

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case No: SS090/2021

(1) Reportable: NO
(2) Of interest to other judges: NO
(3) Revised.

24 April 2023

In the matter between: -

THE STATE

and

GERHARDUS ACKERMAN

Neutral Citation: *The State v Gerhardus Ackerman* (Case No: SS090/2021) [2023]
ZAGPJHC 363 (24 April 2023)

J U D G M E N T

Ismail J:

The charges

[1] The accused, a 51-year-old male who stands indicted on 740 counts. In

summary form the charges are as follows:

Count 1 – 253

Contravening of section 24b(1)(a) of the Films and Publication Act, Act 65 of 1996 read with sections 1, 2, 22, 24b(3), 24c, 30a and 30b of Act 65 of 1996 as amended and read further with sections 1 to 11 of the Films and Publication Amendment Act 34 of 1999 and read further with sections 1 to 23 of the films and publication amendment act 18 of 2004 and read further with sections 1 to 40 of the Films and Publication Amendment Act 3 of 2009 and read further with sections 94, 256, 276 of the Criminal Procedure Act, Act 51 of 1977 as amended and read further with sections 1 - 4, 11 - 28, 42 – 43, 80 – 83, and 89 of the electronics Act, Act 25 of 2002 as amended – unlawful possession of child pornography;

Count 254 – 639

Contravening of section 24b(1)(a) of the Films and Publication Act, Act 65 of 1996 read with sections 1, 2, 22, 24b(3), 24c, 30a and 30b of Act 65 of 1996 as amended and read further with sections 1 to 11 of the Films and Publication Amendment Act 34 of 1999 and read further with sections 1 to 23 of the Films and Publication Amendment Act 18 of 2004 and read further with sections 1 to 40 of the Films and Publication Amendment Act 3 of 2009 and read further with sections 94, 256, 276 of the Criminal Procedure Act, Act 51 of 1977 as amended and read further with sections 1 - 4, 11 - 28, 42 – 43, 80 – 83, and 89 of the electronics act, act 25 of 2002 as amended – unlawful possession of child pornography;

Count 640-641

Contravening of section 24b(1)(b) of the Films and Publication Act, Act 65 of 1996 read with sections 1, 2, 22, 24b(3), 24c, 30a and 30b of Act 65 of 1996 as amended and read further with sections 1 – 11 of the Films and Publication Amendment Act 34

of 1999 and read further with sections 1 – 23 of the Films and Publication Amendment Act 18 of 2004 and read further with sections 1 – 40 of the Films and Publication Amendment Act 3 of 2009 and read further with sections 94, 256, 276 of the Criminal Procedure Act, act 51 of 1977 as amended and read further with sections 1 – 4, 11 – 28, 42 – 43, 80 – 83 and 89 of the electronics Act, Act 25 of 2002 as amended – unlawful creating, producing of child pornography;

Count 642-643

Contravening of section 24b(1)(c) of the Films and Publication Act, Act 65 of 1996 as amended and read further with sections 1 – 11 of the Films and Publication Amendment Act 34 of 1999 and read further with sections 1 – 23 of the Films and Publication Amendment Act 18 of 2004 and read further with sections 1 – 40 of the Films and Publication Amendment Act 3 of 2009 and read further with sections 94, 256, 276 of the Criminal Procedure Act, Act 51 of 1977 as amended and read further with sections 1 – 4, 11 – 28, 42 – 43, 80 – 83 and 89 of the electronics Act, Act 25 of 2002 as amended – unlawful importing or procuring child pornography;

Count 644

Contravening of section 24b(1)(d) of the Films and Publication Amendment Act, Act 65 of 1996 read with sections 1, 2, 22, 24b(3) 24c, 30a and 30b of Act 65 of 1996 as amended and read further with sections 1 – 11 of the Films and Publication Amendment Act 34 of 1999 and read further with sections 1 – 23 of the Films and Publication Amendment Act 18 of 2004 and read further with sections 1 – 40 of the Films and Publication Amendment Act 3 of 2009 and read further with sections 94, 256, 276, of the Criminal Procedure Act 51 of 1977 as amended and read further with sections 1 – 4, 11 – 28, 42 – 43, 80 – 83 and 89 of the electronics Act, Act 25 of 2002 as amended – unlawful distribution of child pornography;

Count 645

Contravening of section 24b (3) of the Films and Publication Amendment Act, Act 65 of 1996 read with sections 1, 2, 22, 24b (3) 24c, 30a and 30b of Act 65 of 1996 as amended and read further with sections 1 – 11 of the Films and Publication

Amendment Act 34 of 1999 and read further with sections 1 – 23 of the Films and Publication Amendment Act 18 of 2004 and read further with sections 1 – 40 of the Films and Publication Amendment Act 3 of 2009 and read further with sections 94, 256, 276, of the Criminal Procedure Act, act 51 of 1977 as amended and read further with sections 1 – 4, 11 – 28, 42 – 43, 80 – 83 and 89 of the electronics Act, Act 25 of 2002 as amended – unlawful transactions facilitating distribution of child pornography;

Count 646-650

Contravention of section 4(1) read with sections 1, 2, 3, 11, 12, 13a, 14, 18, 23, 29, 30 and 48 of the Prevention and Combatting of Trafficking in Persons Act 7 of 2013 as amended and read with sections 94, 256, 257, 261, 268 and 270 of Act 51 of 1977 and read with the provisions of section 51(1) of schedule 2 of the Criminal Law Amendment Act 105 of 1997 as amended- and further read with the provisions of section 1, 120, 123 and 281 of Act 38 of 2005 as amended and further read with sections 1, 2, 40, 41 and 43 of Act 32 of 2007 as amended- trafficking in persons;

Alternative to count 648

Contravention of section 4 read with sections 10(1)(a) and 10(2) and further read with sections 1, 2, 3, 11, 12, 13a, 14, 18, 23, 29, 30 and 48 of the Prevention and Combatting of Trafficking in Persons Act 7 of 2013 as amended and read with sections 94, 256, 257, 261, 268 and 270 of Act 51 of 1977 and read with the provisions of section 51(1) of schedule 2 of the Criminal Law Amendment Act 105 of 1997 as amended- and further read with the provisions of section 1, 120, 123 and 281 of act 38 of 2005 as amended and further read with sections 1, 2, 40, 41 and 43 of act 32 of 2007 as amended- trafficking in persons;

Count 651-653

Contravention of section 7 read with section 1, 2, 3, 11, 13(c), 14, 29, 30 and 48 of the Prevention and Combatting of Trafficking in Persons Act 7 of 2013 as amended and read with the provisions of section 94, 256, 257 and 270 of Act 51 of 1977 as amended and further read with the provisions of section 1, 120 and 123 of act 38 of

2005 as amended and further read with sections 1, 2, 40, 41 and 43 of act 32 of 2007 as amended- benefitting from the services of a child victim of trafficking;

Count 654

Contravention of section 8(1)(a) read with section 1, 2, 3, 11, 12, 13(d), 14, 29, 30 and 48 of the Prevention and Combatting of Trafficking in Persons Act 7 of 2013 and read with sections 94, 256, 257 and 270 of the Criminal Procedure Act 51 of 1977 as amended- conduct facilitating trafficking in persons by allowing premises to be used to facilitate trafficking in persons;

Count 655

Contravention of section 8(1)(b) read with section 1, 2, 3, 11, 12, 13(d), 14, 29, 30 and 48 of the Prevention and Combatting of Trafficking in Persons Act 7 of 2013 and read with sections 94, 256, 257 and 270 of the Criminal Procedure Act 51 of 1977 as amended- conduct facilitating trafficking in persons by allowing premises to be used to facilitate trafficking in persons;

