whole you saying if I love you I'd show my boobs and body basically I did say yes I have hormones and some of that was because of me."

131. page 44: "He: "It's about me wasting a year of my life in prison." It is obvious from this remark by the accused, that they were communicating from inside the prison to her outside a year after his arrest.
132. page 54: She: "If you are going to hurt someone hurt me not them ok" He: "They hurt me so why would I not punish them?"
133. page 55: He: "They hurt me so why would I not punish them?" She: "No. Me!" He: "I hurt you and you punished me." She: "So, hurt me instead of them." He: "They were all involved." She: "Leave them tho just me please." He: "Your parents are actually the cause of this. And Thabitha. Bitch. I don't want to hurt you anymore."
134. page 57: "He: "Complainant [the court substituted her name with complainant] if you had the power to drop this case, will you?" She: "Yes...." He: "It doesn't matter to me if you can't."
[end of the quotes from Exhibit Q.]
135. He was boasting under cross-examination on the contents of Exhibit Q, that he was keeping a lot of people safe. Naturally, the State Advocate latched onto this and requested him to explain what it means. He bluntly refused to answer her and told her: "It is a ridiculous question and I am not going to answer it." This is a direct quote from his testimony which was repeated three times in a row. He also stated that her parents deserved to be punished. It was put to him that in his view a girl is a slut because she wears her skirt above her knee. He hedges and ducked and dived and eventually he did not answer it. He later during his testimony admitted that he threatened to harm complainant's parents because they made his life horrible. And then he blurted out unashamedly and straight to the point: "Remember, I can do as I like. Whatever I like." Or words to that effect.
136. Considering Exhibit Q, bearing in mind that this is an hard copy of an extract from the sound clip Exhibit 1 of a WhatsApp conversation when he phoned her from prison and in his own words, he was in custody for a year already, it is clear that he was extremely overbearing

and manipulative so much so that she pleaded on numerous occasions that he should rather kill or hurt her, but not her parents or Tabitha for instance. And then he was so argumentative when he was cross-examined by Advocate Ryan. He repeated his threats that he could harm complainants' parents and he was scathing about the State Witnesses and the State Advocate. During his cross-examination by the State Advocate, and more particularly in respect of Exhibit Q, the court made a note that the accused is very argumentative. He repeats that complainant's parents deserved to be punished [his own words]. The court also made notes that there was a lot of arguments about the so-called "consent" and it was during some of these oral "fights" that the accused just kept on talking at such a fast and furious pace, the court could not keep up taking notes. I asked Mr Kruger how should the court handle this lot and he couldn't assist.

137. Immediately after the cross-examination on the contents of Exhibit Q, he told the court that he does have a tongue-fetish and he very early on in their "relationship," asked her to stick her tongue out. It was followed up by him telling the court that within an hour after they met on Omegle, he was masturbating but his face was not showing although she knew he was masturbating. He denies having a rape-fetish. He told the court that the complainant liked to be tied down and he further told her what he then can do to her. She was, according to the accused just as aggressive as he was. He complained that he is accused of recruiting her to have sex with her. Accused was very explicit when he said that he considered the trafficking charge as insane.

138. On 12 June 2024 the State applies that the State's case be re-opened to enable the State to try to download contents from the accused cell phone that were not previously downloaded. Adv Ryan informed the court that she will use another IT expert to try the downloading. This application by the State was not opposed by Mr. Kruger. On 2 July 2024 the court was informed that the download was successful.

139. The court is in possession of Exhibit S consisting of 2596 pages of WhatsApp messages these WhatsApp messages were printed, bound and paginated in 3 lever arch files. Volume 1 is paginated from page 1 to page 1000 covering the period 12 May 2022 to 6 June 2022. Volume 2 is paginated from page 1001 to 1831 covering the period 6 June 2022 to 10 July 2022. Volume 3 is paginated from page 1832 to 2596 covering the period from 10 July 2022 to 4 September 2022. This means that these 2596 pages were generated between the accused and the complainant within 115 days which means within 3 months and a couple of days. It averages to 22.5 pages of WhatsApp messages per day.

140. On 18 July 2024 Mr Kruger requested that the accused be re-called to give further evidence on Exhibit S. The State did not oppose it and it was granted. The authenticity of the Exhibit S was not in issue.

141. The State then handed in Exhibit 2 which is the soft copy of Exhibit S. Mr Kruger, on the same date 18 July 2024 handed in Exhibit R that consists of the following:

141.1. Admissions in terms of Section 220 of the CPA signed in the original by the accused and counter signed by Mr Kruger.

