IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: **SS43/2017**

In the matter between:

THE STATE

and

JASON THOMAS ROHDE Accused

CORAM: **SALIE-HLOPHE, J**

DATE OF HEARING: **9 OCTOBER 2017**

DELIVERED: **8 NOVEMBER 2018**

COUNSEL FOR THE STATE: Advocate L Van Niekerk

COUNSEL FOR ACCUSED: Advocate G Van Der Spuy

ATTORNEYS FOR ACCUSED: Witz, Calicchio, Isakow & Shapiro

JUDGMENT DELIVERED ON 8 NOVEMBER 2018

SALIE-HLOPHE, J:

INTRODUCTION:

[1] On a winter's Sunday morning, in July 2016, the shocking news of the death of a guest at the Spier Hotel rippled through our community and gripped news coverage around the globe. The upmarket hotel set in the picturesque Stellenbosch region of the Western Cape, also known as the Cape Winelands, posed a stark contrast to the half-naked body of Susan Rohde, dead on the bathroom floor of Room 221. A life most certainly interrupted and cut short in her prime. Just aged 46, she was the mother of three daughters. She was also the wife of Jason Rohde, a successful businessman, the CEO at the time of a prestigious realty company. The

hotel was the venue for the Lew Geffen/Sotheby's International Realty Conference during the weekend of 22 to 24 July 2016. It was however also the setting of the final scene of a love triangle which had formed some months before.

[2] Jason and Susan lived in Bryanston, Johannesburg. They were married for 23 years with three adolescent daughters, when two weeks after Valentine's Day in February 2016, Susan discovered a surprise card left for him in his suitcase by his mistress, Jolene. The card said it all. Jason had been having an affair. Susan confronted her husband without delay. She locked them up in their *en-suite* bathroom, isolating them from their children, interrogated what was apparent from the card to be proof of a love affair. She instructed Jason to call his mistress, on speaker, and break off the affair in her presence. Jason obliged. This marked the first episode of what kicked off months of a myriad of emotions in this love triangle. Susan's ill-fated discovery was followed with months of harrowing trauma. The emotional hallmarks of infidelity entwined itself like creeping ivy into the lives of those affected: betrayal, suspicion, passion, sex, frustration, anxiety, anger and humiliation took its inevitable shape. Susan struggled in silence. She wanted to keep the appearance that all was well.

But beneath her exterior she was struggling to cope with her emotions. She felt her life had been turned upside down.

[3] Jolene Alterskye, an estate agent with Sotheby's, would be attending the conference. Susan insisted that she would escort Jason during the weekend at Spier. She wanted to make sure that Jolene would see them together and realise that there is no place for her in their marriage. Her husband assured her the affair was over. He expressed his commitment to the marriage. Susan was still niggled with suspicions though. But this weekend she was going to openly triumph over her nemesis and prove to all at the conference that they were the picture perfect couple. A united front she called it.

[4] Jason stormed out of marriage counselling, infuriated by Susan's insistence to attend at Spier. From botox injections to clothing on appro, Susan was ready for the weekend. She was going to look her best for the occasion. She travelled to Cape Town in time for the conference. This would be her last journey.

[5] Jason delivered the opening speech under the watchful eye of his wife. Desperate to conceal the affair from her, he avoided looking into Jolene's direction at all costs. Jason messaged Jolene on the Saturday:

- *"Cause I am frustrated I can't be with you who I want. U still love me?"*
- *"All I can think of is you. I want to scream with frustration. I don't want anything more in my life than to be with you."*
- *"I absolutely hate it. I just want it to end."*
- *"Having you close is driving me crazy. Sue is driving me nuts!!!!! She follows me around like a fucking shadow."*

[6] The following morning, Susan was dead.

[7] In the hours before her death, they had returned to Room 221 from the gala dinner. Susan wanted to settle down with her husband and got undressed. Jason however wanted to be with his mistress. He sneaked into the bathroom to send his lover a message, when Susan caught him in the act. Her suspicions that the affair was not over had proven true. Tempers soared as it became clear that Jason's game was over. He

wanted to get out and go to his lover. Their argument soon became physical, with Susan wanting to restrain Jason from leaving the room and Jason wanting to get to his lover. She did not give up the fight and scurried behind him from one room to the next. Annoyed and frustrated that she would confront his lover, he eventually acceded to his wife's command. This would be the last time she was seen alive outside of Room 221.

[8] Jason said that Susan took her own life as a final response to his persistent love affair with Jolene. Susan had been depressed and suicidal but the humiliation and shock that he wanted to end their marriage had clearly been too much to bear. She went to the bathroom that morning, closed the door, he fell back to sleep and unbeknown to him, tragedy struck. From the towel hook behind the bathroom door, his wife hanged herself with the cord of her hair curling iron.

[9] The State alleges that Jason murdered Susan then staged her death as a suicide. He was brought before the Court as an accused.

[10] This is the judgment of the trial which followed.

THE CHARGES:

[11] The indictment states that the accused is guilty of the crimes of:

1. ***MURDER; AND***
2. ***DEFEATING OR OBSTRUCTING THE ADMINISTRATION OF JUSTICE.***

IN THAT *the accused on or about Sunday, 24 July 2016 and at or near ROOM 221, THE SPIER HOTEL AND LEISURE, R310 in the district of* ***STELLENBOSCH*** *unlawfully and intentionally-*

COUNT ONE:

killed ***SUSAN FRANCIS ROHDE****, an adult female, by manual strangulation and/or inflicting other violence unknown to the State;*

AND FURTHER THAT *THE PROVISIONS OF Act 105 of 1997 are applicable in that on Count one the offence is specified in Part II of Schedule 2 of the said Act, murder in circumstances other than those referred to in Part I, and that minimum sentence of imprisonment for a period not less than 15 years is therefore applicable;*

COUNT TWO:

to defeat or obstruct the course of justice, committed (an) act(s), to wit inflicting injuries to ***SUSAN FRANCIS ROHDE*** *and tampering with the crime scene by locking the bathroom door and by placing an electric hair iron cord, one part loosely around her neck, and the other part in a single strand around the clothing/towel hook at the back of the bathroom door'*

AND *thereafter changing the same electric hair iron cord's position by tying it to hang in a double strand around the clothing/towel hook at the back of the bathroom door'*

AND *by supplying false information to the police, in order to mislead the police as to the true method of her death and the identity of the perpetrator, which act(s) defeated or obstructed the administration of justice.*

PLEA EXPLANATION:

[12] The accused pleaded not guilty to both counts and provided a plea explanation. He was legally represented throughout. A plea statement in terms of Section 115 was handed up in court, marked as Exhibit A. In

terms thereof the accused inter alia admitted that he had an extra-marital affair and stated further that it had caused substantial strain on the marriage. They resorted to marriage counselling however the deceased continued to suffer severe emotional turbulence as a result of his infidelity. The deceased insisted on attending the conference at Spier, they both knew that Jolene would be attending. As the weekend unfolded, the intensity of Susan's anger became more manifest. He conceded that a physical altercation ensued between him and the deceased in the early hours of the Sunday morning. He denied however that he attacked her. He claimed that the deceased committed suicide and that he did not kill her nor did he stage her death as a suicide.

[13] The trial ran for 57 days. The State called 21 witnesses whilst the accused testified in his own defence and called 4 further witnesses, 3 of which were experts. Before the commencement of evidence, the Court conducted an inspection-in-loco at Spier Hotel, Stellenbosch where the deceased body was found as well as other areas in and around the location. A minute and photographs recording the inspection was handed up as EXHIBIT "Z".

[14] **SUMMARIES OF EVIDENCE:**

THE WITNESSES FOR THE STATE:

[14.1] **MR MARK THOMPSON ("THOMPSON"):**

Thompson testified that he knows the accused for 7 years and worked with him at Sotheby's International Realty. He attended the conference at Spier. At around 8h30 a.m. on the Sunday he was chatting with other guests at the breakfast venue where the conference programme was scheduled to proceed, when he heard from a colleague that something happened at one of the hotel rooms. Concerned that it may involve one of the conference attendees, he went to have a look. It was a couple of minutes after 08h30 when he came across a few staff members of the hotel standing in the pathway outside the hotel room. He went into the room and saw Susan Rohde's body lying on the floor. The accused was seated next to her. *"Mark help me"* the accused told him. He had never performed CPR[1] however felt that he must do something and proceeded to compress her chest and blow into her mouth. He learnt later that he did not do it correctly as he had forgotten to close her nose when breathing into her mouth. He

[1] CPR is the abbreviation for cardio pulmonary resuscitation

realised that Susan was dead as her body was cold. He attempted to resuscitate her between half an hour and 45 minutes. During this time the accused blew into her mouth once and sat down again. Susan's nose started bleeding during his attempts to revive her. He wiped the blood off with a tissue and started compressing her chest again. Her nose bled again which happened about three times. He took the Court through the thoughts which raced through his mind at the time. He testified that he felt uncomfortable as Susan was completely naked during the attempts to revive her. He made various observations which either unsettled or concerned him. Questions raced through his mind in that moment: Why was she naked? Why was the cord tied so loosely to the hook? Why was the cord so flimsy and not taut if her body had hanged from it? Why was there still such a small, single knot in the one strand? Why would Jason not say anything to Susan? Jason simply repeated: *"Mark help me, Mark help me"* and only blew into Susan's mouth once. Her body was cold, lips blue and skin porcelain white. Susan's body was lying with her head furthest from the door and her feet under the basins. He could not reconcile that position with her hanging on the door and having been taken off. He noticed a massive indignant bruise on her inside thigh, a small stool next to her hip and a pool of urine under her buttocks. A woman entered the room

at the time he was getting tired of attempting CPR. She shouted in a frenzied state that she commands him to revive the body in the name of Jesus. He found this distracting and asked her to pray outside. Ms Geffen stood at the door screaming with disbelief. Wanting to contain the panic, he asked her to see to it that the paramedics would speed up.

Exhausted from performing CPR, he sat down next to Jason, on the left of the deceased and held him. Someone entered the bathroom and covered Susan's body with a red blanket.

He further testified that after the incident he reached out to Jason with a view to assist him but Jason withdrew contact from him.

He went for trauma counselling after this incident where he retold the story several times.

Under cross-examination this witness testified that he did some religious studies as the University of Cape Town and also pursued theological studies at Rhodes University. He was later ordained as an Anglican priest

and worked in Bishop Lavis for some time as a priest. He was taught basic CPR at school and did a course whilst in the air force but he had never performed CPR on a person. In response to a question whether he had noticed that the deceased had worn a robe when he entered the bathroom, he explained it did not occur to him in that moment that the white towelling around her arms was in fact a robe as it could also be that she was laying on a towel. He did not notice the difference. It was only until he saw the photographs that he could distinguish that her arms were in the sleeves.

Defence counsel referred to respective photos of Susan's body with a silver chain around her neck, a bracelet on her wrist and depicting a towel on the right hand hook behind the bathroom door. The witness indicated that he could not remember it as the things which caused him trauma were mental images which remained with him

He explained that he reasoned that in a traumatic situation such as this, that you give someone a task to help ease the tension and anxiety. That is what prompted him to ask Ms. Geffen to make sure that the ambulance arrived quicker, which she did.

When he put his hand under the back of her neck, while Susan's body was freezing cold, lips were blue, porcelain white, he felt the warmth at the back

of her neck and he presumed that that was either his hand or when he lifted her. He explained that even though his arms were aching from CPR efforts, he kept going even though he knew she was dead. He did not know what else to do.

He also noted that the area around her neck appeared more bruised than he may have anticipated if she was hanged on a thin cord. Her whole neck looked bruised.

Counsel put it to the witness that his client did not respond to his messages because the newspapers had published Jason as being complicit in the murder of the deceased and that the accused was totally ostracised by certain people thereafter. Thompson indicated that at the time that the accused withdrew contact from him there had not been publications that Jason was suspected of murder nor had he been ostracized. He also indicated that they had experienced a very tragic moment together. It therefore had puzzled him why Jason was withdrawing himself from him. On the Sunday evening he tried to arrange early transport for Jason to get back to his home so that he could be with his children. There would

therefore not have been any reason for Jason to withdraw contact from him.

Thompson explained differences or additions between his statements. According to him his first statement was steeped in the moments following the trauma. It must therefore be considered merely as a mental data dump. With trauma counselling he had been able to process the event as it had unfolded. Things that were clear and that he still remembers 15 months later are those images that stood out for him. There were details that he could quite easily have forgotten as they did not appear significant, out of place or commendable at the time.

He indicated by way of photo illustration where he and the accused were seated on the bathroom floor in relation to Susan's body and how it was that he could have a clear view of the back of the door.

[14.2] **Dr Akmal Coetzee-Khan:**

A bundle of documents containing Dr. Coetzee-Khan's ("Khan") CV, post-mortem report, notes and reference materials were handed up, marked as

EXHIBIT D Bundle1 as well as a bundle of photographs marked EXHIBIT D Bundle 2.

He was on duty on Sunday the 24th when he received a request from the Paarl Forensic Pathology Services officer present at the scene to attend at Spier. They were unclear as to whether the deceased had committed suicide or whether she had been murdered. They also wanted an estimated time of death in order to corroborate the history which was provided to them by the husband of the deceased. He was informed of the alleged history and that blood stains on the floor of the hotel room, bed sheet, pillows and duvet cover appeared suspicious to the attending officers.

Khan took the Court through various photos [2] and his observations of both the body and the scene at the time. He arrived at the scene at approximately 12h45. Upon entering the bathroom he noted the body on the floor, lying with the head towards the toilet and the bath. The legs were underneath the basin towards the door.

There was no ligature present on the body at that time. He had been provided with information that the ligature had already been removed and that it was already placed into an evidence bag by the time he had arrived.

[2] Exhibit B, Bundle 2 – photos depicting the room and faecal stains on the floor outside the room

He noticed that the gown had blood stains but there was no blood that he could see on the back of the door or entrance of the bathroom. He also noticed that there was make-up on the deceased's face.

A ligature imprint mark was noted to the front and side of the neck. The imprint mark was horizontally aligned, meaning that it was on a straight line horizontally across the front part of the neck and on the left side of the neck as well.[3] On the right hand side of the neck the ligature mark was sloping upwards slightly, with a very pale blanched appearance.[4] The imprint did not extend across the whole right side of the neck and stopped just before the ear. It did not extend pass these points. He observed linear scratch marks located immediately under the right lower jaw.[5] He also noted scratch marks on the left front of the neck above the ligature imprint however it is not clear from the photos. There was no knot imprint mark against the surface of the skin.

