

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

CASE NO:

SS09/10

DATE:

6 SEPTEMBER 2010

5 In the matter between:

**THE STATE**

and

**MANFRED RAYMOND SWARTZ**

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**JUDGMENT**

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**SAMELA, AJ**

This is a unanimous decision of the court. The accused, Mr  
15 Manfred Swartz, aged 34, is appearing before a Judge sitting  
with an Assessor and Mr De Villiers appeared for the accused  
and Ms Engelbrecht appeared for the state. The accused is  
charged with four counts, namely abduction, secondly rape,  
third count rape and fourthly murder for a seven year old  
20 female child, Nadine Jantjies.

It is alleged that on the 15 June 2009 and at or near Wesbank  
in the District of Kuils River the accused did unlawfully and  
intentionally abduct one Nadine Jantjies, a child of seven  
25 years old without the consent of the parent or guardian and  
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raped her twice, that is on her vaginal part and on the anal part which thereafter the said youngster was murdered. I may also mention then that in respect of the charge of rape, that is on second and third counts, as contemplated in Section 3 of the Criminal Law Sexual Offences and Related Matters Amendment Act 32 of 2007. The indictment has indicated, that the provisions of Section 51 of the Criminal Law Amendment Act 105 of 1997 as amended, the Minimum Sentence Act read with Schedule 2 thereto, if the accused is convicted is facing a minimum sentence of life imprisonment. Similarly with count 4, in the indictment, Section 51(1) of Act 105/1997 read with the Schedule 2, that is when murder was planned or premeditated also attracts the minimum sentence of life imprisonment.

It is also important to mention that the accused has made certain admissions in terms of Section 220 of the Criminal Procedure Act, Act 51 of 1977.

1. admitted the identity of the deceased as Nadine Jantjies;

2. admitted the certified copy of the deceased's birth certificate;

3. confirmed and admitted that the said deceased died

on the 15 June 2009;

4. admitted that the deceased died as a result of strangulation and;

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5. That Dr Tiemensma conducted the post-mortem on behalf of the deceased on the 17 June 2009 and also admitted the doctor's content report;

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6. admitted that Dr Tiemensma correctly noted her finding resulting from her examination of the deceased's body which report was marked Exhibit C;

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7. admitted that from the time of alleged commission of the offence up until the post-mortem was conducted the body of the deceased did not further receive any injuries and also admitted that the photos;

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8. That the key to photos and sketch plan depicted a correct version of the scene where the body was found and also certain items found on the scene;

9. admitted that the photos taking during post-mortem of the deceased are admitted as Exhibit E and;

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10. that the vaginal, anal, oral and fingernail swabs and hair samples taken from the deceased on the 17 June 2009 by Dr Tiemensma during post-mortem were sealed and correctly packed where it was received  
5 intact by the warrant officer Boltman;

11. Admitted the blood samples taken from the accused on the 19 June 2009 by Dr D M Andrew, sealed and thoroughly packed and sent to the forensic laboratory  
10 at Kuils River and was received by Warrant Officer Boltman;

12. That on 17 June 2009, Dr Tiemensma took fingernails and anal swabs and admitted that for safekeeping and  
15 sending the information all times was correct;

13. On 31 June 2009 Warrant Officer Boltman, in charge of the forensic laboratory, a properly trained forensic analyst in the service of the state, compared the  
20 samples mentioned in paragraph 12 and came to the conclusion that the genetic material of the accused were present in the vaginal and anal samples of the deceased which was Exhibit F and;

25 14. admitted that the accused made a statement to Supt

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C J Matthee on the 17 June 2009 where he revealed his involvement in the commission of the offences. That statement was hereto marked attached as Exhibit G.

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15. admitted that the statement referred to in paragraph 14 was made freely and voluntarily without any undue influence and the accused's constitutional rights were at all times respected.

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This document then was admitted and allowed into court's record and was marked Exhibit A.

