IN THE HIGH COURT OF SOUTH AFRICA

[NORTHERN CAPE DIVISION, KIMBERLEY]

Reportable:	YES/NO
Circulate to Judges:	YES/NO
Circulate to Regional Magistrates:	YES/NO
Circulate to Magistrates:	YES/NO

Case No: K/S 46/2012

Date Heard: 11/03/2013 -09/12/2013

25/03/2014- 27/03/2014

16/05/2014 - 24/06/2014

Date Delivered: 13/08/2014

In the matter between:

THE STATE

V

DD

SENTENCE

KGOMO JP

[1] In two days from today (13 August 2014) the minor accused, DD, will turn 18 years of age, having been born on 15 August 1996. On 27 March 2014 I convicted him of the rape and premeditated murder of his younger sister, Ms M, who was 14 years old; the premeditated murder of his parents (parricide), Mr D who was 44 years old and Mrs C who was 43 years old. This was therefore a Multiple Family Homicide also known

as Familicide. DD was also convicted of Defeating the Ends of Justice. He committed these offences on Good Friday, 06 April 2012, when he was 15 years and 8 (eight) months old.

[2] In consequence of the aforegoing the trial was and still is being conducted in terms of s 63 of the Child Justice Act, No 75 of 2008 (the CJA) read with s 154(3) of the Criminal Procedure Act, No 51 of 1977 (the CPA). The minor was therefore assessed by a probation officer in terms of s 34 of the CJA before any court proceedings, preliminary or otherwise, commenced for the diverse purposes set out in s 35 of this Act. S 35 provides crucially, inter alia, that:

"***35 Purpose of assessment***

The purpose of an assessment is to-

(h) determine whether the child has been used by an adult to commit the crime in question; and

(i) provide any other relevant information regarding the child which the probation officer may regard to be in the best interests of the child or which may further any objective which this Act intends to achieve."

[3] In **S v Dlamini** 1991(2) SACR 655 (A) Nicholas AJA (Hefer JA and Goldstone JA concurring) observed at 666j – 667e:

"It has been observed that, whereas criminal trials in both England and South Africa are conducted up to the stage of conviction with scrupulous, time-consuming care, the procedure at the sentencing stage is almost perfunctory. ---.

More than 100 years ago, Mr Justice Stephen said that, while it is commonly thought that --- Judges of first-rate ability, elaborate systems of procedure and careful rules of evidence are concerned essentially with the punishment of the offender, 'there is no part of the whole matter to which so little attention is paid by those principally concerned with it'. He regretted the fact that Judges paid so little and

such superficial attention to sentencing. Yet, he argued, sentencing was the gist of the criminal trial. 'It is', he said, 'to the trial what the bullet is to the powder.' And more recently, in The Machinery of Justice in England, Jackson wrote:

'An English criminal trial, properly conducted, is one of the best products of our law, provided you walk out of the court before the sentence is given. If you stay to the end you may find that it takes far less time and enquiry to settle a man's prospects in life than it took to find out whether he took a suitcase out of a parked motorcar.'"

There was nothing perfunctory concerning the sentencing procedure in this case. On the contrary the pendulum may have swung the other way in the extreme. No fewer than 30 witnesses testified in mitigation and aggravation of sentence and what impact the crimes have had on the lives of the minor's family, his friends and the broader community. Maybe, just maybe, the elaboration was just as well.

[4] In **S v Du Toit** 1979(3) SA 846 (A) Rumpff CJ had this to say at 857H-858A:

"Wanneer die aard van die misdaad en die belang van die gemeenskap oorweeg word, is die beskuldigde eintlik nog op die agtergrond, maar wanneer hy as strafwaardige mens vir oorweging aan die beurt kom, moet die volle soeklig op sy persoon as geheel, met al sy fasette, gewerp word. Sy ouderdom, sy geslag, sy agtergrond, sy geestestoestand toe hy die misdaad gepleeg het, sy motief, sy vatbaarheid vir beïnvloeding en alle relevante faktore moet ondersoek en geweeg word. En hy word nie met primitiewe wraaksug beskou nie, maar met menslikheid en dit is hierdie menslikheid wat in elke geval, hoe erg ook al, vereis dat versagtende omstandighede ondersoek moet word."

[5] In **S v Siebert** 1998(1) SACR 554 (SCA) at 558j-559b Olivier JA made this pronouncement:

"Sentencing is a judicial function sui generis. It should not be governed by considerations based on notions akin to onus of proof. In this field of law, public interest requires the court to play a more active, inquisitorial role. The accused should not be sentenced unless and until all the facts and circumstances necessary for the responsible exercise of such discretion have been placed before the court.

An accused should not be sentenced on the basis of his or her legal representative's diligence or ignorance. If there is insufficient evidence before the court to enable it to exercise a proper judicial sentencing discretion, it is the duty of that court to call for such evidence."

[6] As reflected earlier s35(h) enjoins a presiding judicial officer to *"determine whether the child has been used by an adult to commit the crime(s) in question."* The answer to this is: I am satisfied that DD has not been so used. In other words he did not act under the influence of any more mature person or persons. This view emanates from the following factors:

6.1 It has never been suggested by the defence or the State that this was the case. On the contrary the State submitted that he was a "lone ranger" whereas the minor still vehemently protests his innocence, ill-conceived as that may be;

6.2 At para 33 of the judgment I made the following observation:
Placing himself in the barn is pivotal to the minor's defence. This is so because if this is not where he was during the murders then he must have been in the house with his parents and sister when they were killed. If I have to be extremely charitable to the minor I would have to find that he witnessed the shooter eliminate his family; a less charitable view would be that he was in cahoots with the shooter; or, the least charitable scenario would be that he

must have pulled the triggers of the smoking guns that he later that evening delivered to the police."

6.3 At para 67 of the judgment I stated:

"67. In my view the torturer wanted to achieve something; and THAT something on the evidence was to have sexual intercourse with the girl. The girl refused and defended her modesty. In consequence she was tortured, raped and murdered to prevent her from reporting to her parents that she was raped. Because the girl's parents would bear witness against the perpetrator they too had to be eliminated, and were. This is the most plausible motive for the murders. In the leading case on the relevance of motive for purposes of proving intention or identity Innes CJ held in ***R v Khumalo and Nkosi*** *1918 AD 500 at 504:*

"The ordinary man does not perpetrate a grave criminal offence without a motive; and although it is not essential, nor always possible, to ascertain what it was, the matter is often of considerable importance. A crime for which no motive likely to affect the person charged can be assigned is difficult to bring home. So that the presence of such a motive is an element in favour of the Crown, and its absence an element in favour of the accused."

The meaning of this quotation is to bring home the sense that no one could reasonably have influenced DD to torture, rape and murder his sister. This would be most bizarre. What would be in it for the instigator.

6.4 DD was also not in contact with any stranger-outsider telephonically several days before the murder, during and after the incidents themselves. Para 31 of the judgment dealt fully with the

phone calls made and received during this period by the minor and his family, as the case may be.

[7] Section 35(h) of the **CJA** (above) is merely a re-statement of the principle on whether the child acted under duress which may be a complete defence; alternatively, whether the minor was pressurised or influenced to commit the crimes, which is a mitigating factor. See **S v Mabuza & Others** 2009(2) SACR 435 (SCA) at para 22 where the Court stated:

"Youthfulness almost always affects the moral culpability of juvenile accused. This is because young people often do not possess the maturity of adults and are therefore not in the same position to assess the consequences of their actions. They are also susceptible to peer pressure and adult influence and are vulnerable when proper adult guidance is lacking. There are, however, degrees of maturity, the younger the juvenile the less mature he or she is likely to be. Judicial policy has thus appreciated that juvenile delinquency does not inevitably lead to adult criminality and is often a phase of adult development. The degree of maturity must always be carefully investigated in assessing a juvenile's moral culpability for the purposes of sentencing. The Constitutional Court warned in S v Williams and Others [1995(2) SACR 251 (CC)] that youthful offenders, particularly, should not be sacrificed on the altar of deterrence. There is therefore compelling justification for the view that youthfulness, at least before the advent of the minimum sentencing regime, was per se a factor mitigating sentence"

[8] What is also of cardinal importance is how the crimes were committed. This speaks to the direct intent to murder, the premeditation, the determination or the measure of deliberation with which the crimes were

perpetrated. The best demonstration lies in the description given in para 42 of the judgment:

"42. Dr Fouchè testified that the .22 gunshot wounds caused instantaneous death. This must be so. Of immense significance is the evidence of W/O Phillemon Nhlapo. He is an expert on ballistics and attached to the Ballistic Section of the Forensic Science Laboratory of SAPS in Cape Town. He also attended the post-mortem examination with Capt Joubert conducted by Dr Fouchè. The evidence of the three are consonant where their fields of expertise converge or conflate. He testified that each one of the deceased were shot through his/her body with the lighter calibre Magnum .357 first and, when they were already prostrate, then executed with the heavy calibre .22 rifle; almost without exception through their heads. The following excerpts encapsulate it all:

"State Counsel: Yes. And then paragraph 8. Paragraph 8 contains the conclusions you reach as a result of what you observed of the wounds. === Yes My Lord.

Yes, you can then move to paragraph 8.1. === 8.1 will read as follows: The wound mentioned in paragraph 5.1 was caused by the bullet fired with a downwards trajectory My Lord.