A haematoma was on the left eyelid as well as an abrasion to the left occipital bone of the eye socket. He interpreted this injury consistent with blunt force trauma to the face more specifically to the eye with a fist

[3] Scene report - pg. 2 par 5 (a) / photo 6
[4] Exhibit D, Bundle 2 : Annexure C number 12
[5] Photo 12

wearing a ring. This feature is not normally found in the case of a hanging or suicide. It is usually an indication that there was some sort of physical altercation that had occurred.

There was a small area of blood spatter on the right upper eyelid. He also noted that there was bruising to the left knee and on the left lower leg.[6]

He noted that there was a very large healing bruise to the upper right leg and thigh. Its greenish colour indicated that it had occurred a few days before. The presence of bruises of different ages was a concerning feature and with the limited history he had to also consider battered women's syndrome.

Abrasion injuries were noted on the anterior aspect of the toes of both feet with surrounding blood staining of the feet[7] and on her left shoulder were consistent with being dragged over a rough surface like the carpet of the bedroom.

Reddish colouration on the right hand knuckles indicated a bruise with a small laceration. A bruise was also noted on the wrist. These are typically defence type injuries sustained from a physical altercation.

---

[6] Photo 15 and 16 – Annexure C

[7] Photos 25, 26 and 27 – Annexure C

Faecal soil was noted between the buttocks, with no faecal soiling noted on the bathroom door.

Early *rigor mortis* was present with stiffening of the feet, arms and jaw, which started in smaller joint but was not over the entire body. The body in hanging cases is usually presented with a specific blood distribution in the lower limbs and feet, hands and forearms, and on the neck if it had slumped to one side.

He explained lividity in simple terms to be that when the person dies, circulation of the blood ceases and the blood becomes stagnant in areas of the body depending on the posture of the body after death.

The pattern of lividity was over the back and back of the legs, in other words the contact areas over the shoulder blades and buttocks were pale. The pattern was indicative of the deceased laying on her back. Lividity takes about 30 minutes to start and about 3 hours to establish completely. This would assist him in calculating the estimated time of death.

Time of death estimation included the consideration of multiple factors such as the cooling, the temperature he had seen of the body compared to the ambient environment as well as the changes of *rigor mortis* and lividity. He interpreted his findings that the estimated time of death from the time of

calculation to be 7 hrs and 30 minutes earlier, subject an interval of 2.8hrs earlier or later based on the calculations subject to certain unknown variables. He estimated the time of death to be at 05h40 a.m. on 24 July 2016 with a probability of 95%.[8]

He had noted that there was red staining on the bedroom floor[9] and on the bedding which he found odd. If the deceased had committed suicide by hanging in the bathroom, he could not understand why there were bloodstains on the pillow, bed sheet and duvet.[10] The belt of the robe was hanging off the bed.[11] He concluded that if the deceased got out of the bed to go to the bathroom she would have in his view closed her robe. This features presented as suspicious, lending to the possibility that the deceased body could have been moved or dragged naked from the bedroom to the bathroom.

From his inspection of the bathroom door lock he noted that it is possible to open the door from the outside by sliding something in the groove on the outside of the door locking mechanism. These types of locks are typical in

---

[8] See item 6 on the post-mortem report
[9] Exhibit D, Annexure A, Photo 23 & 24 (stain on bedroom floor marked as B9
[10] Exhibit D, Annexure A, Photo 3 – blood stains on duvet cover and sheet marked B10 & B12
[11] Exhibit D, Annexure A, Photo 2 – belt on bed hanging off on the left of bed

hotel rooms for safety reasons so that if someone gets stuck it can be opened from the outside. He requested that the lock be examined by an expert in that field as well as the towel hook in order to determine if it could sustain the weight of the deceased in the course of hanging.

Based on what he had seen in the hotel room, in the bathroom, the bathroom door and the appearance of the deceased he was not comfortable to declare it as a suicide from hanging. Many features did not fit the history of suicide and hence he requested further examination of the scene by the crime scene unit.

He testified that he also wanted the deceased's husband to be examined by a forensic clinician for any injuries. At that stage, he was of the view that the matter ought to be investigated as the death was possibly a homicide. He performed the post mortem two days later, on Tuesday, the 26th in the presence of investigating police and the head of the pathology unit, Dr. Abrahams.

Khan referred to his chief post mortem report[12] and explained certain of his observations made therein:[13]

An incomplete ligature imprint mark noted to the anterior and lateral aspects (front and side) of the neck. The ligature mark is horizontal and terminated before the ear and did not extend further along the neck.[14] An electric cord around the neck in hanging normally presents a friction abrasion from it rubbing against that surface of the skin. He did not notice any friction abrasion present at the ligature mark. He also noted that in hanging the pattern would be expected to be sloped in an upwards position sloping upwards on the sides of the neck going to the suspension point. In this case, it was horizontally aligned across the neck and just sloping slightly on the right side. In hangings the ligature mark is usually in about 80% of the cases above the laryngeal prominence which would be quite high up in the neck. In his view the ligature mark was applied after death (post mortem) and not before death (ante-mortem) meaning that it is a staging of a hanging.

Asked by the Court to clarify what he meant by staging, he replied that the person is already dead and an attempt is made to make it look like a

[12] Exhibit D – bundle 1 – Chief post mortem report
[13] Exhibit B – photos 83 – 236 depicts the autopsy photos
[14] Exhibit B – photo 108

hanging by applying a ligature which inflicts an indentation or ligature mark. The imprint pattern and position thereof was not consistent with a hanging position.

He further explained that in his view the ligature mark was inflicted whilst the deceased was lying flat. The lividity across the back further supported this conclusion. The post-mortem lividity is fixed and well-established posteriorly with contact pallor noted over the shoulder blades and buttocks. The body's position was horizontal, lying on the back, indicating death in a supine position which is lying on the back. Other possibilities of hanging positions were considered by him such as kneeling but the lividity noted did not support such an inference.

Scratch marks to the right lower jaw and left side as well under the chin and in front of the neck were assessed as fingernail scratches.[15]

In all cases of suspected hanging, strangulation or injuries sustained to the neck, a bloodless neck dissection is performed which is a specialised technique. This ensures that the injuries or haemorrhages observed in the neck region are true haemorrhages and not features that occurred after death.

---

[15] Exhibit D, Annexure C, Photo 12 – scratch marks to the right lower jaw running transverse with associated haematoma

The process explained in simple terms would entail removal of the brain allowing the blood to be drained from the head region as well as removal of all the organs below the level of the sternal notch, which would be the lungs, heart, all the way down to the intestines. All of these would be removed before dissecting the neck. The neck region has to be bloodless before dissection in order that any blood from any smaller vessels that are on the surface could not infiltrate that area and give an appearance that there is a haemorrhage when in fact it is not a haemorrhage.

The process would start with the skin and reflect each muscle layer and then eventually down to the bones and cartilage so that each specific area is inspected for any possible injuries. The technique is performed in layers because a small haemorrhage can indicate where force was applied to the neck. The hyoid bone and the thyroid cartilage were inspected. There was a fracture of the thyroid cartilage.

Directly under the linear abrasions (scratches on skin by the jaw) and above the ligature mark, haemorrhages to the subcutaneous tissue as well a large haemorrhage to the submandibular gland were observed. A haemorrhage on the other side (left side of neck) where the other 3 scratch marks were noted also showed a haemorrhage to the subcutaneous

tissue.[16] The haemorrhages in the neck are geographically in a different point to the location of the ligature mark. These haemorrhages which were on either side of the neck of the deceased were unrelated to the ligature mark.

Dissection of the hyoid bone revealed no fracture. There was a haemorrhage which indicates that force was applied to this region of the neck. He observed a haemorrhage to the membrane which is located between the hyoid bone and thyroid cartilage. The presence of a haemorrhage there is indicative of blunt force trauma to this region. This feature was unrelated to the ligature mark and usually in cases of manual strangulation it would be indicative that there was pressure applied from the left side going inwards towards the bone.[17]

Khan testified that the type of injury to the superior horn of the thyroid cartilage indicates a specific type of injury. Combined with the haemorrhages observed in the neck it is consistent with a hand being applied to the neck with a squeezing type action over the sides of the neck, pointing to manual strangulation and not ligature strangulation.

---

[16] Exhibit B, photos 198 – 205

[17] Exhibit B - photo 216 shows a fracture which would have occurred ante-mortem (before death).

Usually in cases of hanging, very little haemorrhages would be present in the neck and the haemorrhages tend to be directly related to the ligature, which was not the case herein.

He noted an area of pallor to the nose tip, upper and lower lips and slight deviation of the nose.[18] The nose has been deviated, consistent with external airway obstruction. This indicates something had been placed over the nose and the mouth. The pallor occurs over the nose and consistent with an object or hand placed over the nose and mouth. This was confirmed by the pharyngeal soft tissue haemorrhages and congestion to the base of the tongue. As far as CPR is concerned he indicated that if the person's nose was pinched, deviation of the nose and pallor can occur if done roughly.

He also noted congestion present of the internal organs and sub pleural petechial haemorrhages to the surface of the lungs. He indicated that it was not clear on the photo[19] but there were also fine petechial haemorrhages noted on the surface of the heart. This indicated features consistent with asphyxia, a result of interruption with respiration.

---

[18] Exhibit B – photo 233 & 234
[19] Exhibit B – photo 173

The presence of bruising injuries to the body, face and fractures to the third, fourth and fifth ribs anteriorly is evidence of blunt force trauma to the body. With CPR one can also get fractures to the ribs especially in the front if it is performed quite vigorously.

The right chest wall indicated a further haemorrhage going towards the axilla which he cannot associate with resuscitation as it is quite far away from the central aspect, more likely consistent with blunt force trauma.

The trauma is more consistent with a physical altercation including punching or maybe kicking to that area. In the context of manual strangulation, the rib injuries would result from a knee placed against the person in order to overcome the victim, thereby retaining pressure on the neck as the victim would be resisting or moving their hands and body.

When he flapped the scalp from the head, he found a haematoma to the scalp of the occipital region and this further confirmed that there was blunt force trauma applied to the back of the head as well. This type of injury pointed more likely to the victim's head being pushed against a surface to cause blunt trauma to the back of the head.

Examination of the meninges also showed that there was haemorrhage in the subarachnoid area which indicated that there was also trauma to the head.

Bruising and abrasion to the knuckles of the deceased indicated trauma to that hand and knuckles[20] and well as a bruise to the left wrist[21] were most likely consistent with defence type injuries indicative of the victim protecting him/herself and/or fending off the attacker.

There were contusion injuries to the surface of the lungs and this also indicates blunt force trauma to the chest wall.

On inspection of the stomach, there was approximately 100ml of fresh blood present, indicating that there was ingestion of blood. The intestines were dark in colour pointing to the presence of blood sourcing from ingestion which had passed through the stomach and further down into the intestines. Once he opened the intestines, he saw altered blood products. For this to have occurred there must have already been some sort of trauma that caused her to ingest blood and for it to go through the stomach and be in the intestines. This occurred before death and with the contusion injuries to the lungs, she most likely started to cough up blood and ingest it

[20] Exhibit B – photo 143
[21] Exhibit B - Photo 144

for it to pass through and go to the intestines. This would indicate that there was some sort of physical or blunt force altercation before strangulation.

Healing bruises estimated to have resulted from blunt force trauma approximately 7 days prior to the deceased's death concerned him as to the possibility that the deceased was a battered woman.

His conclusion was that the deceased died of an unnatural cause consistent with asphyxia due to manual strangulation and external airway obstruction. The features of the ligature imprint abrasion mark are consistent with post-mortem application to the neck.

The deceased was 1.71m and 52kgs and was relatively slim but in a good nutritional condition. The first post-mortem changes the body. *Rigor mortis* by that time was generalised and intense. The post-mortem lividity was present posteriorly and fixed with pallor noted over the shoulder blades and buttocks which was consistent with death, not consistent to be in the upright position.

The white gown was present on the deceased and there was no clothing underneath that gown. There was red staining resembling blood noted to the inner aspect of the right shoulder at the back as well as to the right

neck and chest in front of the gown. There was also no evidence of medical intervention.

The ligature imprint was 6–8mm in width and was incomplete and horizontally aligned over the anterior aspect and left lateral aspect. On the right hand side it slightly sloped upwards. The imprint mark extended into the hairline and did not form an apex posteriorly. The imprint did not go to the back of the neck meaning it only covered approximately 60% of the neck. There was no point of suspension, which is the point going upwards. There was also no knot imprint which would otherwise indicate where the knot was located against the surface of the skin. The ligature imprint mark was not parchment or leathery like and presented features not consistent with ante-mortem application. In other words it was placed or tightened around the deceased's neck after death.

Based on the features of the ligature mark together with the position of the scratch marks over the skin surface of the neck, he was of the view that it most likely indicated a thumb that was on the right hand side with the attacker's remaining fingers spread over on the left hand side consistent with manual strangulation.

There was an abrasion noted to the left shoulder with a tangential abrasion mark with bruising noted. This injury was indicative of blunt trauma more likely caused by rubbing against a rough surface. The tangential appearance indicated further dragging across a rough surface. He observed and considered the different surfaces in the hotel room and in his view the carpet in the bedroom had a rough surface. The deceased was more likely dragged across that surface resulting in this injury. This type of drag mark would not be consistent with the tiles in the bathroom and the position of the injury is not consistent with hanging.

There was also an abrasion to the second digit of the right foot and a little abrasion on the toe on the right side. There was also a linear abrasion mark noted to the medial and anterior aspect of the first digit of the left foot. A linear abrasion mark was also noted to the medial aspect of the second digit of the toenail on the left foot. These abrasions indicate that that it rubbed against a rough surface. They could be caused by a rough surface like the carpet in the bedroom or something else that had abraded the top of the skin off.

Bruising to the left anterior lower leg had also been noted. This was a fresh bruise, different to the healing bruise as well as a fresh bruise to the left anterior and medial knee.

Blood was sent to the DNA lab and a 5-panel drug screen on the urine tested negative for drugs.

A post mortem report by Dr Perumal ("Perumal") was handed in and marked EXHIBIT E. A second autopsy was performed after the body was released from the state forensic pathology services.[22] The second autopsy was requested by the accused. Khan was asked to consider the contents of the report and comment thereon. The key aspects of his testimony in this regard were:

The history as set out that: *"Mrs Rohde hung herself with a cord attached to an electric hair straightener"*, does not indicate that it is an **alleged** history, but appears to be accepted as the background.

