



**IN THE REGIONAL DIVISION OF GAUTENG
HELD AT PRETORIA**

CASE NO: 14/546/2013

In the matter between

The State

Versus

Onyekachi Okechukwu Eze

Accused

JUDGMENT

“[S]ex trafficking ... should no more be seen as women's issues than slavery was a black issue or the Holocaust was a Jewish issue. These are all humanitarian concerns, transcending any one race, gender, or creed.” — (Nicholas D. Kristof and Sheryl WuDunn)

[1] The accused, an adult male Nigerian national had the following charges put to him at the commencement of the trial: -

Count 1 – The illegal and intentional trafficking for sexual purposes of [REDACTED] (hereafter referred to as [REDACTED] without her consent, in contravention of section 71(1) of the Criminal Law (Sexual Offences and related Matters) Amendment Act, 32 of 2007

(hereafter referred to as the 'Sexual Offences Act, 32 of 2007') - read with the provisions of section 51 and Schedule 2 of the Criminal Law Amendment Act, No. 105 of 1997, as amended - Trafficking in persons for sexual purposes. The offence is alleged to have taken place at Pretoria during the period 2010.

Count 2 - The illegal and intentional trafficking for sexual purposes of [REDACTED] [REDACTED] (hereafter referred to as [REDACTED]), without her consent, in contravention of section 71(1) of the Sexual Offences Act, 32 of 2007 - read with the provisions of section 51 and Schedule 2 of the Criminal Law Amendment Act, No. 105 of 1997, as amended - Trafficking in persons for sexual purposes.

The offence is likewise alleged to have taken place at Pretoria during the period April 2013 up to 9 May 2013

Count 3 – THAT the accused is guilty of the crime of contravention of the provisions of section 3 of the Sexual Offences Act, No. 32 of 2007 - read with the provisions of section 51 and Schedule 2 of the Criminal Law Amendment Act, No. 105 of 1997, as amended – Rape;

IN THAT during or about the period April 2013 up to 9 May 2013 and at or near No 325 Sandalwood Drive, Newlands, Pretoria, the accused did unlawfully intentionally commit an act of sexual penetration with the complainant, [REDACTED], a 19 year old female, without the consent of the said complainant.

Count 4 - THAT the accused is guilty of the crime of contravention of the provisions of section 3 of the Sexual Offences Act, No. 32 of 2007, read with the provisions of section 51 and Schedule 2 of the Criminal Law Amendment Act, No. 105 of 1997, as amended – Rape;

IN THAT on or about 9 May 2013 and at or near No 325 Sandalwood drive Newlands, Pretoria, the said accused did unlawfully and intentionally commit an act of sexual penetration with the complainant, [REDACTED] a 19 year old female, without the consent of the said complainant.

Count 5 - THAT the accused is guilty of the crime of contravention of the provisions of section 5(b) of the Drugs and Drug Trafficking Act, No 140 of 1992 - Supply of drugs; IN THAT during or about 2010 and at or near Sunnyside, Pretoria, the accused did unlawfully and intentionally supply an undesirable dependence producing substance, to whit cocaine as listed in part III of Schedule 2 of Act 140 van 1992, to ■■■. Alternatively;

THAT the accused is guilty of the crime of contravention of the provisions of section 5(b) of the Drugs and Drug Trafficking Act, No 140 of 1992 – Unlawful possession of drugs.

Count 6 – THAT the accused is guilty of the crime of contravention of the provisions of section 5(b) of the Drugs and Drug Trafficking Act, No 140 of 1992 - Supply of drugs; IN THAT during or about April 2013 up to 9 May 2013 and at or near No 325 Sandalwood drive, Newlands, Pretoria, the accused did unlawfully and intentionally supply an undesirable dependence producing substance, to whit cocaine as listed in part III of Schedule 2 of Act 140 van 1992, to ■■■■■, a 19 year old female. Alternatively;

THAT the accused is guilty of the crime of contravention of the provisions of section 5(b) of the Drugs and Drug Trafficking Act, No 140 of 1992 – Unlawful possession of drugs.

Counts 7 – THAT the accused is guilty of the crime of the contravention of the provisions of section 20 of the Sexual Offences Act, No. 23 of 1957 - Knowingly living, wholly or in part, of the earnings of prostitution,

IN THAT during the period 2010 up to 9 May 2013 and at or near Pretoria, the said accused did unlawfully and intentionally live, wholly or in part, on rewards, favours or compensation obtained from the commission of sexual acts of ■■■■■ and/or ■■■ with other men.

Count 8 – THAT the accused is guilty of the crime of contravention of the provisions of section 2 of the Sexual Offences Act, No.23 of 1957 - Keeping of a brothel

IN THAT during or about the period 2010 up to 9 May 2013 and at or near Pretoria, the said accused did unlawfully and intentionally kept a brothel at No 325 Sandalwood Drive, Newlands, Pretoria.

Count 9 - THAT the accused is guilty of the offence of contravening section 49(6) read with section 1, 36, 38 - 46 of Act 13 of 2002;

IN that upon or about 9 May 2013 and at or near No 395 Sandalwood drive Newlands, Pretoria, the accused unlawfully contravened a condition of his permit, to wit Temporary Residence Permit number RBFCHSR for purposes of travel holiday, by not extending his permit after it has lapsed on 16 August 2006, and thereby illegally remaining in the RSA.

[2] Counts 1 and 2 bear references to the provisions of section 51 and Schedule 2 of the Criminal Law Amendment Act 105 of 1997, as amended – the minimum sentencing regime on which the state would rely in case of conviction. Since the crimes of ‘trafficking’ fall in Part I of Schedule 2 of the Act; the proper reference would have been to refer to the specific subsection that applies, namely section 51(1), in terms of which the minimum sentence of imprisonment for life is prescribed in case of conviction. Reference to section 51 broadly, without referring to the specific subsection does however not mean that section 51(1) cannot be relied upon in case of conviction - see *S v Kolea* 2013 (1) SACR 409 (SCA).

[3] The accused was represented by Adv RC Maphari. He pleaded not guilty to all counts. The accused indicated through Counsel that he chose to give a plea explanation in terms of section 115 of the Criminal Procedure Act, Act 51 of 1977 (the CPA) which was read into the record and received into evidence marked Exhibit “A”. No admissions were recorded in terms of s220 of the CPA. The accused confirmed that he understood the charges against him and that the provisions of the so-called prescribed minimum sentences act will be applicable to counts 1 to 4. He confirmed that the competent verdicts were explained to him. With the consent of the state, the

defence handed a copy of a document headed Asylum Seeker Temporary Permit and it was received into evidence marked Exhibit "B". This document related to Count 9.

[4] The state addressed the court on application in terms of section 153 of the CPA. With the consent of the defence it was ordered that in terms of section 153 (3) (a) all members of the public leave the court as the proceedings would be held *in camera*. The prosecutor then applied in terms of section 158 (2) and (3) of the CPA for both complainants to testify by means of close circuit television. The accused initially objected to the evidence of ■■■ being led by means of close circuit television, but later withdrew his objection and the court ordered that in terms of section 158 (2) (a), the complainants give evidence by means of close circuit television. In making the said Order, the Court considered the provisions of section 158 (3) (e) of the CPA based on the recommendations contained in the Victim Impact Reports of ■■■ and ■■■■■ compiled by M Mmushi, a social worker. These reports were received into evidence and marked as Exhibits "C" and "D" respectively.

[5] The Prosecutor, Adv A van Deventer addressed the court briefly in terms of section 150 of the CPA. Altogether 6 witnesses testified for the state. The state witnesses were ■■■ and ■■■■■ (the complainants), Warrant Officers Qegu and Sithole (the investigating and arresting police officers), Dr Lukhozi (a medical practitioner who completed the J88 Medico-legal report) and Major Stollarz (a clinical psychologist). The accused testified in his own defence and no witnesses were called for the defence.

In order to complete a coherent picture of the events in this trial, the evidence of the witnesses will not be dealt with in the order in which they testified.