Count 656

Contravention of section 8(1)(c) read with section 1, 2, 3, 11, 12, 13(d), 14, 29, 30 and 48 of the Prevention and Combatting of Trafficking in Persons Act 7 of 2013 and read with sections 94, 256, 257 and 270 of Act 51 of 1977 as amended further read with the provisions of section 1 and 120 of Act 38 of 2005- intentionally distributing information that facilitates or promotes trafficking in persons using the internet or other information technology means;

Count 657-660

Contravention of section 8(1)(d) read with section 1, 2, 3, 11, 12, 13(d), 14, 29, 30 and 48 of the Prevention and Combatting of Trafficking in Persons Act 7 of 2013 as amended and read with section 94, 256, 257, 261, 268 and 270 of Act 51 of 1977 as amended-conduct that facilitates trafficking (finances, controls or organizes the commission of offences);

Count 661-663

Contravention of section 10(1)(b) read with the provisions of chapter 2 and the provisions of section 10(2), 11, 13, 14, 29, 30 and 48 of the Prevention and Combatting of Trafficking in Persons Act 7 of 2013 as amended and read with the provisions of section 256, 257 and 270 of Act 51 of 1977 as amended and further read with section 51(1) and schedule 2 of act 105 of 1997-conduct aimed at participation in the commission of an offence under this chapter,

Count 664

Contravention of section 10(1)(c) read with the provisions of chapter 2 and the provisions of section 10(2), 11, 13, 14, 29, 30 and 48 of the Prevention and Combatting of Trafficking in Persons Act 7 of 2013 as amended and read with the provisions of section 256, 257 and 270 of Act 51 of 1977 as amended and further read with section 51(1) and schedule 2 of act 105 of 1997-involvement in offences under chapter 2 of act 7 of 2013;

Count 665, 666, 668, 673, 676, 677 and 678:

Contravention of section 3 read with section 1, 2, 50, 55, 56(1), 57, 58, 59, 60 and 61 of Act 32 of 2007 further read with section 120 of Act 38 of 2005 and further read with section 256, 257, 261, 268 and 270 of Act 51 of 1977 and read with the provisions of section 51(1) and schedule 2 of Act 105 of 1997 as amended- rape;

Count 667, 669, 672, 674, 679, 680 and 681

Contravention of section 5(1) read with sections 1, 2, 56, 57, 58, 59, 60 and 61 of Act 32 of 2007 read with sections 256, 257, 261, 268 and 270 of Act 51 of 1977 as amended- sexual assault;

Count 670

Contravention of section 4 read with section 1, 2, 50, 55, 56(1), 57, 58, 59, 60 and 61 of Act 32 of 2007 further read with section 120 of Act 38 of 2005 and further read with section 256, 257, 261, 268 and 270 of Act 51 of 1977 and read with the provisions of section 51 and schedule 2 of Act 105 of 1997 as amended- compelled rape;

Count 671, 675

Contravention of section 6 read with section 1, 2, 56, 57, 58, 59, 60 and 61 of Act 32 of 2007 and further read with sections 256, 257, 261, 268 and 270 of Act 51 of 1977 as amended- compelled sexual assault;

Count 682-684

Contravention of section 17(1) read with sections 1, 2, 56(5), 57, 58, 59, 60 and 61 of Act 32 of 2007 and further read with sections 256 and 261 of Act 51 of 1977 and further read with section 51(2) and schedule 2 of act 105 of 1997- sexual exploitation of a child;

Count 685-689

Contravention of section 17(2) read with sections 1, 56(5), 57, 58, 59, 60 and 61 of Act 32 of 2007 and further read with sections 256 and 261 of Act 51 of 1977 and further read with section 51(2) and schedule 2 of Act 105 of 1997-sexual exploitation of children;

Count 690-692

Contravention of section 17(3)(b) read with section 1, 56, 57, 58, 59, 60 and 61 of Act 32 of 2007 and further read with section 256 and 261 of Act 51 of 1977 and further read with section 51(2) and schedule 2 of Act 105 of 1997 -furthering the sexual exploitation of a child;

Count 693-695

Contravention of section 17(4) read with sections 1, 56(5), 57, 58, 59,60 and 61 of Act 32 of 2007 and further read with sections 256 and 261 of the Criminal Procedure Act 51 of 1977-benefitting from the sexual exploitation of a child;

Count 696-698

Contravention of section 17(5) read with sections 1, 56(5), 57, 58, 59, 60 and 61 of Act 32 of 2007 and also read with sections 256 and 261 of Act 51 of 1977- sexual exploitation of children;

Count 699-701

Contravention of section 18(2)(c) read with section 1, 56, 57, 58, 59, 60 and 61 of Act 32 of 2007 and further read with sections 256 and 261 of Act 51 of 1977- sexual grooming of children;

Count 702-706

Contravention of section 18(2)(d) read with section 1, 20(1), 56, 57, 58, 59, 60 and 61 of Act 32 of 2007 and further read with section 256 and 261 of Act 51 of 1977- sexual grooming of children;

Count 707-711

Contravention of section 18(2)(d)(i) read with section 1, 20(1), 56, 57, 58, 59, 60 and 61 of Act 32 of 2007 and further read with section 256 and 261 of Act 51 of 1977- sexual grooming of children;

Count 712, 714, 715, 716 and 717

Contravention of section 18(2)(b) read with section 1, 56, 57, 58, 59, 60 and 61 of Act 32 of 2007 and further read with sections 256 and 261 of Act 51 of 1977- sexual grooming of children;

Count 713, 718, 719, 720 and 721

Contravention of section 22 read with sections 1, 56, 57, 58, 59, 60 and 61 of Act 32 of 2007. Also read with sections 256 and 261 of the Criminal Procedure Act 51 of 1977- exposure or display of or causing exposure or display of genital organs, anus or female breasts to children;

Count 722-726

Contravention of section 20(1)(c) read with section 1, 50, 56a, 57, 58, 59, 60 and 61 of the Amended Act 32 of 2007 and read with section 92(1) of the Magistrate's Court Act 32 of 1944 as amended- using children for or benefitting from child pornography;

Count 727

Contravention of section 20(2) read with sections 1, 20(1), 50, 56, 56a, 57, 58, 59, 60 and 61 of Amended Act 32 of 2007 and read further with section 92(1) of the Magistrate's Court Act 32 of 1944 as amended - using children for or benefitting from child pornography;

Count 728

Malicious damage to property;

Count 729-731

Attempted murder

[2] Initially Mr Ackerman was charged with Advocate Paul Kennedy. They were both given bail in the lower court. Prior to the commencement of the trial Mr Kennedy took his own life. The matter proceeded against Mr Ackerman on his own.

[3] Mr Ackerman was represented by Mr Alberts from the Legal Aid Board, Pretoria throughout the trial. He pleaded not guilty to each and every count which was put to him.

[4] No plea explanation was tendered in terms of the provisions of s115 of the Criminal

Procedure Act 51 of 1977 (the CPA).

[5] The state led the evidence of its first witness, Colonel Clark, a psychologist in the employment of the SAPS. She was requested to compile reports on several children.

She compiled reports on the children who I would refer to by their initials, in order to protect their respective identities. Reports were compiled for the victims TW exhibit B2 SJ exhibit B3, WS exhibit B4, DLD exhibit B5, RJR exhibit B6, and B7. Colonel Clark opined that the victims should testify in camera in terms of s 158 of the CPA with the assistance of an intermediary and that they should testify in terms of section 170A of the Act.

[6] Dr Struwig was recommended by Colonel Clark to act as an intermediary when the victims testified. Dr Struwig's qualifications were placed on record. She was a teacher for 7 years – and she was also a counsellor. Mr Albert's had no objection to her acting as an intermediary as she was suitably qualified.

[7] There was an issue relating to the accused's bail which the court dealt with. This issue was dealt with in a separate judgment and nothing further would be said on this aspect in this judgment

[8] *Evidence of TW*

A W senior gave evidence. He is the father of TW. He told the court that his son approached him and told him that he was contacted by Gerrie who offered him a job as a masseur. Gerrie was identified as being the accused. TW was 16 years old at the

time. Mr A W spoke telephonically to Gerrie who assured him that there would be no untoward activity of any sexual nature during massages. It was strictly a message job.