Reference to the ligature imprint does not indicate whether it is an ante-mortem ligature imprint mark or post-mortem imprint mark.

The scattered abrasions and bruises on the neck, face and body are not interpreted as to what the cause of these bruises could be.

No mention of the injuries to the knuckles or to the wrist were made normally indicative of defence wound injuries to that area.

---

[22] Second autopsy was performed in Johannesburg 8 days post death on 01 August 2016. The report is dated 16 August 2016.

No mention of the fracture or the thyroid cartilage.

The report is silent on the presence of blood in the stomach and the dark pigmentation of intestines indicative of congestion. The report does not address the other injuries that were present on the body and crucial findings thereof.

The report does not indicate that the special technique of a bloodless neck dissection performed during the first autopsy could not be performed during the second autopsy. The sutures would have indicated that such a technique was performed.

The report is silent as to the fact that the linear abrasions of the lower jaw and on the side of the neck were above the ligature mark and thus unrelated to the ligature mark and whether or not it is related to manual strangulation.

Indication that there were no identifiable definitive ante-mortem bruises to the subcutaneous tissue is misleading.

Stating that there was "no definitive fracture of the hyoid bone or the thyroid cornua"[23]is incorrect and misleading.

---

[23] Exhibit E – Page 4 – under "NB:"

The report does not identify the possible cause of the injury to the left shoulder; the abrasion to the left occipital bridge, the haematoma to the left eye nor the bruises below the right ear and the two small focal abrasions to the knuckle of the left index finger.

Whilst certain injuries are noted, it is not considered in the conclusion that the deceased died of injuries consistent with ligature strangulation / death by hanging.

No comment is made on the pallor and deviation of the nose nor the lips and colour thereof.

No mention was made of the skull and head injuries. No interpretation is given for the cause of the fractured ribs.

Bruises to the tongue were not interpreted and is not a common feature in hanging cases.

Many of the injuries observed on the body of the deceased were omitted. The second autopsy report would not have the findings of the bloodless neck dissection which is limited to a first autopsy. Reconstruction after this type of dissection is not possible nor can a second autopsy reveal a finding or comment in connection therewith. The findings of the latter technique would be significant to differentiate the diagnosis of ligature strangulation

from manual strangulation. The second autopsy report however nonetheless makes findings of the haemorrhages in the neck area and labelled it as post-mortem artefacts with no definitive ante-mortem haemorrhages. A second autopsy cannot make findings which are exclusive to the neck dissection procedure.

Khan denies that the imprint noted by Perumal on the back of the neck was on the back of the neck when the first autopsy was performed. The second autopsy report does not comment that the ligature mark was horizontal which would conflict with a suspension from above the head.

Whilst Perumal noted the linear scratch abrasions, he did not interpret the cause thereof as such injuries are important in the determination of the cause of death.

On the recommencement of evidence, Counsel for the State indicated to Khan that evidence over the weekend was obtained through affidavits by the deceased's sister[24] and mother[25] in which they stated that the deceased told them that she sustained the bruise when she fell over on a dumbbell during an attempt to perform a handstand. Khan commented that this would be consistent with his estimation of the age of the bruise of 7

[24] Handwritten statement (not commissioned) by Angela Norton marked as Exhibit G1
[25] Handwritten statement (not commissioned) by Diane Holmes marked as Exhibit H1

days prior to death. He, however, indicated that he could not comment on information by the deceased's mother that her daughter had bruised easily due to a condition for the reason that it would depend on whether the condition referred to had been diagnosed by a medical practitioner or was it just based on their experience within the family. He added that the area to the thigh is made up of lax tissue and can bruise much easier than stiff or condensed tissue. He further added that there was no obvious evidence of a specific bleeding tendency or abnormalities to the vessels which he had observed during the autopsy.

Under cross-examination counsel questioned the veracity of Khan's evidence to the extent that the post-mortem handwritten notes could not have been written at the scene as he had testified. Further placed into dispute the fact that Khan could not have known the mortuary reference number or death register number which appears in his notes. Lengthy cross examination followed on the experience of Khan and manner of his previous workings, his understanding of various calculations in forensic pathology and his understanding of lividity, cooling of the body after death and death interval time. Counsel for defence put to Khan that his understanding as to the algor mortis calculation as reflected in his report

was incorrect. As such it was put to him[26] that his estimation of the time of death was wrong. Khan conceded that his interpretation of the calculation principles were incorrect in that the estimated time of death would not be 05h40 with a 95% probability but instead a calculation resulting in a estimation of death having occurred with 95% probability between 02h52 and 08h28. Dr Khan explained that he worked out the death time interval as being 7,5 hours earlier with a variable of 2,8 hours before and after. His interpretation of the 95% factor was incorrect and that he should have found the mean range as being the 95% probability and not the other way around. So death most likely happened between the range 2,8 hours before 05h40 and 2,8 hours after 05h40.

Questioned as to the possibility that the death could have resulted from blunt force trauma as opposed to manual strangulation, Khan replied that the blunt force trauma could have contributed to the death but the findings that he found were consistent with manual strangulation and external airway obstruction.

Van der Spuy questioned Khan on his findings that he excluded the hanging the basis of the position of the lividity noted. Khan replied that

[26] Van der Spuy made extensive reference to literature and the death time interval calculation called the nomogram.

lividity was not a main factor for excluding hanging but it was something he took into account in his conclusion.

Khan confirmed that the appearance of the ligature imprint mark and its nature was a major factor informing his conclusion of manual strangulation as well as the fact that the geographical locations of the marks around the deceased neck (underlying layers) were different to that of the appearance of the ligature on the outside skin surface. Khan also confirmed that the injury to the deceased's thyroid cartilage was a factor in arriving at his conclusion.

Khan conceded that the explanation that deceased had fallen on a dumbbell could have caused the bruise to her upper thigh but it does not explain other healing and fresh injuries.

It was put to Khan that the deceased would have been under the influence of alcohol and although her blood alcohol test read as being below the legal limit at 0.05, the defence will call Professor Saayman as a witness in that there is a strong possibility that on Susan was under the influence of intoxicating liquor. Khan replied that he was provided the information that she drank alcohol the night before and he took the sample to get the

content determination which indicated deceased had a low alcohol level and not likely intoxicated at time of her death.

Van der Spuy questioned Khan's appropriateness in recommending in his report that the husband of the deceased's passport must be removed until the investigation is completed. Khan explained given the history that the deceased and her husband had an argument, his observations of the scene and injuries noted on the body of the deceased, lend reasonable cause for an investigation as he suggested.

Van der Spuy put to Khan that it was beyond his mandate and is out of line for him to have done so. Khan replied that this is based on his experience in the Western Cape where they have had potential accused suspects leave immediately after an event occurring and that it is a recommendation as he was informed by the police that the husband of the deceased was going to the airport to travel to Johannesburg. As he was not sure as to his post mortem conclusion at that stage, he considered it prudent to make the recommendation.

Khan conceded that he did not perform the special technique of a pneumohemothorax as he did not consider it necessary. He also confirmed that he although he did not perform a facial flap dissection, he

concluded that a secondary cause of death to be smothering as there were other injuries indicating to smothering such as injuries inside the mouth and haemorrhages to the pharynx and tongue. These were consistent with injuries that you would find in smothering.

Khan indicated that it was not necessary to perform further tests and techniques to determine the cause of death as the injuries observed confirmed a finding of the cause of death as manual strangulation and external airway obstruction.

[14.3] **Warrant Officer: Heremias Cornelis Engelbrecht**

The testimony of this witness was essentially on cell phone data and how it works, the methodology and the sequence of cell phone activity. He started in the police service in 1990 and has 27 years' service.[27] He took the Court through the software that is used for the extraction of mobile data, how the cables are used during extraction and the process of analysis of such extraction for the purpose of creating a report.

[27] An affidavit by this witness dated 27 September 2016 and marked J1 was handed in as well as a bundle of documents with an affidavit (A60) market as J2.

He also explained how the software works for advanced extractions and the extraction process of data. He did extractions of 2 phones as per the request of the investigating officer in this matter.[28]

Engelbrecht testified that whatsapp messages were deleted between the accused and Jolene around 08 August 2016. Whilst he cannot see the content of the messages, he can see that there was contact between them.

He noted that there were whatsapp messages between the deceased and Jolene however the messages on Jolene's phone were deleted. The messages appeared on the deceased's phone.

The cell phones of the accused and that of Jolene had no sim cards. He however accessed the data from the device itself.

Under cross-examination, the witness stated that as per HEC1 the timeline between deceased and Jolene's phone shows that there is a Whatsapp from Jolene to the deceased at 05h50am. Then at 07h02am and 07h06am there were a whatsapp message from the deceased to Jolene. The last communication from the deceased to Jolene was at 07h06. On

[28] The defence was present and conversations between the accused and the defence were excluded from the report.

J2, the extraction of Jolene's phone indicates the last message between the accused and Jolene were around 10h45 on the 23rd.

[14.4] Peter Norton

Norton is married to the deceased's sister, Angela Norton, and the brother-in-law of the deceased. He runs a construction business. He was notified on the Sunday morning about the death of the deceased.

He immediately went to Spier Hotel and was directed to a room where he found Jason.[29] A number of relatives were there including the father of the deceased, Mr. Neville Holmes ("Neville"). He described Jason as tearful and that he appeared devastated. People were moving around in the room and Neville went in and out of the room whilst other people entered. Someone took a statement from Jason.[30] Neville enquired as to what happened. Jason explained that they had a fight, and Neville asked to see his hands. He said that Susan had tripped in the car park and that she cut herself which is where the blood had come from. Norton said that he looked at Jason's hands when he showed it to Neville and that he did not

[29] This room was adjacent to Room 221

[30] He subsequently learnt that it was one of the investigating officers

notice any marks. Neville grabbed Jason's hands and turned them over and looked at them. Jason was well dressed and cleanly shaven.

When Jason finished his statement, Neville told him to read to Jason before he signed it, which they did. Jason's statement[31]was handed to the witness. He confirmed that to be the statement made and read out the contents of the statement.

Under cross examination Defence counsel referred Norton to a statement which he gave the police a year after the incident. Norton said in his statement that Jason never spoke to him at the funeral and that the he (Jason) was late and never stayed for tea after the funeral. Defence put to the witness that by the time that the funeral happened the accused was ostracised by the deceased's family and was told that he was going to be arrested. Norton said that he does not know what Jason's state of mind was however he can confirm that when the family saw him they hugged him and his 3 girls and that the funeral went ahead. In answer to a question by the defence whether the family treated Jason like a husband or son in law that suffered a tragedy, Norton replied that there was compassion mixed with suspicion.

[31] Exhibit K

The witness testified that he did not know how Susan felt about her father's infidelity.

He confirmed that to his knowledge Jason never displayed violence to Susan.

[14.5] **Warrant Officer Anna-Marie Van Niekerk**

Van Niekerk has been in the police for 23 years and obtained a Master's degree in analysing cell phone records. She confirmed that she was requested to analyse cell phone records in this matter which she received from investigating officers. She also obtained cell phone records through the process of Section 205 summonses and call reports from Spier Hotel.

Van Niekerk took the Court through her methodology. She established a timeline of communication between the accused, deceased and Jolene Alterskye. Exhibit M was handed up which was her statement and extraction data.

On 24 July 2016 the accused cell phone data shows at:

- 00:17:13 a call from 082 447 6169 and the call was not answered
- 00:27:27 an outgoing call of 9 seconds to the deceased

- 02:15:52 an outgoing call to Jolene of 0 seconds
- 02:56:39 an outgoing call to Jolene of 13 seconds.
- 03:00:03 an outgoing call to Jolene of 1 second.
- 03:00:20 an incoming call from Jolene of 50 seconds.
- 03:02:21 sms from Jolene.
- 03:02:26 the same sms message and then again at 03:02:34.
- 03:32:28 an incoming call from Jolene lasting 7 seconds.
- 04:45:33 an incoming call from Simony Dos Santos.
- 05:54:29 an incoming sms again from Simony Dos Santos.
- 08:02:22 an outgoing call was made from the accused's cell phone to Susan (3 seconds).
- 08:41:28 an incoming sms to the accused's phone.

Van Niekerk then continued with deceased's cell phone records and said that at:

- 00:27:27 incoming call from the accused and it was not answered.
- 00:27:47 incoming sms was received from the accused.

- 03:11:47 outgoing call was made from Susan's phone to Jolene (call went in to voicemail)

Van Niekerk then proceeded with Jolene's activations and said that at:

- 00:17:13 an outgoing call to the accused and lasting 4 seconds.
- 01:01:21 an outgoing call (23 seconds) to Simony Dos Santos
- 01:04:14 an outgoing call (15 seconds) to Brendan Muller
- 02:05:57 an incoming call from Simony Dos Santos (0 seconds).
- 02:15:52 an incoming call from the accused (0 seconds)
- 02:56:38 an incoming call from the accused (13 seconds).

The extractions and information established a basic timeline integrated in time sequence which the witness indicated as:

- 00:17:13 the accused received a call from Jolene but he did not answer lasting 5 seconds.
- 00:27:27 an outgoing call from the accused to the cell phone of the deceased which she didn't answer.
- 01:01:21 Jolene made an outgoing call to Simony Dos Santos (23 seconds).

- 01:04:14 Jolene made an outgoing call to Brendan Miller (15 seconds).
- 02:05:57 Simony made an outgoing call to Jolene.
- 02:15:52 Jason made an outgoing call to Jolene.
- 02:56:39 Jason made an outgoing call to Jolene (13 seconds).
- 03:00:03 Jason made an outgoing call to Jolene (1 second).
- 03:00:20 Jason received a call from Jolene (50 seconds).
- 03:11:47 The deceased made an outgoing call to Jolene.
- 03:18:05 Jolene received an incoming call from Simony (50 seconds).
- 03:24:32 An incoming call from Simony (16 seconds).
- 03:32:28 Jason received a call from Jolene (7 seconds).
- 03:45:05 Jolene made an outgoing call to Simony (58 seconds).
- 03:58 Brendan Miller sent a messag to Jason reading: *"You ok?"*
- 04:03:07 Jolene made an outgoing call to Simony (22 seconds)
- 04:11:02 Jolene received an incoming call from Brendan Miller (56 seconds).
- 04:45:33 Jason received a sms from Simony
- 05:50:29 Whatsapp from Jolene to deceased: ***"Go wash your mouth"***

- 07:02:06 Whatsapp from deceased to Jolene: ***"Whore – wash your own fucking mouth".***
- 07:02:23 Whatsapp from deceased to Jolene: ***"After you suck my husband's dick".***
- 07:06:34 Whatsapp from deceased to Jolene: ***"Jason said you were only good for one thing and that's why he keeps coming back. He said you would be the last person he ever wanted to be with".***[32]
- At 07:06:36 Accused replied to Brendan Muller *"**Drama, but okay".***
- At 08:02:22 an outgoing call made from the accused to the deceased's phone.
- 08:22 A call is placed from the inside line of Room 221 from the accused to reception as per his statement
- At 08:51 An outgoing call was made to Sandy Geffen and then at 08:53 outgoing call to Lew Geffen.