The evidence of ■■■■■

[6] ■■■ was probably 26 years old when her exposure to drugs began. In her childhood, she was molested throughout her school days by someone close to her family. This had a great impact on her life as an adult person. She felt unloved and

dirty. To cope she took her mother's prescription medicine, anti-depressants and sleeping tablets. She found employment at Waterkloof air force base as a cook. Her first marriage was abusive, and she divorced her husband whilst expecting her first child. By this time, she was a full corporal working as a chef at the air force base. She turned to alcohol and stated that she was becoming an alcoholic. Her friendship with a certain sergeant [REDACTED], a male work colleague lead to her introduction to the sordid world of hard drugs. [REDACTED] took her to a Nigerian dealer in Sunnyside, Pretoria. He taught her how the drug, which she came to know as 'rocks' was smoked using a glass pipe. In her later testimony, she explained that 'rocks' was a street name for cocaine and described in detail how a rock is prepared for smoking. I will return to this aspect. She enjoyed the experience of drug induced happiness and over time her cravings grew. Between the two of them, the cost for an evening's supply of rocks would amount to a thousand rand. From once a month to once a week, they made more frequent trips to Sunnyside to obtain drugs. Eventually she found herself smoking drugs every other day. Her salary of R4700.00 could not fund her addiction and she borrowed money and began selling her household goods. [REDACTED] suggested that if she agreed to have sex with the dealer they would get a free supply of drugs. This exchange of sex for drugs extended to other Nigerian dealers as well. Eventually she began going out on her own to obtain drugs.

[7] It was during one such outing that she was taken in by a certain Nigerian dealer when she found herself stranded at night as her motor bike needed repairs. Under the guise of offering to help her, she was taken to his flat and given more drugs. From then onwards she never returned home permanently. Because she was absent without leave, she lost her job. She went on to recount a detailed train of events which eventually resulted in her being taken in by the accused. The details are omitted only to the extent that bear light on her transformation from drug addict to becoming a fully-fledged sex slave. The person who assisted her with her motor bike had other girls living in his flat. She was given clothes and taught how to work the streets as a prostitute. Her every movement was monitored and all income she made was taken from her. Depending on how much money she made she received rocks in exchange.

[8] She was sold to another Nigerian dealer known as Omeka who took her off the streets and advertised her body on the internet. She was photographed, and advertisements were placed offering her sexual services. She stayed here for several

months and made a lot of money for the dealer. When she managed to return to Sunnyside she met a Nigerian who she referred to as 'Uncle'. He supplied her with rocks in exchange for her working for him as a prostitute. She thereafter was passed on and worked for another Nigerian called John during which time she realised she was pregnant. She was not allowed to leave the house and did not have many clients. Because she was not making any money John sold her to the accused.

[9] She occupied the accused's 2-bedroom flat with a Coloured woman and a Nigerian man. She shared one room with the accused and the other couple the other. She had sexual intercourse with the accused to obtain drugs. The pattern of her lifestyle was the same – her body was advertised in provocative poses on the internet after being photographed in skimpy underwear. Men would make appointments for sex after viewing the site. Advertisements were placed on sites such as Sex Trader, Escort South Africa and Red Velvet. She had no choice in the matter. The men would call at the flat where the sexual encounters took place. Her other chores included cleaning the flat and making food. Initially she remained locked in with the Nigerian keeping guard over them. The accused collected her earnings in the evenings when he returned. In exchange, he gave her rocks for half the value of the money earned. She was unable to say whether he had any other source of income. The accused became angry if she did not see clients and bring in money. She saw 4 to 5 clients a day at a rate of R400.00 for half an hour and R500.00 for an hour. She made extra money for oral and anal sex. Then there was what she referred to as the 'smoking client'. This client paid extra for the company. She would sit with him showing him how to smoke the rocks whilst arousing him sexually. These clients brought in an income of between R5000.00 to R20 000.00. Her sole motivation to see clients was to make money for the accused to obtain drugs and sustain her addiction. Her morning drug doze, which she called the 'wake up' drug, was provided free by the accused and so was the evening drug which she referred to as the 'sleeper'.

[10] She believed that the accused was her pimp. All money earned was collected by the accused who gave her drugs in exchange. She stated that the accused used her earnings to pay the rent, buy food, toiletries and clothes for her as she had to look good for the clients. The accused kept the rest of the money for himself. There was a time on her birthday that the accused took her to a shopping centre to see her parents for about 15 minutes whilst keeping her under observation all the time. She did not

disclose that she was being kept against her will by the accused. They lived in Faerie Glen at that time. Because she was given a cellphone so that clients could contact her she was able to contact the Welfare regarding the birth of her child. In the accused's absence, she left to stay at this welfare home for a week where her child was born. She stated that for a while she overcame the cravings to take any drugs as having the child was more important to her. She decided against putting the child up for adoption and returned to live with her parents. She was even able to find work as a receptionist for a month or two. However, her addiction overcame her and on a trip one evening to buy drugs the accused traced her and forcefully took her to Silverton. She began living there with the accused and a certain KC, who was also Nigerian. The accused again arranged for her to see clients after she was advertised on the sex website. KC manufactured drugs in the kitchen and sold it to the accused. She estimated that she made approximately R40 000.0 a month and all of this went to the accused. Her movements were severely restricted, and she was effectively locked up in the building. The accused threatened to kill her if she tried to run away again. Thereafter they moved to a flat in Silversands.

[11] ■ narrated an incident about an assault which took place when she left the flat in Silversands and went to Sunnyside to buy drugs. The accused followed her to a flat where she was severely beaten. He hit her using his fists and open hands, kicked her on her ribs, beat her with a dog chain and stick all over her body. When they returned to Silversands, he called his pastor and he performed a cleansing ceremony on her using oils and holy water. The accused professed to be a religious man.

[12] She was no longer on speaking terms with her parents who blamed her for leaving her children. In her loneliness, she explained that she turned to making the accused's life happy so that her life could be happy. There were many instances when he assaulted her and punished her by not giving her drugs. He manipulated her emotionally and made her believe that she was worthless. When they moved to Loskop Street, she met Natasha who was living there. Using one of Natasha's clients she was able to escape in the boot of his car. She returned to her parent's home and stayed there for a long time. Her third daughter was born during this time. She reverted to using drugs again. The accused came across her one evening when she went to buy drugs and took her back with him. She had earlier incurred a drug debt with a certain Nigerian dealer called JJ who held her motor bike as security for payment. The

accused made this payment of R2000.00 on her behalf after she was escorted by force to his car. The arrangements were that she would live with a certain Chooks for a while and that her bike would be collected later.

[13] During her stay with Chooks she reverted to prostitution through the internet and received her daily supply of drugs. Chooks became her new pimp for a while although she later found out that the money was shared with the accused. The accused got to know that Chooks made a lot of money from the clients which she picked up from a local bar and took her away to live in Elarduspark, which was the home of a certain Cheedi, a person the accused worked for when he arrived in South Africa. They rented a room there. There were other prostitutes in the house. Cheedi was also a pimp and high up in the drug organisation. Because the accused failed to pay the rent they left to live in a flat in Sunnyside. A certain Charles owned this flat and it was occupied by 4 or 5 other prostitutes. Charles was the head of their church group. The ladies worked the streets for clients. The accused kept guard over ■■■ who worked on the internet and the streets.

[14] Eventually, they moved to Sandalwood Road, Newlands. She and the accused occupied the bottom level. This was the address where the accused was arrested. This was also the address where the 2nd complainant ■■■ came to live a few months later. ■■■ was an 18-year-old drug addict recruited by Chooks for which he also got a share of her earnings as a prostitute. She believed that the accused had sex with ■■■ the evening she arrived because she came across a condom. She had no knowledge of any rape. The accused continued to make more money with two girls working. They saw more clients here and made more money all of which the accused controlled. The girls were advertised in newspapers and the internet. All sexual activities took place in exchange for drugs supplied by the accused at this venue rented by the accused. When the clients called at the premises the accused would lurk in the background so that he was not seen but he always was informed what was going on. The witness was shown a bundle of cellphone records, but she was unable to confirm that any of the names appearing therein were used by her or related to her.