141.2. Exhibit R1 and R2: the accused sent the complainant these documents without any amendment. He admitted that he formally communicated with the complainant and sent her a Word-document titled: "What I would do to Complainants name – Chapter One" and later an additional document to be Chapter Two, although not titled as such which he copied from an erotic novel. He admits that R1 was created on 4 November 2021 and R2 was created 20 January 2022.

142. It was at this point that the court requested Mr Kruger to read R1 and R2 into the record. He was visibly taken aback and informed the court that it is too gross and explicit and that he would prefer not to read it into the record. R1 had explicit graphic depictions of a man and a woman having sex in various positions. I quote from R1: "I'm going to kiss

you in that mouth to stop you from talking whilst my hands are holding down those arms so there is nothing to stop me from making sure your being fucked like the bad little slut you are." The contents of R1 and R2 are not in issue and the accused does not deny having sent it to the complainant who was at the time still a minor, a child 15 years of age. In respect of R2 he once again said in very explicit language how he is going to grab her hands, tie them up behind her back so that she cannot stop him from having sex with her "... like that bad girl you are." On page 5 of R2 he says, and it should be borne in mind that he is the author of this document, he said the following: "I am going to slap that ass every few minutes because you deserve to be spanked for having an attitude." Throughout these two documents he refers to the complainant's private parts in the most vulgar and explicit terms imaginable. He was most explicit and vulgar describing how he is going to rape her. The court agrees with Mr Kruger that it is most vile and not be read in open court.

143. The court rejects his version in that it cannot be possibly be true. The court have to consider the totality of the evidence to reach a conclusion. The court did not only perused Exhibit S or considered any other document or listened to any "say-so" of only one witness to reach its conclusion, but the totality of the evidence, that means I took into account inter alia Exhibit Q and R as well. I had the privilege of observing all of the witnesses and I can state that the accused is without a shadow of doubt the only one that point blank refused to answer questions though it was repeated three times by the State Advocate and still he refused to answer stating the question is ridiculous saying bluntly that he is not going to answer it. Each and every one of the State witnesses answered every single question no matter how difficult or awkward it was. The court accepts the evidence for the State and come to the conclusion that the State proved its case beyond reasonable doubt.

144. Adult emotions were imposed on this child by the accused as an adult with vast sexual experience. He admitted having vast sexual experience.

145. Complainant bought into his manipulation to the extent where she believed his lies that he is the only one in the whole wide world that

loves her and cares for her. She started shouting at her parents that she hated them whereas prior to her meeting the accused she was a tender and kind hearted child telling her parents how much she loves them. She was excelling in her school work. He alienated her from her friends to such an extent that she felt guilty talking to a boy at her school. She confided in her mother who told her not to worry as she is absolutely free to speak to anyone. Her mother graphically told the court how her daughter changed not for the better. She gave the court a long list of aspects that she notices how the complainant changed for the worse. And that worried her parents whom the accused also had the audacity to belittle and to call them "assholes."

146. He mentally manipulated her and she was entrapped by the accused in this thing that he calls "a love relationship." He stresses that it was "love relationship" which the court rejects in totality: one of the reasons is that this so-called "love relationship" started with the very first contact on Omegle and, so he testified, that within an hour or so after they met, he started masturbating. The playing field was totally uneven: it was between an adult male with previous sexual experience and a minor of 14 – 15 years of age. She was not a match for his ploys. It was an adult versus a child. He kept on applying pressure to have sex and to have oral sex by her "giving him head." What was her reaction? She told him unequivocally using straight words telling him she felt uncomfortable, she still wanted to enjoy her youth and not to worry about "this stuff." She said to him in clear English that it is her body and her virginity. He would not or could not understand this and he "corrected" her saying when she said: "... my virginity is mine not yours. I decide when it gets taken Qas that's not a compromise." He: "It is not yours it's ours get it right." She: "No factually it's mine." He had the audacity to "correct" her by claiming falsely that her virginity is "ours" and she must get it right. She continued and eventually told him that her body is her temple. His reaction was electrifying and is worthwhile quoting again: "Wtf who told you that ...? Sounds like something my Indian mates would say. Did you get that out of religious studies?" It is clear that he was not backing down but stepping up his manipulative behaviour.