[9] TW gave evidence how he met Gerrie on Facebook during 2020. Gerrie offered him

a massaging job and told him that everything was legitimate. He was told to send a picture of himself and to make a video wherein he fondles his penis and he must masturbate. TW arrived in Johannesburg by bus. He was transported to the accused's

place by uber. The accused asked TW to lie on the massage table and he started massaging the minor from his feet upwards. He told TW how 'hot' he was. The accused

told him that he had to be naked when he massaged clients and that he had to fondle the client's private parts. The clients were also allowed to touch the minor's penis.

The fondling of the client's penis was referred to by the accused as " the happy ending"

to the massage session. TW testified that he was paid between R700 and R800 for an

hour's session.

TW testified that the last client he went to was Paul Kennedy (who would be referred to as PK or Kennedy interchangeable). When he went to Kennedy's residence he was

accompanied by another child who was either 15 or 16 years old. They eventually went

to Kennedy's bedroom where they massaged him. They started fondling penis. Kennedy pulled him towards his face and he started to stick his tongue into his anus. (this act was referred to as "rimming"). Kennedy then said to TW that if he wanted to earn an extra sum of R500 he had to give him (Kennedy) a blow job. TW did this and Kennedy eventually ejaculated.

[10] On a certain day accused went to play golf and TW was alone at the accused flat when Warrant Officer du Plessis arrived. Du Plessis eventually took him to his parent's place in Free State.

[11] The accused version which was put to the witness was that he showed him how to perform massages, however he prohibited the masseur from doing more than massages, as his golden rule was that there was to be no intercourse or sex. It was also put to the witness that he told TW that Kennedy was HIV positive. TW denied that he was told about Kennedy's HIV status. It was put to the witness that the accused made his phone and computer available to him to use. The witness replied that he only used the computer to listen to music. It was also put to TW that the accused told him that Kennedy was HIV+ to which the witness replied that he did not tell me this.

[12] *Evidence of SJ*

SJ testified that he was born on the 19 December 2003. He met Gerrie Ackerman when he was 16 years old on Facebook. Ackerman asked him to send photographs of

himself to him. He in turn sent a photographs to SG.

He discussed personal aspects of his life with the accused such as his background and how bad things were at home. He had to go back to live with his father and that he did not want to go to school. At that stage the witness started his gender transition and he was on hormone therapy, Ackerman told him about his massage and cookies business. He told the lad that he could come and work for him and that he would make

lots of money and earn a good living. The boy told his mother that he was offered a job

by Gerrie and his mother "told him that it was a bad choice". His mother spoke to the accused. Subsequently the accused told SJ "how fucked up" his parents were.

He arrived at the accused place by uber with a paltry sum of R20. He testified that the accused did not look like the person who appeared on the photograph which was sent to him. The accused asked him to remove his shirt and pants and to lie on the massage table. The accused started to massage him from his ankles up to his calf area and from there to his thighs and buttock. The accused then got on top of him whilst having an erection. He then rubbed his penis against SJ's anus. SJ said no to the accused however the accused continued and did not listen.

He inserted his penis into SJ's anus. SJ testified that he cringed and he surrendered. The accused penetrated him and the pain was excruciating. The accused was not wearing a condom. The accused said to him that he has a client for him who would arrive at 8pm. He had to massage the client and play with the client's "tollie". When the client arrived SJ started to massage the client. The accused went outside and he learnt later that the accused peeped through the window and observed him whilst he was busy with the client. The accused started to act funny towards him (SJ). He told SJ that he liked him a lot and that he was very beautiful. What he saw really upset him (the accused).

The accused said to him that Kennedy wanted Jadine and him to go to PK's house. He said Kennedy would love him because he had a "Boesman Gat". A uber vehicle came to fetch them and they were taken to Kennedy's residence. At Kennedy's place he took them to the Lapa where they were offered soft drinks whilst they chatted generally, they then went to Kennedy's bedroom where he took off his clothes. They were in the bathroom where they undressed. They then went to Kennedy's bed and three of them were naked. They started massaging Kennedy and he started touching him on his legs and bum. Jadine and SJ also started touching each other. Kennedy then gave them a "ring job" i.e. licked his anus. Thereafter Kennedy asked Jadine to

penetrate him. When they reached accused place Jadine and the accused were arguing about money. That night the accused wanted to sleep with Jadine, however the two boys slept on the couch. SJ met TW on WhatsApp. Gerrie said to him that this

man is going to work with us, and that he was going to be massaging with him. During

cross examination he said that he was 16 years old, when he went to the accused place. It was put to him that the sexual intercourse that the accused had with him was

with his consent. SJ replied NO he did not consent. He was asked what else apart from

clutching did he do to which he replied that he did not want to be penetrated.

[13] *TC's evidence*

TC like the other two boys, met the accused on Facebook. He was 15 years old at the time. The accused enquired from him whether he was interested in obtaining work and told the boy about his massaging and cookie business. He told the boy that he operated his massaging business from home. He told him that he could earn R700 per hour. Accused agreed to buy him a bus ticket to get to his place. The accused requested that he should send him photographs which he needed to send to his boss. TC told the accused what his age was. The accused told him to make a video where he is taking off his uniform. Such a video was made and sent to the accused. The accused insisted that the minor make a video where he would be

naked. Such a video was made by the boy on Tik Tok. He did not receive any compensation for making the video. He was prevented from going to the accused place by his mother, and he never met the accused personally. The boy was subsequently contacted by W/O du Plessis who eventually took a statement from him. During cross examination he stated that he sent 7 photos to the accused including a video recording.

[14] *The evidence of RR*

He testified that during 2007 he was 9 years old. His family were spending their holidays at Hartenbosch. He and his cousin went to the shower facility for campers' in order to shower. Whilst they were showering they were playing a game where they threw their shorts over the cubicle toward a wooden structure. One of the trousers struck a pole and got stuck. When they tried to retrieve the trouser they saw a man walking around the shower facility naked. According to the witness it was unusual for a person to be walking around naked. Usually people would cover themselves with a towel which would be wrapped around their waist. This man had an erection. They felt uncomfortable and they decided to leave the ablution facility. RR returned to their camping site and reported the incident to his uncle. His uncle went to confront the man.

Two years later during 2009 he was once again with his cousin at the ablution facility when they saw the man again. His cousin told him the man is back and he was once

again prowling around naked. It was put to the witness that the accused would deny that he was there in 2007 however he would admit that he was there in 2009.

[15] DR gave evidence that he was with RR his cousin during the two incidents. The witness confirmed the evidence of RR. During cross examination it was put to him that the accused would deny that he was there in 2007 and the witness replied that he can say with 100% certainty that he was there in 2007.

[16] *DR senior the father of DR testified.*

He testified that a report was made to him in 2007 by his son and nephew regarding a man in the shower facility walking around naked with an erection. He saw this man walking from one bathroom towards the other bathroom which was approximately 200 metres apart. This man entered the bathrooms on at least two occasions whilst he observed him. He eventually grabbed the man with his t-shirt and pointed a finger in his face and told him 'vir jou gaan ek. bliksem'. The man told him that he has such problems and he would not completely understand him. A photograph of the man was taken from behind – see exhibit D. He pointed out the man to be accused seated in court. He saw accused again during 2009. He was adamant that it was the same person he confronted two years prior to this incident. He followed the accused for some distance on the beach. The accused climbed some steps leading towards the road and he eventually lost sight of him amongst the houses. The witnesses' wife phoned him to inform him that the police arrested the persons. When he got there the

accused was in the back of the police vehicle.