And just to remind ourselves Warrant Officer Nhlapo, this wound we see on photos 20 and 22 of exhibit "FF", is that correct? === That's correct My Lord.

While we are on this particular wound, would this be consistent if somebody who is sitting and getting up from the sitting position when such a wound is inflicted? === That's correct My Lord. The upper body of the person being exposed to the shooter, slightly bent into the shooter My Lord.

Court: Bending forward? === Forward My Lord.

Mr Cloete: And then you can move on to paragraph 8.2 and read it out for purposes of the record. === 8.2: The wound mentioned in

paragraph 5.2 was caused by the bullet fired from the right with a downwards trajectory My Lord.

And again, these are the wounds we see on photos 19 and 23 of exhibit "FF", namely the wound on the right side of [Mr D], is that correct? === That's correct My Lord.

And you say this was also with a downward trajectory? === That's correct My Lord.

Then you can move on to paragraph 8.3. === 8.3: The wounds mentioned in paragraph 5.3 was caused by a bullet fired from the left to the right My Lord.

Now what is important here, and this is the wound which we see on photo 24? === That's correct My Lord.

Of exhibit "FF". While we are on this particular wound. Is it possible that the shooter was standing up and the deceased was lying down when this particular shot was fired which caused this wound? === That's correct My Lord."

The deceased were all executed. All executions are coldblooded.

[9] Dr Lerissa Panieri-Peter was called by the defence. She is a Specialist Forensic Psychiatrist. She holds an MBCHB (UCT–1994) and FCPsych (SA–2001). She holds a number of Fellowships. Her expertise was not placed in dispute. She was an impressive and reliable witness.

[10] On the injuries inflicted on the deceased by the minor she testified as follows:

10.1 *"Of particular concern had been the observation by the Court and others, that the accused appeared unemotional. Furthermore the accused has consistently denied committing the offences for which he had now been convicted. Finally the nature of the offences is so hard to fathom and so heinous that this matter has caused disquiet amongst all involved. This report consists of a summary of my*

psychiatric findings and conclusions in the matter and it has been compiled with the purpose of detailing psychiatric or psychological factors that are relevant to the current legal proceedings. The findings arrived at by me pursuant to my evaluation and assessment of [DD], are independent of the influences whatsoever by any person."

10.2 Dr Panieri-Peter continues most significantly:

"From a psychiatric perspective the crime is an intensely brutal one. It is certainly not what one would expect of a cold, calculated and planned execution, by an experienced and excellent marksman. The post-mortem findings indicate that each of the victims was shot with two weapons, and that the first shots to all victims were not the lethal shots. Two of the victims were severely beaten on the head or face, apparently with the butt of a firearm or another blunt object. [Mr D] was beaten on the vertex of his skull and had a number of severe lacerations on the top of his scalp. [Ms M] appeared to have a number of defensive injuries to her body, but also had multiple lacerations indicating significant blunt force to her scalp and face. All victims seemed to have died as a consequence of a final lethal gunshot wound to the head with a different weapon. The nature of the violence and patterns of injuries is noteworthy. I would suggest that the pattern of injuries is more suggestive of an emotion of anger, rage, hatred, paranoia or intoxication, rather than of bland, cold planning and execution. With the marksmanship of the Accused I would have expected him to be able to kill with a single shot each victim from a distance, should that have been his planned methodically-intended action. The crime seems to have a chaotic quality to it. Furthermore the timing of the murders is noteworthy. The sequence of events is remarkably fast. It does not make sense that a well considered execution would have been so rushed, botched and ill considered

in the end. When asked about this aspect of the case, the accused said to me again that he did not commit the offences. And this is now in my last interview, I again went there. Now that the judgment – because exactly as the Court said, I was hoping that now that we have judgment, that creates a different approach. He added that if he had, he would not have been as stupid as to have left his shirt there, without hiding it, or have left the place like that. He said that he would have burned the whole place down, or would have gone far away to the fields. Accounts of witnesses suggest, and I understand testing afterwards, suggests that the Accused must have driven remarkably fast from the farm to the police station. Certainly this action is congruent with an emotional response. It was noted by others that he was seen to be crying and needed to be calmed down immediately after the events. This seems incongruent with the presentation of the Accused in court. My view is that if he was malingering his emotions at the time of the incidents, he would have been able to malinger his emotions at a time when he was more on display and where he was being judged accordingly. One would expect a very manipulative person to have presented a very convincing performance in court as to the emotions he would have been expected to show. Instead he appeared stony faced. My Lord, the court made reference yesterday to the person after 8 years who now appeared remorseful and I think what I am saying in this is that his emotional responses have not been in his interests. In other words one would expect of a person who was able to read how others expected him to behave, one would expect him to have been much more convincing in court. And certainly the account given that I have knowledge of the offence, immediately after, we're talking about when he arrived in the police station etcetera, was that of an emotional response at that time. And there's no reason to suggest

that the emotional response was feigning, if you look at all the other actions, including the crime itself, and if he was good feigning emotions. So if I am wrong about that, and that emotional response was feigning, then I would have expected him to have done a much better job of it here, of looking distressed and upset and remorseful. Another unusual aspect of this in my experience is the persistent insistence of him being innocent of the offences. My experience is different from that of the police. I don't come from that perspective. I am not seen as fused with that. And it is always a surprise to me how often people tell a psychiatrist what happened. Many people, in fact it's something I have to explain to people at the beginning, is that in forensic psychiatry, what you tell me is not confidential because people have this feeling that it is somehow. The space in which one sees them is very conductive to that, it's quite and it's very encouraging of that and my experience is that most people who committed heinous crimes tell one. Often because the motivation of the crime they see as a justification. In other words, they so badly want to be understood as to what happened, they want you to understand to explain to maybe exonerate, to maybe excuse, to maybe lessen the culpability, whatever the reason, there are different reasons in every circumstance, but it is unusual."

[11] Adv Hannes Cloete, for the State, called Major Bronwyn Stollarz as a witness. She is employed as a Chief Psychologist at the Investigative Psychology Section of the South African Police Service (SAPS) in Pretoria. It needs be pointed out that there is very little dichotomy (difference) between her evidence and that of Dr Panieri-Peter. She was also a reliable witness.

[12] Major Stollarz testified as follows on the injuries of the deceased:

12.1 *"The expression of unnecessary violence can be seen in the injuries to both [Mr D] and in particular[Ms M], who's injuries were significant. Over and above the gunshot wounds sustained by these victims, blunt force trauma was inflicted. It appears in the case of [Mr D] that these injuries were sustained after the deceased was incapacitated by the gunshot wounds. It can be inferred from the lack of movement following his blunt force trauma injuries that [Mr D] could not have still been considered a continuing threat to the Accused. The unnecessary blunt force trauma is therefore considered an expressing of rage to both of the deceased. Point 8: Risk and rehabilitation prospects. Maybe if I can just interrupt for a single moment. Dr Fouche described the injuries to the heads of [Ms M] and [Mr D] as an overkill, would you agree with that? --- Yes My Lord."*

12.2 Major Stollarz continues:

"Then it is the evidence that all three deceased were shot with the .357 Magnum revolver, they were incapacitated at least and then they were executed with the .22 rifle, how must we understand the Accused being able to be so determined to kill? --- My Lord I think that what it indicates is that even though the timeframe that we're talking about in terms of the commission of the murders is very short. That, as was indicated yesterday, the going back to get the .22, indicates very decisive behaviour about one's next move on the crime or one's next behaviour on the crime scene. That was a decision that happened and behaviour followed accordingly, in order to make sure that there were no survivors. Dr Panieri-Peter used the word botched in her report, and in my opinion we cannot refer to this crime scene as a botched crime

scene because all the victims were killed and that was the purpose of the shot with the .22.

COURT: Was the term botched not perhaps used in saying it was done amateurishly. I don't know? --- Perhaps, perhaps.

MR CLOETE: To be able to go and fetch a .22 and to execute, to make sure that your parents and your sister are dead. Can you give us any opinion in terms of the ... process or lack thereof or understanding, how is that possible, given the relationship between the Accused and these victims? ---My Lord, I think that is what is so disconcerting about a family murder is that we struggle to understand how an offender could kill the people who are most precious to him, with whom he is supposed to have the greatest attachment. And that I am concerned that the crime scene behaviour indicates that there was an objectification of the family members that he was able to see himself as separate from them in terms of the loving relationship and the attachment that he had for them in order to be able to kill them and I think that, for me, is probably something that developed mentally, we've [been] looking at for quite a long time. Not that he was acting in a overtly negative or dangerous way to them, but in the nuances and the relationship there must have been some sort of difficulties with regards to attachment and relationships."

12.3 The Major went on to say in-chief:

"You also agreed with the description of Dr Fouche and Dr Panieri-Peter also used the word overkill. The question I have in this regard is, is overkill an indication as Dr Panieri-Peter indeed testified, an indication of an emotional connection to a victim, or could it be? ---It is one of the factors that we look at my Lord, when we see overkill on a crime scene, as she testified to, it can be an indication of a psychotic or someone in the throes of some

sort of psychotic mental illness. It can be a sign of a drug induced state where one sees these excessive amounts of rage. But we also see it a lot in intimate partner murders and when we see that on a murder scene, it can indicate that that amount of rage indicates a connection between the perpetrator and the Accused. So as I said we see a lot in intimate partner murders and it's something noteworthy.