147. It is not a "love relationship" as he falsely claims it to be, but an abusive relationship and it is clear that he was in total control or sufficiently in control of it and he tried to make the utmost of it.
148. By these acts and his constant harassing, constant threatening to kill her parents to such an extent that she pleaded by putting her own life at 15 years on the line, only not for her parents to get hurt. He violated her human dignity and personal security that are enshrined in our country's Constitution and in the Trafficking Act. The Trafficking Act should also be read with the Criminal Law (Sexual Offences and Related Matters) Amendment Act" means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007) ["the SORMA].
149. The Preamble to the Trafficking Act reads: "And since the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the right to **human dignity, ... security of the person, ... not to be treated in a cruel, inhuman or degrading way, ... and the right of children to be protected** from maltreatment, neglect, **abuse or degradation.**" [emphasis by the court].
150. The definition of "exploitation" includes *inter alia* sexual exploitation. Sexual exploitation means the commission of—(a) any sexual offence referred to in the SORMA or (b) any offence of a sexual nature in any other law."
151. One of the questions the court has to answer is: whether this definition is applicable or not? If not, the accused goes out free.
152. How does the SORMA defines sexual exploitation? We read in the Preamble to SORMA: "WHEREAS women and children, being particularly vulnerable, are more likely to become victims of sexual offences, including participating in adult prostitution and sexual exploitation of children;"
153. In the words of her mother, the family leads the good life, the upper crust of society. There was no shortages of anything and yet her daughter was vulnerable and fell for it.

154. Definition of "abuse of vulnerability: "abuse of vulnerability" for purposes 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 exploitation," [the court's emphasis]. Complainant stated that under oath multiple times. It is also clear by reading the long-winded discussion of him trying to force her to agree to oral sex and eventually she stating clearly and unequivocally that her body is her temple as well as his reaction to it. She was trapped and had no reasonable alternative but to submit.

155. The accused is represented throughout this trial by Mr. Kruger who is one of our country's most senior attorneys specialising in criminal matters and he is also one of the most experienced attorneys at that. It is safe to state that it is not the first time that he drafted and counter-signed pleas, whether a plea of guilty or of not guilty with or without admissions. At the start of the trial and during the pleading stage, the accused signed Exhibit A and B in court and these two documents were counter-signed by Mr Kruger. These guilty pleas were accepted by the State Advocate Ryan who I hasten to add is also most experienced and a senior in the NPA. The court found the accused guilty in terms of his guilty pleas and the trial continued.

156. After evidence was lead, by both the state and the accused, the legal representatives proceeded to submit their respective heads of argument. The defence, all of a sudden, advanced the submissions that the court should correct the pleas of guilty in respect of counts 2 & 3, then enter pleas of not guilty and found him not guilty on these counts.

157. Section 112 of the CPA deals with a plea of guilty during a summary trial and it states:

"If an accused or his legal adviser hands a written statement by the accused into court, in which the accused sets out the facts which he admits and on which he has pleaded guilty, the court may, in lieu of questioning the accused under subsection (1) (b), convict the accused on the strength of such statement and sentence him as provided in the said subsection if the court is satisfied that the accused is guilty of the offence to which he has pleaded guilty: Provided that the

court may in its discretion put any question to the accused in order to clarify any matter raised in the statement."

158. Section 112 (3) provides as follows:

"Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purposes of determining an appropriate sentence."

159. The state accepted the pleas, the court found him guilty of these crimes he pleaded guilty to as stated above. The court did not sentence him and the trial proceeded.

160. Now it is argued that the court should, in terms of section 113 of the CPA correct these pleas, to enter pleas of not guilty, and to find him not guilty.

161. Section 113 (1) of the CPA deals with the correction of a plea of guilty, if applicable:

"(1) If the court at any stage of the proceedings under section 112 (1) (a) or (b) or 112 (2) and before sentence is **passed is in doubt** whether the accused is in law guilty of the offence to which he or she has pleaded guilty or if it is alleged or appears to the court that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge or if the court is of the opinion for any other reason that the accused's plea of guilty should not stand, the court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution: Provided that any allegation, other than an allegation referred to above, admitted by the accused up to the stage at which the court records a plea of not guilty, shall stand as proof in any court of such allegation. [emphasis by the court].

162. I will now take a closer look at section 113 (1) bearing in mind that the accused submitted a signed written plea of guilty to counts 2 & 3 and certain admissions, I ask myself pertinent questions:

163. Is there any doubt whether the accused is guilty? The answer is NO. It is beyond reasonable doubt that the accused is guilty to the counts and that the pleas were in law correct.