[15] She contacted her parents through Facebook and arranged to go to the Children's Court in Pretoria North to sign off her last born so that her parents would

become legal guardians of her child. It was before magistrate Hitchcock that she made a full disclosure which caused the magistrate to report the matter to the Hawks. ■ accompanied the officers to point out the premises where the accused was arrested. She was thereafter in protective custody.

[16] Under cross examination she denied that the accused was the father of her second born child. She conceded that the only reason she continued to stay on with the drug dealers was because of her drug addiction and she believed that she was acting out of her own free will at the time. She denied that her working as a prostitute was due to an arrangement she had with the accused. It was put to her that she was not forced to see clients and she only did so get money for her addiction. She denied this. She clarified that her wake up and sleeper drugs were given to her by the accused free of charge. However, if she did not see clients she was not given food, and something was taken away from her as punishment. She further conceded that although opportunities presented itself for her to run away from the accused, the accused made threats to kill her family if she ever tried to run away and he had her motor cycle.

[17] There was a time when her father reported her missing to the police. She was questioned about a police raid which took place whilst living in Elarduspark which created an opportunity for her to make a report to the police. She affirmed that she did so, but they returned her to the accused. This made her lose all faith and hope in their ability to help her. The accused maintained that after she left, it was she who contacted him to settle her debts which he did to stop her working on the streets. She denied this and maintained that it created a further obligation to advertise her on the internet and force her to offer her sexual services over a long time.

The evidence of ■

[18] Shortly after commencing her evidence by means of close circuit television, ■ started to cry uncontrollably and the parties agreed to postpone the hearing. The state indicated that it wanted the court to invoke the provisions of s170A for the appointment of an intermediary. The defence noted its objection since the ■ had the biological age of an adult. It became necessary for the prosecution to send the

witness to a clinical psychologist for an evaluation to determine the witness's mental age.

Section 170A (1) of Act 51 of 1977 states as follows:

“(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”. (My emphasis)

[19] After a Psycho Social Report was submitted by Ms Nel, a Forensic Psychological Report was compiled by S Sedick, a clinical psychologist at Weskoppies Hospital, Pretoria. Her report was received into evidence marked Exhibit “S (3)”. When the proceedings resumed it appeared that the defence was no longer pursuing its objection. However, based on *S v Mashinini* 2012 (1) SACR 604 (SCA) para10 which stated that “the failure by the accused or his legal representative to object to what was patently an irregular procedure, can never turn such an irregular act into a lawful or regular one”, both parties were directed to present argument. The full argument and ruling is on record and it is not necessary to summarise it, save to say that the authority on which the defence relied supported the granting of the application.

[20] Based on the authority submitted in argument and the findings and recommendations made in the clinical psychologist's report Exhibit “S (3)” and having heard the legal representatives in this matter, I held that the [REDACTED] would be exposed to undue mental stress or hardship were she to testify in court, and ordered that an intermediary be appointed and that the witnesses may testify by means of a closed-circuit television system. The victim's mental age was estimated to fall within the 14 to 18-year-old age range. The intermediary, employed as such by the Department of Justice as a ‘competent’ person to act as an intermediary, one Orika Charlotte Schoeman was then sworn in as an intermediary. She was a registered social worker with 18 years' experience and lectures to all intermediaries in South Africa.

[21] [REDACTED] was 6 months old when she, together with her sisters and brother were placed in the welfare social system. This happened after she was raped by her father.

Her mother became a prostitute. She was then moved to another home which separated her from her siblings. From there she was placed in the Morester Children's Home until she was 12 years old. She was thereafter transferred to the Catherine Robinson Children's Home in Vereeniging. Here she was subjected to bullying and mockery which resulted in her getting into fights with other learners. At the Home she associated with a group of girls she described as 'wrong friends'. One in the group introduced the rest to start smoking dagga. They absconded from school for 3 months to live with a certain Aunty Baby who owned a pub. Their intention was to go on a drinking spree. She made acquaintances at the pub during this time that paid for the drinks. The police located them, and they returned to the school. She was then introduced to mandrax and ended up using drugs. A Nigerian man abducted her from school and took her to an unknown location where she was kept. She stated that they forced her to smoke drugs after being assaulted.

[22] She described a certain Charles as one of the Nigerians from Vereeniging who sold girls. She regarded him as her boss who was nice and believed at the time she was in love with him. Charles sold her to a person called Austin. He became her boss and she was attracted to him. According to her evidence she also fell in love with Austin and had a sexual relationship with him. She began working as a prostitute for Austin under threat that her family will be harmed. She was sold back to Charles after Austin made a girl pregnant. Both Austin and Charles had drug dealings. Thereafter Charles sold her for R5000.00 to a person called Allaji. She described Allaji as one of the big bosses from Nigeria. His street name was Kenneth. She was taken to his flat at an unknown location and put to work as a prostitute. He already had 5 girls working as prostitutes. All of them were beaten up. He had a hold over her because of the drugs he supplied to her and expected her to pay him back from her earnings as a prostitute. She was also given a 'wake up' drug in the morning, in the afternoon and a 'sleeper' doze at night. Her addiction to crystal meth led to severe cravings.

[23] Initially she worked on the streets and was then photographed and advertised on the internet offering sexual services. She was 16 at that stage. The clients would call her directly and make a booking. After they paid her, the money was handed to Allaji. After 5 years she managed to escape. After staying a week with her aunt, she arranged to meet a certain person called Moody whom she earlier knew. She arranged to meet him in Johannesburg but came into contact with a certain person called

Chooks instead. Chooks, who was also Nigerian showed an interest in her and offered that she stays with him. He brought her to Pretoria and that is how she met the accused and the first complainant, [REDACTED]. They were living in a one room flat with a bathroom. Chooks left her there and returned to Johannesburg. It was [REDACTED] who told her that Chooks had sold her to the accused. She smoked rocks with [REDACTED]. Because [REDACTED] had to see a client, she waited with the accused in another outside room. The accused told her that he loved her and wished to sleep with her. She refused. When they returned to the room [REDACTED] had fallen asleep on the bed. The arrangements were that she was to have shared the bed with [REDACTED] and the accused was to have slept on the double couch.

[24] She began watching TV and the accused again made sexual advances towards her which she again refused. He then forced himself on her, removed her clothes, put on a condom and had sexual intercourse with her against her will. She stated that at this moment she 'switched off' which was understood to mean that she did not resist and she said because she felt nobody cared. She had an experience of being raped as a 13-year-old at gun point. She did not seek help from [REDACTED] because she sensed that [REDACTED] was as afraid of the accused as she was. Even the next morning, although [REDACTED] came across the condom in the bin, she did not disclose that she was raped as she feared for her life. The accused arranged for Estcourt South Africa to photograph her. Pictures were taken of her in her underwear posing in different provocative positions. The pictures were paid for by the accused and she received many clients in response to the advertisement.

[25] The accused fixed her service rate at R400.00 for half an hour and R800.00 for an hour's sex. The money earned was handed to the accused. There were times when she would see clients and the accused would disappear to the outside room. She was given a cellphone to make the bookings. She did not contact her Aunt because she did not have her number. She was too scared to run away from the accused. She recalled how she was beaten by Allaji. After she opened a police docket her friend testified on her behalf. This docket disappeared as Allaji had friends in the police force. As punishment she was tied to a chair and had to witness how her friend was killed. She also witnessed two other girls being killed. She was 15 years old at the time.

[26] She also narrated the events relating to further incident when the accused raped her. This happened during the evening shortly before the accused was arrested for the present case. She had earlier seen a client and called the accused to give him the money. He came by 6pm and wanted to have sex with her. She refused. He then forced himself on her and had sexual intercourse with her in the same manner as he did before. In exchange for the money she earned he gave her a 'sleeper' drug. She stated that it had been part of the rules she knew living with the Nigerians that all the money was given to them or you would be beaten up. The accused also threatened to assault her, and she feared that if she refused to work for him, her life would be in danger. Food in the house was scarce and sometimes she ate once a day.