[17] *Evidence of DLD*

This witness met the accused on the app called grinder. He was 16 years old at that stage. The boy gave him a WhatsApp number which belonged to the accused. He was told he could perform massages for money. He was in desperate need for money. He arranged to meet the accused. He got into an uber and was transported to the accused place. Like the other boys the accused told DLD to lie naked on the massage table and started to massage him. The accused then explained that he should repeat his action on him the accused. The accused was wearing his shorts at that stage. The accused turned around and removed his shorts. He then asked DLD to touch his penis. The boy was hesitant as he did not expect this however the accused told him that he did inform him that he would have to fondle people's private parts. He fondled the accused penis until he ejaculated. The accused climbed on top of him and placed his penis between 'his cheek of his bum and then shoved his penis into his anus. He cried out in pain and then ran to the bathroom. There was blood on his penis. He decided to get his stuff and get out of there. The accused apologised and asked him to stay. He phoned one of his friends to fetch him in order to get home. He did not tell his friend what happened. He wanted to forget about the incident and he pretended it never happened. During cross examination it was put to DLD that the accused sent him a photo and DLD said that he liked the accused because he preferred "Jocks" – the witness responded that he did not recall that He

was asked when you touched the accused penis did you say anything and he replied that he did not realize that the massage embraced touching of the penis. It was put to DLD that he was interested in having sex with the accused, to which the boy replied I never wanted to engage in sexual activity with him.

[18] *Evidence of WS*

WS testified that he was told about Dante or Gerrie by Pieter. He was 14 years' old at the time. He made between 1 and 4 videos for the accused. In the videos it was him, JP and Dup. Dup recorded the video and they had to masturbate which was recorded on the video. Footage was taken of their private parts and buttock but not their faces. He was paid money for the videos. The videos were sent to Herman who in turn sent them to Gerrie. They received payment by e-wallet from the accused. They were taken to the accused home by Herman. Gerrie and Herman explained to the three of them what was going to happen. They were told that they would get R950 per massage. Accused taught them how to massage other men and they had to rub the client's private parts. Gerrie fondled his penis and he in turn did the same to Gerrie. Gerrie then arranged three clients for him. Two of the client's paid him R950 each. The third client was PK. PK gave him R4000.

During cross examination he stated that he received payments for making the videos from Pieter. He was asked whether he discussed his age with the accused and the witness answered that he did. It was also put to the witness that accused prohibited

sex on his premises and WS replied “hy lieg” During re-examination he was asked what did he tell Gerrie regarding his age and he responded that he told him he was 14 years old.

[19] *WL's evidence:*

He testified that he and the previous witness were friends. William and Pieter said that there was work to be done. They were taken to the accused premises by Herman. Whilst in the car Herman touched him at his private parts and said he want to see what he is working with. He was 14 years old at the time. At the house Herman gave them underwear to put on. They met the accused. Herman was undressed and he laid naked on the massage table, WL “the witness was shocked as he did not see anything like this in his life before”. They massaged him on different parts of his body. He was paid for making those videos. The videos were sent to Pieter.

[20] The incident at Aquatic centre in Sunninghill On this count the witnesses Moses Moloisane, Mike van Hille. AM and his mother testified. Mr Moloisane an employee of the centre went to the bathroom on the 23 June 2020, when he saw the accused at a urinal wearing a t-shirt and was naked from the waist down. He left the bathroom and when he returned 2-30 minutes later he saw the same man who was completely naked. This man was seated and he had a phone in his hand and he was playing with his penis with the other hand. It was a week day, and at that time the place was

frequented predominantly by school children. This man's cellular phone was on and he was taking a video. The rules at the place was that no photos or videos could be taken in the bathroom area. This man put on his clothes when he observed the witness, and he started to leave the bathroom. The witness approached his supervisor Mike. Mr Hille asked him his name and the man responded and said his name was Gerrie van Zyl. He then saw the man walking to the cars whilst Mike was talking to one of the parents. This man got into his car and drove through the boom gate causing damage to it. Mr von Hille received a call from a person who told him that he was the person who damaged the boom gate and that he was prepared to pay for the damages he caused. He then told him that his name was Ackerman. Prior to the stranger driving off Mr Hille received a complaint from a distraught mother regarding a report which her son made to her. The mother said that her son, AM reported that a man was naked in the bathroom and he had an erection. AM testified and confirmed that the man was naked and that he had an erection whilst in the change room.

[21] A report from Mr Muridili Murendeni from the Film and Publication Board (FPB) was handed in by agreement. The defence had no objection to the contents of the report. In essence the report stated:

1. That 664 picture images were found to contain child pornography;

2. On an acer laptop 1310 images of toddlers between the ages 6-12 contained images of these toddlers' penises and several images of the toddlers being penetrated by having anal sex. There were some photos of toddlers sucking penises. This report was handed in as an exhibit marked "G".

[22] Hendrick du Plessis testified that he was the investigating officer in this matter. He was referred to by the complainants as Dupie. He received a complaint from a minor SJ, to the effect that the accused rented him out to adults to perform massages. The minor told him that he received money for performing those massages, and that a portion of the proceeds he received had to be given to the accused. SJ provided him with the cellular phone number of another boy who was going to perform massages for the accused. The witness made contact with TW and met him. TW told him that he came from Kastel in the Free State. He took a statement from TW. He was told that PK paid for his bus ticket to Johannesburg. Ackerman told him to make videos and told him the more "revealing" or sexy the videos were, the more he would get more money. Mr Du Plessis applied for a J51 warrant to seize all the accused electronic devices and storage devices. Armed with a warrant he approached the accused. He explained his rights to the accused and handed him a copy of the seizure warrant. He requested that the accused hand over his cellular phones. The seizure warrant was handed in as an exhibit marked exhibit H. The items seized were placed in sealed bags and they were subsequently handed over to Johan Classen's to download the devices which were seized. Mr Kennedy

was arrested. The witness testified that the accused told SJ that PK was HIV+ and that he should not engage in having sex with him.

Exhibit K is a record of PK'S HIV+ status

Exhibit M Ackerman's HIV status (negative)

Exhibit P - SJ'S status

During cross examination it was put to the witness that the accused would deny that his rights were explained to him. He was asked whether he noted WS statement. The witness confirmed that he did he was referred to paragraph 7 of WS statement where the following was written; Ek was gevra by Dante om masseuring te doen, hy het nie aan my gevat nie. The witness replied korrek.

[23] Thereafter the accused made certain admissions in terms of s220 of the CPA, the amendments were read into the record and the admissions were also handed in as an exhibit marked "Q" The s220 admissions contain 53 admissions, and I will refer to some of them hereunder.

1. That on 15 October 2020 the South African Police obtained a search

Warrant from magistrate D C van den Berg of Johannesburg to search

for and seize, inter alia, any computers and cellular telephones at the accused home at no.12 Wellington Ave Sandringham.....;

2. That an Asus laptop, as well as a Huawei and Premio cellular

telephones were seized during the above search;

3. ...

4. ...

5.

6. That the accused conducted business as a message parlour;

7. That Paul Kennedy played a role in recruiting/securing/bringing masseurs to work for the accused in his message parlour;

8. That the accused took a portion of the moneys paid to the masseurs trained by him;

9. That SJ was examined by the Far East Rand Hospital on 6 January 2022 by a registered nurse ... and the J88 medico Legal Examination conducted. The correctness of the findings and opinion expressed in this report is admitted as - Exhibit P

10...

11...

17. That on 6 January 2022 SJ tested HIV positive - Exhibit S;

18...

19. That Paul Kennedy informed the accused of his HIV status on 19

September 2020;

20...

21...

22. That the sealed bags mentioned in in 5 supra, was handed to Mr PJ Classen, a criminal investigator with the United States of America's Homeland Security, stationed at the Embassy of the United States of America, Pretoria

23. The content of the statement of Mr Classen, dated 4 March 2021, under A22 in Sandringham CAS 162/10/2020, is admitted and does not require further proof. Exhibit T

24. The content of the statement of Mr Classen, dated 21 September 2021, under A42 in Sandringham CAS 162/10/2020, is admitted and does not require further proof. Exhibit U

25...