The accused pleaded not guilty on counts 1, 2 and 3 and as I  
15 have explained pleaded guilty on count 4, that is the murder count. The plea of guilty on count 4 in terms of Section 112 of the Criminal Procedure Act 51/1977 as amended was read into the court's record and the state accepted the plea and the accused was found guilty accordingly. It was allowed and  
20 admitted into the court's record and was marked Exhibit H.

The accused on counts 1, 2 and 3 has made the following plea explanation; on count 1 he denied that he had committed the crime of kidnapping although he admitted that he had no  
25 consent from the parent or the guardian of the child and also

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informed the court that he had no prior intention to rape the deceased on count 2 and 3 although he informed the court that he had a sexual intercourse with the deceased after the deceased had been strangled by him, that is after the  
5 deceased had died and he in fact informed the court that he is guilty in terms of Section 14 of Act 32/2007, hereinafter called the Sexual Offences and Related Matters, not guilty to rape and also explained then that in respect of count 4, though he pleaded guilty to murder, he had no premeditated plan to kill  
10 the deceased.

The state called the following witnesses to give a *viva voce* evidence, Dr Tiemensma, Ms Fransina Jantjies, the deceased's mother, Lorenzo Smith, Mr Thomas Baar, Warrant Officer  
15 Rietman Boltman, Ms Elnette Sarels and Colonel C G Theron.

Dr Tiemensma confirmed that she conducted a post-mortem on the deceased's body on the 17 June 2009 and produced a report. Her findings were that the cause of the death was  
20 consistent with the strangulation. Regarding the deceased's genital organs, the doctor told the court that there was blood present in the vulva, vagina and anus. The external genitalia showed lacerations with surrounding contusions at the six o'clock position. The hymen was lacerated. Extensive  
25 laceration and contusions of the internal lateral vaginal walls

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were evident. No injury to the cervix was seen. The anus showed superficial radial laceration at the six o'clock position. No injury to the rectal causa could be demonstrated.

5 Under cross-examination, she confirmed her evidence-in-chief. The doctor testified further with certainty that at the time the deceased was raped she was still alive. She could not tell the court with certainty whether hands or cord was used in the strangulation and could not exclude the possibilities that both  
10 the hands and cord might have been used to strangle the deceased. Answering a question from the bench the doctor testified that she was of the opinion that the deceased had undergone severe pains due to her age and severe injuries received in her genitalia and neck before she died. The  
15 doctor's post-mortem report was admitted into the court's record and marked Exhibit C.

Ms Fransina Jantjies, the deceased's biological mother confirmed that she knew the accused who resided with his  
20 mother and wife at the back of her house. She also confirmed that the deceased was seven years old and confirmed the correctness of the deceased's certified birth certificate marked Exhibit B. She told the court that she never trusted the accused who used to make some funny remarks to her saying,  
25 amongst other things, that she was his wife and these funny

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remarks made her to warn her two children not to play nor accept any gifts from the accused. On the day of the incident she was preparing to go to work as she worked an evening shift when she realised or noticed that the deceased was

5 missing as she was not playing with other children at the usual street corner house. Together with friends they searched for the child, but in vain. As the search continued, one Mr Mark Smith informed her that the deceased left with the accused. She went back home to the accused's wendy house and asked

10 him about the whereabouts of the child. The accused was already in bed, looked normal to her, twice the accused replied that he did not know the deceased's whereabouts and on the third occasion the accused informed her that he left the deceased at the stop street. Police were called and the

15 accused was arrested. The following day the naked body of the deceased was found. Under cross-examination she confirmed her evidence-in-chief.

Lorenzo Smith, a youngster, a 13 year old, testified *in camera*

20 assisted by his parent, Mr Mark Smith. Lorenzo testified that he knew the accused as they used to call him by a nickname called "goat man" and told the court that the accused resided at the deceased's place. He told the court that on the day in question at the back of the church whilst playing with his

25 brother and the deceased, accused came. He called the

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deceased and asked her to walk with him to the shop as he would buy her sweets. The deceased refused and the accused promised to buy her sweets and chips. The deceased then left with him and that was the last time he saw her. This witness  
5 was not cross-examined.