164. Does it appear to the court that the accused does not admit an allegation in the charge? The answer is: no. He was ably assisted by Mr Kruger and he duly admitted all the allegations in these two charges underscoring it by stating that he wanted to plead guilty from the beginning and I quote from his written plea ad para 4: "That the accused had indicated from the onset that he wished to plead guilty."
165. Does it appear to the court that the accused has incorrectly admitted any such allegation? The answer is: No. There are no indications from the evidence as a whole that he had incorrectly admitted any allegations at all.
166. Does the accused have a valid defence to the charge? The answer is: NO, he does not have a valid defence to the charges.
167. The last question the court has to consider is: Is the court is of the opinion that there are any other reasons that the accused's plea of guilty should not stand? The answer is: NO.
168. During the argument stage the court debated the point *in limine* that the guilty pleas to counts 2 and 3, stands to be corrected, and eventually Mr Kruger conceded that the court does not have to correct the pleas and that the accused pleas of guilty stand and that the verdict of the court is correct. That then settles this point.
169. Mr Kruger, in his heads of argument, argues that there is a duplication of convictions in respect of counts 5, 6, 7 & 8. He argues that the court should only convict him on count 4 because, so he argues, counts 5, 6, 7 & 8 constitute an improper duplication of convictions.
170. The accused pleaded guilty to counts 2, 3, 6, 7 & 8. In respect of counts 2 & 3 the accused now requests to court to "correct his signed written plea and I have dealt with this already and will not repeat it. Now, he alleges that counts 5 – 8 constitute an improper duplication of convictions. These points pertaining to the so-called duplication and therefor an improper duplication of convictions, were not strenuously argued and in light of the concessions by Mr Kruger, these points *in*

limine also fall by the wayside and it was effectually abandoned. The verdict of the court in respect of these charges to which the accused pleaded guilty, stands. What about count 5 compelled self-sexual assault to which he pleaded not guilty? Did he concede that the court should find the accused guilty on this count? It is not entirely clear and therefor the court, in favour of the accused, still have to bring out a finding whether he is guilty or not of this count and the others to which he pleaded not guilty.

171. At the outset of this judgment, I set out the 8 counts against the accused in great detail of which the main count is human trafficking and to which he pleaded not guilty.

172. While I am considering the evidence in respect of counts 1, 4 & 5, I will have regard to the evidence as a whole because, even in the light of the accused pleading guilty to five of the eight counts, it impacts on the entire case. In other words, I have regard to each count he pleaded not guilty to on their own and as a whole and how that interact with the counts, he pleaded guilty to.

173. What is human trafficking? It is set out in the Trafficking Act in section 4 (1).

"4 Trafficking in persons

(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;
- (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 a 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.”
[the court’s emphasis]

174. I wish to point out that not a single one of the following words delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives are defined in the Trafficking Act. That calls for interpretation by the court. The word “recruits” calls for deeper research than what the normal everyday dictionaries offer. Google offers tens of websites that deal with this word that relates it to human trafficking. I am further of the view that the following reference³ will suffice [the Wisconsin University Child Welfare Professional Development System].

175. This specific study deals exclusively with the word “recruitment.” Other studies of the University deal with other elements. It examines how traffickers recruit and maintain control over these victims. It examines some of the techniques used by child sex traffickers to recruit them and sex trafficking. And what do they do to maintain control over these victims? The court is of the view that this case is a classical case study for recruiting and keeping control over the complainant and I once again refer to the 2596 WhatsApp messages and the accused’s evidence under oath.

176. The researchers asked questions such as who can be a trafficker? Even a hotel worker who turns a blind eye maybe a trafficker. The study found that normally a trafficker would hide his or her intentions and after some time, will reveal who he or she really is. Accused told the court in his own words that he masturbated within an hour after meeting the complainant on that notorious website. And the WhatsApp messages reveal that he “forced” her to prepare for anal sex with her hairbrush because he doesn’t want to have any difficulties when he meets her for the second time failing anal sex, he would then finger her while she is eating curry.