And Dr Panieri-Peter testified that his would fit in with what we had seen here, a family environment. You agree with that? ---Yes My Lord."

The prognosis by Dr Panieri and Maj Stollarz will be dealt at a later stage.

[13] DD has shown no remorse or contrition and still protests his innocence. I am satisfied that he was not advised or influenced by anyone at the initial stage of the criminal events to deny involvement. From the inception he reported to the folks on the family farm (Ms Watermond and the others) that there has been a farm attack. He perpetuated this lie to the police, family members, school friends, teachers, social workers, psychiatrists, the Court, and the community at large to this day.

[14] DD has falsely implicated Mr David Goronyane, Mr Wippie Deerling and two other persons as possible suspects. He caused a private investigator to be appointed by his guardian and some family members to trace the ghost perpetrator(s). He created fertile ground for the gullible or the mischievous to make false claims or to peddle unfounded rumours. The stage was set by Mr Heckroodt, DD's guardian, for those who believe in the minor's innocence or those who are out and out denialists, after his ward's conviction but during mitigation he (Heckroodt) said:

14.1 He read the judgment and is not convinced that the minor is guilty;

14.2 He advised the minor from the inception (6/7 April 2012) not to discuss the incident with anyone, even family, because he cannot tell who, in the divided family members, had his best interests at heart, Mrs Elbeth Vermaak, his aunt testified that:
"[E]k kan onthou dat Mnr Bennie Heckroodt waar hy die nag oornag het, my die volgende oggend vroeg gebel het en gesê het op regsadvies moet ons nie vir [DD] uitvra oor wat die aand gebeur het nie. Dit kan dalk later teen hom gebruik word, as ons liewer is vir ons broer as wat ons vir hom was."

14.3 It was preferable that the minor protest his innocence because implicating himself would jeopadise his chances of a successful appeal;

14.4 When the appeal is successful it is only then that DD would be allowed to make a clean breast;

14.5 Mr Bode, for DD, asked Mr Heckroodt in-chief to comment on the following statement by Mrs Van Wyk, a social worker:
"Huidige oortreding: Dit kan dus voorkom dat die Beskuldigde se denkwyse die afgelope 2 jare deur ander mense beïnvloed was, en daarom vind hy dit moeilik om volledige beskrywings van die voorval te gee en daarom is hy aangemoedig om niks oor die misdaad bekend te maak nie." U is die voog, u is baie naby aan die minderjarige beskuldigde, het u enige kommentaar oor daardie opmerking in soverre dit dalk op u betrekking mag hê? --- U Edele, ons het in opdrag van die eerste regspan het – ek en hy het daaroor gepraat. Hy het van tyd tot tyd 'n behoefte gehad. Ek het Mnr de Jager hulle se instruksies nie uitgevoer op daai punt, dat as hy met my wil praat of iets, dat ek vir hom sê, hey ons mag nie praat hieroor nie. Ek het geen rede gehad om hom aanmekaar

terug te vat na daai gebeure toe nie. Maar Mevrou Cronje [a clinical psychologist] het op 'n stadium vir ons 'n aanduiding gegee dat sy sukkel om rêrig kontak met die kind te maak want hy het nou opdrag gekry hy moet nie praat en sy weet nie, sy kan nie rêrig – u weet daar's, ek weet nie hoe om dit te noem nie. Sy wil met hom oor die goed praat maar hy mag nie met haar daaroor praat nie."

[15] Mr Heckrood was emphatic that he knows DD very well since some time before the commission of the crimes. He trained and mentored him for the gymkhana sport. (It is an event comprising competition on horseback, typically for children). DD has stayed with his family since about 07 April 2012 (a day after the incidents). DD is respectful and not violent. He and his relatives had no qualms leaving him with or in the care of their younger children, both boys and girls. He never harmed them. If anything he was protective of them. In Mr Heckroodt's view DD is incapable of committing such heinous crimes. He believes that the perpetrator is still out on the loose. Mrs Heckroodt, his wife, said she will never believe that DD committed the crimes he has been convicted of. When I asked her what would she say if DD confessed to the crimes in later years. She responded that she will only accept it when the minor implicates himself.

[16] Mr Bode called Dr Eon F Sonnekus, a Criminologist Consultant, on behalf of the minor. He is a highly educated professional. I list his qualifications and refer to his vast experience for a specific reason. He holds a BA (UP) 1984, BA (Hons-Cum Laude) (Criminology) (UP) 1986, MA(Cum-Laude) (Criminology) (UP) 1987, D Litt et Phill (Criminology) Unisa 1993. He has received numerous research awards, at home and abroad. He applies both criminological and penological principles in his

approach to sentencing. He has testified in at least 64 cases between 2006 and 2014 only. He testified over several days in this Court.

[17] Dr Sonnekus conducted interviews with numerous members of the family, with the minor himself, his guardian, Mr Heckroodt, and the latter's wife Mrs Heckroodt. He had sight of the reports of the social workers who testified and used a number of source documents, including my judgments (there are three of them) in this case as well as portions of the record. He also consulted with Dr Panieri-Peter, aforementioned. Yet Dr Sonnekus became unstuck under cross-examination and on the rare occasions when he was questioned by the Court. The following are a few samples of his undoing:

17.1 In his evidence-in-chief Dr Sonnekus pointed out that "*ek is opdrag gegee deur Mnr Bode om die gesprek wat Majoor Stollarz wou voer met DD by te woon en in te sit en deurloppend advies te verskaf aan hom, Mnr Bode, of dan sy Prokureurs Assitent, rakende die hele proses aangeleentheid.*" Mr Heckroodt was also in attendance and so was attorney Ms Jackie Labuschagne.

17.2 State Counsel, Adv Hannes Cloete, enquired from Dr Sonnekus whether it is his evidence that in his interview with the minor, over three sessions, he did not succeed, "uit monde van DD", to establish what really happened on 06 April 2012. He responded: "*O, o, rondom die incident nee, nee ek het hom ook nie daarna gevra nie want nommber een hy is geregtig om sy swygreg te handhaaf, ons weet dit in die vonnis verhoor. Nomber twee, hy was bevind as `n leuenagtige getuie en, en my benadering is dat hy moet hom neerlê definitief tydens gevangenissetting by die uitspraak van sy edele. So dit is nie `n kwessie van dat ek die uitspraak van sy edele met hom gaan toets, vir hom gaan sê stem*

jy nou saam met die hof of nie ek weet mos nou hy was leuenagtig bevind, ek weet hy het `n swyg reg. Dit is nie vir my wetenskaplik betroubaar maar as ek net een ander punt u edele mag noem, ek het nie op grond van drie sessies alleen sekere gevolgtrekkings gemaak nie wat ek gedoen het is ek het gesteun op die mense se getuienis wat hom lewenslank ken en dit vertolk of hom gereeld herken nê of gereelde interaksie gehad het so met ander woorde dit is nie feite wat ek kon postuleer nie nê."

17.3 Dr Sonnekys was asked why, in his opinion, was an overkill carried out on Mr D and Ms M and not on Mrs C as well. He blamed the lack of an eye witness for this inability. To him circumstantial evidence is less reliable. State counsel put it to him:
"Met die grootste eerbied u sien u het nou `n lang verduideliking gegee maar u skep die verkeerde indruk. Dit is nie asof ons sonder feite hier sit nie. Hier is feite om op te werk. Hier is feite om sekere afleidings van te maak. Hier is feite om die hof behulpsaam te wees en die feite is die manier hoe hierdie moorde gepleeg is, is dit nie so nie? - Asof omstandigheidsgetuienis iets minder is en dit is nie. --- Ek sê nie dit is minder nie ek sê dit is moeilik vir `n kriminoloog, dit is feitlik onmoontlik om `n verklaringsmodel te gaan toepas op grond van sekere omstandighede wat die skuld aandui. Dit aanvaar ek van die beskuldigde maar onthou nou ons gaan breër, dit gaan nie net oor die regsaspekte nie dit gaan oor kriminologiese aspekte, hy moet presies, presies weet jy weet ek kan nie dit is die positivis maar dit is `n semi-natuurwetenskap ons, dit is net hoe dit werk."

17.4 State counsel put it to Dr Sonnekus that the minor has to keep up the charade of innocence, two years and two months later, because an admission of guilt equals the forfeiture of his

inheritance or risk alienating himself from some family members. The doctor gave a convoluted academic lecture to this simple question. He could have said he does not know, if that is the case. In the end you have no inkling on what he seeks to convey. The minor enquired within 24 hours of the murder from several people what he will inherit or whether he will inherit Ms M's portion as well. I then enquired from the doctor:

"Kom ek by u verneem dokter want u het die oorkonde gelees, u het die verklarings gelees, het u hom gevra maar hoekom het u by Kolonel De Waal verneem wat hy gaan erf, het u hom gevra? ---- Nee, nee want ek het ... (tussenbeide)

Hoekom nie? --- Ek het geweet dat hy handhaaf nou sy swyg reg in hierdie verhoor, hy is `n leuenagtige getuie bevind en ek wil met eerbied, ek was nie daar om die saak te herondersoek nie, ek was net daar om te kyk na moontlike versagtende en moontlike verswarende faktore."