[27] She was not allowed to go anywhere, and clients contacted her by cellphone. The language she used in court when describing the accused showed an intense hatred she bore for what he put her through. When asked if she though ■■■ feared the accused, her answer was a 'deadly yes'. Although she had experimented with various types of drugs, the accused supplied her with rocks and there were times when she was deprived because the accused would get home late after she fell asleep. Apart from seeing clients she also had to clean the house. The three weeks she lived there she saw up to 5 clients a day. At times she made up to R4000.00 a day for the accused.

[28] She was wearing a very revealing outfit before the before the police arrived. The accused bought that outfit because he wanted her to look sexy for clients. When the police knocked on the door she hid the glass pipe and the drug pieces, which were on a DVD cover, were flushed down the toilet. She was high on drugs at the time and had also consumed alcohol. Warrant officer Qegu (whom she referred to as Vuvo) took her to the bathroom where she showed her what she had hidden. She was hysterical at this stage. The officer asked her to pack her things and covered with a blanket. When they got to the car she saw ■■■ hiding in the car. They were then taken to a safe house where they stayed for 6 months.

The Medical Evidence

[29] Dr Lukhozi, a medical practitioner was called to give expert testimony about clinical examinations he conducted on both the complainants on the 14 May 2013. After obtaining his MBBch medical degree from Wits University, he completed a

diploma in Clinical Forensic medicine from the Colleges of Medicine of South Africa and a diploma in Clinical Medical Jurisprudence from London School of Apothecaries. He was a member of the Royal College of Physicians in London. He also held a Master's degree in Applied Bio Ethics from the University of Stellenbosch. At the relevant time he was working for the Medico Legal Department of Gauteng Health concentrating mainly in clinical forensic medicine and had 7 years' experience in that area of practice. He advised that in old terminology he was a District Surgeon who are now referred to as Medical Practitioners in Clinical Forensic Medicine. The court found by his qualifications, skill and experience he qualified as an expert.

[30] Nothing turned on the examination and report of [REDACTED] and the accused faced no charges relating to the contents of this report. Her Medico Legal Examination Report or J88 Form was nevertheless received into evidence free of objection only to show that she was examined by the doctor on the 14 May 2013. It was marked Exhibit "E". The defence took issue with the J88 Examination Report of [REDACTED] as she was examined as a rape victim 5 days after the incident. The cross examination of the doctor on this aspect revealed that whilst most adults present within 72 hours there were instances where they have examined years after the event. However, after 72 hours the chances are very slim to find persistent spermatozoa or injuries if they were not severe because they would have healed. Since most of those injuries are superficial, they will heal very quickly. In this case no DNA samples were collected because the victim did not present within 72 hours.

[31] Although he did not find injuries on genital examination, he clarified that the absence of injuries does not rule out penetration especially on an adult sexually active female. The J88 form shows a history of about 10 consensual sexual partners during the last 7 days preceding her examination. He referred to cases where, even if victims presented for examination within 24 hours, 70 to 80% showed no injuries. The defence contended that there was a deliberate delay of 5 days in presenting [REDACTED] for examination because it would not have revealed any positive evidence of rape had it been done sooner. The doctor explained that even if the victim is brought the same day it does not guarantee that evidence will not dissipate, and it may still not be possible to find evidence of rape, so a deliberate delay will not assist anyone. Importantly, bringing the victim to the clinic for a medico legal examination on the same day as opposed to five days later may not have made a lot of difference mainly

because the victim engaged in other incidents of sexual penetration and sexual activity shortly before the examination. The J88 examination form of [REDACTED] was received into evidence and was marked Exhibit "F".

The Evidence of Warrant officers Qegu and Sithole

[32] Warrant officers Qegu and Sithole testified about the events which led to the arrest of the accused and the rescue of the 2nd complainant. Both officers were part of the Hawks unit and specially trained to work in the field of human trafficking. Qegu was with Sithole when they were assigned to attend to a case at Pretoria North Children's Court. Qegu testified that she and Sithole attended court and met with magistrate Hitchcock who had made the report for police intervention. They also met [REDACTED], the 1st complainant there. She informed them how she and the 2nd complainant were being kept by the accused as sex workers against their will at [REDACTED]. The officers went to this venue after [REDACTED] made a call to establish that the accused was there. [REDACTED] pointed out the house but remained hidden in the vehicle. Before gaining entry to the accused premises she warned the girl inside not to run away as they were the police. The accused took some time to let them in.

[33] Except for a pair of pants, the accused was naked. The other person in the room was [REDACTED], who was very scantily dressed sitting on the bed drinking a beer. She detailed [REDACTED]'s sleepwear as being very transparent and revealing. Because of the way the victim was dressed she took her to the bathroom whilst Sithole dealt with the accused. She described [REDACTED]'s condition as being in a state of shock, disorientated and mostly incoherent. It appeared as if she was drunk or on drugs and was laughing for no reason. In the bathroom [REDACTED] told her that shortly before the accused had given her drugs which she smoked, he had sexual intercourse with her without consent. The accused told her to flush the rest of those drugs down the toilet when the officers knocked on the door. A glass pipe was found in the bathroom cabinet which was placed in a sealed forensic exhibit bag. The sealed bag bore the unique number PA5001053735 and was booked into SAP 13 under reference number 494/05/2013. On inspection a trace of a white powder-like substance was detected on the toilet seat. There was no food in the fridge.

[34] The witness stated that she had to assist the victim to the car as she had trouble walking. Both complainants were taken to a safe house and the accused was taken to the Brooklyn police station where he was charged the following day. The complainants were taken for medico legal examinations on the 14 May 2013 being the first available date and the witness confirmed Exhibits "E" and "F" were the relevant J88 forms. At the safe house both complainants showed signs of drug withdrawal symptoms. ■ had red rashes on her body and ■ required specialist examination of her stomach. She arranged for victim impact reports to be compiled by police psychologist Major Stollarz.

[35] The witness stated that she booked out the exhibit bag of the evidence collected on the scene and took to the laboratory for forensic analysis. The results of the test are contained in a s212 affidavit of warrant officer Mashapha which was received into evidence free of objection and marked Exhibit "I (1 and 2)". The analysis determined that it contained cocaine and cocaine is identical to one of the substances obtained from the Coca leaves. It is therefore listed in Part II of Schedule 2 of the Drugs and Drug Trafficking Act, (Act 140 Of 1992). The witness attempted to verify the address in Thembisa furnished by the accused where he allegedly worked. It led them to a Gold Exchange business. The owner, who also happened to be Nigerian, was questioned and he stated that he didn't know the accused. The witness's statement in this regard and the Tax Clearance Certificate of the business was received into evidence marked Exhibits "G" and "H" respectively. Exhibit "J (1 and 2)" was the witness's police affidavit pertaining to the arrest of the accused.

[36] Also booked into the SAP 13 register were all cellphones recovered from the accused and victims. These were sent for the data to be downloaded. Exhibit "K (1 to 17)" is a Report headed Mobile Device Extraction and Analysis. Exhibit "L" comprises a bundle of extracts of contacts, calls and messages retrieved from the cellphones referred to in Exhibit "K". The witness concluded her testimony by referring to a set of documents, some of which she obtained from ■ and some of which were found at the accused residence. These related to placement advertisements for sexual services under different names with deposit slips and receipts as proof of payment made to Sex Trader and Escort SA. These were marked Exhibits "M" (1 and 2), "N" (1 to 4) and "O". All exhibits were handed in free of objection from the defence.

[37] In cross examination it was put to the witness that the accused knew nothing about the glass pipe, had not seen it before and did not hand it to [REDACTED]. The witness's explanation for the delay in taking [REDACTED] for a medico legal examination was that the events fell over a weekend and she stayed alone with her child. No other officer was available to take her to the doctor. It was put to the witness that the rape allegation was made only to make the case look stronger; the accused never had sexual intercourse with the victim on the day in question. He maintained that there was food in the fridge. It was also put to her that the accused will say that he had no knowledge of Exhibits "M", "N" and "O", being the documents relating to the advertisements in Sex Trader and Escort SA and saw them for the first time in court. He denied that the cell phone numbers appearing on the receipts were his.