Mr Thomas Baar testified that he knew the accused who resided at the deceased's place. On the day of the incident he told the court that the deceased played with other children in  
10 front of his gate. Also, he saw the accused going up and down severally. He did not pay much attention as he had to look after his children as well. Also this witness was not cross-examined, the evidence was accepted as such.

15 Warrant Officer Boltman testified that he is an expert that interpreted the DNA analysis in this matter. His conclusion was that the accused's genetic material was present in the vaginal and anal samples of the deceased. Under cross-examination he confirmed his evidence-in-chief. His report  
20 was admitted into the court's record and marked Exhibit F.

Ms Elnette Sarels confirmed that she knew the accused for about three to four months then and also knew the deceased and her mother. She told the court that the accused used to  
25 visit her house frequently whereby he would together with her  
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partner, that is Shane, smoked tik a lot. She also informed the court that she disliked the accused for no reason as he never did anything wrong to her. On the day of the incident she informed the court that the accused arrived at her place and

5 she noticed that he looked nervous, when he nearly fell as he was assisting her with the fixing of the house roof. Whilst inside the house one of his children screamed and this caused accused to burst in anger saying, amongst other things, that it is parents like her who neglected their children whose children

10 got murdered. The accused was angry and requested Shane to accompany him on a mission to the garage and then to Bellville. However, Shane refused. The accused voluntarily informed her that he was afraid to go back to his home because the deceased's mother would ask him about the

15 deceased and also that there was a missing child at their house. She told the court that the accused did not look like a person who had smoked tik. She testified that when the accused had smoked tik, usually he was very confident and bold but at that moment the accused was nervous. Under

20 cross-examination, she informed the court that the accused used to visit her place frequently and would smoke tik with them, that is, Ms Sarels and Shane. However, she denied that on the day in question she had smoked tik as well as the weather was windy, and that she no longer smoked tik as she

25 is now a rehabilitated person.

Colonel C G Theron is the investigating officer in this case. He testified that on the 16 June 2009 the deceased's naked body was found in the bushes and he is the one who took the  
5 warning statement from the accused. The accused informed him that he had raped and killed the deceased. He organised Lieutenant Matthee from Kraaifontein to take the accused's confession. The warning statement was admitted into the court's record and marked Exhibit K and that was the state's  
10 case.

The accused, on the other hand, confirmed that at the time of the incident he resided at the back of the house in the same yard with the deceased's parents and he had good relationship  
15 with the deceased's mother and the other siblings. He stayed together with his wife, mother, brother-in-law and his wife. He testified that he was unemployed and he used to do odd jobs. He very often went to Mrs Sarels' place where he used to get tik and smoke it together with Shane, that is Sarels' partner,  
20 and also with Ms Sarels. He told the court that he did not have a good relationship with Sarels but he went there to smoke tik. He told the court that he used to tik everyday, every morning, afternoon, evening, that is all the time. He got the money from stealing and selling other people's goods and  
25 also friends of his who stole and sold the items that had stolen

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and bought tik. On the day of the incident he testified that he was on his way to a tuck shop when he saw the deceased playing with other children. He had asked the deceased to go back home as she was playing far away from home, that is at the back of the church, but she refused. He then requested her to accompany him to the shop where he would buy her sweets, which she complied. After buying her chips he asked her if she would be going home and she replied in the negative as she informed him that she would play in the sports field next to the bushes and requested him to accompany her to the same. The deceased then played alone on the sports field as she ran around and he was watching her. He called the deceased and strangled her. He told the court that after strangulation he stood up, walked away, came back and lifted the deceased's hands and arms and noticed that they limped. Walked away again for 10 to 15 paces, came back and had vaginal and anal sexual intercourse with the deceased. He could not dispute the doctor's opinion that when he had sexual intercourse with the deceased she was still alive because he told the court the deceased did not scream. He went to the garage to buy tik where he smoked with others and returned to his house. He returned to Sarels' place where he found Shane and then began to smoke tik again. Ms Sarels came while they were smoking tik and they all smoked tik, including Ms Sarels. He told the court further that on the day of the incident he had

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smoked tik in the morning, afternoon, evening and that Sarels did not smoke tik that evening. He reiterated that at the time he killed the deceased, though he smoked tik, he knew what he was doing because the tik had little effect on him. He told  
5 the court that though he did not know why he killed the deceased, he had the intention to kill her. He confirmed that he was arrested and made confession to a magistrate.