26. The folder containing extracts from the cellular telephones and laptop of the accused is admitted as a true reflection of the information contained in these devices. – Exhibit X

27. That Mr. Classen's copied extracts of voice notes between accused and Paul Kennedy to a disk and it is admitted that the disk contains a true reflection of those conversations. Exhibit Y

28...

29. That p778 of the bundle referred to at 26, *supra*, contains an excerpt of a voice note (VN) PTT-202010-WA0029.opus where the accused talks to a client and offers two 16-year-old boys including TW, and discusses what they would offer and payment.

30...

31. That p 779 of the bundle referred to at 26, *supra*, contains an excerpt of the client (sic) ask the accused to find him a masseur who "fuck" him.

34. That p 1111 of the bundle referred to at 26, *supra*, contains an excerpt of a voice note to Paul Kennedy PTT-20200819-WA0035.opus where the accused talk indicates that he is busy gaining a boy's trust.

35. That p1111 of the bundle referred to at 26, *supra*, contains an excerpt of a voice note PTT-20200819-WA0039.opus where the accused describes to Paul Kennedy how he is winning the boy's trust.

40. That p 1165 of the bundle referred to at 26, *supra*, contains an excerpt of a voice note PTT-20200901-WA0083.opus where the accused accused explains his strategy to Paul Kennedy.

41

50. That points 2 and 3 in Annexure A referring to material extracted from the Huawei cellular telephone confiscated from the accused and included in exhibit G contains videos VID_20191109_060320.mp4 VID_20191109_060223.mp4; which were both found in the /DCIM/Camera folder of the above phone. The videos both depict the accused having sex with a 16-year-old boy, RB with his consent.

[24] Mr Classen's testified and he was taken through some of the WhatsApp messages between the accused and Kennedy, SMS messages between the accused and his clients. These SMS and WhatsApp messages were downloaded from the accused phone which was seized. These messages were compiled in two albums, marked Y. The contents of these messages and WhatsApps appearing in the albums were not disputed. I do not propose to repeat the messages into this judgment as they are on record. Save to state that some of these messages revealed how the accused offered the boys to his customers and others. He instructed the children how to make the naked videos. The accused asked PK whether he preferred experienced (boys) or inexperienced boys. Fixing prices with his clients for services such as R1200 for one and R2000 for two boys.

[25] Mr Classens's testified about some messages contained in exhibit Y. Such as:

11128 PTT 200826...

Where the accused is speaking to PK – offering child K;

1149 20200821

Accused sending nudes to a boy- hoping boy do the same;

1179 20200902

Accused asking PK do you prefer experience or inexperience.

[26] *The prosecution closes its case.*

Mr Albert's brought an application for the discharge of the accused in terms of section

174 of the CPA on counts 666 and 673 on the basis that no evidence was presented on those counts. The state did not oppose the application and it conceded that no evidence was led on these counts. The accused was consequently discharged on these two counts.

[27] *The accused / Ackerman's Evidence.*

He was questioned about the incident at Dagamaskop in 2007. He denied that he was at the resort as the two cousins testified. He admitted that he was there in 2009. He was walking on the beach and he needed to use the bathroom. He took a shower when he noticed that costumes were being throw about.

He saw a boy climbing up and looking at him. They were giggling. Thereafter they left the bathroom. A man accused him of walking around naked in the bathroom with an erection. He denied this. He walked out of the bathroom and he was confronted

by FJR senior who spoke about an incident two years prior to this incident. He continued walking on the beach and he noticed that the man was following him, and talking on the phone. He decided to hide away in order for this person to pass him so that he could continue to Mossel Bay. The mother of one of the boys came up to him and demanded to see his tattoos. He told her that he had no tattoos in the presence of the police and he told them that they were confronting the wrong person.

Regarding the incident at the swim school. He testified that he was living in Sandton and he wanted to swim. He googled for swimming facilities in the area and found the places address. He went there on the Friday however there was a gala taking place. He returned on the Monday. Prior to going to the reception he had an urgent need to use the toilet, so he went into the change rooms. Whilst in the change room he started to get messages from clients. He spent time talking to his clients. Moses (Mr Moloisane) came in and he went to the locker. Both the child AM and Moses said that he was playing with his penis. Mr Van Hille said he must come to the office. He told Mr Hille that his name was Gary.

He was asked how he met TW. He responded that he met him on Facebook and they started to chat on WhatsApp. He said that he spoke to TW's father. He requested TW to make a Tik Tok video. PK was not happy with the video, so he gave him LV's video to guide him. He was paid for the video by Paul Kennedy. He stated that he trained TW. He testified that he trained SJ like the other boys. He admitted to having had sex with

SJ. It was the only time he had sex with SJ. According to him SJ enjoyed the sex and he did not object to it. He testified that SJ also went to PK.

WS and two other boys were brought to his place by Pieter. The boys were told that they could make money if they made a strip video. A video was made which. PK paid for. He met WS and WL for the first time when they came. Both of them said to him that they were 16 years old. According to him Herman trained the boys in how to give a message as he went to play golf. According to him WS had 4-6 clients. PK was one of WS client. The accused testified that he was contacted by w/o Du Plessis who wanted to see him regarding his car. When he met Du Plessis he was told that he was trafficking children and that he groomed them to participate in sexual acts with third parties. He denied that his constitutional rights were explained to him. The accused stated that he trained them and they were willing to give happy endings. He also stated that his golden rule was that they were not to have intercourse at his premises with the clients.

During cross examination he was asked what is rimming? He replied that when you use your tongue to lick around someone's anus. Mr Ackerman denied that he instructed

the boys to perform sexual acts as his golden rule was that there was to be no sex. He

was referred to voice note.

PTT 20201001 –WA 031 opus:

Where a conversation between him and a client related to fixing a price for the boys service. During the conversation the accused stated he has two boys both. R1200 for one boy and R2000 for both. It was put to him that he was offering the boy to be rimmed, BJ'd and that he was fixing a price for the boys with his customers. The accused told PK in response to getting a boy this Friday that he must be patient he has a strategy and that the boy is gaining his trust.

He admitted that he had anal sex with SJ and DLD. He was asked why did he break his own golden rule. The state advocate asked him whether he was testing the merchandise. He was questioned about the images which were found on his phone and he testified that those videos were deleted and the authorities managed to retrieve them. He was told that it was in a WhatsApp file on his phone and he then suggested that the boys had access to his phone and they must have uploaded it onto his phone. He had no idea of those images on his phone until he was confronted with them. It was put to him that the images were never deleted from his phone as Mr Classen's testified that he found them in a folder on his phone. He admitted that the boys made videos at his request and PK paid for them. He was asked whether he directed the videos and he answered yes. Regarding the two incidents in the shower rooms at Dagamaskop and Sandton he denied that he had an erection and he suggested that both Moses and AM were not speaking the truth.

Evaluation of the evidence

[28] The following aspects of the matter are common cause:

1. That the accused met the majority of the complainants on Facebook; social media;
2. That the boys were taught how to massage potential clients of the accused and that they had to perform 'the happy ending on customers'
3. Accused arranged/ made appointment for the boys to message his clients and a fee would be charged for their services;
4. A percentage of the fee from the massages and or other sexual acts which the boys charged had to be paid to the accused;
5. The accused instructed the boys to make videos of themselves in a naked state often having to play with their penises. The boys were paid to make these videos by PK. The accused would direct and instruct them how to make the videos.
6. The accused clients with the exception of PK all came to the accused apartment where the messages and or sexual acts were performed on them.
7. All the bookings for the messages were made by the accused for his clients.

8. That the accused had anally penetrated two of the boys.
9. Several boys lived with the accused at his premises where he operated his message business from.