[38] Warrant Officer Sithole's testified and his evidence was in line with that of the testimony of Qegu. He confirmed that on meeting [REDACTED] she informed them that from 2009 the accused forced her to stay with him and used her as a sex worker. He stated that on entering [REDACTED], Qegu took charge of the victim and he concentrated on the accused. He did notice that the complainant was wearing lingerie and struggling to walk. Qegu took her into the bathroom. She was talking loudly, laughing and He did not find anything on the accused's possession. In cross examination Sithole stated that Qegu informed him about the glass pipe she found when they were leaving the scene. After obtaining the accused's consent, the witness read the accused's entire Warning Statement, which he took on the day following the arrest into the record and it was received into evidence and marked Exhibit "P" (1 to 13). The SAPS 14A form (Notice of Rights in terms of the Constitution) was also received into evidence and marked Exhibit "Q".

[39] As a follow-up to the Warning Statement he enquired and was informed by [REDACTED] that it was the accused who took away her motor bike. Under cross examination and according to the witness's recall, [REDACTED] told them that the accused had just finished raping her when they entered the room. It was also put to Sithole that the reason for the delay in having the medical examination done was to find something to link the accused to the offence. The defence introduced into evidence a map and set of photographs of the accused's residence in Sandalwood Road for the purposes of showing the walking distance from the complex to the security point and the Spar shopping centre. These documents were marked Exhibit "R" (1 to 6).

The evidence of the Major Bronwynn Stollarz

[40] Major Stollarz, a clinical psychologist, testified as an expert witness. She adduced evidence based on a victimology report, which she compiled at the request of the state. The purpose of her report and evidence was to assist the court in understanding the behaviour of victims of human trafficking from a psychological point of view, and to do so about the two complainants in the case. Major Stollarz presented impressive *curriculum vitae*. Her educational background included a Master's degree in Clinical Psychology, with distinction. She gave evidence regarding both the relevant training she received as well as training she currently presented, including conference presentations. She outlined her work experience and highlighted her court experience in finalised trials in which she presented reports or assisted the prosecution. She read her entire CV into the record and a copy was received into evidence marked Exhibit "S 1". By virtue of her qualifications, skill and experience, the court found that she qualified as an expert.

[41] The witness then proceeded to read her entire Report into the record. I will deal with certain salient features of her report later in this judgment. The conclusion she reached was that 'the complainants in the present matter were both, due to a number of developmental factors and traumas, and their abuse of substances, vulnerable to becoming victims of human trafficking. During the time that led up to their rescue they were subjected to witnessing and experiencing physical and sexual violence, threats, and encouragement of their addictions. Neither complainant wished to remain in the environment that they were in, but believed that they were unable to leave due to a number of psychological factors regarding the accused control over them, which included their fear of their own, or their families' safety, substance addiction and lack of other viable alternatives. These victims were therefore exposed to the typical mechanisms used by traffickers to keep their victims in a web of trafficking that extended beyond the mere physical control to the expansive grip of psychological control'. Her report was also received into evidence marked Exhibit "S 2".

[42] There was no challenge to her testimony – the defence recorded that the accused had no objections and she was not cross examined on her evidence. No additional psychiatric or other expert evidence was presented to the court. The

defence also had no objection to the affidavit of magistrate Hitchcock, to which was attached a record of the Children's Court proceedings being received into evidence. This bundle was incorrectly marked earlier and was corrected to read Exhibit "U".

That was the case for the state.

The evidence of the Accused

[43] The accused testified that he was born on Nigeria and came to South Africa in 2006. At first, he stayed with his brother in Johannesburg and then moved to Sunnyside, Pretoria to stay with and assist his brother, Okechuku who had a gold exchange business in Thembisa. He entered South Africa on a visitor's permit and later sought asylum as a refugee to reside legally in the country. One day he met ■■■ by chance whilst walking in Sunnyside. He stopped her and spoke to her. She told him she was divorced, had one child and stayed in Pretoria North with her parents. She also informed him that she was a prostitute working on the streets, as she needed money to buy drugs. He told her it was ok because he loved her. He told her he liked her and wanted her to be his girlfriend. She agreed, and they began dating. They were in a relationship and she once slept over at his place. She took him to her home to meet her parents and they became very close. She also wanted to stay with him in Sunnyside and he agreed.

[44] By the end of 2009 they began living together. The accused stated that because he worked in Thembisa, he would leave home in the morning and return in the evening. He suspected that for the first 3 months together she continued being a prostitute because she was not home in the evenings. When he confronted her about this and she left to live with her parents. In this time, the accused informed her that he had moved to live in Faerie Glen. She returned to live with him and he did not want her engaging in prostitution anymore. She returned to live with her parents and began working as a receptionist for about 4 months. They continued seeing each other during this time and she was expecting his child in 2010. She alternated between staying with the accused and her parents. After giving birth, he visited the baby at her parent's home. During February 2011 she brought the baby over and stayed with the accused for 2 weeks before going back to live with her parents. The accused then moved to live with a friend in Loskop Street. During this time, he was sending money to her using Shoprite money market. The reason she stayed there was because she had a sickly

daughter. During 2013, she called him from Sunnyside for financial help as she had pawned her motor bike to buy drugs. He paid to have this bike released and she began living with him. He kept her bike away from her to avoid her using it again to obtain drugs. However, he allowed her to use it to visit her parents. [REDACTED] then returned to her parent's home and the accused moved to live in Sandalwood Drive. Two months later, she called him to get directions to his new residence. They began living happily together once again. He had no idea what she whilst he was at work. He provided well for her.

[45] One day she asked for money to place an advert offering her sexual services as she was bored staying alone and didn't want to work on the streets. He refused. Two days later he saw receipts for payments from newspapers and the internet relating to such adverts. He confronted her, and she confirmed that these related to her. He became very upset when she also admitted having pawned the home theatre music system. He started discovering used condoms in the house and realised she was still engaging in prostitution. Although he wanted her to leave, he allowed her to stay on put of love. There was a time when her mother visited on a Sunday and they all spent time together. She even accompanied them to the mall and did shopping. He always ensured there were groceries in the house and they lived happily without any problems as 'boyfriend and girlfriend'.

[46] He testified that there was a case in the Children's Court relating to their child. Her parents wanted to adopt their child and they wanted the child to stay with them. He had taken her to attend court many times relating to this case. On the 9 May 2013 she went to court with a relative. Before leaving he gave her money to buy things for the child. I pause to mention that this was the day of the accused's arrest. Regarding the main charge of human trafficking, he maintained that [REDACTED] was his girlfriend with whom he had a child and they were in love. She was in contact with her family. They shared a bond. She had keys to the premises and could come and go as she pleased. He had his own business from which he made money and provided for her and their child. The income from managing the sale of broken gold and diamonds business brought in a high profit. At times he earned up to R10 000.00 a month and he also got money from gambling. This enabled him to pay the rent, buy a car and see to his expenses. He received no money from her and earned no money off her. He had never supplied her with drugs and had no idea how and from where she got it. I pause to

mention that on a question by the court at the end of his testimony he admitted that she told him she bought “rocks” from Arcadia or Sunnyside. She used drugs without him knowing or seeing her use it. She engaged in prostitution only to buy drugs as there was always food in the house. Only on one occasion did he see and become aware that a client came to the house for sexual favours. He denied ever having assaulted her.