Under cross-examination he told the court that people like Mr  
10 Baar wanted him to be seen on a bad light on account of what he did and also denied that on the day in question he walked up and down. He also denied that he insisted that the deceased should go with him to the tuck shop. He confirmed, however, that the deceased was wearing shoes with laces. He  
15 told the court that he strangled the deceased with his own hands. He was emphatic telling the court that the doctor lied to the court that the deceased had abrasions and did not agree with the doctor that the deceased had serious injuries as he insisted that the did not assault the deceased. Answering a  
20 question from the bench, he told the court that though he loved children very much he decided to kill the deceased for apparently no reason. And that was the defence case.

The following are common cause. Firstly, the accused in this  
25 matter is Manfred Swartz. The deceased was a seven year old

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child, Nadine Jantjies. Thirdly, the incident happened on 15 June 2009 at Vogelvlei bush, Wesbank, Mfuleni. The only disputes are whether, firstly, the accused abducted the deceased and secondly whether the deceased was alive when  
5 she was raped two times.

Abduction is defined as when a person, male or female, if he or she unlawfully and intentionally removes an unmarried minor who may likewise be either male or female from the  
10 control of his or her parents or guardian and without the consent of such parents or guardians intending that he or she or somebody else married, to have sexual intercourse with her. The important elements here are, firstly, the removal and secondly of an unmarried minor, thirdly, from the control of his  
15 or her parents or guardian and, fourthly, with the intention of marrying or having sexual intercourse with a minor and fifthly, without the consent of the parents and guardian and sixthly, unlawfulness and, lastly, intentionally.

20 While rape is defined as any person who unlawfully and intentionally commits an act of sexual penetration with another person without the latter's consent. That is Section 3 of the Sexual Offences and Related Matters Amendment Act 32 of 2007. The important elements here are firstly, sexual  
25 penetration of another person and secondly, without the

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consent of the latter's person and thirdly, unlawfulness and, fourthly, intentionally.

Murder is defined as the unlawful and intentional causing of  
5 the death of another human being. The important elements  
here being causing the death and secondly, of another person,  
unlawfully and lastly, intentionally.

Dr Tiemensma's testimony and the post-mortem report makes  
10 it very clear that the accused raped the deceased while still  
alive. The doctor's report is clear and when testifying in court  
the doctor was very impressive. She did not hesitate and was  
certain in whatever she told the court except that she could not  
tell the court with certainty whether the deceased was  
15 strangled with hands only as she told the court that it might be  
both hands and cord. She was a reliable, honest and a  
credible witness.

Ms Jantjies evidence was clear and straightforward and she is  
20 bitter, understandably, because the accused killed her  
daughter for apparently no good reason. She was an honest  
and a credible witness.

Lorenzo Smith, though the youngster was 13 years old, was  
25 also an honest and a reliable witness and he was also  
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credible.

Mr Baar's testimony that the accused was walking up and down and also that he saw the deceased playing with the children, is  
5 accepted by the court and on what he testified here in court, the court found him reliable and credible.

Ms Sarels' testimony was clear and straight forward. She was also an honest, reliable and credible witness.

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Warrant Officer Boltman and Colonel Theron's testimonies were clear and I believe them that they were honest, reliable and credible witnesses.

15 I may just add then that although the State witnesses were single witnesses in their respective testimonies in court, I must say each and everyone's testimony, though treated with caution, was satisfactory in every material respect and I have no doubt in my mind that they comply with the requirements in  
20 Section 208 of Criminal Procedure Act, Act 51 of 1977 as amended.