³https://media.wcupds.wisc.edu/related-training/Human-Trafficking/m3-Recruiting/story_content/external_files/recruiting-transcript.pdf

177. He quickly identified her need for acceptance and a warm relationship. The accused assured her numerous times that he cares for her and that her parents do not care for her – this is all within the findings of the researcher of this paper. Then according to the study, the victim is isolated. So far, every point mentioned in this study ties in perfectly with Captain Botha's and Ms Tage's evidence. The complainant's mother gave evidence in lay man's terms of what she found was happening with her daughter and it fits in with this study. The complainant's mother never mentioned the word "recruits", but it is noticeable how her *viva voce* evidence resonates in the study.
178. Then the trafficker starts with his or her sexual demands. If there is refusal, or hesitancy there are various ways available to the trafficker to "counter" it: in the instant matter, he simply refuses to take no for an answer and he kept on coming back with different arguments. He even threatened her parents' lives. It seems as if the accused has gained complete or sufficient control over the complainant.
179. The trafficker reshapes the world view of the child and this happened in the instant matter. The trafficker manipulates the feelings of shame, humiliation and guilt of the complainant. The complainant testified about that as well. Her mother, Captain Botha and Ms Tage re-iterated her fears, guilt, shame and humiliation in open court. The accused tried his utmost to play it down by repeatedly saying that it was said in jest, dark humour and so on.
180. Where do traffickers go to, to recruit? In this instance he went to a website of ill-repute namely Omegle and when the two of them were linked, he immediately started with the normal trafficker's arsenal of weapons. He used social media such as Omegle, snapchat, WhatsApp to gain access. He even had her PIN numbers and only at a very late stage he gave her access to some of his devices.

181. He was so in complete or sufficient control of the complainant that he phoned her from the Diepkloof Prison although she blocked his cell phones. He was besotted with the complainant.
182. Complainant told the court, and it was corroborated by the accused, that his face was for a very long period not visible to conceal his age as he was scared that she might dump him for being too old for her. That is what traffickers do: they conceal their real identity for a period.
183. It is clear to the court that the recruiting stage might take a while to be established and in this case, it was established beyond any reasonable doubt. The trafficker gains psychological control and the complainant told the court that she felt trapped and had no other alternative but to give way to the accused persistent nagging.
184. She said that she loved the accused and at the same time she was petrified that he would kill her parents. Then the trafficker creates a new "family" for the child because he has alienated the victim from his/her family. The recruiting is most successful because the trafficker now knows a great deal about the victim, her family, school friends and surroundings. It is this basis, namely the recruiting of the complainant, that he is prosecuted on.
185. It is widely accepted and described as it being a process. I think that is the crux of human trafficking. The process is described succinctly in the Trafficking Act. In light of the viewpoint that it is a process I am of the view that there are various steps in this process and each step is a complete crime. In other words, it is not a prerequisite to have each and every step to constitute the crime of human trafficking. Each separate step is sufficient to constitute the crime. It seems as if there are 9 different steps in the process and these steps are the following:
186. Let's consider the wording of section (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 ... for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons.

Step one: "any person who delivers ... another person within or across the borders of the Republic, by means of ... for the purpose of exploitation is guilty ...

Step two: any person who ... recruits another person within or across the borders of the Republic, by means of ... for the purpose of exploitation is guilty ...

Step three: any person who ... transports ... another person within or across the borders of the Republic, by means of ... for the purpose of exploitation is guilty ...

Step four: any person who ... transfers ... another person within or across the borders of the Republic, by means of ... for the purpose of exploitation is guilty ...

Step five: any person who ... harbours ... another person within or across the borders of the Republic, by means of ... for the purpose of exploitation is guilty ...

Step six: any person who ... sells ... another person within or across the borders of the Republic, by means of ... for the purpose of exploitation is guilty ...

Step seven: any person who ... exchanges ... another person within or across the borders of the Republic, by means of ... for the purpose of exploitation is guilty ...

Step eight: any person who ... leases ... another person within or across the borders of the Republic, by means of ... for the purpose of exploitation is guilty ...

Step nine: any person who ... receives another person within or across the borders of the Republic, by means of ... for the purpose of exploitation is guilty ...

187. This matter revolves around step two: the word: "recruits" and what it means.

188. In respect of the State's case the court asks the question whether the case was proven beyond any reasonable doubt. The answer is yes.

189. In respect of the accused's case: the question is, is his version reasonably possibly true? It is rejected.

190. Evaluation of the witnesses and their demeanour in court? Are they reliable? I accept the evidence of the state witnesses.

191. Let us turn to an international instrument called: The PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME⁴ ["the Protocol"]. It was adopted and opened for ratification and accession by the General Assembly resolution 55/25 of 15 November 2000. South Africa is a signatory to it. South Africa signed it on 14 December 2000 and ratified it on 20 February 2004.