17.5 Much later (about 27 pages later) State counsel enquired:

"U sien Dr Sonnekus in u verslag is daar verwysing na wat op daardie dag gebeur het, soos byvoorbeeld die wegry van die plaas af na die Polisiekantoor. U weet daai verwysing in u verslag? ---Ja.

So daaruit moet ek aflei dat u die gebeure van die 6de April met die Beskuldigde bespreek het soos `n mens sou verwag u sou? --- Ek het dit nie bespreek met hom nie, ek het as u na die opskrifte kyk sal u sien dit het gegaan oor sy emosies. Dit is waarna ek hom uitgevra het. Met ander woorde sy subjetiewe ervaring. Ek het nie vir hom `n klomp vrae gestel, wat gebeur? Vertel vir my, nee, ek het dit beslis nie gedoen nie en die voog was teenwoordig.

<u>HOF:</u> Maar hoekom nie? Hoekom nie? Dit is wat ek nie kan verstaan nie. Hoekom nie, dit is mos belangrik? Is dit nie

belangrik nie? Ek verstaan dit nie so mooi nie, miskien moet ek maar my onkunde openbaar. Ek moet vandag iets leer. Hoekom nie? --- Edele, ek het gevoel hy het reeds getuig. As hy nie die waarheid gepraat het in die agbare hof tydens die verhoor en hy is bevind as leuenagtige getuie aan die eenkant, en aan die anderkant handhaaf hy sy swygreg tydens die vonnisverhoor, plaas dit my in `n verskriklike moeilike situasie. Want ek sit hier met iemand wat u met eerbied bevind het dat hy so leuenagtig was, as ek u mag aanhaal, dat u gesê het dit is asof hy nooit getuig het nie---.

Soos die Staatsadvokaat aan die ander getuie in die verlede gestel het, why are you skirting the issue? --- Ja.

Dit is wat ek vandag `n bietjie wil leer, Goed, u kan daarop reageer. --- U Edele, in my eie etiek is die respek vir die Hoë Hof se uitspraak van so `n aard dat ek dit persoonlik nooit bevraagteken wanneer ek met `n beskuldigde werk."

17.6 The equivocation by Dr Sonnekus proceeded under cross-examination:

"Goed, het die Beskuldigde vir u gesê, ek wil nie daaroor praat nie, ek wil my swygreg uitoefen of het iemand namens hom dit vir u gesê? --- Niemand het namens hom tydens die 10 onderhoude dit vir my gesê nie, ***maar ek het met die Prokureur voor die onderhoud al gekonsulteer en ek het geweet dat hy gaan nie getuig nie, hy wil nie getuig nie.*** *Natuurlik kan hy dit verander sekerlik as hy wil. U sal dit beter verstaan. Maar tydens die gesprek het hy definatief vir my aangedui dat hy nie oor die insident wil praat nie.*

Het hy dit vir u gesê? --- Hy het dit nie – ek wil vir u sê hy het dit nie gesê nie.

Het hy dit vir u gesê? Dis 'n eenvoudige vraag, het hy vir u gesê, Oom of Doctor, ek wil nie oor hierdie insident praat nie. --- Dit was nie die letterlike woorde nie.

Wat was dan die letterlike woorde gewees? --- Wel ek het nie 'n band geneem nie, ek het nie 'n transkripsie geneem nie. Ek het hom gerespekteer en sy – die indruk wat ek gevorm het, ek het die notas gemaak, ek het dit nou nie alles hier in die verslag, u weet, vervat nie, ***was baie duidelik dat hy nie oor die insident gaan praat nie. Maar hy is ook nie gevra om daaroor te praat nie.***" (Emphasis added)

17.7 *"HOF: Doktor, in daardie teks wisseling tussen DD en Chanté, het hy vir haar iets gesê, ek het nou lanklaas gelees, maar iets gesê – ek weet hulle gaan my verdink dat ek die moorde gepleeg het. --- Ja.*

Nou u weet daarvan? --- Ek is bewus daarvan, dis reg.

Nou Doktor wat ek wil weet, het u daarom vir hom gevra, maar sê vir my, op grond waarvan sou hulle u verdink? --- Edele nee, ek het dit nie vir hom gevra nie.

Waarom nie? --- Soos ek vir u vanoggend verduidelik het, ek beskou hom as leuenagtig oor die gebeure en ek het nie 'n ware, 'n waarheid antwoord verwag nie, dit was nie binne my raamwerk, my persoonlike raamwerk met die oog op vonnisoplegging relevant, binne my raamwerk. Dit mag vir u relevant wees, maar dit was nie vir my relevant."

MNR CLOETE: Soos die Hof behaag Edele.

HOF: Goed, maar laat ek net eers vra. --- Seker.

You see what concerns me is that much of what we have heard, it's so academic and some of it has very, very little to do with the

reality revolving around the case. We do have a lot of aspects that have to do with his character elsewhere, that's fine, I understand that, but it means that now here is a whole area that lies untested, that was not interrogated, that was not investigated at all and we have a thorough investigation on another aspect. Nou beteken dit 'n mens het nie 'n gebalanseerde prentjie nie want --- you don't touch this, it's taboo, you don't touch it. --- Ek hoor.

Want aan die einde van die dag moet ek al die verslae, die getuienis, alles bymekaar bring. --- Ja.

En probeer om u nie te misverstaan. --- Ek verstaan."

17.8 Adv Cloete put it to Dr Sonnekus that there was no prohibition placed on the Following professionals not to interview DD on the events (offences) that took place on 06 April 2012 because DD wished to exercise his right to remain silent: Ms Katarina Klaaste, a Social Worker attached to correctional Services; Ms Mariette Joubert, a social worker attached to NICRO; Ms Marita Van Kraayenburg, Ms Joubert's colleague and Dr Panieri-Peter all of whom were defence witnesses. Dr Sonnekus confirmed that no limits were placed on them.

17.9 Asked why such stringent limits were place on Major Stollarz Dr Sonnekus responded:

"Ja, maar ek dink darem u moet verstaan dat Majoor Stollarz is 'n staatsgetuie, uiteraard nie 'n deskundige en dat op grond van daardie feitestel die regsverteenwoordiger sy eie diskresie kan toepas. Nou ek het van die begin af het ek instruksie gekry van mnr. Bode dat daar so iets gaan plaasvind, maar dat daar 'n voorwaarde aan gekoppel is en hy het my versoek dat ek insit en dat ek die hele situasie moniteer en dat ek dalk ook geredelik advies gee direk op die punt aan hetsy hom of sy

prokureursassistent, me. Jacky Labuschagne. So daar was definitief in my opdrag afgesien van wat u nou sê van ander neutrale of staatsdeskundiges of, ek meen staat dan praat ek maar van mevrou, van DKD en so aan of Dr. Peter, maar in my spesifieke opdrag was daar definitief die "provisio" adviseer ons oor hierdie aangeleentheid, sit hier in, dit is jou opdrag."

17.10 As the interview with Maj Stollarz proceeded DD related to her what transpired whilst he was in the barn. He interrupts himself and informed the major that he was **not uncomfortable** (nie ongemaklik) to explain what took place. But he enquired what was the point of repeating it *ad nauseum* because he has done it to hundreds of people (honderde mense) and besides she has read his evidence and/or statement (verklaring), DD remarked. The interview by Maj Stollarz was openly mechanically recorded, apparently by consent. State counsel asked Dr Sonnekus on this point:

"Ja en dan kom u in so die vyfde, sesde lyntjie van onder af van bladsy 62 "Dit is nie toelaatbaar nie. Dit is die feite van die saak", is dit reg? --- Dit is korrek.

En dan sê u "You are asking the facts" heel onder. --- Ja.

En dan gaan dit aan en dan interessant genoeg sê me. Labuschagne, die regspraktisyn dan sê sy "No, no, no, you can. I am sure he is comfortable with you asking questions around the incident but I think you want answers around his emotional state of mind when he came into the house, is that what you are trying to get". Nou dit is 'n baie goeie vraag, want dit is presies wat die sielkundige wou doen, u verstaan dit? --- Ja, maar ...

Sy wou gehoor het "vertel my van die insident en dan kan ek sekere konklusies maak ten aansien van die emosionele toestand en die konklusies wat kan maak daaromtrent, u verstaan? --- Dit is

haar weergawe, maar as 'n mens hierdie hele stuk ontleed is hier verskillende plekke waar sy vir hom enersyds gesê het hy kan op enige stadium die onderhoud stop ---."

17.11 *"HOF: --- dokter, dit is presies waar ek wil inkom. Ek wou vroeër ingekom het, want dit het vir my gelyk of u 'n blanko tjek gehad het gebruik u diskresie "there are no terms of reference or no specific terms of reference, use your discretion, it is a blank cheque but now", nou kom u en u sê daar was spesifiek aan u oorgedra dat daar nie oor die feite van die saak vrae gestel mag word nie. --- U edele, ek wil net, baie dankie vir u vraag.*
So voor u antwoord. --- Seker.
Kan u dan net vir my sê wat spesifiek was u opdrag stadig en nommer 1 dit en nommer 2 dit en nommer 3 dit en nommer 4 dit sodat ons kan weet. --- Ja 100%."