[47] Regarding ██████, he stated that he knew her boyfriend Chooks and that’s how he met her. Chooks had moved to Pretoria from Johannesburg and was looking out for a place where his girlfriend could live for a while. Both he and ██████ agreed that ██████ could stay with them. According to his evidence she was only there for 3 weeks. He was aware that she was originally from Vereeniging, but was staying in Johannesburg. He denied having bought ██████ from his friend and stated that had no personal relationship with her. He had no knowledge that she was a prostitute or that she was advertised on the internet as he was not home most of the time. He also knew nothing about her drug addiction and denied having supplied her with any drugs. He strongly denied the allegations that he had raped her on two occasions and didn’t know why she said this. According to him ██████ was surprised and questioned the police as to why the accused was being arrested as ██████ was the accused’s boyfriend. For days after his arrest the police also mention nothing concerning a charge of rape. He got to know for the first time of such charge in court.

[48] According to him, if the police found a pipe in the bathroom they would have shown it to him and asked for an explanation. He denied that any drugs were found by the police. Regarding the charge concerning the Immigration Act, he stated that he whilst residing in South Africa he was using an Asylum Seeker’s Permit. He entered the country with a passport but sought asylum. He blamed the procedure and long queues as the reason why it expired and had no time to have it renewed before his arrest. Home affairs still have his name and details on their system. He relied on Exhibit “B” and maintained that the Refugee Act permitted his stay and overrode the Immigration Act.

[49] In cross examination it emerged that he had obtained the equivalent of a matric education whilst in Nigeria. He came to South Africa for his own safety because of problems in his community which led to the burning of their family shop and the death

of his father. He came on a visiting visa and did not apply for a business one although he started his own business at the end of 2006. He could not say with certainty when he obtained his asylum permit or where his passport was. He could not explain why his brother at the gold exchange business told the police he was not working there. Thereafter he was examined regarding ■■■'s version and his responses were either a denial, that he had no knowledge or couldn't comment on it. He did confirm that ■■■ explained to him and he knew what "rocks" were, but he had not seen these drugs. At first, he stated that he noticed a change in her behaviour when she used drugs and he knew exactly when she was using drugs because she broke out into boils on her face and body. He had often seen her in a drugged state. Under later examination he stated that she never showed any difference in behaviour if she didn't use drugs. He held the belief that no person addicted to drugs could be controlled and that a drug addict could stop taking drugs anytime they chose unless they liked taking drugs. At first, he stated that he had a bank account but when asked why it was not traceable, he stated that it was a post office savings account. When pressed for details he said it belonged to a certain Steve who had left the country and he had a card to access the account.

[50] Regarding ■■■ his earlier testimony was that he had no knowledge that she was a prostitute or that she was advertised on the internet as he was not home most of the time. Under cross examination he stated that ■■■ informed him that ■■■ had joined her on the internet. Although he stated that he never saw her getting visitors for sexual favours, this new version was in stark contrast to the para 2.2 of his plea explanation (Exhibit "B") which was read into the record by his counsel. He stated that he was fully dressed when the police came to arrest him. He denied that Warrant officer Qegu, before gaining entry to his premises, issued any warning to ■■■ not to run as they came to rescue her. Further, ■■■ was trying to defend him by offering an explanation but the police told her not to get involved. He denied that ■■■ was in the condition she was as described by the police officers at the time of his arrest. His evidence was that ■■■ was coached and told to say all the things she testified about and she told the police on the scene that they were arresting the wrong person. He disputed that the glass pipe containing traces of drugs was found in his premises because it was not shown to him. Likewise, he stated that if ■■■ told the officer she was raped they would have told him about it and he only got to know about this charge in court. When it was pointed out to him that the offence of rape

appeared in paragraph 2 of his warning Statement (Exhibit "P"), his response was that he was never asked if he understood it at the time. He further denied that he signed that relevant portion of the statement. I pause to mention that after obtaining the accused's consent, Officer Sithole read the accused's entire Warning Statement, which he took on the day following the arrest into the record and it was received into evidence and marked Exhibit "P" (1 to 13). It was also shown to the accused in court and received into evidence free of objection.

[51] His explanation why both complainants made the same allegations against him was that they probably discussed it to implicate him. He could not explain why he was not registered as a tax payer although on his version he earned R10 000.00 a month. When asked why his name on the Asylum Permit was different to the name he gave on the warning statement, he said it was a mistake which was not corrected. In re-examination he explained that it was a spelling error made by official at Home Affairs. Exhibit "T", an affidavit in terms of s212 of the CPA from a Senior Administrative clerk at the Department of Home Affairs was received into evidence free of objection to show the current legal status of the accused. That was the case for the defence.

[52] The entire evidence in this case unmasked the sordid and sleazy world of drug abuse, prostitution and exploitation. It was common cause that at some stage both complainants resided with the accused. Also, that during their stay with him they were addicted to hard drugs and as prostitutes, engaged in sex with clients for money for which in turn fuelled their drug addiction. What was in issue was whether this was of their own choice. In other words, whether this vicious circle was of the complainants' free and voluntary doing or whether the accused exploited their addiction to the extent that he was in effective control of their lives. The state evidence was directed to show that the accused took advantage of their addiction by supplying the drugs to them which held them in bondage thus enabling him to profit from them selling their bodies for gain. The defence evidence was directed to show that the complainants prostituted themselves freely and willingly to sustain their drug addiction and that he had no hand in it. It was apparent from the plea explanation that the court would have to resolve these mutually destructive versions.

[53] It was for the state to discharge the onus resting upon it to prove beyond reasonable doubt that the accused was guilty of the offences for which he was

charged. Whilst it is entirely permissible for a court to test an accused's evidence against the probabilities, it is improper to determine his guilt on a balance of probabilities. The standard of proof remains proof beyond reasonable doubt, i.e. evidence with such a high degree of probability that the ordinary reasonable man, after mature consideration, concludes that there exists no reasonable doubt that an accused has committed the crime charged. An accused's evidence therefore can be rejected based on probabilities (see: *S v Phallo* 1999 (2) SACR 558 (SCA) paras 10 and 11). The accused version should be rejected only if found to be so improbable that it cannot reasonably possibly be true (*S v Shackell* 2001 (2) SACR 185 (SCA) para 30; *S v V* 2000 (1) SACR 453 (SCA) para 3).

[54] Before embarking on an assessment and evaluation of the versions it is necessary undertake an examination of those elements which are relevant to the crime of trafficking in persons and which feature prominently in the present case. It is also necessary to highlight some of the principles underlying the crime. In a commentary on the United Nations Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children (commonly known as the *Palermo Protocol*) published in the *Journal of International Human Rights* 2007; Anne Marie Tavella concludes that human trafficking is difficult to define for several reasons. One of the main problems is that trafficking takes many different forms and not all instances of trafficking involve the same elements. Having ratified the Palermo Protocol, South Africa has since adopted legislation to establish human trafficking as a criminal offence. Parliament passed the Prevention and Combating of Trafficking in Persons Act No. 7 of 2013), which came into operation after this trial commenced. The State therefore formulated the charges in terms of the transitional provision relating to trafficking in persons for sexual purposes contained in Chapter 7, Part 6, section 71 of the Sexual Offences Act, Act No. 32 of 2007. Human trafficking has to be understood as a criminal process rather than a criminal action. The elements referred to in the definition are the result of a criminal strategy put in place by the perpetrators of this crime in order to secure the physical availability and presence of a victim by means of illicit means such as physical or psychological coercion, threats or use of force, abduction, abuse of power or abuse of a position of vulnerability, in order to exploit the victim sexually or for other purposes.