[32] This was the last communication transmitted from the cellphone of the deceased

According to the deceased's extraction report iApple messages between the deceased and her clinical psychologist (Ms. Newcombe) on Friday, 22 July 2018 were exchanged as follows:[33]

- 20:40:19 ***"I shook her hand and said hi and said I hoped we didn't have to meet again"*** - Susan to Newcombe
- 20:41:12 ***"Did it leave you feeling in control?"*** - Newcombe to Susan
- 20:44:39: **"Yes"**- Susan to Newcombe
- 20:45:24 ***"Great! So tomorrow will be better".***[34] - Newcombe to Susan

The witness testified to messages extracted between Jason to Jolene on the Saturday, 23rd July 2018.

Van Niekerk testified regarding incoming and outgoing calls between the accused and Jolene for the period of February until July 2016[35] as well as

---

[33] Annexure Q page 43, 44 & 45

[34] This message was unread.

[35] The amount of outgoing and incoming calls made between accused and Jolene were:

- February 2016 104 outgoing calls and 120 incoming calls from the accused to Jolene.
- March 182 incoming calls and 544 outgoing calls.
- April 154 incoming calls and 222 outgoing calls.
- May 186 incoming calls and 125 outgoing calls.
- June 198 incoming calls and 125 outgoing calls.
- July 199 incoming calls and 94 outgoing calls.

exchanged messages between the accused and deceased on the Saturday, the 23rd.

Under cross-examination the witness confirmed that there was a total of 2 229 Whatsapp messages from the deceased to the accused and the total amount of calls from the deceased to the accused were 1 703.

[14.6] **Psychiatrist - Jane Francis Newcombe**

Newcombe attained a nursing diploma, Bachelor of Arts in psychology, worked at a psychiatric hospital for several years and did her Honours and Masters in Psychology. She did her dissertation on post-traumatic stress disorder and the impact thereof on adolescence and worked at a Child Adolescent Family Unit as a registered psychologist. Thereafter, she went into private practice.

Newcombe testified that Susan consulted with her in May 2016, which was the first of 8 sessions, every Wednesday at 08h30. She took the Court through her methodology applied and information collated from the deceased.

Susan informed her that her husband had been having an affair with one Jolene which was ongoing. The affair started in June 2015. She had found a hand written Valentine's Day card to her husband. When she found out he stopped the affair immediately and he had communicated to Jolene and said that he loved his wife and wanted to work on their relationship.

The deceased was much calmer during the second session and appeared more composed. During sessions they also dealt with her family history and relationships with members of her family. When she was 35 she discovered that her father had an extra-marital affair which was devastating to her. However, her parents have remained together and seem to be having a better relationship.

Susan was battling to cope with the fact that her husband had lied to her and this affair seems to have been both an emotional and sexual affair. He had ended the relationship but had become quite aggressive about the way he wanted them to move forward.

Susan denied that there was any violence in the marriage but informed her that they would have fierce arguments. Susan said that she felt that her husband was irritated with her constantly harping on about the affair and that she was anxious, especially when Jason travelled.

He was very frustrated with her anxieties which she had expressed regarding the affair. He was also in individual counselling and they were seeing a couple's therapist where they made slow progress. Susan expressed that she was lacking self-esteem and could be depressed. Newcombe indicated that when a patient said this she would explore what is meant by that. She checked whether Susan had any of the symptoms of depression.

They spoke about the affair including her struggles to overcome her husband's infidelity and to manage her hurt and anguish. Susan drew parallels between her experience and her father's affair. Susan shared that she had contacted Jolene to leave Jason alone. Susan would also check on Jason's phone and asked him to take Jolene off his phone as a contact and to block her number. She perceived that Jolene was very invested in Jason and wanted this relationship. Newcombe perceived Susan as wanting to protect Jason from being hoovered back into the affair with Jolene.

She said that Susan wanted to fix the relationship and wanted to know how to manage her anger and turmoil as she felt that the infidelity had turned her life upside down. It affected how she felt about everything so she started to doubt her own ability to recognise the truth from non-truth and felt

lost. Newcombe indicated that these feelings and experiences are normal when a spouse finds out that their spouse had been having an affair. Susan was very sensitive to being criticised and possibly she had an issue with envy.

Susan disclosed in therapy that she met Jason at a party when they were 19 years old. She said that he was quite jealous of her and had a volatile temper but was gentle and kind most of the time. Susan said that Jason is very sensitive about being criticised and loses his temper quickly.

Susan was very involved in an orphanage called Hearts of Hope as well as a primary school. She also provided support counselling to victims at Sandton Police Station.

When Newcombe asked Susan whether she had any current fears, she mentioned that she feared that they will continue to treat each other badly and that she will continue to live in fear. She feared that their family will be exposed to the tension at home and that Jason would lie to her again.

Susan described the marital relationship to always be a loving relationship but that it had become distant in the past months. All their friends saw them as the perfect couple. She was angry that whilst Jolene knew that Jason was married, she did not refrain from getting romantically involved with her

husband. Susan said that both her father and Jason were short tempered, both had affairs and both are untrustworthy. Susan was still very anxious when she was away from Jason and in particular when Jason went away as his work was in Cape Town. Susan perceived Jason as being understanding about her anxieties as he would take photos of where he was so that she would feel more at ease. She said that she checked his cell phone to see if there was any indication that Jason and Jolene were still in contact. They also spoke about the couple therapy and Susan said that she was anxious about upsetting Jason so she was not really talking about what her side of things were.

Susan did not tell her family or friends about the affair as she did not want people to hold Jason responsible or dislike him for what was going on. She felt that she had no one to really talk about what was happening. This was distressing as she was trying to deal with it all on her own.

In couple's therapy, Jason took responsibility for having hurt her but that he had difficulty with her wanting more details of the affair.

In another session Susan was very distressed and crying. It was however in relation to her eldest daughter as she had a big fight with her and the session focused mostly on that issue.

Newcombe said that it appeared to her that Susan did not always put her needs out there as she did not always get an empathic response. Jason was angry that she wanted to go with him to the conference in Cape Town and was looking for reasons why she should not go with. Susan wanted to go and she wanted her and Jason to be seen as this strong intimate couple so that Jolene would not think that there was space for her to be in a relationship with Jason.

In the last session it was discussed that if she discovered the affair was still ongoing, she planned to leave the conference and go to her sister.[36] Newcombe told Susan that she could phone her if necessary. Susan called her from Spier on the Friday evening and told her that she was complimented at the conference as being beautiful and that she had no reason to feel threatened by younger women. This distressed her because she wished that it was Jason saying those things about her. Susan told her that she did not greet Jolene at the conference which she was quite anxious about. They spoke about the fact that she had nothing to be ashamed about and that she was entitled to be there. During the telephone call, Newcombe experienced Susan as distressed but neither depressed

[36] Exhibit N – Statement under oath by Jane Newcombe – dated 22 July 2017 – paragraph 13

nor despairing.[37] By the end of the conversation, of around 10 minutes, Susan came across as being more in control and ready to re-engage in the evening's activities.[38]

Later that evening she received a message from Susan. She indicated that she greeted Jolene and said that she hoped that she never had to meet her again. Newcombe asked Susan whether it made her feel better and whether she felt stronger for it, to which she responded positively.

Newcombe said that she did not experience Susan as suicidal and that she did not experience her as a suicidal threat. In Newcombe's opinion she was anxious but not depressed and there was no evidence of impulsivity or acting out behaviour. She is of the view that Susan had not given up on life and that she had several protective factors which would have prevented her from being suicidal. Newcombe continued that Susan's marriage was not the only thing that gave her life meaning. Susan did not think that the affair would lead to divorce. Susan was very involved and invested in her children which also gave her meaning. She was involved in charitable works in her community. Susan was very integrated into her friendship circle and was well liked by others.

---

[37] Exhibit N – paragraph 17
[38] Exhibit N – paragraph 16

Newcombe said that when she heard what had happened she was initially completely shocked as she heard that Susan had killed herself. She said that her immediate thought was as to what she had missed. This prompted her to go back to her notes to see if there were things that would suggest that Susan was in fact vulnerable to suicide. Newcombe testified that she was satisfied and sure that she did not miss anything and that Susan did not present as depressed or suicidal.

The witness was referred to the statement by the marriage counsellor that Susan might need to be admitted to hospital. She replied that Susan had informed her that the couple's marriage therapist at one point felt that she may need to be admitted to hospital. In exploring the possibility of an admission it became clear that Susan became increasingly anxious when she experienced Jason as being emotionally distant. This would trigger her preoccupation with the details of the affair, which made Jason angry and he withdrew further. She explained that Susan's overwhelming distress was identified as a feature of anxiety rather than depression and that they decided that the solution was to handle the situation differently rather than be admitted.[39]

[39] Exhibit N – paragraph 9

She came across in therapy as someone that would be able to take back control of her emotions and progressed well with therapeutic treatment. Although Susan was quick to anger in heated arguments with Jason and experience emotional spill overs, she also cooled down very quickly and moved on.

Susan presented as an intelligent, attractive woman, whose responses to situations were both appropriate and proportional. She engaged well in the therapeutic relationship and was forthcoming with information and considered in her responses. Whilst Susan was anxious and tearful at times, she was easily soothed and able to take control and think her way through situations. Neither an examination of her history, nor the way she presented gave any indication of potential suicidal behaviour. She was more anxious than depressed and there was no evidence of impulsivity or acting out behaviour.

In **Under cross-examination** Newcombe conceded that Susan had come to see her after she had given a talk at the Sandton Police Station to volunteer counsellors on the topic of depression and suicide.

Defence counsel asked Newcombe to read out a number of heated messages exchanged between Susan and Jason on the Saturday at Spier. The messages were not listed in chronological order. Newcombe was asked to consider whether the exchanged messages reflected Susan as being rational. She answered that it struck her more that Susan was in a rage, however she cannot give context as to what put her in the rage. She testified further that Susan's ranting appeared in line with emotional spill over rather than being irrational.

Defence asked whether he is correct in saying that if Susan was bipolar, manic, depressed and anxious she may have wanted to commit suicide. Newcombe replied that she was confident in stating that Susan was not bipolar or manic depressive and that although she had some narcissistic features she did not qualify to have narcissistic personality disorder.

As to how involved she was with her children, Newcombe replied that she spoke about her children with concern and love. She cared about their development and discipline. The way she spoke about the family as well as her relationship and her care about her children, came across in a positive way.

Newcombe said that Susan was a good candidate for long term psychodynamic psychotherapy as she was thoughtful and could self-reflect meaning that she had an observing ego whereby she could look at her own behaviour and comment on it. Susan was able to identify her expectations of therapy. Susan recorded in the questionnaire that she hoped to process her anger and develop a good sense of what she should expect from herself and her husband in terms of going forward.

Newcombe said that she had at least 8 sessions with Susan and that the purpose of the session notes is not to give a detailed outline of everything discussed in these sessions but to provide a trigger to prompt her memory so that there is continuity between sessions.

She was asked if she had dealt with any other suicides. She replied that she never had a patient that had completed suicide. But that she has had several who were severely depressed and required hospitalisation and who have been hospitalised then recover and come back to therapy. Patients who have attempted to commit suicide were those with personality disorders and had impulsive tendencies.

Whilst Newcombe conceded that the information she had regarding Susan was based on what Susan had shared with her, she explained that her

views is also based on her interpretation of interactions with Susan and the knowledge which she acquired in practice combined with her clinical judgment.

Defence asked whether she performed a basic mental examination for signs of depression on Susan. Newcombe said that she spoke to Susan about the signs and symptoms of depression. There are some symptoms that appear in both anxiety and depression. Susan appeared to be insecure and have low self-esteem but not depressed.

In re-examination Newcombe expressed her view that there was a pattern of suspicion which resulted in Susan's emotional up and down. Susan expressed herself in exaggerated terms, for example, she would say to Jason: *"I hate you"*. That was not because she really hated him, but because she was angry with him and it was a way of dramatizing her emotions. Newcombe considered the fact that Susan tried to find out as much detail about the affair and travelled to Cape Town to visit places which Jason had been with Jolene in order to visualise what she had missed out on. She identified it as the game of catch up which betrayed spouses often resort to in order to deal with their trauma, shock and humiliation. It would also be normal to search for the truth and struggling with what is true or not. Jason had often reassured Susan of his

commitment and telling her that he loves and desire her which had a rollercoaster effect on her. Susan experienced Jason to be aloof to her emotions and that he did not sufficiently respond to her verbal cues. This would result in her pre-occupation with the affair and expressing herself in a manner to get her husband's attention such as saying: *"Sometimes I just want to die"*, but this was not her having suicidal ideations. In her view, Susan would use manipulative and exaggerated speech for example the message from the deceased to the accused[40]: *"you have ruined my life"*, designed for her husband to be more attuned to her plight.

Newcombe maintained that throughout her contact with the deceased until her final contact, she did not observe or held the view that Susan was at risk of taking her life.

[14.7] **Marriage Counsellor - Carol Ann Nader**

Nader has a BA Honours in Psychology and is in her 6th year of private practice as a registered marriage counsellor.

[40] Exhibit O, page 45 – Extractions of conversations between the deceased and the accused between 1 January and 24 July 2016 – handed up by Adv. Mihalik.

Jason and Susan briefed her to improve their communication and conflict resolution skills and to assist them to move to a stronger relationship going forward.

At their second session Susan looked depressed and jumpy. She proposed that Susan gets her own therapy and possibly see a psychiatrist for medication.

At the third session, Jason complained that Susan kept on asking the same questions about the affair. According to Nader she appeared to be a bit hyper aroused and manic. Nader looked for symptoms of major depressive disorder and ran a checklist in her head. She asked Susan if she had ever thought of suicide. Susan replied no and that she would never do that to her children.

Nader said that Susan complained about feeling sad, empty and sometimes hopeless and that she appeared to be isolating herself. She was gymming a lot and was not socialising with her friends. She said that Susan displayed a lot of agitation and erratic behaviour and that she was pacing within the room and complained about feeling jumpy.