(a) His mandate was to hold a watching brief during the interview.

(b) That DD was exercising his right to remain silent and that he would not be testifying;

(c) That Jacky Labuschagne must give legal advise throughout the interview;

(d) When Maj Stollarz expressed her dissatisfaction with the manner in which Dr Sonnekus interrupted or interfered with her interview she (Stollarz) suggested the he (Sonnekus) take a backseat (in both senses of the word) and that only Ms Laguschagne should speak. After a break during which Dr Sonnekus consulted telephonically with Mr Bode his instruction was: *"Nee, hulle mag nie die feite vrae stel nie."*

17.12 Maj Stollarz terminated the interview because the situation had become untenable and the further interview had become skewed and meaningless. However when state counsel put it to Dr Sonnekus that it was a combination of Mr Bode's instructions, Ms Labuschagne's intervention and his (Dr Sonnekus') interference that led to the interview being terminated, the irrepressible doctor would have none of it. On the one hand he says the child terminated it because he exclaimed: "Is ek nie `n mens nie, ek kan nie onthou nie. Ek weet nie." On the other hand the doctor says the major has herself to blame in that she imposed the condition that DD can stop her at any stage when he feels uncomfortable. He accused the major of breaching her own condition by persisting with the interview after DD had opted out.

17.13 Dr Sonnekus broached something in which he did not raise at the interview with Maj Stollarz. He stated that it was objectionable that the English-speaking Stollarz interviewed the Afrikaans-speaking DD through an interpreter, Cpt Myburgh, who did not speak the same Afrikaans dialect as DD. I have no knowledge what dialect the captain from Pretoria spoke. What I do know though, is that DD Spoke ordinary Afrikaans, not dissimilar to that spoken in the Pretoria-area.[1] Dr Sonnekus also suggested that DD may have been intimidated by the police uniform worne by the major and the captain. This is also just an afterthought and a ruse. The interview transcript certainly does not reflect DD's or his guardian's or Dr Sonnekus' discomfeiture with the uniforms.

17.14 I made the following enquiry from Dr Sonnekus:

[1] (Brits, 60 km west of Pretoria is my hometown. I was also a Court Interpreter and prosecutor there for five (5) years).

"Okay u het gepraat van die staat se hoofde, maar het u ook Advokaat Coetzee en Advokaat Erasmus namens DD se hoofde gelees, het u dit ook gelees? --- Ja, ek het dit volledig gelees wat hulle sê.

Iets baie opvallend wat u daar opgemerk het? --- Ja, ek het die hele debat gevolg. Okay, ek noem dit nou debat met eerbied, ekskuus maar die hele punt, die kontroversie dat Advokaat Erasmus daar sou gesê het dit kon moontlik die vader gewees het wat die verkragting gepleeg het. Dit was vir my die mees uitstaande kontroversie.

Hoekom noem u dit nie hier nie? Het u dit met hom opgeneem, met DD? --- U edele, ek het dit nie met hom opgeneem nie.

Maar hoe dan nie, want hy sê "my pa was alles vir my, my pa was dit, my pa was dat", nou kom daardie aspek uit? --- As ek vir u mag sê, as ek 'n rede mag noem dan het ek in die aanvullende hoofde van mnr. Bode en mnr. Cloete gelees en gevoel dit is daarin vervat."

The slippery doctor is oncemore shifting the blame. He was doing DD's assessment and evaluation for purposes of an appropriate sentence no favours.

17.15After re-examination by Mr Bode I wanted to know from Dr Sonnekus:

"HOF: Dokter, ek wil net 'n paar dingetjies uitklaar en opklaar. Is daar enige beletsel in die wet, in u bedryf enige regulasies, enige reëls, enige laat ons maar sê "policy" wat u as, sê maar, kriminoloog verbied om vrae te stel oor gebeure waaroor 'n beskuldigde skuldig bevind word? --- Nee, u edele, nee."

17.16 *"HOF: Nou ek het u gevra oor wat u mandaat was wat die omskrywing was van u pligte toe u nou die "watching brief" gehou het en u het dit uiteengesit. Nou wil ek net by u verneem toe u die onderhoude met DD voer was daar enige sodanige beperkings? --- U bedoel wat mnr. Bode op my sou gelê het, dit is wat u vra.*

Of mnr. Bode of u eie gewete of iemand anders, dit maak nie saak nie, was daar enige beperkings deur enige iemand en ek meen enige iemand insluitende u eie gewete as 'n mens se gewete iemand kan wees. --- Nie deur enige mense nie, maar deur my eie gewete wel, ja.

Okay. Nou sluit ons vir 'n wyle u eie gewete uit, maar daar was geen beperkings wat ons het deur mnr. Bode of iemand anders nie? --- Nee."

THE PURPOSE AND APPROACH OF AN EXPERT TO EVIDENCE

[18] When it comes to the duty and responsibilities of an expert witness Levinsohn J had this to say in **Diners Club SA (Pty) Ltd v Singh and Another** [2004] 3 ALL SA 568 (D) at 595c-f:

"I was not impressed with Dr Anderson as an expert witness. While it is true to say that he is a leading authority in his field, that he is articulate and erudite and cuts an impressive figure in the witness-box, he has feet of clay as an expert witness. First and foremost, he manifestly aligned himself to the first defendant's case and maintained the stance that the first defendant was an innocent victim; the true perpetrators being members of the plaintiff's organisation. He took it upon himself to lay a complaint with the United Kingdom police against the DCI. In my view an expert witness should not identify himself to that extent with his client's cause. He is obliged to remain dispassionate and objective for after all it is his opinions which assist the court at the end of the day in arriving at a just decision. On several occasions Dr Anderson was asked to express an opinion based on assumptions put to him. He

declined to do so. He was asked to accept the factual premise of the assumption but remained adamant that he would not do so."

[19] In **S v Loubscher** 1979(3) SA 47 (A) the summarised observations made by Rumpff CJ at 60C -62B are succinctly captured as follows in the headnote:

*"Evidence concerning the mental condition of an accused, **who has been convicted of murder**, can only be properly considered when the particulars of the murder are taken into account. A court cannot rely on allegations of a general nature which are not connected with the facts of the particular case.*

It is the duty of an expert on mental conditions in a criminal case not merely to express general opinions, which in the medical field can perhaps be regarded as well-founded, but to give his opinions with a proper appreciation of what the task of a trial court is in the application of the criminal law and particularly in the consideration of criminal responsibility and criminal liability.

It is essential that any expert, who expresses an opinion concerning the criminal responsibility of a sufferer from [an affliction], should at least connect the mental condition of such a person with the full particulars of the crime which such a person has committed." (Own emphasis)

See to the same effect **S v Mngomezulu** 1972(1) SA 797 (A) where the Court enjoined that the expert's evidence must be linked to facts of the case otherwise it is abstract theory.

[20] Dr Sonnekus' evidence certainly fall under the above category. He referred to portions in the judgment that are favourable to the minor and yet claim that he did not use the judgment when asked about aspects of the judgment which show the minor up as a liar. Interfering in the interview of a fellow professional (Maj Stollarz) and then claim

that he was carrying out a mandate which he was paid for borders on unethical conduct. He is clearly biased. His evidence was skewed and unreliable and stands rejected.

THE EVIDENCE OF MS VAN KRAAYENBURG AND MS JOUBERT

[21] The two ladies are social workers and co-compilers of a pre-sentencing report on the minor, DD. They are both attached to NICRO. Ms Van Kraayenburg, it bears early pointing out, faired only marginally better than Dr Sonnekus. She testified ahead of the doctor. Her report and, more fundamentally, her evidence are wafting somewhere in the air. State counsel correctly characterised them as academic as there is a distinct disconnect between her evidence and the real issues: The crimes DD was convicted of; why does he still protest his innocence in the face of the conviction; what is his explanation or, more benignly, his attitude in the face of glaring aspects that have shown him up to have lied.

[22] As will be seen presently Ms Van Kraayenburg faltered and fell under cross-examination. Her crumbling can clearly be ascribed to the fact that she tried too vehemently to find excuses for DD and even to try and exonerate him from culpability on other aspects of the case. A cross-section follows.

[23] The extract that follows cast some doubt either on the purpose of the re-investigation or the inadequacy of the method employed by Ms Van Kraayenburg. In re-examination Mr Bode asks her whether *"it is required that you need to take... each and every case on its merits now, say a crime that you need to take the facts and compare all these facts with the person you are consulting with."*

The response in part was:

"We make use of what is being researched and studied and then we compare what we found. So we do not necessarily test what's already been found in Court because it's alone. We do not need to go there. It's already proven."

I am unable to fathom what the comparison without interrogating the real issues, the crimes, assist in seeking to do a proper evaluation.

[24] Mrs Van Kraayenburg says they tested what DD imparted to them through "many other interviews with people because we need to find out what is said by him. Is the accused telling the truth *"because remember, we are busy compiling a profile of a person."* Then *"we go back to the Accused and we will then ask certain things. We will confront."* The result of this exercise, Ms Van Van Kraayenburg stated, was that the accused never lied to her. Startling. This prompted the following interaction between her and state counsel:

"Did you find signs of manipulation, lying?—No, we did not."

Later, the cross-examination continues:

"Look, there is a clear pattern of lying. I am not talking about white lies? - - - Hm.