[55] Section 71 of the Sexual Offences Act, 32 of 2007 sets out this process and the relevant portions are:

(section 71) - Trafficking in persons for sexual purposes

- (1) A person ('A') who trafficks any person ('B'), without the consent of B, is guilty of the offence of trafficking in persons for sexual purposes.
- (3) For the purpose of subsection (1), 'consent' means voluntary or uncoerced agreement.
- (4) Circumstances in which B does not voluntarily or without coercion agree to being trafficked, as contemplated in subsection (3), include, but are not limited to, the following-

(a) where B submits or is subjected to such an act as a result of any one or more of the means or circumstances contemplated in subparagraphs (i) to (vii) of the definition of trafficking having been used or being present; or

(b) where B is incapable in law of appreciating the nature of the act, including where B is, at the time of the commission of such act-

.....(words omitted)

(iii) in an altered state of consciousness, including under the influence of any medicine, drug, alcohol or other substance, to the extent that B's consciousness or judgement is adversely affected;

[56] The extended definition of 'trafficking' in section 70 (2) (b) states that for purposes of this Part— "trafficking" includes the supply, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, disposal or receiving of a person, within or across the borders of the Republic, by means of— a threat of harm, the threat or use of force, intimidation or other forms of coercion, abduction, fraud, deception or false pretences, the abuse of power or of a position of vulnerability, to the extent that the complainant is inhibited from indicating his or her unwillingness or resistance to being trafficked, or unwillingness to participate in such an act; or the giving or receiving of payments, compensation, rewards, benefits or any other advantage, for the purpose of any form or manner of exploitation, grooming or abuse of a sexual nature of such person, including the commission of any sexual offence or any offence of a sexual nature in any other law against such person or performing

any sexual act with such person, whether committed in or outside the borders of the Republic, and "trafficks" and "trafficked" have a corresponding meaning.

[57] In summary, the Act adopts a broad definition of human trafficking, namely, that a person will be guilty of human trafficking if he or she delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of SA, through various means, including the use of force, deception and coercion, aimed at the person or an immediate family member for the purpose of exploitation. The methods to facilitate trafficking in persons have evolved through the years but the usual features of the crime involve recruitment by force or deception, and movement or transportation of people against their will, for the purposes of exploitation. However, the crime remains underreported. (see: *'Protecting victims of human trafficking – is South Africa doing enough?'* a journal article by Judge Patricia Goliath - March 23rd, 2016 *De Rebus*.)

[58] The court observed the complainants when they testified. Their tone and demeanour displayed uneasiness in their narration. Although ■■■' account of events spanned a period of a few years, her unprompted recall of events, of names and of places was insightful and impressive. She gave detailed testimony in an intelligent and lucid manner and was subjected to lengthy and gruelling cross examination. It became necessary to elicit the evidence of ■■■■■, the younger complainant, through the intervention of an intermediary for reasons already explained. This then enabled her to also present her evidence in explicit detail in a logical and coherent way. A striking feature of both complainants' testimony was the similarity it revealed on many material aspects. The court gained insight into the *modus operandi* of how the network of human trafficking operated. The network of which the accused was part of recruited those who had already become exposed to hard drugs. Both testified about girls being sold from one Nigerian drug dealer to another and then being supplied with drugs to sustain their dependence thereby exercising control over them under threats of withholding the supply of drugs or violence. This drug dependence eased the way to exploit them commercially. Both complainants spoke of how the free 'wake up' and 'sleeper' drug was a feature of their daily life. Both witnesses testified about being constantly monitored, of being deprived of food and essentials as punishment at the

whim of the accused and how they had no control over the income they earned as prostitutes for the accused.

[59] The court examined the evidence of both complainants critically and with caution, although presiding officers no longer have to apply the cautionary rule in evaluating the evidence of complainants in sexual offences. The offence of human trafficking and its elements present unusual features to that of usual sexual crimes. *S v Jones* 2004 (1) SACR 420 (C) emphasised that circumstances may require the application of the cautionary rule if unusual features in the evidence of the complainant's evidence cry out for it. Regarding ██████, her mental age was assessed and estimated to fall within the 14 to 18-year-old age range. In *J v S* 2011 JOL 26715 (ECG) it was held that even though s208 of the CPA permits the conviction of an accused on the evidence of a single witness, who can be a child, it does not mean that in matters where there are charges of a sexual nature and the single witness is a child, convictions should follow with less caution. The evidence still has to be reliable. It was held further that Courts are still, and should always be, required to treat the evidence of a single child witness with caution (see also *S v Olawale* 2010 (1) All SA 451 SCA and *S v Dyira* 2010 (1) SACR 78 ECG). The probabilities in itself can satisfy the cautionary rule (see: *S v Bester* 1990 (2) SACR 325 (A) at 330d).

[60] Both complainants gave a clear and satisfactory account of events and impressed the court as a truthful witness. Their versions were unshaken under cross examination and no material contradictions or discrepancies emerged from their overall evidence despite being subjected to long and vigorous cross examination. Their evidence remained unequivocal and unchallenged. The Court finds that there is nothing to cast doubt on their veracity concerning the events they testified about. Their evidence was clear and satisfactory in all material respects and is accepted as such. The common thread of the *modus operandi* employed by the accused and his network which both complainants detailed in their narration provided sufficient corroboration of each other's evidence. Further corroboration that both were using drugs and had advertisements placed offering their sexual services whilst staying with the accused came from the evidence of the accused himself. The evidence of the arresting officers also provided corroboration of certain aspects of ██████'s evidence. Most significantly, the facts recorded in the victimology report (Exhibit 'S 2') of Major

Stollarz, the expert clinical psychologist tally with those gleaned from the evidence of both complainants.

[61] Officers Qegu and Sithole were independent witnesses who gave formal evidence. They corroborated each other, and no material defects or contradictions emerged from their testimony. The Court finds that there is nothing to cast doubt on their veracity concerning the events they testified about. Their evidence was clear and satisfactory in all material respects and is accepted as such. They were honest witnesses, and their evidence was reliable.

[62] The flaws in the accused's version were exposed during his cross examination. Throughout his responses he invented and gave opportunistic answers to problems which were posed to him. Certain discrepancies, inconsistencies and contradictions emerged which have earlier been highlighted in detail in this judgment when summarising his court testimony. It is not necessary to re-state them once more. Other examples concern the accused having no knowledge of Exhibits "M", "N" and "O", being the documents relating to the advertisements in Sex Trader and Escort SA. It was put to warrant officer Qegu that the accused had no knowledge of and saw these documents for the first time in court. Under cross examination he admitted he saw receipts for payments from newspapers and the internet relating to such adverts and at some stage confronted ■■■ about this. Counsel for the State examined the accused at length regarding the complainants' versions and his responses were either a denial, that he had no knowledge or couldn't comment on it.

[63] This is simply incredible and against the probabilities given the nature and time span of the detailed evidence which confronted him. In his plea explanation (Exhibit "A") he states that when he first met ■■■, she was a street prostitute who had lost her freedom and was staying with an un-named Nigerian to whom she owed money for drugs. He rescued her by settling the debt and took her in out of love. This was not the version he gave when he testified. In his court testimony he stated that he met her, they began dating and formed a relationship. It was much later that they began living together.

[64] There are many other factors which militate against accepting the version of the accused. A rule of evidence requires that a party has a duty to cross examine on aspects which he disputes (*R v Malele* 1975 (4) SA 128 T). Though recognising that the Supreme Court of Appeal in *S v Scott-Crossley* 2008 (1) SACR 223 held that it is not necessary for an accused's version to be put in all its detail to every witness, it was required of the accused to put so much of his own case to a witness as concerns that particular witness. The accused disputed various aspects of the evidence of the arresting officers yet did not challenge them in cross examination on those aspects which he disputed. An example concerns the description of ██████'s condition at the time of his arrest. Qegu described her as being in a state of shock, disorientated and mostly incoherent. It appeared as if she was drunk or on drugs and was laughing for no reason. Sithole's evidence corroborated this. The accused firmly disputed this when he gave evidence, yet there was no challenge on this aspect when the police officers were cross examined. In fact, the defence relied on her disorientated state to suggest to Qegu that what was disclosed to Qegu was unreliable evidence, given ██████'s drugged condition. A further example related to the accused testimony that ██████ tried to defend him at the time of his arrest by offering an innocent explanation, but the police told her not to get involved. This was simply not put to them in cross examination. If a point in dispute is left unchallenged in cross examination, the party calling the witness is entitled to assume that the unchallenged witness's testimony is accepted as correct (see *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC) and *S v Boesak* (1) SACR 633 (SCA)).