Susan stated that she felt that she could have been a better wife and that she could have done things differently. Susan told her that she had lost a tremendous amount of weight and that she was not sleeping well.

Nader said that during the course of the counselling Susan highlighted childhood trauma, low tolerance for mental and emotional pain, feelings of hopelessness and pushing family and friends away. Susan did not want anyone to know about the affair, did not confide in anyone and said she would cope on her own. She felt that she needed to keep up appearances. Susan also displayed outbursts of rage and low frustration tolerance in the sessions.

Nader mentioned that Susan agreed to go to therapy on her own and that she noted that Susan felt a little better thereafter. Susan became more anxious when Jason was due to travel.

At the following session, Susan was looking a lot better and appeared to be more calm and in control.

In a further session Susan said that she was feeling down again as they were fighting often. Jason complained that she is insecure and that she called him 47 times the day before.

Susan told Nader that she was seeing a therapist and that she was happy with her. Nader was still concerned about Susan as she was still demonstrating a lot of symptoms of agitation. There were reports on things that she had done outside the sessions, so she was not convinced that she was not possibly suicidal. At the following session, they were both calmer.

In the next session, Susan complained that Jason was distant and belittled her in public. The couple fought a lot in this session and accused each other of various things.

In a session on 11 July they spoke about the upcoming conference and the fact that Jason did not want Susan to go as he was worried about how she would behave. In the last session before the Spier[41] weekend, 20 July, Susan insisted on escorting him to Spier and she wanted his colleagues to see them together. Jason did not want her to go with to the conference. Nader said that she advised against this and tried to mediate but failed. Jason stormed out of the room and appeared frustrated and angry. Susan also stormed out of the room.

On 27th of July, Jason called and informed her that Susan had committed suicide. He was crying and tearful.

---

[41] Exhibit P – Carol Nader typed notes from the Rohde file

Nader was requested by the accused's legal representative, Mr. Witz, to prepare a report, which she did, dated 18 August 2016.[42] She was also later requested to meet with Dr Panieri-Peter which she did. Nader testified that Panieri-Peter took down notes of discussions during their meeting and told her to read through her handwritten notes and sign the last page thereof, which she did. She did not understand that the notes would be used in Court. Nader said that she deleted the words that stated that Susan *"was"* a suicide risk and inserted *"could be"* because at no stage did she ever say that Susan was suicidal.[43] She does not have a copy of the note. The notes however do not reflect the amendment or deletion which she claims she had made.

Nader said that a lot of things which she reported to Panieri-Peter were based on her **thoughts** and **assumptions** that she made and not based on fact.

In response to a question by the Court as to her qualifications to clinically diagnose mental conditions such as depression, she indicated that she is not qualified to make diagnosis but she can do a primary

---

[42] Exhibit P - Private and Confidential Report – Mr. and Mrs. J. Rohde dated 18.8.2016

[43] The handwritten notes of Dr. Panieri-Peter dated 12 /09/2016 were handed up by defence and marked as Exhibit Q.

assessment,[44]where after she would refer the patient for onward psychological or medical assessment.

[14.8] Medical practitioner - Dr Lize-Mare Steenkamp

Steenkamp attained her medical degree in 1996. She has a diploma in occupation health (2002) and a certificate in travel medicine (2006).

Her first consultation with Susan was in February 2014 which was primarily for the administration of botox. Susan had long standing sleeping problems for which she prescribed Stilnox tablets.

Susan told her that she was under a lot of stress and that she had been dealing with marital discord since February. She tried to get more information but Susan was reluctant to discuss the matter any further and did not want to be referred for therapy as she had been seeing a psychologist already. She also complained that she had heartburn and had difficulty eating. During this visit she did a general examination but could not find any clinical abnormalities. Steenkamp said that she decided to prescribe medication for the short term treatment of reflux and gastritis to

[44] Exhibit P – Statement under oath by Carol Nader and commissioned June 2017 – paragraph 21 including 21.1 – 21.4 – Nader sets out that in the execution of her duties at a primary healthcare level she has the skills to screen and identify mental health challenges

help her regain her appetite, Urbanol for daytime anxiety and Stilnox for assisting sleeping difficulties.

Steenkamp said on 15 July 2016 they discussed her medication use and she mentioned that she was using the Urbanol for the daytime anxiety occasionally and not every day. She was sleeping better with the Stilnox. Susan looked more relaxed than with her previous visit.

Susan was generally a very healthy patient with very little medical problems. She exercised, did not smoke and had good health. Save for Susan's teary visit in June 2016, she was always very poised, reserved and well presented. Susan consulted Steenkamp on 15 July 2016 for botox injections. She already looked better and informed her that she was going away with her husband to Spier during the following weekend. Susan told Steenkamp *"make me pretty".*

Under cross examination it was put to the witness that it has been scientifically established that there is a noted association between the use of benzodiazepines (found in both Stilnox and Urbanol) and an increased risk of suicide. Steenkamp testified that Susan had been using Stilnox since 13 May and that she gave her another prescription on 24 June. Defence counsel put to the witness his view that that is not short-term use

and that over and above the dangers associated with an elevated risk of suicide, it was also addictive. She conceded the side-effects and risks of the medication but pointed out that is why she followed up with patients.

Susan appeared to her to be stressed and appeared anxious due to the stress in her life and therefore she gave her a prescription for a drug to help her with her daytime anxiety. In her view Susan did not have an anxiety disorder nor was she depressed. She was anxious which is considered normal human behaviour and reaction to a stressful event.

Defence counsel asked Steenkamp that if she had known that Susan was depressed, could not sleep or eat, was tearful, drinking more, started smoking, stalking her husband, was up and down emotionally and exhibited other conduct associated with suicide etc., whether that would have made a difference to her approach. Steenkamp replied that had she been aware of facts as stated by Counsel, she would have referred Susan to a psychiatrist or considered adding other medications.

She received a request from an attorney representing Mr. Rohde for information, however, she referred the request to the Medical Protection Society whom referred her to a firm of attorneys for assistance in this regard. Thereafter she was contacted by the prosecutor in the matter.

She did not perceive Susan as being depressed or that she exhibited a loss of interest in life. She was just anxious and appeared to be making effort in dealing with the stressor in her life, more particular in respect of her marital discord.

[14.9] DR DEIDRÈ KAY ABRAHAMS

The prosecutor handed up Exhibit Y, a report by Dr Deidre Kay Abrahams ("Abrahams") who testified as follows. She was appointed as the chief of the Paarl Forensic Pathology Services and she has done around 9000 autopsies.

She was informed of the death on the day. Dr. Khan, who works in her unit was called out to the scene. Khan expressed to her his concerns that there were indicators that do not fit with the history of suicidal hanging. Khan requested Abrahams to be a second pair of eyes at the autopsy of the deceased.

Abrahams read part of her report into the record noting that:

"*the autopsy report was compiled by Dr Akmal Khan and dated 2 August 2016. I concur with the finding of the autopsy report. The cause of death*

determined to be unnatural, consistent [with] asphyxia following manual strangulation and external airway obstruction. The features of the ligature imprint groove are consistent with post-mortem application of a ligature to the neck."

"*The external finds of the autopsy report revealed signs of traumatic, constrictive force with pressure to the neck consistent with manual strangulation.*"

Abrahams proceeded to take the Court through photographs taken of the deceased and pointed out the scientific medical nature of the injuries. She pointed out scratch marks on the right neck at jaw angle, under the chin on the anterior of the neck and a ligature indentation on the neck. Further, she pointed out using the photographs, areas of ante-mortem haemorrhages and fractures stating that this was indicative of forceful pressure. There was evidence of blunt trauma to the thoracic cage: fractures to the right third, fourth and fifth ribs.

In her opinion these features were not consistent with a person that hanged herself. There was contusion of the lungs and haemorrhages consistent with ante-mortem injures. In her view the deceased was alive at the time she sustained the aforesaid rib fractures. There was blood in her stomach

and small bowel. The blood had gone in her airways and was thereafter ingested. It takes around 20 minutes for fluids to pass the stomach into the small bowel. There was some time before the manual strangulation during which she was alive and swallowing blood. There was pallor over the tip of the nose, lips and teeth imprint in the mouth which most likely fits with a soft object pressing over the mouth area causing suffocation.

The ligature imprint covered 60% of the skin of the neck, with a single line. There was no evidence of long term vertical suspension. The brain showed a haemorrhage.

Abrahams was presented with **Exhibit 1**, and described it as a block used to support the neck for the purposes of dissection. She could not recall which one of the 6 blocks was used for the deceased's autopsy. She then examined a photograph taken during the second autopsy showing the back of the deceased neck with a horizontal indentation. She indicated that it was a post-mortem artefact. She further testified that this mark was not present during the first autopsy.

Abrahams commented on the autopsy report of Dr Perumal, noting a few aspects such as the fact that the second autopsy occurred five days after the first which brings its value into question; certain aspects were not

indicated in his report: haemorrhages, bone fractures; dental imprints; blood in the nose; contusion of the lungs; blood in the stomach and small bowel were not noted. The second report would be compromised by the first autopsy having altered the body and which would have made his findings partial or incomplete due to the previous dissection. Further, there is no comment in the second report of the scratch marks or signs of self-defence. The report, she said, had also failed to find the thyroid fracture.

Under cross examination Abrahams maintained that she considered the report of Perumal misleading and of dubitable value, for reasons, most notably the content of his report excluded crucial details and that he was hired by the accused. She testified that a urine 5 panel drug screen was performed and was negative.

As to Khan's estimation of the time of death she testified that the time of death was as per the final report, 05h40 with a range of 2.8 hours i.e. between 02h52 and 08h28 with a 5% permissible deviation.

Regarding the question of lividity she testified that the evidence did not support hanging as blood would collect in the lower part of the body due to gravity and this was not seen. She testified that lividity does not start immediately and usually takes 20 – 30 minutes. She conceded that lividity

does not show the position of the body at the time of death, but rather the position after death and if the body was moved shortly after death the lividity might redistribute more specifically when a person hanged themselves and was removed shortly after death, within 30 to 60 minutes, then one would not expect to see lividity indicating hanging.

As for the evidence regarding smothering, she testified that pallor to the nose is indicative of a lack of blood causing the area to appear pale. She maintained that this was caused by a soft object being pressed against the deceased's face, obstructing the airways. Other causes, she testified, could be if a person lied face down and she conceded that pallor may be caused by hypostasis. However, she maintained that in this matter they saw pallor of the peri-oral, peri-nasal areas with dental imprints of the teeth on the lips and intense congestion in the para-pharyngeal area, all of which was indicative of a soft object being placed over the deceased's face.

She testified that the main cause of death was manual strangulation and a supportive secondary cause was smothering. Although she noted that the deceased's face was less congested than one would expect in a manual strangulation case but this could be in circumstances where the deceased was strangled and smothered at the same time. The dental imprints on the

inside of the deceased mouth were not in her view due to CPR. Furthermore CPR would not normally result in teeth indentations.

The defence put it to the witness that the deceased's injuries were sustained variously through physical altercations with the accused, falling on a garden wall, as a result of her hanging herself and during CPR.

Abrahams testified that as regards the physical altercations aspect, she did not hear the direct admissions by the accused. She disputed the garden wall history, testifying that this does not make sense as there where two injuries to the chest wall (one anterior and one anterolateral) which would only make sense if she fell twice or was hit twice. CPR, she testified, can cause injury, but in this case the rib fractures occurred prior to the CPR as the deceased had bled as a result of the rib fractures and swallowed and ingested blood whilst still alive. Furthermore, she testified that the rib fractures were on the right side, whereas CPR was performed on the left side. She conceded that if CPR were to restore circulation, haemorrhages may form around CPR related injuries, but disputed that this was the case herein as the deceased was already cold and had no circulation. As for the hanging injuries, she testified that there might be other injuries caused during the hanging but in the majority of cases there are few other signs of injury. Hyoid fractures, she testified, may occur in hanging cases. As for

convulsions, she testified that normally this would cause ligature abrasions on the neck, but this was not evident on the deceased's ligature mark. Further, she testified that thyroid cartilage injuries can occur but not necessarily so with both manual strangulation and hangings. She testified that the left superior horn of the thyroid of the deceased was fractured and in order to come to a conclusion on the cause of the death one looks at all of the injuries in context including the force vectors acting on the thyroid horn and the various haemorrhages found in the neck area and other injuries sustained. She denied that the thyroid horn had been mistakenly cut during the autopsy. This injury she testified was not a post-mortem artefact. The haemorrhages, she testified, were ante-mortem in origin.

The defence handed up a bundle of photographs taken by Perumal marked as **Exhibit** BB. Attention was drawn to 2 lines on the back of the deceased's neck. Abrahams testified that this mark was not present during the first autopsy and denied that she had missed this mark during the first autopsy. She testified that they examined the neck in *situ* and then eviscerated it, removing parts for examination on the dissection table, all without causing injury. These horizontal marks were caused after the autopsy was performed and therefore not ligature marks.

As for specimens for the purpose of histology, she testified that they did not harvest any as they did not consider it necessary in the circumstances. It would be superfluous to do so in that they had determined the cause of death as being consistent with manual strangulation, evidence of suffocation and of a post-mortem placement of a ligature against the neck.

She testified that this was not a difficult case, there was clear evidence of the cause of death and they were not equivocal in respect thereof. They had performed external and internal examinations which produced evidence of manual strangulation and thus it was not necessary or mandatory to take tissue samples for microscopic examination (histology). Further, she testified that it is within the doctor's discretion whether to take tissue for further examination.

The inter-thoracic organs were first removed, then the brain and only then did Khan perform the neck dissection. She testified that they followed all procedures in order to perform the neck dissection without causing any artefactual injury.

With regards to the ligature mark, she testified that you cannot always determine from the colour of the mark whether it was an ante or post-mortem injury. However, there were many factors that went into the type of

mark that was left. In this case, she testified that the ligature mark was indicative of a post-mortem application of a ligature as it was pale, translucent, blanched and showed no sign of vital reaction. She noted that there was a redder line above and below the blanched area on the neck, which she referred to as "hyperaemic" and caused by the displacement of blood above and below the ligature imprint. This means there was no blood circulation. The person was dead at the time of imprint. Further, she testified that there was no friction abrasion and no drying or dark brown discolouration which one would normally see and there were no haemorrhages under the ligature mark.

The defence posited that the scratches or abrasions at the angle of the neck was resuscitation associated, which the witness disputed stating that one does not resuscitated by applying pressure to the neck but rather by opening the airways.