I am talking about the clear pattern of lying which has been established. Within minutes of killing his parents and his sister, he started the pattern of lying when he told the Police what has happened on the farm and he continued with that until today, including when he had the interviews with you. You see, in the first instance I asked you did you find any signs of lying and manipulation and you said well , no. And then you said yes, well the lying you understand now. But your first answer was no, we did not find any signs of lying, which is clearly wrong. I mean if you had regard to the judgment , it must be wrong. - - - Hm. You understand that? - - - Yes.

But it also shows because it was put in your report on page, during the assessment sessions the Accused was friendly and he appeared to be honest with the undersigned.
The assessment is he appeared to be honest. He is an honest person. This is what stands here. - - - Hm.
And what does this tell us? It tells us exactly the same thing I told Mrs Van Wyk yesterday, that even professionals like yourself and your colleagues were let to believe through these sessions that the Accused is honest . That you did in the light of overwhelming evidence that he cannot be honest. And isn't that a clear indication and clear evidence of his ability to manipulate, that you can be fooled,
that Mrs Van Wyk can be fooled, that Ms Joubert can be fooled?"

Ms Van Kraayenburg's reaction to this statement went as follows in part:
"With what we've had after ten hours of interviews on different stages, testing different kinds of evidence or ideas, we did not feel at that stage that we are being manipulated or that we are being lied to, because we were not trying to re-investigate what the Court already found. We were trying to find other ways, other things, other evidence for us as social workers that we can come back to the Court and say to the Court here are deviant behaviour, this is what we picked up, this is what we picked up in terms of how he manipulates or how he has a tendency to tell lies. --- That's what we were trying to do, so in that way we did not find him to be lying. We tried to correlate what he said about his activities at school, who his friends are, what they are doing. Those are the things that we tested. We did not go, and perhaps that's then wrong of us, that we really didn' t go and tried to . . . (interjection) .
COURT: But then it becomes a bit too academic because it must relate – having done that, it must then relate to the case. - - Yes My Lord."

[25] To round off the question of DD's honesty or otherwise. The absurdity of Ms Van Kraayenburg's methodology, assessment and evaluation became apparent when Mr Bode sought to establish the following:

"Now when you compared factual aspects, in other words answers that he gave you and you compared that with other sources on facts, did you ever find on any of those facts that he lied? - - - No. If he said something, how irrelevant it might also have been or sounds now, we will test that and we couldn't find that his explanation or what he said is different from what the family perhaps confirmed.

COURT: Mr Bode, that does not help me at all because you will have to say to Mrs Van Kraayenburg what question did you ask, what answer did you get; what question did you ask, what answer did you get . You see? Then it is for me to decide then, because Mrs Van Kraayenburg can say he lied to me and I can find that he did not lie. It's for me.

MR BODE: Thank you My Lord.

COURT: Because Mrs Van Kraayenburg may have asked him 110 questions and he may not have lied on any one of them. But the question is what questions did she ask. You see, this is where we are going to."

[26] An example of the absurdity of the methodology can be demonstrated in the following manner. Mrs Vermaak and Mrs Smith, DD's aunts, between them testified that they wondered how the intruder(s) entered the house unseen, why the dogs that are usually vigilant did not bark to alert the occupants, why the intruder(s) did not see DD who was a few meters from them; there were no signs of forced entry etc. Based on these question marks state counsel ask Ms Van Kraayenburg:

"She [Mrs Vermaak] and Mrs Smith listened to what the Accused had to say. They were sceptical about it. They asked questions. They

explored all of these stories he told and they thought to themselves no, no, this does not make sense. They were correct in that. We know that now, am I right? - - - Yes."

[27] How Ms Van Kraayenburg can ignore the record of proceedings and the judgment on this aspect and swallow what DD related to them, immaterial of how divergent or irrelevant the versions may have been, but if Mrs Vermaak and Mrs Smith confirmed his account as correct (which may have related to the birds, the bees and the flowers) Ms Van Kraayenburg would be satisfied with the confirmation and come to Court with DD's profile that he is truthful. That was an abject waste of time and scarce resources.

[28] What is even more disconcerting is Ms Van Kraayenburg's following assertion under cross-examination:
"Where is the conclusion in your report that he [DD] was lying to you as well?--- During the interview what we've asked, no he was not lying."

[29] The cross-examination elicits these further responses from Ms Van Kraayenburg:
"This is under the heading "evaluation". This is now where you make your findings, is that correct? - - - Yes.
The findings you want to convey to the Court . - - - Yes.
Now 'he shows remarkable resilience and determination in adverse circumstances.' And then you know, you allude to the past two years he was constantly exposed to a grown-ups life, police investigations, being expelled from Grey College and so on, and so on, and so on. - - - Hm.
It is as if the Accused is complimented for this resilience under adverse circumstances which is not of his doing. If you have said this about say for instance Mariana Smith or Elbeth Vermaak who are trying to continue with their lives under adverse circumstances, I would have understood

it. But now you refer this to the Accused as if he is the victim. - - - My Lord, again we did not do the report on the family necessarily. So Mrs Vermaak and Smith, I can understand – why you say that . But again, we need to understand that it is important for us that what we observe, that we try and theoretically explain behaviour."

Later:

"Shouldn't the context be he showed remarkable resilience and determination to mislead the Court and to get away with murder? - - - No.

Why not? - - - Because we couldn' t observe that he is manipulating and lying to us when we compared things. No, no. What we know is that he is not taking responsibility for the crime.

No, no, no, that cannot be right. When you assessed this particular Accused, and we went through that this morning --- you conceded that you were supposed to also take into account the judgment of this Court, the bare facts what has happened here. - - - Hm."

THE EVIDENCE OF MS JOUBERT

[30] Ms Joubert may be a co-compiler of the pre-sentencing NICRO report with Ms Van Kraayenburg but in evidence she has faired much better than her colleague. In fact in certain respects I have some understanding for where she comes from and I appreciate her positive attitude in others. The "we" that Ms Van Kraayenburg used so profusely, which is a reference to the twin-compilers' joint effort may be unjustified.

[31] Ms Joubert testified that she used the judgment as foundation because in her profession her work only commences after conviction. When an accused denies involvement in any offence despite conviction she

confronts him with the findings of the Court and observe his/her reaction, she says. This is also the process that she adopted with DD.

[32] Ms Joubert confirms the observation/view point in their joint report which states:

"The undersigned did not identify macro and micro risk factors and any conclusive criminal thinking patterns in the behaviour of the accused". Baie belangrik "the following were therefore the only and most dominant risk factors present in the life of the accused" en dan kwoteer u dit "he was found guilty of murder and rape, the crimes were aggressive in nature. He does not accept the responsibility". Is dit ook u persoonlike bevinding gewees? --- Dit is korrek, u edele."

[33] Later on Ms Joubert states, still in-chief:

"Okay, weet u op hierdie stadium ons het gekyk na die uitspraak. Ek meen dit is klaar bevind hierdie. Ek het die foto's gekyk en ek is seker, ek dink mnr. Heckroodt was by en uself. Ek het amper flou geword van die erns van die misdaad en ek het dit juis gekyk omdat ek wil hierdie oortreder gaan sê dit is die wrede goed wat jy gedoen het. Ek wou hom uitlok om vir my dan nou die "remorse", so ek het regtig ingegaan in wat het gebeur ook bietjie en op die ou end van die dag, ons het gekyk na "criminal thinking patterns", die gewone, al die goeters wat gewoonlik vir ons 'n indikasie is van hoe groot risiko is hierdie persoon en dit is juis, ons kon dit nie kry nie. Daar was geen bevestiging daarvan nie."

[34] Ms Joubert did wallow in mud when she tried to defend the indefensible as far as the alleged mysterious disappearance of R32 000,00 is concerned. She probably did not read Col De Waal's credible evidence on DD's fantastic fable on this point. She also did not read the judgment properly in this respect or simply chose to believe DD blindly. This caused state counsel to exclaim in exasperation:

"Ek sal myself weerhou om kommentaar te lewer op daardie laaste antwoord van u teenoor die agbare hof, werklik."

[35] After compiling their report the social workers reverted to DD to discuss the report with him. Ms Joubert says the social welfare ethics (maatskaplike etiek) enjoins them to do so. She says DD was satisfied with the report. Regard being had to Ms Van Kraayenburg's evidence (discredited under cross-examination) why wouldn't DD have been satisfied. I am uncomfortable with the wisdom of this vetting process. It could create undue pressure on the compilers. They are professionals and ought to be trusted to do the right thing. Take it or leave it, they must meet in Court.

[36] Ms Joubert stated in no uncertain terms that the presence of Dr Sonnekus at the interview conducted by Ms Stollarz "was vir my ongelukkig, ek is onder eed en ek is eerlik, dit was vir my onregverdig." Later she said; correctly in my view:

"Ek weet net gewoonlik as ek kan sê u edele, maatskaplike werk sielkundiges ons sien normaalweg ons kliënte een tot een ten opsigte van die vertroulikheid, konfidensialiteit en om daardie tipe verhouding te kan bou."

[37] Ms Joubert states further that the question of an appeal came up during her interview with DD. "You can ask him", she said. I advised him to be honest with me. I told him that I hope his appeal succeeds. Otherwise the evidence will record that he showed no remorse.