[29] It is trite that in a criminal trial the *onus* is on the prosecution to prove its case against the accused beyond reasonable doubt. See *R v Difford* 1937 D 370, *R v M* 1945 AD and *S v Chabalala*. Furthermore, the court is duty bound to consider all the evidence presented during the trial- See *S v van der Meyden* 1999 (1) SACR 447 (W)

at 449j-450b. Where Nugent J as he then was stated:

“The proper test that and accused is 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. The process of reasoning which is appropriate to the application of the test in any particular case will depend upon the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false; some of it might be found to unreliable; and some of it might be found to be only possibly false or unreliable; but none of it may simply be ignored.”

[30] In this matter the children by and large were single witnesses regarding what

happened to them, and for that reason the court must view their versions with caution.

Having said that there are many aspects of their narratives which are similar to each other such as how each of them was 'recruited' by the accused, how he trained them to message clients; that he made appointments for them to message his clients, how the accused asked them to make videos. How he took a percentage of the fee they earned.

[31] The court in terms of section 208 of the CPA may convict on the evidence of a single witness- See *S v Mokoena* 1932 OPD 79 at 80. In *S v Artman* 1968 (3) SA 339 (A) at 341B Holmes JA stated:

"While there is always need for caution in such cases, the ultimate requirement is proof beyond reasonable doubt; and courts must guard against their reasoning tending to become stifled by formalism. In other words, the exercise of caution must not be allowed to displace the exercise of common sense."

See also: *S v Webber* 1971 (3) SA 754 (A) and *S v Sauls and Others* 1981 (3) SA 172 (A) at 180 E-G

Several children testified how they got to know the accused and how they were recruited by him, trained by him and how they serviced his clients for reward. Most of these children did not know each other; however, their evidence has a pattern of similarity *via a via* the accused recruitment, training and the payments they received

from clients and how they had to pay the accused a portion of their fee. How he made appointments for his client. In this regard the state relied on *S v Mbatha* (2018) ZAGPHC 502.

[32] When the evidence of each victim is viewed in isolation their evidence must be viewed with caution regarding the *minutia* of their testimony, however when their evidence is viewed with other evidence in totality one observes the common thread in their evidence. Ultimately the test for the commonality in the evidence must be relevance of such similar evidence for the admissibility. As was succinctly stated by Schreiner JA in *Matthews v S* 1960 (1) SA 752 at 758 that relevancy is based upon a blend of logic and experience lying outside the law.

[33] I will now deal with the specific crimes the accused pleaded to.

Counts 1 to 253 dealing with the video footage and images recovered from the Huawei Mate 10 Pro cellular phone which was seized by W/O Du Plessis. The evidence of w/o Du Plessis, Muridili and Mr Classen's is pivotal to these counts. Their evidence was not disputed that the images were found on the phone, on the contrary the accused admitted them. Initially his version was that it was deleted, however, the police managed to retrieve those images. Thereafter he suggested that he did not download the images and that the boys must have done so with the exception of the video recording of him having consensual sex with a boy. His denial of taking these videos must also be considered with the evidence of Moses Moletsane that at the swimming school he had a phone in his hand and that he was recording something. These two incidents are unrelated however is it a mere coincidence that he was in the change room naked as Michelangelo's David save that

he had a cellular phone as opposed to a sling, recording images on to his phone.

The accused version regarding the images found on his phone was a denial by him that he was aware of them. So too is the incident of him recording in the cloak room. His version on most aspects is a denial of what the state witnesses testified about such, as the incident in 2007 at Hartenbos, namely that the two boys and the father of one of the boys is mistaken about his identity at Hartenbos in 2007. I will revert to the accused version of denial when I appraise his evidence, below.

[34] The irresistible and logical inference is that the accused was aware of the images on his cellular phone and in my view he should be found guilty on these counts. The accused is convicted on counts 1 to 235

[35] *Counts 254-639*

Once again the evidence of w/o Du Plessis, Muridili and Mr Classen's is pivotal on these counts which relate to the images found on the accused laptop. Their evidence was again not disputed that the images were found on the laptop by Mr Classen's. - See Exhibit Y and para [28] *supra*

[36] The accused version that the boys had access to his computer and they must have uploaded these images on his computer is so far- fetched that it be rejected. One of the boys testified that they merely used his computer to listen to music. His

version is not reasonably possibly true as the accused admitted that his laptop had a password in order to gain access. Once again his version is a denial that he uploaded those images and he endeavours to lay the blame at others. In my view the prosecution proved its case on these counts through the evidence of Mr Muridili and others mentioned in the preceding paragraph. He is found guilty on these counts.

[37] *Counts 640-641.*

These counts relate to the creation of child pornography. Several children testified that the accused requested them to make videos of themselves in a naked state. See the evidence of TW para [9] *supra*, WS paragraph [18] *supra*, TC paragraph [13] *supra*. The accused is therefore found guilty on these counts.

[38] *Counts 642-643 and 644*

The accused told the children to make videos so that they could earn some money. These videos were meant for his clients. He instructed and directed them how to make the videos and what they should portray on these videos. In my view there is an overlapping between counts 642-643 and 644. For that reason, he is convicted on count 642-643. He is acquitted on count 644

[39] *Count 645*

This count relates to facilitating a financial transaction for pornographic videos. The evidence was that the accused requested the children to make these videos for PK

and that they would be paid. A 15-year-old boy testified how he received payment for the videos he made. On pages 1341-1342 of exhibit Y- the accused is conversing with PK about sending him videos and negotiating prices for these videos. Accused is convicted on this count.

[40] *Counts 646-650 and 732*

The accused worked with others such as Herman Combrink and PK to lure these children by approaching them on Facebook to recruit them to the message business. In doing so these children were harboured at the accused place of residence to perform these sexual acts on his clients for payment. The proceeds received by the boys was shared with the accused. All the clients on whom these sexual acts were performed were the accused clients, which he arranged.

The accused when he testified remarked that the boys were over the age of 16 years and that they participated voluntarily. This is a disingenuous argument because he targeted these children and he exploited their vulnerable state. Most of these children came from troubled homes and poor backgrounds. One or two of them had personal issues and thoughts of suicide and ideation. Whilst some of them attempted to harm themselves and were cutters. The accused took advantage of their emotional state by offering them a place to stay where they could make money. His conversation with PK regarding he has a strategy to get a boy to come, and assuring PK that he is gaining the boys confidence is testimony to his cunning modus operandi. On count

648 he is convicted of attempted human trafficking of TC. He is convicted on counts 646, 647, 649, 650 and 732

[41] *Count 650*

PJTH did not testify and no evidence was led in respect of this count. The accused is acquitted on this count

[42] *Counts 651-653 and 733*

These counts relate to the accused benefitting from the services of the victims. He permitted his clients including PK to utilise the services of the victims for which they were paid and he personally benefitted from their services. The accused when he testified admitted that he received a cut of the proceeds the victims were paid. He is accordingly found guilty on these counts.

[43] *Count 654*

This count relates to the accused having used his premises in Sandringham to conduct a massage business, where the victims had to perform lewd acts, on his clients, referred to as "happy endings". He is found guilty on this count

[44] *Count 655*

The accused used the premises in Sandringham to harbour, facilitate and promote human trafficking as the victims were housed. The evidence of TW and ... was that

they messaged the accused clients and performed happy endings at his premises. During these sessions the accused would be out of the premises. The appointments for these messages were all arranged between the accused and his clients. The prosecution proved its case against the accused on this count and he is found guilty.

[45] *Count 656*

This count relates to the accused unlawfully and intentionally publishing, broadcasting and distributed information regarding TW on his devices to his clients with a view to secure clients for TW thereby facilitating the trafficking of TW. The evidence tendered by TW in this regard which was not denied by the accused. On behalf of the accused Mr Albert's submitted that this count was established however, it was a duplication of count 646. I agree with his submission and for that reason he is acquitted on this count.