192. The Protocol at article 3 under the heading: USE OF TERMS defines "human trafficking" as follows:

"For the purposes of this Protocol:

(a) "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 purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the

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https://www.unodc.org/documents/treaties/Special/2000_Protocol_to_Prevent_2C_Suppress_and_Punish_Trafficking_in_Persons.pdf

prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a **child** for the purposes of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in paragraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age."

193. One can use my procedure set out above to dissect article 3 (a) of the Protocol to discover the steps set out herein. It is clear that the Trafficking Act does have more steps than the Protocol.

194. Article 4 of the Protocol under the heading Scope of Application: provides as follows: "This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organised criminal group, **as well as to the protection of victims of such offences.**" [emphasis by the court].

195. Article 5 of the Protocol under the heading Criminalization provides as follows:

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence in accordance with paragraph 1 of this article."

196. One of the ways victims of such offences are protected is the Trafficking Act linked to SORMA and I venture to state that South Africa is on its way to improve its legislative and other measures as may be necessary to protect victims as best it can. The law can state *ad nauseam* that murder is outlawed, it still happens every single day. So, the State can do as much as it can to outlaw human trafficking, unfortunately, it still happens every day internationally.

197. The State Advocate, Adv Ryan submitted that the act of recruitment for sexual exploitation must be proven beyond reasonable doubt. The Act does not define "recruitment" and therefore the definition from the Oxford English Dictionary will be used. The earliest known use of the noun "recruit" is in the early 1600s. "Recruit" is defined as, to enlist, to find new people, to join or the process of actively seeking out for a specific position. It is the State's submission that the accused was indeed actively enlisting or recruiting the complainant for sexual exploitation. This can be seen in the utterances that the accused made on "WhatsApp". As I have indicated above the normal everyday dictionaries are not up to standard to define "recruiting" and hence, my different approach to get to the true meaning of this word.

198. The accused further stated during cross examination, that he came to South Africa to have a sexual encounter with the complainant.

199. Trafficking in persons, it is submitted, has to be understood as a criminal process rather than a criminal action. All the elements or steps as described above are the result of a criminal strategy put in place in order to secure the physical availability and presence of the victim through illicit means, *vis a vis* physical or psychological coercion, threat or use of force, abduction, the abuse of power or the abuse of vulnerability to exploit a victim. There are three phases of trafficking:

1] the measures or conduct employed/used by traffickers (i.e. what is done) to introduce or maintain a victim in the trafficking

scenario. The acts are not criminal *per se* when seen strictly in isolation. These acts become illegal when coupled with the following two additional elements:

2] an indication that the act was committed without the consent or through the vitiated consent (implying the absence of a fully informed and freely given consent) of the victim and;

3] indication that the intent of the conduct was exploitation.

200. It is the state's submission that it has been proven beyond reasonable doubt that the criminal process of the accused was, to recruit the complainant for sexual exploitation. It is further submitted that the fact that her so-called "consent" was not fully informed and or freely given, did not matter to the accused. Through a process of grooming, he broke her down and obtained her "consent". It must be remembered that even though the accused indicates that she consented, the complainant denies this. That defence fails since children cannot consent to being trafficked. See the *Embrace project*⁵-case referred to by Ryan.

201. In respect of Count 4: grooming: Captain Botha also testified that there are different stages of grooming. Exhibit "O". These stages are as follows:

201.1. Gaining trust and access;

201.2. Playing a role in the child's life;

201.3. Isolating the child;

201.4. Creating secrecy around the relationship;

201.5. Initiating sexual contact and;

⁵ *Embrace Project NPC and Others v Minister of Justice and Correctional Services and Others* (04856/22) [2024] ZAGPPHC 961; 2025 (1) SACR 36 (GP) (30 September 2024)

201.6. Controlling the relationship.

202. COUNT 5 COMPELLED SELF-SEXUAL ASSAULT: SORMA makes it a crime for a person to force another person to witness and or perform sexual acts on themselves. This is known as compelled self-sexual assault.

203. Was it proven beyond reasonable doubt? This calls for the assessment and evaluation of the witnesses for the state and the accused and the evidence. *Rex v Blom* is such a well-known case and it so often quoted by both the State and the defence that it seems to the court that it begs a reminder that this case [*Blom*-case] was based entirely on circumstantial evidence⁶. Whereas in the instant matter it is direct evidence which then calls for inferences to be drawn from this direct evidence and the oft quoted dictum by Watermeyer J.A. is:

"In reasoning by inference there are two cardinal rules of logic which cannot be ignored: (1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn. (2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct."