[65] It is globally accepted that victims of trafficking are vulnerable for several reasons. The many connections between prostitution and drug addiction are well documented. An addiction to drugs or alcohol is often an integral aspect of prostitution. Prostitution, like the illegal drug trade, is big business for traffickers. Major Stollarz, alludes to this in her expert testimony (see para 5.2 of Exhibit "S 2"). Her research shows that victims who are addicted to substances are easier to control and manipulate, and are less likely to attempt to run away. Drug or alcohol addiction is a high-risk factor for prostitution. At the street level pimps often use drugs to exert control over prostitutes. Many pimps are also drug dealers and may initially attract and lure girls with free drugs. This includes girls with financial or emotional problems, runaways

and girls from dysfunctional families, and girls who are already addicted to drugs. In her addicted state a victim is experiencing overwhelming cravings for the drug and will do what she must do to satisfy them. She has impaired judgment and is susceptible to control by a domineering personality. Drug addiction helps pimps keep prostitutes virtually enslaved. It is a sad fact that many of them become involved in prostitution as an indirect result of addiction. Some people turn to prostitution as a means to finance their addiction. Some turn to prostitution after addiction has ruined their lives and left them no apparent alternative. Some turn to prostitution after fleeing dysfunctional homes and abusive, drug addicted or alcoholic parents. (see: www.addictionhelpcenter.com/Is_There_a_Connection_between_Prostitution_and_Drug_or_Alcohol_Addiction? - Accessed on 20 November 2017). Coupled with this, the complainants' backgrounds increased their vulnerability to being trafficked.

[66] The evidence shows that the accused's account of the events was far from convincing. There is no reasonable possibility that the accused's version may be true. There is every reason to reject the accused version when weighed against the totality of the evidence against him. In assessing whether the State has discharged the onus of proving its case against the accused beyond a reasonable doubt, it must consider all the evidence in arriving at a conclusion whether to convict or acquit an accused. In *S v Van der Meyden* 1999 (1) SACR 447 (WLD) at 449h – 450b, Nugent J said the following:

'A court does not base its conclusion, whether it be to convict or to acquit, on only part of the evidence. The conclusion which it arrives at must account for all the evidence.

The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent'.

[67] It became clear once all of the evidence unfolded that the accused was being untruthful to the court and this explains some of the contradictions and improbabilities in his evidence. The accused contention that [REDACTED] was coached and told to say all the things she testified about is baseless and improbable. So too is his explanation as to why both complainants made the same allegations against him. He claimed that they probably discussed it to implicate him. It is inconceivable to accept the accused's

for having contravening section 49(6) read with other sections of Act 13 of 2002 (the Immigration Act). The State adduced no formal oral or documentary evidence pertaining to this charge and relied on the cross examination of the accused when he testified. At the inception of the trial the defence handed in a copy of a document authenticated by the Department of Home Affairs headed 'Asylum Seeker Temporary Permit'. The state had no objection to this document being received into evidence and it was marked Exhibit 'B'. This exhibit showed that the accused enjoyed the temporary status of a refugee, the permit having been issued in terms of section 22 of the Refugees Act No. 130 of 1998. It also showed that several of the stipulated conditions contained in the permit were breached. However, the accused was not charged for any of the offences under the Refugees Act and consequently is acquitted on count 9.

[71] It was not in issue that both complainants were addicted hard drug users of 'rocks' or cocaine. Both maintained that the accused supplied the drugs to them daily. Qegu testified that at the time of the accused's arrest, a glass pipe was found in the bathroom cabinet which was placed in a sealed forensic exhibit bag. The sealed bag was booked into SAP 13. On inspection a trace of a white powder-like substance was also detected on the toilet seat. The witness stated that she booked out the exhibit bag of the evidence collected on the scene and took to the laboratory for forensic analysis. The results of the test are contained in a s212 affidavit of warrant officer Mashapha which was received into evidence free of objection and marked Exhibit "I (1)" and "I (2)". The analysis determined that it contained cocaine and cocaine is identical to one of the substances obtained from the Coca leaves. It is therefore listed in Part II of Schedule 2 of the Drugs and Drug Trafficking Act, (Act 140 Of 1992). This body of evidence was met with the accused's denial. He knew nothing about the glass pipe, had not seen it before and did not hand it to [REDACTED]. It meant that, on the accused version, Officer Qegu either placed this incriminating evidence at the scene or dishonestly testified about such finding. The court accepts the version of Qegu as corroborated by [REDACTED]. The accused's version is so improbable that it can be rejected outright as false. Consequently, the accused is found guilty as charged on Count 6, the supply of drugs, to whit cocaine, to [REDACTED].

[72] There is no doubt having regard to all the evidence that the accused also supplied cocaine to ■■■. However, to secure a conviction on this separate count it was incumbent on the State to prove all the essential and specific statutory elements which made up the averments contained in Count 5 as was done in Count 6. No evidence was lead in this regard. Unlawful possession was proved, but to convict on the alternative count will amount to duplication of the charge contained in Count 6. The accused is therefore acquitted on the main and alternative counts of Count 5.

[73] ■■■ testified regarding the rape incidents pertaining to Counts 3 and 4. Regarding the first incident she stated that she had earlier smoked 'rocks' with ■■■. She began watching TV and the accused again made sexual advances towards her which she again refused. He then forced himself on her, removed her clothes, put on a condom and had sexual intercourse with her against her will. She stated that at this moment she 'switched off' which was understood to mean that she did not resist. She also stated that she felt nobody cared. She had an experience of being raped as a 13-year-old at gun point. The defence challenge to her evidence was a denial. She stated that she did not seek help from ■■■ because she sensed that ■■■ was as afraid of the accused as she was. Even the next morning, although ■■■ came across the condom in the bin, she did not disclose that she had been raped as she feared for her life. Her version ties up with that of ■■■ who testified that she believed that the accused had sex with ■■■ the evening she arrived because she came across the condom. ■■■ however did not disclose to her that the accused had raped her. It would have been easy for ■■■ to falsely implicate the accused by fully corroborating ■■■'s version. This gave credibility to both complainants' versions regarding the incident. Regarding the second incident, she stated that this happened during the evening shortly before the accused was arrested for the present case. She had earlier seen a client and called the accused to give him the money. He came by 6pm and wanted to have sex with her. She refused. He then forced himself on her and had sexual intercourse with her in the same manner as he did before. The accused denied this. He maintained that the rape allegation was made only to make the case look stronger. Further, he stated that for days after his arrest the police mentioned nothing concerning a charge of rape. He stated that he got to know for the first time of such charge in court. However, this was proved under cross examination to be simply not true. It was pointed out to him that the offence of rape appeared in paragraph 2 of his

warning Statement (Exhibit "P") which he signed the day following his arrest. This proved to be another instance of the accused being caught in the web of lies he spun.

[74] Both officers testified that on entering the room, [REDACTED] was scantily dressed and in a state of intoxication. Qegu stated that such skimpy and revealing apparel was not appropriate for the cold month of June in Pretoria. The accused only had a pair of pants on. The witness' detailed description of [REDACTED]'s appearance conveyed the impression that something untoward had happened before they entered the room. It took the accused some time to let them in. Officer Qegu confirmed that [REDACTED] told her on the scene that the accused had raped her. This disclosure was made shortly after the incident happened. The defence made much of the delay in the medical examination of the complainant. However, the evidence of Dr Lukhozi, the medical practitioner who gave expert testimony about his clinical examination put this issue to rest.

[75] The version of the complainant is accepted, and the accused's version is rejected as false. It is a finding that the accused has contravened section 3 of the Sexual Offences Act, Act No. 32 of 2007 in that he unlawfully and intentionally committed acts of sexual penetration with the complainant by inserting his penis into the complainant's vagina without her consent on both occasions. Consequently, the accused is found guilty as charged in respect of Counts 3 and 4.

[76] Counts 1, 2, 3 and 4 bear references to the provisions of section 51 and Schedule 2 of the Criminal Law Amendment Act 105 of 1997, as amended – the so-called minimum sentencing Act which will apply in sentencing.

Pravesh Singh
Regional Magistrate
PRETORIA
27 November 2017