The accused, on the other side, was evasive and could not clearly tell the court exactly what he did and the reason or  
25 reasons thereof. He looked down while state witnesses

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testified and when it was his turn, he never looked at his counsel, the state advocate, nor to the court. He answered very often before the questions were even completed. The court is of the view that the accused was very economic with the truth, that is, he is an outright liar whose versions on counts 1, 2 and 3 can be hardly believed. He was a dishonest, untruthful, unreliable and not a credible witness and the court rejects his version.

10 Ms Engelbrecht submitted that the accused unlawfully and intentionally enticed the minor deceased from the control of her parent or guardian without the parent or guardian consent with the intention of having sexual intercourse with her.

15 Mr De Villiers replied to Ms Engelbrecht's submission by submitting that at a place where the deceased was, surely was out of the control of either the parent or the guardian and the accused did not entice the deceased by promising to buy her sweets and chips and the accused cannot be guilty of either kidnapping or abduction. I disagree. I am of the view that, firstly, the parent was in control of the deceased at all material times. Secondly, I agree with Ms Engelbrech's submission that by promising to buy her sweets and chips, the accused enticed a young child of seven years old to go with him to the tuck shop. The deceased trusted the accused. The accused did

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not get the permission from the parent or guardian to go with the deceased to the tuck shop. When the accused led the deceased to the bushes next to the sports field, I agree with Ms Engelbrecht that he had surely the intention to rape and kill  
5 her.

Ms Engelbrecht, furthermore, submitted that the doctor's testimony and report were clear. The accused did not rape the corpse as he claimed but raped the deceased while still alive.  
10 Mr De Villiers countered that submission by arguing that the court cannot take the doctor's opinion alone. It has to look at the totality of the evidence at its disposal and decide. I agree that the court has to look at the totality of the evidence at its disposal. However, in the absence of any other contrary  
15 expert evidence, the doctor's report and testimony are persuasive. I find that the accused raped the deceased whilst she was alive.

Finally, Ms Engelbrecht submitted that by walking up and down  
20 the accused showed that he had a plan in mind, namely to rape and kill the deceased and not to buy her sweets and chips as he would like us to believe.

Mr De Villiers argued that the state has accepted the plea that  
25 the accused had no premeditated plan, it cannot now change.

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I agree. He submitted further that the killing was a spur of the moment. I disagree.

The accused, on his own version told the court that he watched  
5 the deceased playing in the sports field alone, that is running  
around, and after a while decided to call her and strangled her.  
Surely the killing was not a spur of a moment.

In this matter it is clear that the accused enticed the young  
10 child of seven years old away from other children she was  
playing with, by promising to buy her sweets and chips without  
the child's parent's or guardian's consent. Contrary to his  
version that he loves children very much, he decided to lead  
the young unsuspecting victim to a place where the accused  
15 had sexual intercourse with her without her consent and kill  
her in a cruel, inhuman and degrading fashion by strangling  
her. If one looks at the deceased's photos, especially Exhibit  
E, photos 5 and 6, one can see that a cord or similar object  
was used, agreeing to a certain extent with the doctor, and  
20 also that perhaps a cord was also used in addition to what the  
accused informed the court, that he used hands in killing this  
young defenceless child. The doctor unequivocally told the  
court that looking at the deceased's age, undoubtedly the  
deceased suffered severe pains before her untimely death.

25

I am of the view that the state, in respect of counts 1, 2 and 3, that is abduction, two times rape, has proved its case beyond reasonable doubt and the accused is therefore found:

- 5        GUILTY ON COUNT 1, that is abduction.  
         GUILTY ON COUNT 2, that is rape, and  
         GUILTY ON COUNT 3, that is rape.

         You have already been found GUILTY ON COUNT 4, that is  
10    murder in terms of your plea. In other words, the accused has  
         been found GUILTY ON ALL COUNTS, 1, 2 3 and 4.

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SAMELA, AJ