[38] I consider Ms Joubert's evidence to be helpful. She was forthright even where she may have made *bona fide* mistakes.

[39] When it comes to the fortitude and resilience against ever-present adversity part of the report, co-authored by Ms Van Kraayenburg and Ms Joubert, I wish to make the following observation: The truth is that DD is the architect of his own misfortune. He is the one who raised the alarm with the police and cried wolf. He could not have wished for any better and sensitive support from the police, the family and family friends (including Pastor Otto of his Church) on the evening of the events. He had two guardians in two days (Mr Bulletjies Steenkamp (on 06/04/2012) and Mr Heckroodt and his family since). To say that the Heckroodts were protective of him throughout would be an understatement. They were overprotective. I doubt very much that some of the advice that DD received from Mr Heckroodt and the firearms he was exposed to, sometimes unsupervised, served his long-term best interests. He hunted and posted a photograph of himself with his hunted trophy on social media.

[40] DD has had experienced legal representatives (an attorney and two advocates) from 07 April 2012, a day after the crimes were committed. He was then treated as a witness and not perceived as a suspect. He received a goodwill visit (welwillendheidsbesoek) from the police, led by a Chaplain, two days later. He behaved despicably at Grey College, Bloemfontein, and should have been expelled but was protected. He led a charmed life there, a matter which I will revisit. DD was only charged on 21 August 2012 and was released on bail on 03 September 2012. He retained the same legal team until he, inexplicably, terminated their mandate on 12 December 2013 when judgment was due to be delivered. He has appointed a new legal team that has since done what they believed to be in his best interests.

[41] The gratuitous violence displayed by DD's senseless conduct has left so much devastation, grief, anger, unemployment - the list is not

exhaustive. The evidence emanating from the educators at Grey College, Bloemfontein, Messers Brian Du Plessis and John Henry Dykman, is that whereas DD had been a withdrawn boy before the 06 April 2012 offences he became too self-assured and sought attention thereafter to the point of being arrogant. He would drop his pants to his ankles several times midway lessons in full view of his class mates (only boys). He would on occasion approach a teacher and stare him in the face, as if he was sizing him up. He repeatedly left the classroom without permission when the teaching was in progress and stood on the stoep or in the sun. When questioned he would say: *"Can't you see what I am doing"* or that he was cold in the classroom.

[42] In my view he was taunting the authorities or provoking them to expel him. However, they absorbed his challenges and bent over-backwards to retain him at school as long as they could, but drew the line after Grade 11. He was not re-admitted for Grade 12, even for distant learning.

[43] Ms Marieta Mathee, the principal of Hoër Meisiesskool Oranje, Ms M's school, testified to the kind of trauma Ms M's violent death caused her school mates. A video was shown on the moving tributes she was paid. One of the parents of the school penned a tribute that tugged at the heart-strings when it was read with such passion in court. I am glad that I postponed sentencing to allow for a cooling-off period to enable me to accord DD no more and no less than he deserves. See: **S v Tonga** 1993 (1) SACR 365(V) at 370 B-I.

[44] From the evidence given in mitigation of sentence or generally at this sentencing proceedings DD still enjoys the support of the majority of the members of his family, whether they believe in his innocence or not. The mixed emotions that he has engendered in the family was typified by the heartfelt evidence/message that came from his paternal grandmother

Ouma Bettie, (surname withheld for what it is worth). She has lost a son Mr D and, a daughter-in-law Mrs C and a granddaughter, Ms M, and in a manner of speaking a grandson DD, whom she knew in her heart-of-hearts she would never see alive outside prison again, for she is 88 years old. She also lost her husband in July 2013. I title her plea (haar plooidooe): ***"Die Huil is Myne/The Tears are My Own"*** She says:

"Ek is 'n ma vir my kinders en 'n ouma vir my kleinkinders en agterkleinkinders. Ons is 'n hegte familie en mense wat nog altyd reggekry het om mekaar lief te hê en te dra. Ek het oud geword met die wete dat ek nie altyd almal teen seer kan beskerm nie, daarvoor is die lewe té onvoorspelbaar. Ek sal dit baie graag anders wou gehad het. Die laaste twee jaar was die moeilikste tye waarvoor iemand nie voorberei was nie. Dag vir dag moes ons byna soos 'n toneelstuk belewe dat ons lewens net nie meer ons eie is nie. Die hartseer van 06 April 2012 het alles vir ons verander. Hoe moeilik is dit nie om daaroor te praat nie. Ons is almal diep verskeur en hartseer wat nog vlak lê. Die tyding van my kinders en kleinkind se dood sal altyd vir ons die slegste nuus denkbaar wees. Ons harte is gebreek en hulle plekke is vir altyd leeg. Niemand van ons kon hierdie tragedie vooraf bedink nie. As familie kon ons saamkuier en lag, ons het mekaar gereeld gesien en baie gepraat. Die tye saam was so oneindig kosbaar. Dit alles het op 'n dag verander. Ek en my man, Don, moes ten midde van ons eie hartseer probeer verstaan wat daai dag gebeur het. Ek het hom sien kwyn onder die hartseer wat hy gedra het. Hy het gesterf terwyl hy gesukkel het om die gebeure van daai dag te verwerk. Hy was gebroke oor sy kinders en kleinkind. Hierdie boek is nou vir hom toe. Ek moes besluite neem wat ook vir my baie moeilik was. Ter wille van my kinders en kleinkinders moes ek die ma en die ouma wees wat binne hierdie tyd staande moes bly. Ek moes die groter huishouding in stand hou. My huis en hart moes oop bly vir my mense. Almal van ons het belewe dat ons hartseer openbare besit geword het. Mense kon en het hieroor gepraat, vrae

gevra en geskrywe. Ek wil graag seker maak dat my familie steeds belewe dat 'n ma en 'n ouma daar is om te tröos en vas te hou en 'n drukkie te gee. Natuurlik het ek ook met my eie hartseer en spanning moes saamlewe. Saans met slaaptyd het ek soveel gevra en gebid dat die more anders sal wees, dat daardie nagmerrie net so 'n nare droom sal wees. Ek het geleer wat dit beteken om te treur oor my geliefdes. My man, Don, het baie maal gesê dat mense nie elke dag dankbaar genoeg is oor kinders wat lewe nie. Almal van ons verlang na die waarheid wat daardie dag op Naauwhoek gebeur het. Ons wil berusting hê. 'n Ma en 'n ouma se bloed loop deur haar hart en is die taal van die liefde wat anders as feite en verklarings en hofstukke is. Emosies lê so diep en dit is so moeilik om woorde daarvoor te kry. Elkeen het anders wat daar is, tog nie voorberei vir hoe haar seer behoorlik beleef te word nie. ***My huil is myne****, my pad moet ek soos ander mense alleen loop. My trane loop soos dit vir my reg voel. Na aanleiding van die deskundiges se getuienis en verslae wat ons die afgelope week in die hof gehoor het, kon ek nie anders as om te glo dat – ag ekskuus tog, dat die tragedie van 6 April 2012,* ***plaasgevind het as gevolg van 'n geweldige negatiewe karakter insinking by my geliefde kleinseun*** *nie. Ek pleit by die Hof dat hy die nodige psigiatriese en sielkundige ondersteuning sal kry sodat hy ook weer eendag in die samelewing opgeneem kan word om 'n positiewe bydrae te kan maak tot ons mooi land Suid Afrika."*

[45] It has been common cause from the beginging that DD has had an upbrining that many South Africans can only dream of. The record on the merits is replete with references to this fact. His parents were well-off and loving. They catered for all his needs and even spoiled him. DD had training in firearms before he was ten. He hunted unsuperivised. He had free access to the vehicles on the farm although he did not yet qualify to obtain and possess a driver's licence. He could pick and choose horses to ride on the farm and for his beloved gymkhana sport.

He attended an exclusive school. The State conceded, accepted and knew these factors, even before DD was charged, four months after the crimes were committed.

[46] For the reasons stated hereinbefore there is no need to deal with the reports by the social workers concerning his upbring. None of the reports has or could reasonabley state that DD showed remorse. None of them recommended any punishment except a custodial sentence. Mr Bode submitted that the following joint recommendation by Ms Van Kraayenburg and Ms Joubert is valid and be accorded the necessary weight:

46.1. The fact that the accused continue to claim that he is innocent would necessitate not just strict monitoring, but also intensive therapy focusing on aspects of cognitive restructuring and interpersonal problem solving, e.g. dealing with underlying aggression and power issue appropriately.

46.2. In addition to the abovementioned, attention need to be given to facilitate the process of grief and loss of his family, his childhood and identity which will assist with the restoration and reintegration process back into society.

46.3. The accued needs extensive individual therapy whereby he needs to address underlying anger and relationship factors, with reference to the restoration of the relationship breakdown between him and some of his family members and with his community of origin in order to enable successful reunification and reintergration back into the society.

46.4. Due to his youthfulness he will benefit from a group program to enhance life and social skills.

46.5. Attend a program addressing appropriate sexual behaviour and power and control issues.

46.6. Depending on the period of incarceration and subsequent exposure to drug abuse inside the correctional facility, he will have to undergo a group work treatment program for drug abuse and prevention.