[46] *Count 657*

This count relates to the accused facilitating the trafficking of TW. In this regard the accused worked jointly with PK in organizing the transportation and paying for bus ticket of TW to get to Johannesburg. The whole purpose of getting TW to come to Johannesburg was to sexually exploit TW who was 15year old at the time. Mr Albert's submitted that this count was established however, he submitted that it was a duplication of count 646. I agree with his submission and for that reason the accused

is acquitted on this count.

[47] *Count 658*

This count relates to the accused facilitating the trafficking of SJ. In this regard. The evidence was that it was the accused who arranged the uber for the child and paid for it. The sole purpose of getting the boy to his home was that the accused should arrange boys to service his clients. Mr Albert's submitted that this count was established however, it was a duplication of count 646. I agree with his submission and for that reason he is acquitted on this count.

[48] *Count 659*

No evidence on this count was led in respect of PJTH. Accused is acquitted on this count.

[49] *Count 660*

This count related to how the accused arranged for DLD to be transported by uber to his premises for the purposes of the child having to perform sexual acts with his clients. Accused is found guilty on this count.

[50] *Counts 661-663 and 735*

These count relate to how the accused and PK unlawfully and intentionally promoted, aided, recruited, and encouraged each other to commit a schedule 2 offence.

Evidence was led how the accused convinced the parent of SJ, and he used other children convince the parents, to allow their children to go to his place. An example being how the accused convinced PK that he is gaining the boys confidence and that he would eventually come. The accused is convicted on these count.

[51] *Count 664*

This count relates to how the accused and PK unlawfully and intentionally conspired to commit the schedule 2 offences. There can be no doubt that the accused and PK conspired to achieve this end however in my view this count is a duplication of count 663. The accused is therefore acquitted on this count.

[52] *Count 665*

This count relates to the rape on SJ by the accused. For details on the rape see paragraph [12], pages 7 12-13 *supra*. The accused admitted having sexually penetrated SJ, however, he testified that it was with SJ's consent. SJ specifically testified that he said NO but the accused persisted. Mrs Dube submitted that the accused version should be rejected as he changed his version on how the penetration of SJ took place. Initially it was put to SJ when he testified that he had been on top of the accused when he inserted his penis into his anus. This changed when he testified as he said SJ was on the message table when got onto him.

I will deal under a separate heading on how the accused version changed on

several material aspects when I deal with the calibre of his evidence. The issue is whether the boy consented to the anal penetration or not. On the accused own version, he was teaching the boy how to message. The boy was lying on the message table when the accused mounted him whilst on the bed. On this score the court finds that the accused's version to be improbable as the child was on the bed being taught by the accused to be massaged, when the anal penetration suddenly occurred.

The accused raised the question that the boy lied to his father by telling his father he was happy at the accused place. Whilst that is true, the context must be taken into account. SJ was troubled with his existence of living a boring and parochial life and wanted to get away from his home desperately. See: *S v Mtsweni* 1985(3) SA 590 (A) at 593/4 and *Dwebu v S* [2004] 4 ALL SA 1 SCA. The fact that he lied to his father does not mean that he is not speaking the truth on this score. I reject the accused version that SJ consented to the accused actions. The accused foisted himself on the boy and despite the boy saying no to him he continued. The accused is convicted of raping SJ.

[53] *Count 667*

This count relates to the accused touching and caressing the naked body of SJ thereby arousing him whilst teaching him how to perform the messages. This charge has been established, however it is a duplication in the light of count 665. He is found not guilty on this count.

[54] *Count 668*

This count relates to the incident where the accused sent SJ to PK. The evidence presented by the state establishes that the accused told PK what acts he could perform on SJ, namely 'BJ and rimming'. On the other- hand the accused testimony was that his golden rule was no intercourse. If the boys performed any acts apart from happy endings he was not aware of such acts and that those acts were done without his approval. This version turned out to be a lie because he was confronted with what appears on pages 1355-1357 where PK books SJ and another boy from the accused. PK tells the accused that he wants oral sex and he wants to watch the boys fuck. The accused unlawfully and intentionally encouraged the boy to perform such acts on PK. Then later watched whilst the one child penetrated the other.

His version that he was unaware of what the boys did is blatantly false. This is once again an example of the accused changing his version- See the closing remarks at paragraph [33] above. He is found guilty on this count.

[55] *Count 669*

This count relates to where SJ was presented to PK by the accused. According to SJ's testimony they proceeded to do to PK what the accused instructed him to do. They messaged a naked PK and also performed the happy ending an act which had the effect to degrade SJ. The accused arranged the meeting between PK and

SJ Accused is found guilty on this count.

[56] *Count 670 and 671*

This count relates to PK having informed the accused that he wanted SJ and another boy to come to his house. – See count 668 above. The boy J penetrated SJ's anus whilst PK watched. In my view this is a duplication of charges. The accused is acquitted on this count. Count 671 is once again so closely linked to counts 668 and 670 that it would be considered a splitting of charges. He is acquitted on count 671.

[57] *Counts 672-677*

On count 673 the accused was discharged in terms of section 174 of the CPA. The remaining counts deal with the accused who recruited TW with the assistance of PK. TW was 15 years old at the time a fact which accused must have known as TW's identity document was sent to PK although this is denied by the accused, birth certificate was sent in order to purchase the bus ticket.

1. The accused trained TW how to perform the messages which included him having to fondle the client's private parts;
2. The accused pimped TW to his clients to perform these acts in order to receive payment. The money that the child received was shared with the accused.
3. TW and another boy were ultimately presented to the accused prized

client PK. The accused presented these boys to PK knowingly, intentionally and unlawfully assisting PK and/or his other clients to commit these lewd acts on TW.

4. The accused denied touching TW penis which TW denied. The accused version on this aspect changed as he stated that a happy ending was a vital part of the messages, and without a happy ending the business would not 'survive'. The fact that the child was to fondle the accused and other unknown person's private parts was degrading and humiliating to the child.

5. The accused sent TW to PK knowing that the latter was HIV+. He knew that the possibility existed that PK would want to have anal sex with TW and despite that possibility he did not warn him of PK's, HIV status

For the aforesaid reasons, the accused is convicted on counts 672, 674,675, 676 and 678.

[58] *Counts 678- 680 relate to DLD*

DLD was a 16-year-old boy who the accused recruited over a period of time. DLD's family were struggling financially and he wanted to make money. He testified how the accused asked him to remove his clothes which he did reluctantly did as this was told this would happen. The accused touched the DLD's penis and masturbated him. The accused inserted his penis into DLD's anus. See paragraph [17], pages 16-17 *supra* for details of the incident.

After penetrating DLD, DLD wanted to leave. He called his friend to fetch him as the accused refused to pay for an uber. The accused's version was

that the penetration was consensual and that DLD fancied him. I do not accept that DLD consented to the act. The irresistible inference is that he did not consent and that the boys' subsequent conduct, in just wanting to get away. This bolsters the accused view. Why would the boy be so desperate to get away if he fancied the accused as the latter testified? The boy left because he was disgusted and shocked. He testified that he endeavoured pretended that the incident never occurred and he tried to block it from his head.

[59] *Count 681*

No evidence was led in respect of this count. The accused is acquitted on this count.

[60] *Counts 682– 694*

These counts relate to the accused sexually exploiting children for financial or other rewards. The evidence presented during the trial showed how the accused arranged appointments for the boys to service his clients for a fee. The children would charge a fee which a cut thereof was given to the accused. These services would be provided in all the instances, with the exception of where PK was involved, at the accused residence. The accused would use videos which the boys made to his clients and to PK in particular. – See conversation between PK and the accused on page 1312 where sent PK a number of videos.

He made the boys available to his clients to perform sexual acts with the with the victims which included 'fatio, rimming and in some instances anal penetration. TW testified he saw approximately 4-5 clients who the accused arranged for him. I am satisfied that the prosecution proved its case on these counts and the accused is found guilty on these counts.