204. This, in respect of counts 1, 4 and 5, is where the State and the defence are at loggerheads in the inferences that they request the court to draw. The State urges the court that the entire body of evidence is such that the guilt of the accused is proven beyond reasonable doubt and this is based on the rules of logic as seen by the State. The defence, for that matter, urges the court that the only inference to be drawn from the evidence is that the accused's version is reasonably probably true. In the *Blom*-case however, the problems faced by both the trial court and the Appellate Division, as it then was, were that there was no direct evidence because it was based entirely on circumstantial evidence. This court is not faced with that problem because it was direct evidence that were presented to the court.

205. The court should consider the evidence holistically and not piecemeal as it were. I have the direct evidence of the complainant's

⁶ *Rex v Blom* 1939 AD 188 at 201.

mother and the complainant in person and the accused's evidence as well as the welter of documents of which the bulk was 2596 WhatsApp messages. The other witnesses for the State were expert witnesses. The accused did not offer any contrary evidence in respect of the State's experts at all.

206. *Modinga v The State* (20738/14) [2015] ZASCA 94 (01 June 2015) at paragraph 24 it was held that:

"The question for determination is whether, in the light of all the evidence adduced at the trial, the guilt of the Appellants was established beyond reasonable doubt. The breaking down of a body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it. **But in doing so one must guard against the tendency to focus too intently upon the separate and individual parts, of what is, after all, a mosaic of proof.** Doubts about one aspect of the evidence led in a trial may rise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that is 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 trees." [the court's emphasis]

207. The court indeed took a step back and considered the mosaic of evidence as a whole, that means in essence that even the evidence by the accused was considered during this process. I can come to no other conclusion that the accused's guilt in respect of counts 1, 4 and 5 were proven beyond reasonable doubt and consequently the accused's version is rejected hereby as false and not reasonably possibly true.

208. He levelled abuse not only against the complainant, but explicitly against her parents as well. The court have dealt with that already and I am not going to repeat it as any abuse that leads a person to believe that he or she has no reasonable alternative but to submit to exploitation, and includes but is not limited to, taking advantage of the vulnerabilities of that person resulting from being a child. It was clear from the WhatsApp messages how she pleaded with the accused that

she was firmly under the impression that he is capable of causing harm [killing] of her family: she pleaded with him rather to harm her, but not her parents; this child put her own life on the line to protect her parents and he went on with his threats, regardless.

209. Adv Ryan argued in her heads of argument as follows: "In other words, for children to be trafficked or for an accused to be convicted of trafficking of a child, it is not necessary that there be force, fraud, deception or coercion (etc.). In the case of children, consent is irrelevant because a child cannot voluntarily or willingly enter into an arrangement that resulted in trafficking, even if the child's parents were to give their consent. There does, however, have to be the act of recruitment, transportation, transfer (etc.), as well as the purpose of exploitation."

210. Ryan: "Thus, in the case of a child, not only will consent fail as a defence, but there need be none of the prescribed means proven. This is so even if the child is a willing participant."

211. I submit that the court should have a holistic approach and not piecemeal when it evaluates the evidence in the matter. It should not overemphasise or under emphasise a single piece of evidence or for that matter any aspect of the case either in favour of the State or the accused.

212. The question may now be asked whether the accused's version is reasonably possibly true? Not in this case. The evidence is overwhelmingly stacked against the accused.

213. It is the State's submission that the only inference to be drawn from the above utterances are that the accused had the intention to commit a sexual act with the complainant. In the matter of *S v Blom* it was stated that the inference sought to be drawn must be the only reasonable inference to be drawn from the proven facts. And the court adds that it should follow the normal rules of logic. The court is of the opinion that as far as the volume of the WhatsApp messages are concerned, it follows logically that the accused's case cannot be reasonably possibly be true and that the State proofed its case beyond any reasonable doubt.

214. What was the accused's intention? I can do no better than to quote the accused himself by reference to the myriads of instances in the WhatsApp messages about him pestering the complainant to "give me head" and that was already dealt with above. The accused went so far as to tell complainant directly that if they cannot have sex, then he will finger her while she is eating curry. He tried his utmost to present these gross instances as being said in jest, or it should be seen in light of his dark humour.