The defence took the witness through various photographs of the deceased's autopsy. She conceded that they did not strip the tissue between the ribs. As for photograph 167, she testified that sub-pleural petechial haemorrhages were present, as often seen in asphyxia deaths. She disputed that this contusion of the lungs was resuscitation related. As for photograph 193, she denied that the haemorrhage on the skull was a

post-mortem artefact. In photograph 197, showing the brain, there was a subarachnoid haemorrhage. Photograph 210, showing the hyoid bone, she indicated that that there was no fracture but a haemorrhage. On photograph 220, showing the thyroid cartilage, she testified that this was fractured with a haemorrhage around it, denying that this was a cut caused by a scalpel.

She referred to the pillow cover[45] and indicated that it shows an imprint of two areas of makeup (mascara) and bloodstains which was highly likely used to place onto the face of the deceased in the course of smothering or suffocating her. The blood stains on the left (B13-1a) and the two mascara marks are consistent with the abrasion above the left eye of the deceased, mascara worn by the deceased and on the right is a smaller blood stain (B13-1c) consistent with the blood stain noted over the right upper eyelid.[46]

Defence counsel put to her that she had prematurely concluded that the deceased was murdered without being in possession of all the facts, refused to acknowledge other medical views and opinions; was biased and unprofessional and that her testimony was medically unjustifiable. To this the witness stood by her testimony and disputed the allegations

---

[45] Exhibit D - Bundle 2 - Annexure H – photos 4 - 7 marked with blue indicators as B13-1 a, b and c.

[46] Exhibit B – post mortem photos – Photo 113, 115 & 116 as well as Exhibit D – post mortem report – paragraph 4.3.24

vehemently and that the allegations made by counsel countering her expert opinion, were without substance. She testified that they had followed correct procedures and did a full examination before coming to their findings. When other views and literature were put to her by counsel, she considered them in the context of this matter, distinguished same from her findings in this case and therefore it could not be said that she had dismissed opposing views without justification.

She emphasised in her testimony that she was a scientist, based her findings on the science to which she is an expert and that it was for the Court to determine the issue on all of the facts of the case.

[14.10] **MR K MABETA**

This witness testified with an aid of an interpreter. He was on duty as a security guard at Spier Hotel on 23 July 2016 until the following day. His shift started at 18h00.

He was patrolling the area when he saw a couple, a man wearing a black trouser pushing the woman wearing a white gown and who was bare footed. He observed them as having a disagreement. When the man pushed the woman, she moved backwards but both continued to walk. He

concluded them to be having an argument given their facial expressions and that the man was pushing the woman.

Cross examination revealed that had he seen the male hitting the female with a fist or kicking her would have intervened by calling for back-up.

[14.11] MARIUS JOUBERT

Exhibits marked GG1, GG2 and GG3 were handed up, which was a statement by the witness, the DNA results collected at the scene as well as a sketch of the scene.

Joubert has 26 years. experience at SAPS with 24 years. experience as a crime scene investigator. He is a forensic crime scene expert and bloodstain pattern analyst.

He confirmed that he attended a crime scene at room 221 at Spier Hotel and received information from Constable Mbongo and Detective Sergeant Appollis at the scene. They were of the view that the bloodstains at the scene were contemporaneous to the events surrounding the incident. He explained that contemporaneous in this context indicate that the blood stains happened approximately at the same time.

In his DNA report he identified two persons, namely Susan Rhode and Jason Rhode.

Joubert explained that B4 depicted in photo 3[47] on his schedule is blood of the deceased deposited on the bathroom floor to the left of the deceased body. He identified the stain as a contact transfer. He explained that a contact transfer is made when a bloody object comes into contact with a surface and in the process blood was transferred onto that specific area. He further explained that in that specific stain they did not have a recognisable pattern so he cannot conclude what created that specific stain. It could be that the accused handled an object and then blood was transferred to that object which thereafter came into contact with the floor.

The blood of the accused was also identified on items in the bedroom, on the duvet cover as B10-7, B10-8, B10-11 and B10-12. Blood stains on the pillowcase were that of the accused, marked at B11-2.

The bloodstain marked as B8[48] observed in the passageway between the bedroom and the bathroom which belonged to the deceased.

[4747] Exhibit D – Bundle 2 – Annexure A – photos 3 , 4, 12, 13 & 15

[48] Exhibit D – bundle 2 – Annexure A – photo 21

His interpretation is that at some point before, during or after the incident, the accused's blood came into contact with surfaces within the crime scene however he cannot determine the age of the specific bloodstains.

The blood stains of the deceased on the duvet cover indicates that the deceased was lying on the right hand side of the bed because all of the blood from the duvet cover was situated on the right hand side to more or less in the middle of the duvet cover. The blood stains belonging to the deceased towards the lower half of the duvet cover is consistent with bleeding from injuries to her toes.

The injuries sustained to the deceased's left eyebrow could be seen on the other pillowcase marked as B13. That pillowcase was the one on the left side of the bed.[49] The pillowcase marked B11 with two smudges of mascara and bloodstains on either side thereof (consistent with the abrasion on the left and the blood stain noted on the right of eye) is depicted in photo 2 (Exhibit "D") (on the floor).

Photo 1 depicting the blood stain on the bedsheet marked as B12 was that of the deceased, suggesting that she was in bed when those injuries delivered blood to the surface. Joubert added that the narrative presented

[49] This is the pillow pointed out by Dr.Abrahams containing 2 mascara marks and blood stains of the deceased. The pillow case was on the left side of the bed where the accused slept.

to him is consistent with the bloodstains which he observed at the crime scene.

He testified that in order for bloodstains of the accused to have been deposited in the bedroom and bathroom the accused must have sustained an injury such as a small cut for blood to come onto the surface and be transferred onto objects. The bloodstains appeared to be of minimal quantity of blood.

During cross examination counsel put to the witness that from his understanding the quantity of blood could come from a cut on a finger or nick from shaving which one did not notice, possibly was not aware of or would not remember 2 days later. Defence further put to the witness that as the accused and deceased had used the room for a couple of days, it could be possible that the blood had been produced at any stage during their stay in the hotel. Joubert confirmed this to be correct.

Defence counsel also put to the witness that if he were to be told that the accused had no recollection of a nick or cut which he had at the time whether that could have caused the bloodstain and whether that would surprise him, Joubert confirmed that it could be that he sustained an injury and did not notice it.

As regards the blood of the accused collected from the bathroom floor (B4) next to deceased's body, counsel asked the witness how a secondary deposit could take place. The witness explained that the accused could have handled an object and then in that process blood was transferred on that specific object.

To a question by counsel whether it would be a fair comment to say that the blood evidence which he found is not of such a nature that it does not prove any force, trauma or violence, Joubert confirmed that to be correct. He also confirmed that the blood stain analysis is consistent with the accused and deceased having had an altercation. However, he added that the deceased blood stains on the bed are not consistent with the pattern produced from a bleeding nose as the latter would result in a blood drip trail. As to whether the blood stains of the accused could have been from normal day to day living, he confirmed that that would be possible. He cannot say however when the bloodstains were deposited.

[14.12] LIEUTENANT COLONEL SHARLENE OTTO

Otto works for the SAPS in the Forensic Sciences Laboratory in Plattekloof, Cape Town. She has experience testifying on DNA analysis. She attested to four affidavits which were handed up as **Exhibit HH1; 2; 3; and 4**.

Otto testified that they work through the exhibits and start DNA analysis on the ones which might have the most evidential value. Each bloodstain must have a DNA profile for Captain Joubert to work on.

Otto testified that her role is to submit the stains into the DNA process. Once a DNA profile is obtained, she would write an affidavit explaining that the profile belongs to a certain reference sample. She identifies the donor of DNA.

Otto testified that HH4 was produced later as she was requested by the investigating team in Stellenbosch to analyse some stains which they had missed, stains on tissue paper from the bathroom, a gown belt and sheets.

She confirmed that scrapings were taken from under the fingernails of the deceased. Analysis thereof indicated only the DNA of the deceased and none belonging to the accused.

The Court enquired into the process involving secondary transfer. She testified that blood normally dries very quickly, perhaps in less than 30 minutes and the less blood the quicker it dries. Otto testified that secondary transfer can be excluded after half an hour.

In re-examination counsel asked as how to the various conditions at the time: season, temperature, air-conditioning would affect the drying of

accused blood. Otto testified that it would still take maximum half an hour for blood to dry, having taken all those conditions into account. Further questions regarding this aspect were objected to by the defence.

[14.13] **MR DESMOND DANIELS ("DESMOND"):**

Daniels testified in Afrikaans, with the aid of an interpreter. He was on duty on 24 July 2016 at the Spier Hotel. He had been working at Spier for 15 years doing maintenance. On that morning he had certain tasks to perform as directed by the control room, managed on that day by Niklaas. He reported for duty at around half past seven in the maintenance room. He responded to a call for him to attend at Room 221 at around 08h15, reporting that the bathroom door cannot open.

He testified that he went to the room and knocked on the door to the room which was closed. A man opened the door, which Daniels pointed out as the accused before Court. Daniels asked him what the problem was and the accused responded that the toilet door cannot open. He turned the handle of the door but the door could not open. He testified that if the door cannot open and it is locked from the inside, it can be opened from the outside with a screwdriver.

He confirmed that the screwdriver in Court is the one he used to open the door. It has two sides: a star side and a flat side. He proceeded to demonstrate on Exhibit 2[50] how he opened the door that morning. He placed the flat side of the screwdriver into the door mechanism. He testified further that whilst he did this, that the accused stood across from him. He explained that the door can also be unlocked using a coin or a teaspoon.

Daniels testified that when he opened the door he saw a person's legs under the basin to the right. He demonstrated with the aid of a ruler of 15cm and indicated that the door opened to approximately the length of the ruler. He saw the legs of the deceased from about the knee to the feet. At this point the accused called out "Suzy" and went pass him and into the bathroom. He waited outside the bathroom where he faced the wall. He did not look at the deceased's legs as he had been trained not to interfere with the guests. After the accused went in there was silence for about 2 to 3 seconds, then the accused called to him and asked him to come and help. When he entered the bathroom the accused asked him to assist with the removal of the cord from the neck of the deceased. He saw that the deceased was naked. The accused was holding her under the arms. The

[50] The bathroom door of Room 221 was placed before the Court as an exhibit.

testimony was re-enacted before the Court in accordance with the witness' testimony and directions.

Daniels testified that when the accused held her up against him, her head was laying skew, tilted a bit to the left side. She was facing the witness. He testified that she was not breathing and there was a cable around her neck. The screwdriver and the cable was handed up as Exhibits 3 and 4.

He also illustrated how the cable was hanging behind the door and around the deceased's neck. The cord was tied with the curling tong part posing upwards above the top line of the door. The accused and the deceased were 1 or 2 metres behind the door. The accused asked him to remove the cord which he did. The cord was not tight around her neck as he could loosen it easily. Daniels testified that he remembers the cord to having a few knots in it. After removing the cable, Daniels moved out of the bathroom whilst the accused was still in the bathroom with the deceased in his arms. The door was 30 centimetres ajar at that stage. He then made a phone call to the control room so that the ambulance, police and security can be called. He did not enter the room again that morning.

A white bath robe was before the Court which he confirmed to be the Spier hotel robes. Daniels could not recall if he saw a robe in room 221 on that

particular morning. The deceased was not wearing a robe or any clothing. He testified that there were no sockets in the bathroom, only in the room.

The witness recorded a call out in his pocket book at 08h45 on 24 July relating to Room 221 and the toilet door. A copy of the relevant page of the pocket book was handed in as Exhibit JJ. Daniels testified that he was trained in first aid a few years ago.

In response to a question by the Court the witness confirmed that the door can be unlocked or locked from the outside using a screwdriver, teaspoon or coin.

Under cross examination Daniels indicated that he was 62 years old. His highest level of education is Standard 8. On the day in question, he received a call from control and not from the switchboard. He was in the maintenance room at the time which is about 5-6 minutes' walk to room 221. Daniels testified that he spoke to a man, named Niklaas, at control who told him that the door cannot open. The defence disputed this putting to him that Mavis, a woman, had called and told him the door was locked from the inside. The defence handed up an affidavit from Ms. Mavis Dingalibale as Exhibit QQ.

He testified that he had never before been called to open a bathroom. In training he had been told how the door could be opened. The accused did not tell him that there was someone inside nor was he under the impression that there was someone in the bathroom. He opened the door and testified that the body was not against the door. The door opened with ease as there was no resistance to pushing the door open. He stopped opening the door when he saw the legs of the person flat on the floor. After he was called to help by the accused, he entered the bathroom. He testified that he removed the cord easily from the deceased's neck whilst the accused was holding the deceased. The defence pressed Daniels that the assertion that it was easy to remove was not mentioned in any of his statements or affidavits, to which he had no explanation. Further, he testified that he was shocked as the deceased was completely naked, had no clothes on and that he could see her full frontal. The defence disputed that the deceased was naked, without concession from Daniels.

Daniels testified that the cord was wrapped several times around the hook. Counsel for the defence kept pressing the witness as to the fact that he had previously demonstrated less than four loops and on this occasion he wound the cord 10 times around, to which he had no comment. He testified that the deceased was facing him however he did notice injuries to her

face. The defence disputed this, stating that she was facing towards the accused. Daniels stood by his testimony. He further elaborated in answers that when he took the cable off, she was facing him and she was not breathing. He called control from the bedroom and informed them that something had happened in the bathroom. He told control to inform security in order to make a report and thereafter to get the police and an ambulance. He testified that he specified that the lady was naked and not breathing.

He was at room 221 for about 20 minutes. He left the room at around 08h40 and stood outside. He testified that he did not speak to anyone. He disputed speaking to Mr William Lee ("Lee") and testified that he did not say *"I can't believe it. She hung herself"*. The defence handed up an affidavit by Lee as Exhibit RR.

Daniels said he did not see the accused giving the deceased CPR. This was queried as his statement to the police stated that he did see this, which he conceded. Fifteen minutes later 'somebody' arrived and then the duty manager arrived. The defence disputed Daniels' recall of how long this series of events took, to which the witness had no comment.

Daniels testified that he made three statements to the police: the first on the day in question; the second a few days later, and the third about a week later. (An affirmed statement and two affidavits) These documents were handed up as Exhibits LL1; 2; and 3. In the affidavit he said he saw the accused give the deceased mouth-to-mouth resuscitation while he was leaving the room. He stated that this came to him, that the statement was correct. Daniels testified that the second affidavit was to clarify the first. The defence disputed Daniels evidence on the third affidavit attested to allegedly "a week later", saying that no affidavit was attested to a week later. To this Daniels had no comment.