[61] *Counts 696-698*

These counts relate to the accused intentionally and unlawfully living entirely on rewards, favours and compensation for commission on the sexual acts which the children performed. He also received money from PK for the videos which he directed the boys to make. In short the accused made a living from the labours which the children performed on his clients. It appears that he did nothing other than pimping these children for a living. He testified that he conducted a cookie business, however none of the children saw him making such delicacies. He is convicted on both these counts.

[62] *Counts 699-712 –Sexual grooming of Children*

Each of the boys he recruited were housed by him. He trained them how to do the massages and he arranged clients for them. He recruited these vulnerable children on

Facebook and he befriended them in order to gain their confidence and trust. In his own words he told Kennedy to be patient as he gaining the boys trust- See p 1117 PTT

-20200819-WA0039.opus.

The accused enticed the minors to come to Johannesburg by offering them a place to

live and earn a living. To this end in some instances he paid for their transportation to Johannesburg with PK's assistance and in other instances for the for the uber fee to his place. He spoke to some of the parents to convince them to send the children such

as in TW's case, and he even lied to the parents as he did to PW's father who specifically asked him whether the massaging business entailed any sexual activity, to which the accused replied no. Accused is convicted on these counts.

[63] *Count 713-717 - Accused exposure of nudity at Dagamaskloof and the swim school.* The evidence relating to these charges can be revisited at paragraphs [14] – [16] and para [20], supra. His nudity in the public facilities at these places was done with the intent for the boys to observe him in a sexual act of masturbating, as he had an erection on both occasions, thereby embarrassment the children causing them to leave the shower room and change room and telling their parents of this indecent exposure. These two incidents were at two different places, however the similarities in the accused behaviour are pronounced see *Matthew v S, supra*. The accused version

on both these incidents is rejected by this court as being false I accept the version given by the boys who testified on these counts without reservation as being honest and truthful. He is convicted on these counts.

[64] *Counts 722-727*

Accused and PK together used the victims to create, produce Image'/videos of child porn. The making of videos at the instance of PK and the accused was not denied. The

children were directed to make these nude videos for they were paid. Apart from the children making videos a video was found on the accused hard drive by Mr Classen's where he penetrated a boy. See page 1238 Where PK tells the accused, ideally the boys should play with each other. At p1261 message where the accused asks Kennedy

A boy is asking if he must send a butt hole pic. The accused is convicted on these counts.

[65] *Count 728 Malicious damage to Property.*

This count relates to the damage to the boom at the Sunninghill Aquatic Club. He is convicted on this count.

[66] *Counts 729-731 Attempted murder charges*

The accused sent several boys to PK well knowing that the latter was HIV + Kennedy

had anal sex with a 14-year-old boy WS who the accused sent. It was argued that the

accused when he got to know of PK HIV status continued to send boys to him. He

knowingly sent a 14-year-old boy to PK who was raped by him. In his evidence in chief

he testified that he was unaware of what happened at Kennedy's place because his

golden rule was that there was to be no intercourse, and where the children consented

they could do so as they were at least 16 years old. This version was exposed as a

blatant lie, because he advertised that the boys could be rimmed, were prepared to

perform fellatio and even be penetrated. At p781 where a client "Cumm Ads.

Messages the accused and says:

"Seeing as u find these guys I'm looking for one that will fuck me. But thanks for messaging me" the accused responds "I have one like that. will let you know"

The accused admitted that he had consensual sexual intercourse with SJ and DLD.

Both SJ and DLD consenting to intercourse. The issue whether DLD consented to the

sex was dealt with at paragraph [58] supra.

[67] The accused did not impress the court as a witness. He contradicted himself on

numerous aspects. The most notable being that he told the boys that they were not to

have sex as that was his golden rule. When he was confronted with the messages between him and Kennedy speaking about rimming the boys and one of the boys being

a virgin he had no answer.

He initially stated that he did not fix the prices however he is reported to have told a client R1200 for one boy or R2000 for two boys. His version was a denial of all the allegations against him. He denied that he was at Dagamaskop in 2007, however the father of one of the boys grabbed him by the shirt and warned him that if he saw him again, the next time he would call the police. I accept the evidence of DR senior who gave his evidence honestly. The accused was evasive and did not answer question directly. Time and again questions would have to be repeated. On other occasions his

answer to a question that had no bearing to the question resulting in the question being

asked again. I can safely say that the accused evidence was so poor and contradictory

that it should be rejected, save where it accords with the state's evidence.

[68] *Counts 732, 733, 734 and 735 – Human trafficking*

The defence contended that these counts were established, however it relates to one continuous transaction. The accused together with PK arranged for the boys to come

to Johannesburg in order to exploit the sexually so that they could make money from the sexual activities which the accused arranged from the minors. This was a carefully

thought out scheme orchestrated by the accused whereby these victims were exploited

by the accused in order for him to get an income. He is found guilty on these counts.

[69] *Count 736 This charge relates to the rape of WS, 14-year-old victim.*

This count relates to PK having had intercourse with the boy. The state submitted that this was done with the approval of the accused who instructed WS to have intercourse with him. The accused denied that he told the boy to be intimate with PK, however the conversations between PK and the accused on this score is self-evident that they discussed a 14-year boy who was coming to the accused soon. The accused is convicted

on this count.

[70] *Count 737 this count relates to the sexual exploitation of children (WS)* The accused utilised this child by making available to his client's for their sexual needs and in the process he received a percentage of the fee which was paid to the minor. The evidence clearly establishes that the minor was exploited for sexual acts at the Behest of the accused. The accused is found guilty on this count.

[71] *Count 738 – This count pertains to the accused receiving financial rewards*

for sexual activities performed by WS. Whist the evidence reflected that this did happen, in my view this count is so closely related to count 737 that it a duplication of charges. The children were sexually exploited for the sole object of receiving a reward.

The accused is acquitted on this count.

[72] *Count 739- Sexual exploitation of child WS.*

It may be submitted that this count is a duplication of count 737, however each time that a child is sent to a different customer it would be a different count of sexual exploitation. If a child was sent to 10 different clients it would equate to 10 counts as opposed to a child being exploited once only. Accused ids found guilty on this count.

[73] *Count 740- Living from sexual proceeds of a child*

The evidence presented during the trial clearly established that the accused made a living from the sexual exploitation of the children. At one stage the evidence revealed that he had 7 masseurs working for him at a time. From these activities he could pay the rental at the premises in Sandton and had an income to sustain himself. He is convicted on this count.

[74] Finally, I need to say something about the role played by Mr Kennedy in this matter. One is inclined not to say unfavourable and negative things about a person who departed this world, however I would be remiss in my duty if I were to skirt the

issue.

Mr Kennedy was a participant in this matter. He financed the transportation of some of the victims from their places of residence to Mr Ackermann's place. He also financially assisted Mr Ackermann with his day to day expenses when the need arose.

He commissioned the accused to get the boys to make pornographic videos of themselves and he paid for those videos.

He was the only client according to the evidence presented which the boys made house calls to. At his home the boys performed messages with happy endings. In some instances he wanted them to perform falatio, and he carried out the act of rimming. In one instance when there were two boys at his premises he insisted that the one boy has anal sex with the other minor, an act of rape at his request for which they were paid by him. That he took his life was tragic but not unexpected, as he brought shame to himself, and the profession he represented. As an advocate he realised that the game was up and he therefore committed suicide.

The court is duty bound to say this so that the victims may get closure in so far as the role played by him is concerned.

MHE ISMAIL
JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG**APPEARANCES:**

For the Accused : Mr Alberts, from the office of Legal Aid Board, (Pretoria)

For the State : Advocate V Dube, from the office of the DPP
(Johannesburg).

Dates of Hearing : 24 January 2023-26 8January 2023, 30 January 2023,
2 February 2023, 6 February 2023-9 February 2023,
13 February 2023- 17 February 2023, 21 February 2023
23 February 2023, 27 February 2023-28 February 2023,
and 1 March 2023.

Date of judgment : 24 & 25 April 2023.