215. In the *Embrace Project* I read at para 18 the following:

"The applicants submit that the Act as it presently stands, violates the rights of victims/ complainants, mostly women, to equality, dignity, privacy and freedom and security of the person, by permitting a person to rely on a subjective belief of consent when engaging in a sexual act with another person." In essence, this is what was argued that the accused subjectively held the belief that the complainant consented to the various sexual counts.

216. The argument that the accused held the subjective belief, that complainant consented to the various sexual counts, firmly casts the burden and focus on the complainant and it takes the focus away from the accused and what he allegedly did or said [paragraph 21 and para. 22 of the *Embrace Project*]. The court's focus should be on the evidence as a whole and not on the complainant's or for that matter on the accused's version. That to my mind should not be the case: the court has a burden to evaluate the case holistically. I dare not emphasise the one version as opposed the other version. The complainant's willingness to participate in the various suggestions proffered by the accused should also be assessed. And the court take this seriously. She resisted. The accused never took no for an answer: take for instance her say so that her body is her temple and that her body is hers alone and the accused's response to that [para 24 & 25 of the *Embrace Project*-case]. She tried to reason with the accused, because he persistently kept the pressures up on the complainant. She even pleaded for the life of her parents and begged him to rather harm her, but not her parents. What more could she have done? The answer to this is: none.

217. The court in the *Embrace Project*, sets out various myths as it were surrounding sexual violent matters and one of the myths is that sexual predators are always violent monsters. Not so, said the court, they are often fathers, uncles, bosses, colleagues and lovers. In the instant matter the accused is a "lover" of the complainant. If the court solely evaluate the complainant's conduct, the court would have bought into victim blaming and that I am not going to do.

218. At para 26 of the *Embrace Project* the court stated that the law requires consent to be active, and the mere submission is not sufficient to assume consent. It is clear from the quotations from the WhatsApp messages, that she was resisting him actively and rather vocally at times, yet, he tried his utmost to convince her otherwise. At one stage she said to the accused: "No because my virginity is mine not yours. I decide when it gets taken Qas that's not a compromise." Did he accept that? No. He continued pressuring her: "It is not yours it's ours get it right." She: "No factually it's mine." This conversation reveals a lot about the accused and how he applied relentless pressure on a child to have sex with him. How conceited and preposterous you are.

219. At para 65 the *Embrace Project* discussed "consent"⁷

"Consent must be given voluntarily and must be genuine and result from the person's free will, assessed in the context of the surrounding circumstances, and can be withdrawn at any moment. While consent need not be explicit in all cases, it cannot be inferred from:

- (a) silence by the victim;
- (b) non-resistance, verbal or physical, by the victim;
- (c) the victim's past sexual behaviour; or
- (d) the victim's status, occupation or relationship to the accused."

220. The court is of the view that the above quotation from the Special Rapporteur on violence against women, its causes and consequences,

⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, A framework for legislation on rape (model rape law) (15 June 2021) NHRC/47/26/Add.1 at V

is applicable on this matter. The court stated on numerous occasions that it evaluated the evidence holistically and also found that the complainant never withdrew her opposition to the accused's consistent and persistent pressure to consent to his sexual demands.

Mr Kruger, please ask your client to stand.

221. Judgement in respect of the various charges. It is common cause that these crimes were committed in respect of the complainant:

221.1. Count 1: guilty in respect of human trafficking: guilty as is more fully described in the indictment.

221.2. Count 2: guilty in respect of facilitating and or assisting the creation and or production of child-pornography as is more fully described in the indictment.

221.3. Count 3: guilty in respect of possession of child pornography as is more fully described in the indictment.

221.4. Count 4: guilty in respect of encouraging, enabling, instructing, or persuading a child to perform a sexual act [grooming] as is more fully described in the indictment.

221.5. Count 5: guilty in respect of compelled self-sexual assault as is more fully described in the indictment.

221.6. Count 6: guilty in respect of compelling or causing children to witness sexual offences, sexual acts or self-masturbation as is more fully described in the indictment.

221.7. Count 7: guilty in respect of exposure or display of or causing exposure or display of genital organs, anus or female breasts to children [flashing], as is more fully described in the indictment.

221.8. Count 8: guilty in respect of sexual assault as is more fully described in the indictment.

COERTSE CJ AJ

COERTSE
27/1/2023

For the State: Advocate C Ryan NPA

For the Accused: Mr J Kruger instructed
by Botha Du Plessis & Kruger
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