46.7. In order to enhance the successful reintergration into society as a law abiding citizen he needs therapy interventions addressing the impact of exposure to violence, conflict and aggression.

These recommendations will be taken into consideration in assessing an appropriate sentence as they commend themselves to me.

[47] What for me carries more weight on DD's prospects of rehabilitation come from the prognosis of Dr Panieri-Peter and Major Stollarz:

Dr Panieri-peter had this to say:

"***RECOMMENDATIONS***

237. Given that there is no clear and neat explanation at this time, it would be, in my view, psyciatrically prudent to give this case time for psychiatric and psychological review.

237.1 The accused was a minor at the time of the offences and much of his psychological development incomplete. We know from the literature that these crimes may be associated with mental illness and with psychopathy, amongst other things.

237.2 There were possible subtle signs of a change of behaviour and performance shortly prior to the incident, and unfortunately those who could provide most of the information about this, are deceased. This in my view warrants a cautious psychiatric assessment of him in the years ahead.

237.3 Those tasked with this follow-up need to know that they are looking for signs of emerging mental illness, not least of

which would be suicidal behaviour, and also of merging personality traits.

237.4 It is likely that in five years from now, a substantial amount more about this boy will be known in terms of his functioning; his relatedness to others and his response to whatever else befalls him. It is likely also that should there be a masked mental illness present, this will declare itself within that time.

237.5 These psychological Interventions though need to come from a nurturing perspective that see this young person beyond the horror of the offences, to try to keep an open minded approach to trying to understand and uncover whatever he experienced and why he experienced it on the night of 6 April 2012.

237.6 Should it become clear that he has an emerging mental illness, that will require treatment and should it become clear that he is a true psychopath that will need to be managed accordingly at the time. Evidence is that a cognitive approach to taking responsibility, rather than the usual rehabilitative approach of increasing emphathy, is helpful in these cases. Should it become clear that no answer exists, he will simply need to be managed in terms of the law and standard correctional service policies."

[48] Major Stollarz make the following prognosis and recommendations:

"*8.* ***RISK AND REHABILITATION PROSPECTS***

Risk factors are discussed under risk-increasing and risk-decreasing factors. It is the overall combination of both of these types of factors that determine a person's risk.

8.1 ***Risk increasing Factors****:*

8.1.2 Denial of offences

The accused continues to deny that he committed these offences.

> *This has a negative impact on the prospects of rehabilitation as rehabilitation cannot take place unless a person accepts respondibility for their actions.*

8.1.3 <u>The nature of the offences</u>

The killing of one's family by an adolescent is a very rare event. There are social and cultural taboos agians the murder of one's family. The accused was prepared to murder his family members in an attempt to cover up a sexual offence, the rape of his sister. It raises concern that if the accused has the capacity to sexually offend against his sister and then murder his sister and his parents, of what he would be prepared to do to people with whom he has a lesser bond.

8.1.4 <u>Emerging Psychopathic Traits</u>

The accused's conviction for triple murder, excessive violence on the crime scene, dishonesty and attempts to mislead the court, manipulative behaviour, rape of his sister, and a lack of appropriate emotional response following the deaths of his family, together, are consistent with concerning warning signs of emerging psychopathic traits that may develop later on. Due to the age of the accused the undersigned would not make a diagnosis in this regard, however, these emerging traits need to be acknowledged regarding the accused's potential risk of recidivism and the potental benefit of psychotherapy. Psychopathy is considered a negative factor with regards to prospects of rehabilitation and risk of recidivism. However, due to the accused's age and the indication that these traits are likely to still be emerging, intervention at this period is likely to be more beneficial.

8.1.5 <u>Sex offenders</u>

Sex offenders are known to have high rates of recidivism when compared to non-sexual offenders, and rapists have been found to be among the highest re-offenders. Longitudinal assessment of risk in sex offenders has shown that young offenders pose the greatest risk of recidivism for both sexual and violent reconviction. However, studies that have specifically addressed juvenile sex offenders indicate generally low rates of recidivism among those

without a significant history of delinquent behaviour. However, any individual with a prior conviction for a sex offence should be considered a potential risk for re-offending.

8.1.5 Excessive use of violence

The violence expressed in the injuries to [Mr D and Ms M] is likely to indicate significant underlying feelings of rage.

*8.2 **Risk Decreading Factors:***

8.2.1 First time offender

The accused is a first time offender. He is not reported to have had any behavioural problems in childhood, except for self-reported fights during primary school.

8.2.2 Offender Age

Whilst offender age is considered a risk factor when considering the violent and sexual nature of his offences, with regards to rehabilitation, the offender's young age is more likely to provide opportunity for therapeuitic intervention than would be considered likely in an older population.

8.2.3 Home Environment

Typically a stable and supportive home environment is considered a risk decreading factor. It appears that the accused has a stable and supportive environment with his guardians, who do not report any concerns with regards to problematic behaviour. This must be counter-balanced with the view that the accused committed the crimes in a home environment which was viewed for all intensive purposes, as a stable and supportive one.

Longitudinal studies on rehabilitation and risk for recidivism among juvenile parricide offenders is lacking.

*9. **CONCLUSION***

Based on the assessment and integration of information available, and the intergration of the positive and negative risk factors mentioned in point 8 Supra, the undersigned is of the opinion that the accused poses a risk to society for crimes involving manipulation and violence.

It is recommended that:

1. *The accused should participate in any available sex offencer treatment programmes that the Department of Correctional Services or another relevant authority may have to offer.*
2. *The accused attend regular psychotherapy with an appropriately trained Clinical Psychologist to further explore the issues raised above, especially those related to psychopathy.*
3. *That a copy of this report be placed on the accused's Department of Correctional Services file for furture treatment plans as well as any parole hearing in future if relevant."*

[49] Ouma Bettie, the last portion of your plea is that you believe that DD is guilty of the crimes he has been convicted of. You say that *"die tragedie van 06 April 2012 plaasgevind het as gevolg van ń geweldige negatiewe karakter insinking by my geliefde kleinseun."* Unfortunately your grandson is as obdurate or obstinate as a mule. You read the writing on the wall and conveyed it to him grandmotherly. He refused to read it or to listen to your counsel (meaning your advice). On the contrary he turned his back on the wall and by the same token against you. *"O go furaletse"*- in Setswana. Whatever the others who share your grandson's attitude may say or think, they fall under the same category as DD.

[50] Die ou mense het gesê as jy nie wil hoor nie moet jy voel. Die digter, Jan F.E. Cilliers sê in sy gedig Trou: **"Ek hou van ń man wat sy man kan staan."** In twee dae (15/08/2014) is jy wel `n man. Jy moet nou jou eie saksout opeet.

[51] State counsel agitated for 25 years on each of the murders, 15 years for the rape and five (5) years for defeating the ends of justice. Your legal representative whilst conceding that a lengthy jail term is inescapable, was loath to hazard any custodial parameters. I do not blame him. You are a first offencder and was almost 16 years when you committed the offences. Section 77(4) of the Child Justice Act prescribes a maximum

sentence of 25 years. I will allow a remission of 5 (five) years as a window of hope through wich you can peer through as you contemplate your future from your prison environment.

[52] I have had regard to all the cases brought to my attention by both counsel. I have considered the sentences imposed in those cases and the ages of the accused. Some of the cases I have already cited and add the following:

S v Polwane and Others 2003(1) SACR 631 (T).

S v Lehnberg en `n Ander 1975(4) SA 553 (A).

Centre of Child Law v Minister of Justice and Constitutional Development and Others (National Institute for Crime Prevention and the Reintergration of Offenders, as Amicus Curiae) B 2009(2) SACR 477 (CC).

S v Nkosi 2002(1) SACR 135 (W).

Director of Public Prosecutions, Kwazulu-Natal v P 2006(1) SACR 243 (SCA).

S v B 2006(1) SACR 311 (SCA).

S v N 2008(2) SACR 135 (SCA).

S v IO 2010(1) SACR 342 (C).

S v BF 2012(1) SACR 298 (SCA).

S v RS and Others 2012(2) SACR 160 (WCC).

[53] On a conspectus of everything said and done it is my considered view that, having regard also to the provision of s28(g) of the Constitution of the Republic of South Africa, 108 of 1996, a custodial sentence is the only appropriate sentence.

[54] **You are sentenced as follows:**

1. **Count 1:** The rape of Ms M (14 years old): **12 (twelve) years imprisonment.**

2. **Count 2:** The murder of Mr D (44 years old): **20 (twenty) years imprisonment.**
3. **Count 3:** The murder of Mrs C (43 years old): **20 (twenty) years imprisonment.**
4. **Count 4:** The murder of Ms M (mentioned in Count 1): **20 (twenty) years imprisonment.**
5. **Count 5:** Defeating the ends of justice: **Four (4) years imprisonment**.
6. It is ordered that all five sentences will run or be served concurrently.
7. In terms of S77(5) of the Child Justice Act, No 75 if 2008, all five sentences are antedated to **14 March 2014**.

F DIALE KGOMO
JUDGE PRESIDENT
Northern Cape Division, Kimberley

On behalf of the State:	**Adv J J Cloete**
Assisted by:	**Adv Q Hollander**
Instructed by:	Director Public Prosecutions
On behalf of the Accused:	**Mr R Bode**
Instructed by:	Engelsman Magabane Attorneys