The defence had Daniels repeat the demonstration. He had no comment for any differences between the two demonstrations as pointed out by the defence, who handed up photographs of the first demonstration during examination in chief as Exhibit OO and during cross-examination as Exhibit PP.

On examining the door, Daniels confirms that there is a crack on the narrow edge of the door, from the locking mechanism upwards and downwards, which he had not previously seen. Daniels testified that the lock mechanism does not use a key. It is locked on one side using a t-shaped handle and on the other side is a circle with a groove in it. He

testified that the supervisor at Spier taught him how to open the bathroom door using a screwdriver, teaspoon or a coin.

Daniels testified that he had a pocketbook to log problems for 2 years, since around March 2016. He was unable to point to an entry earlier than 24 July 2016, the day in question. He wrote the entry on the second last page, as he was in a rush and just wrote it where the book opened. This was the only entry recording a time. He was in a rush as he was told that this was urgent by the controller. He pointed to entries recorded for September and August 2016. The defence put it to him that he could not have received the call at 08h15 as the accused had called reception at 08h22, but the witness stood by his version.

The defence questioned Daniels about where he had lunch during the adjournment and with whom. He stated he did not meet anyone and spoke to no one. The defence refuted this, showing Daniels a picture taken of him with Mr Schoof from Spier. Daniels explained that there was no one from any law firms with him.

Under re-examination, Daniels testified that there were extra pages to the notebook that were 'sellotaped' but no longer in the book and he did not know if they still existed.

[14.14] COLONEL DANIEL GEORGE POOLEMAN

Pooleman has a B.Eng. in metallurgy degree from the University of Pretoria (1995) and is currently the head of the engineering subsection of the Forensics Science Lab.

Pooleman said that he was asked by Sergeant Appollis to investigate whether the electrical cord had stretched in any way and if there are any breaks which can indicate that the deceased hanged from the cord. He said that when he looked at the photos and looked at the tool, he questioned how this person had hanged herself with the cable hanging in the orientation that it was.

He said that he had to do a tensile test on this cord to determine whether it stretched and whether there was anything wrong on it or at what point it would fail. He explained that he could not make sense of the information provided to him hence he did an inspection on site.

He said that there is a groove in the lock mechanism which is clearly visible. He mentioned that he used a teaspoon as there was a coffee bar in the room and he was able to open the door with the teaspoon as well as a R2 coin. He also tried to open the door with his fingers only which was not possible.

Pooleman said that he examined the cable and could not see any physical failures to the external structure of the cable. There was no section that had been overly stretched or looked like it was broken or deformed. He took x-rays of the hair tool and over the length of the cable and he said that he did not see any failure on the internal structure either.

He explained that a tensile test is to determine the force on a certain component when pulled. One side will be tied and he will pull with the tensile test apparatus on the other side to see how strong the cable is before it starts breaking. He said that the instrument is calibrated to do that and it measures the force needed on this material. The double strand tensile test held at 510 Newton for 10 minutes then released. He testified that the body of the deceased weighed 52 kilograms and that amounts to about 510 Newton. The third test was a double-strand tensile test which he tied around the bottom part and pulled it also until failure until he heard it starting to break.

He mentioned that in a single strand configuration with her hanging, her weight being 510 Newton this cable failed at 392 Newton, which means the cable would have broken. In the double strand tensile test a tensile force was kept at 510 Newton for 10 minutes and no failure was detected. The instrument was able to keep it at 510 Newton and the cable did not fail

during this test. With the third test, the cable started failing at 762 Newton which is about 77 kilograms. This means that on a double strand configuration, the cable could withstand the force of the deceased hanging completely as it only started failing at 762 newton which is similar to 77kgs. The points in the cable where the cord failed are observed by the breakage of the copper inside. Once the copper strength of the material is gone, he illustrated that the cord could easily break.

Pooleman said the way in which the cable was observed by police on arriving at the scene, is irreconcilable with the position Daniels demonstrated the body to have been in when he opened the door.

Pooleman presented the Court with a demonstration during his testimony as to how tensile force works as he was of the view that working from the Khan's post-mortem report, the position of the ligature mark would mean that the force had to come from the back. EXHIBITS UU and VV were handed up in court.

Under cross examination Pooleman confirmed that there is an initial elastic stage in the cord where it might stretch a bit. When you reduce or remove the force it will revert to its original shape and form. If you exceed that then the cord will not revert to its original shape.

Defence Counsel asked him whether he is able to say what the cause of the crack on the door could be and whether he can exclude the possibility that the crack is associated with the application of a heavy weight on the left hand back hook. He replied that he saw the crack when he visited the scene and that it looked as if force was applied from the outside as it runs through the locking mechanism of the door. So it looks like someone tried to open the door with force from the outside. He feels that it is highly unlikely that a weight hanging there would cause that crack down the door. He indicated that force to the door will cause it to crack at its weakest spot which is at the door hinge where the lock goes in.

14.15 MR MARK MACLEAN HOLMES

Mr Holmes testified that he is the deceased's brother and that he lives in Melbourne, Australia. He received news of his sister's death and understood the cause to be suicide. He had known Jason for around 27 years. He sent a text message to him on the Sunday night expressing his shock and sadness. He spoke to Jason briefly on Tuesday 26 July 2016 and then again on 27 July 2016. During the last call, he testified that Jason was very emotional and it was difficult to understand all his words but he

said *"I killed her, I killed her, I killed her."* Holmes tried to comfort Jason saying that it was not his fault and that the family loved him. He took a flight to South Africa and met with Jason on the Friday, together with the family. The meeting was initiated by Jason and held at his house. Jason explained that he was under investigation, that he was having an affair with Jolene and that he had had an altercation with Susan at Spier but that he had not laid a hand on her.

Holmes testified as to how the deceased had reacted to their father's infidelity. He testified that she was resolute and pleased that their parents were able to reconcile their marriage. She was very proactive in getting them marriage counselling. From his discussion with her, he did not understand her to be scarred by this event. He further testified that he did not believe the deceased would have linked their father's infidelity which occurred some 16 years prior with Jason's infidelity.

He testified that his sister had a temper. She was volatile and passionate about issues. She would not give up.

Under cross-examination Holmes testified that he had not seen his sister during 2016 and she had not told him about the accused's affair. He further testified that when the accused called him and said that he had killed her,

Holmes took this to mean that he had killed her *emotionally*, that having this affair had led to her death and that the accused had not actually murdered her.

[14.16] CAPTAIN MAY FRANS SEPTEMBER AND CONSTABLE DONRITO ALPHONSO FERNANDES

September and Fernandes are members of the South African Police Services. Fernandez was doing patrols when on the day in question when he was asked by September to assist him with an incident at Spier regarding an alleged suicide. Fernandes took a statement from Daniels on a car bonnet in the parking area of the estate. He thereafter took it to the police station.

September confirmed that he was in control of the scene. He explained the process which he followed to obtain a case number as in his experience the body will not be removed without such a number.

Under cross examination September confirmed that initially the matter was considered as an inquest under number 83/07/2016. He explained that if there are too many dockets during the day, then the nightshift would

capture case numbers on the system but the case number book could also have been used to allocate case numbers.

[14.17] SERGEANT STEVEN ADAMS

Adams is a SAPS Detective for 15 yrs. He has been allocated with Sergeant Appollis in an investigative capacity.

Adams said that his colleague, Sergeant Appollis took a further statement from Daniels and that he was in consultation with Daniels on two occasions in Stellenbosch. He testified that he had not coached Daniels as to what to say in follow up statements and that no coaching was done by Appollis to his knowledge. He explained that he however prepared the witness for Court which entailed going through the statements with Daniels again and explained how the Court procedures work as he (Daniels) had never been in Court before.

Under cross examination the witness confirmed he had conducted an interview with the domestic employee of the accused, named Lucy. He further testified that he had enquired whether she had ever observed or suspected domestic violence or any physical violence which the accused

might have demonstrated at home against the deceased. He indicated that she informed him that there was no such incidence to her knowledge. Defence asked why he did not take a statement from her. Adams replied that the domestic worker, Lucy is Zulu speaking and he found it very difficult to communicate with her. He told her that he would come back to her with an interpreter to take a formal statement from her. Adv. Mihalik who acted for the accused at the time phoned him and instructed him to cease further communication with the domestic. When Adams thereafter contacted her, she no longer wished to speak with them. The witness confirmed that they did not do a statement to that effect. He denied that the reason for not taking a formal statement was because it was favourable to the accused.

[14.18] **MR JOEP SCHOOF ("SCHOOF"):**

Schoof is the General Manager at Spier Hotel since 2013. He testified how the hotel management handled the incident on the day in question. The hotel manager and HR director provided counselling to the team members. The hotel management resolved to provide assistance to any of their staff members who had been involved in the incident. The facilities manager

dealt with security and made arrangements to get the other guests out of that area of the hotel so that the police could attend to the scene.

Schoof confirmed that he attended Court when Daniels was required to be in attendance as a witness. His role was to provide Daniels with moral support as hotel management had undertaken to do for any of their members. He further testified that he had not discussed Daniels's testimony with the prosecution authority or the police. During Court adjournments he would check how Daniels was and offered him something to eat and drink. He further testified that he assured Daniels that if it made him more comfortable, that he could look to the witness whilst he was testifying.

Their conversations were not relating to the matter or his testimony. He denied that he had coached Daniels as to the contents of his testimony.

Schoof explained what the trained protocol is for the staff members when called upon by a guest for assistance. In the event a guest reported that a door could not open, staff members would be required to ensure that the door be opened. In the event of a door being locked, they would simply unlock it.

[14.19] **MS FARRAH AMEERMIA ("AMEERMIA")**

Ameermia is an estate agent at Sotheby's and was in attendance at the conference at Spier Hotel. She was having drinks in a room on that Sunday morning with Brendan Miller and Jolene Alterskye. The hotel room is located on the ground floor. She was sitting on a couch with her back to the door, chatting to Jolene and Miller when Jason walked in. He went to sit on the edge of the bed. He did not say anything and the three of them just looked at him as he sat there with his arms folded. Shortly after that the door opened again and she saw that it was Susan. She stood by the door and called his name. She appeared agitated and her voice was very stern.

Susan called him several times but Jason remained unresponsive. Susan then proceeded to walk towards him and placed her hand on his arm which the witness understood as a gesture for him to leave with her. Susan wore a white robe. Thereafter the two of them left the room. It sounded like they were arguing outside which went on for about 10 to 20 minutes. Jolene looked shocked when Jason entered the room and came across more expressive than usual.

During cross examination the witness testified that she did not know that Jason and Jolene had been having an affair.

[14.20] SERGEANT MARLON JUAN APPOLLIS

Appollis is one of the investigating officers in this matter and has assistance from Sergeant Adams. He testified that on the Sunday afternoon he was contacted by one of his commanders, Colonel Jones to attend to the scene. He met Captain Joubert; Captain Bester; W/O Nicholas and Constable Adams as well as the Forensic Pathologist Officers. It was his task to oversee the investigation conducted at the scene. He investigated outside the hotel room for broken windows or doors and did not find anything out of the ordinary, nor were fingerprints lifted from the outside window sill.

After the room had been process, he proceeded with his investigation. He found a burnt note as well a letter in the laptop bag which indicated that the accused was involved in an extra marital affair. He found a laptop; watch with a broken strap; bank cards; USB modems which he sealed and removed from the scene. He looked for suicide notes, a diary or anything written down but he could not find anything.

After the autopsy on the Tuesday, 26th, Dr. Khan informed him that the cause of death was determined to be a murder and not suicide. A murder docket was opened. He thereafter arranged to interview Daniels and Thompson. He met with them on the following day.

Under cross examination, Appollis explained his reasons for arresting the accused at his home on the 23 August 2016. They attended to investigations in Johannesburg and obtained information that the accused was planning on leaving the country. He said that he felt that he needed to take action as a murder had been committed.

Appollis testified as to the process they followed when they applied for search warrants to conduct further investigation on the contents of computers, laptops and cell phones in the matter. He indicated that where the investigation does not reveal anything relevant it would not be required to place a negative finding in a statement.

Appollis testified that on the day of the incident no other items other than those which had been booked in at the police station had been removed from the scene. He denied that a handbag containing a diary and a vanity case had been seized by the police. Items which were in the room, under the control of Spier security, were returned to the attorney acting for the accused at the time, Mr. Hassan.

He said that Mr Hassan came to their offices 2 or 3 times and asked for the personal belongings of the deceased which they had handed over to him. Mr. Hassan was killed in November 2016.

STATE'S CASE CLOSED

DEFENCE WITNESSES:

[15.1] **JASON THOMAS ROHDE**:

The accused is 49 years old, born in the United Kingdom and moved with his family to South Africa at the age of 3. He met the deceased in 1989 and they got married in 1993. They moved to Australia and he has dual South African/Australian citizenship. They lived there for 4 years. He missed home and wanted to return to South Africa, Susan was reluctant to return, but eventually acceded to his wishes. Susan successfully underwent fertility treatment and gave birth to their eldest daughter and thereafter twin daughters. He testified that his wife was a perfectionist who was committed to her goals. She would deal with confrontation head on, whilst he would shy away from it. He testified that their relationship had ups and downs. Whilst their verbal altercations were awful, it never escalated to physical violence. They had been to marriage counselling in

the earlier years of their marriage and would consider their marriage to have been good.

His relationship with Jolene started around mid-2015. The deceased found out about this affair on 28 February 2016 when she discovered a Valentine's card in his travel bag on return from Cape Town. He was not aware that Jolene had left the card in his bag. Shocked and scared by his wife's confrontation, he admitted to the affair although he initially tried to deny it. He described that Susan went *"berserk"* and that she could not believe that he had cheated on her. Susan instructed him to call Jolene, place the call on speaker and that he had to terminate the relationship, which he did. Susan held on to his phone in the days thereafter and intercepted a message which Jolene sent him. Jolene indicated in the message that she had written him a letter which she wanted him to see. Pretending to be Jason, Susan gave Jolene an email address and intercepted this email. He described that Susan was devastated, she was consumed by the affair and wanted minute details thereof. A few days after the discovery of the affair Susan phoned him and said that she was on a flight to Cape Town to confront Jolene at her office. After landing in Cape Town, Susan demanded details of places which he had been with Jolene. He indicated that he was concerned about the embarrassment this would

cause and obliged Susan with the information she wanted. She went about Cape Town and visited the areas which he told her he had been with Jolene. Susan returned home the following day, she did not though follow through with her threat to confront Jolene.

The relationship between him and Susan became fraught as she vacillated between anger and anxiety, which was exacerbated by him emotionally withdrawing from her. Susan would wake him up every 2 hours crying and sobbing wanting to talk about the affair. Although they attended sessions with a marriage counsellor, he continued with the affair. They also had individual counselling with separate therapists. He explained that he led a double life, including lying to the counsellor and his therapist. He was very good at covering his tracks. He felt like a fraud as he did not want to destroy his family life but also did not want to leave Jolene. Susan did not eat much, exercised a lot and lost weight. He did not realise that she was in fact in need of psychiatric help. Upon his request, his therapist (Ms. Long) had a session with his therapist, but there was nothing noticeable in Susan's behaviour after that.

He testified that Susan insisted on attending the Spier conference and that this was also discussed with the marriage counsellor. Susan wanted to make sure that he is not seeing Jolene any longer and to show that they

were together. He did not want this for selfish reasons and he was concerned that Susan would confront Jolene.

They arrived in Cape Town on the Thursday, the 21st of July and spent the night at the home of Susan's sister, Angela Norton. They arrived at Spier at about noon on the Friday. As the CEO of the company he was to co-host the event. The situation between him and Susan was very tense and he was afraid of a confrontation between Susan and Jolene. During formal events on the Friday he specifically avoided contact with Jolene however had cell phone contact with her and briefly met in a quiet area of the estate.

They attended an award ceremony on the Saturday evening which ended at around 22h30, followed by an informal cocktail party. After the bar closed, he returned with Susan to their room when two Sotheby's employees passed them and asked if he would join them at the after party in one of the rooms. Susan insisted that they return to the room and would not let him go. They were back in the room between 2 and 3 am. Susan was not drunk, but having had some drinks upped the tempo in their bickering. Whilst she was undressing, he went to the bathroom and started to type a message to Jolene when he was confronted by Susan. She was enraged by this, swore and shouted at him that he was deceitful. He

retaliated verbally and wanted to get out of the room. At that time the deceased was wearing the white hotel gown which she had been found in later.

When he got to the door she attempted to physically prevent him from leaving, pushing his hand away from the door and pushing him back in to the room. He wanted to go to Jolene and he presumed that Susan knew that. He grabbed her wrists and pushed her hands down. He tried to physically move her aside. She kept on moving back to the door. This continued for some minutes. He grabbed her at her wrists and there were a flurry of actions. Then he grabbed her at the front of her gown to move her out of the way. He shoved her by her neck to get her out of the way, but did not squeeze her neck or throttle her. In this way he managed to get the door open and get out of the room. She attempted to pull him back into the room. He swung his arm backwards to dislodge her and struck her on the side of the face with his forearm. In the course of the struggle he also caught her on the top of the nose with his elbow. She followed him out the door and kept pulling on his jersey. She was wearing the white towelling gown with no shoes. A short distance from their room, he went up the stairs leading up to a room from where he could hear the sound of music. He saw some of Sotheby's staff members. The deceased had followed him

up the stairs. He asked where Brendan Miller was and was informed of his room number.[51] On his way to Miller's room they passed by the security guard who had earlier testified.[52] When he got there he found another staff member, Farrah Ameermia, as well as Miller and Jolene. He sat down on the bed opposite Jolene, whilst Susan stood in the doorway, telling him to get out of the room. Afraid of an altercation between Susan and Jolene, he got up and left. He described that it was awkward and tense. He was embarrassed by this. Their arguing continued. When she grabbed on his back, his elbow hit the top of her nose but she was not bleeding. Susan grabbed on his shoulders with both hands, and as he tried to loosen himself from her she partially fell between a small ledge and a flower bed.

He walked back to their room, with Susan following close behind him. When she got into the bedroom she was screaming: *"my fucking toe is bleeding"*. Her toe had been cut, and he noticed a graze mark on her left eyebrow, which was not bleeding. There was no blood from her nose. She did not walk any differently and he did not notice any other injuries. He undressed and got into the left side of the bed. He told Susan that they could not live like this anymore and that he was finished. She continued to rant at him as to what a lying cheat and adulterer he is as well as

[51] Room 441 as per inspection in loco
[52] Mabeta gave evidence for the State.

profanities about Jolene. He however fell asleep and does not know when she got into the bed.

At around 7 in the morning Susan woke him up and she furiously told him that Jolene had sent her messages.[53] Susan was sitting in the bed, to his right. She was propped up with a pillow and carried on ranting. He checked his phone and saw a message sent earlier from Miller asking him if he was okay. He replied, *"Drama, but okay"*.[54] He responded to Susan's ongoing ranting that he was done and when they get back to Johannesburg they would sort things out.

Susan got out of bed, stood at some point at the foot of the bed. He is absolutely sure that she had worn her gown. He turned over and from the corner of his eye saw her walking towards the bathroom door and heard her shutting the door. He fell asleep again.

He woke up some time later. As he does not wear a watch, he did not know what time it was. He tried to get into the bathroom to prepare for the conference breakfast programme. He called out to her to open the door.

---

[53] Cellphone records show messages exchanged between the deceased and Jolene, last of which was at 07:06 am on Sunday

[54] Cellphone records show that accused replied to Miller at 07:06 am on Sunday

He thought she was lying in the bath. He got dressed, did not need to shave as he had shaved the previous evening, but had to brush his teeth. He packed his clothes into his bag. He thought that Susan was having a bath. He phoned her and heard the phone ring from inside the bathroom. Whilst he did not know the time, from his cell phone records he subsequently saw that he had placed the call at 08h02. He started listening at the door but could not hear splashing of water. He became concerned and called reception to send someone from maintenance.[55] He then tried to push the door open, kicked it and nudged it with his shoulder. The door did not move in the least but he is sure that the crack which is subsequently seen in the side of the door was caused by his efforts to break it down.

Daniels arrived about 5 minutes later. Daniels knocked on the main door of Room 221 and he opened for him. He told Daniels that the bathroom door was locked from the inside. Both him and Daniels stood in the passageway in front of the bathroom. Daniels was to his right, crouched down and unlocked the door by way of the screwdriver. The moment Daniels unlocked the door, he (Daniels) stepped backwards and the accused opened the door a couple of inches, until the door was blocked. Daniels

[55] Exhibit QQ - Statement under oath by Mavis Dingalibalu who was stationed at the switchboard.

stepped back and he pushed against the door. The door only partially opened as Susan was behind the door. He proceeded to illustrate this before the Court. He put his shoulder to the door and wedged it open to get in. Susan was hanging behind the door in a crouched position. He could not see if her knees were on the ground but her feet were together and slanted on its side pointing towards the basin. She was leaning slightly forward. He picked her up and called for Daniels to help him, as he would not have been able to remove the cord from her neck. She felt heavy and felt like a ton. Her weight was so great. Later in his testimony he described, whilst holding the deceased up, *"she was a deadweight"*. He held her with his arms under her arms. Susan was wearing a white gown. When Daniels entered he also had to squeeze through the door. It was not a loose knot as it was very tight around her neck. Daniels wiggled the cord and slipped it over her head. The cord depicted in photographs taken by police is exactly how the cord was tied to the door and how the cord was left. He immediately lay Susan down and proceeded with chest compressions and mouth to mouth. He thought she was still alive because there was saliva on the left side of her mouth. She was still warm. He never before had performed CPR and only saw it in the movies. The air would come out when he blew into her mouth. His back was against the

back of the door, meaning that he was positioned on Susan's right. He continued to do this until Thompson arrived who sat down opposite of Susan and also started chest compressions. The accused stated that he also blew into her mouth and alternated. They continued performing CPR until the paramedics arrived. After performing some tests, the paramedics declared her dead on the scene.

According to him Daniels unlocked the door only and did not physically open it. Daniels could not have seen the deceased's legs, as she had been in a crouched position behind the door. He disputed that Susan was lying on the floor and denied that the cord had been loose around her neck. He indicated that when he held the deceased up, her face was towards him, not away from him as Daniels maintained. He could not comment on the manner in which the cord had been tied around his wife's neck as he did not pay attention to how many times it was knotted or what kind of knots it were.

He explained that in that moment he could only think of his children and how ashamed he was of his behaviour which caused his wife to go to these lengths.

After the paramedics had declared the deceased dead, they took him to the ambulance and provided him with medical treatment, after which he was taken to an adjacent room at the hotel. His brothers-in-law arrived, as well as his father-in-law, Neville Holmes. His father-in-law checked his hands, and then checked the door mechanism from both sides (the bathroom in the adjacent room where the accused had been taken to). He gave a statement to the investigating officer, went to Stellenbosch Police Station where after an hour and a half he was told that he was free to leave. His family drove him to the airport and he flew home later that afternoon.

On Tuesday, 26 July, he was contacted by Sergeant Appollis, who indicated that he had to return to Spier to explain the sequence of events. He returned to Cape Town on Thursday the 28th. He was on route to Spier with his attorney when contacted by the investigating officer that Spier would not grant SAPS access to the facility. They were instructed to proceed to SAPS detectives offices instead. On arrival there he was informed that he was being charged as a suspect in the murder of his wife.

He described that his whole world was crashing and that it was unbelievable. He was taken for an examination by Dr Tiemensma where the only injuries noted was a cut on his finger and 2 scratches on his back. He testified that in the days after Susan's death flowers had arrived from

sympathisers. When he reached for a vase which was on a high level, it fell and nicked his left hand middle finger. It was a deep nick. He went to the basin to run water on it. His daughter helped him and his mother-in-law assisted him with a plaster. In this regard we point out that neither the daughter or Jason's mother-in-law were called to collaborate this evidence.

He described that he was in complete shock by this turn of events. He felt like he was in a *"dwaal"*. He returned home and upon legal advice immediately arranged with his legal representative for a second autopsy to be done.

He could not recall any interaction with SAPS until his arrest on the 23rd August (at his home), although his legal representative in Cape Town had indicated to the investigating officers that he would co-operate. As a result of his arrest, his employment was terminated. He denied any attempt to escape or flee the country nor had he shifted money overseas.

He testified in detail, giving particularized account of the events around his arrest leading up to his appearance in the lower court.[56] He arrived in Stellenbosch the following day, the 24th of August and was released on bail

[56] Accused testifies in detail regarding the events of the morning of his arrest and the period thereafter when he was remanded in custody. He was released on bail subject to various conditions the following Tuesday, 29 August 2017.

the following Tuesday. He gave a detailed recollection of the conditions of the holding cells and treatment by various police officers.

He did not dispute the evidence of Mark Holmes (the deceased's brother) that he had said he *"killed her"*, with reference to the deceased, but explained that he meant that his conduct caused her to take her own life. He denied having caused the deceased's death, in any manner, and further denied obstructing the course of justice by tampering with the scene.

Further evidence was led regarding a Discovery Life Insurance policy, with a pay-out on the death of Susan. It had a 2 year suicide exclusion clause and the start date was in 2015. He was aware of the policy.

Under cross-examination he conceded that Susan was a committed parent to the children and confirmed Newcombe's testimony that she was very involved and invested in their daughters. He was aware that the deceased was involved with charitable work at an orphanage. She was very caring about the community. He could not dispute that she did volunteer work by assisting children from disadvantaged communities with maths and reading support. She also had a wide circle of friends and acquaintances.

He led Susan to believe that he was working on the marriage as he wanted both women in his life. It was at Spier when he contemplated the option to divorce. He conceded that he had during previous arguments mentioned divorce but that he did so to be spiteful and never took steps to pursue divorce action. He explained that he was good in covering up his tracks, ducking and diving matters to be deceitful, so as to sustain both his marital and extra marital relationship. The marriage started falling apart from 28 February 2016 with Susan's discovery of the affair.

He did not want Susan to come to Spier as he had a hidden agenda to be with Jolene. He did not want to rub the affair in her face and place her under more stress. He was terrified that Susan may discover the affair was still ongoing as he knew how she would react. He did not want to be embarrassed at Spier by any confrontation by Susan. He testified that he is no longer seeing Jolene, though she messaged him once to see how he is doing.

He testified that during his efforts to exit the hotel room after Susan caught him texting Jolene in the bathroom, he shoved at her neck with his right open hand to move her out of the way. It was not a throttling motion and did not injure her in any way. He demonstrated that he put his hand alongside her neck, not around it.

With respect to the knot around the deceased's neck (or as he clarified, the noose), he explained what he meant by tight, it was not just loosely flopped around her neck, there was tension in the cord so that it was not easily lifted off.[57] He could not say how many times it had been looped around her neck. He did not take notice of this. His only concern was to get it off her neck. According to his recollection, both strands of the cord had been around her neck, but he was not sure. At this point he was asked to demonstrate how he saw the cord around Susan's neck. He illustrated the double strands hanging down from either side of the hook around the neck of the Constable who acted as a model during the demonstration. There would have been tension on the cord as the deceased was suspended from it. He repeated that Susan was in a crouched position behind the door. He agreed that when he picked her up, the cord from her neck to the hook would have slackened, although he did not actually see this. His perception was however that the noose was still tight around her neck. He indicated that he had no recollection of how many times the cord was around her neck however he was sure that the tension was tight. Later in his evidence he testified that he is not sure if it was a double strand around her neck if the 2 strands hanging down from the door were split as he was

[57] Record page 2356 – accused testified that the knot around the neck (later clarified as the noose) was **very tight**

not paying attention to it. He questioned Counsel why he would be focusing on the knots or how it was tied as all he was focused on was it being removed. He could not remember if it was her heels or her toes that he saw when he opened the door. He repeated to Counsel what relevance was it to him to take interest in the cord. When various hanging scenarios were put to the accused, he agreed that the tension on the cord would have slackened when he picked her up but maintained that the cord was still tight around her neck. On a question by the Court during the demonstration as to whether the cord was tied in a single or double strand around the deceased's neck, he testified that it was in a single strand.

The accused was of the view that Susan had been upset at the time of her father's infidelity, although he conceded that he could not say that this had affected her years later in respect of his infidelity.

He testified that when he stated in the statement to the police, in the presence of his relatives, that they had a disagreement, he did not say that it was a physical altercation in that he was embarrassed to state in the presence of his in-laws that they had a *"wrestling match"* between them. He also did not mention that he had wanted to get out the room to be with Jolene as this too would be embarrassing for him to say under those circumstances.

He conceded that it was totally out of character for Susan to have committed suicide. He claimed that his father-in-law had been led to believe by talking to others at the scene that he had been responsible for his wife's death. He denied that when he spoke to Mark Holmes and said *"I killed her"*, that he had used the words in the literal sense. He felt responsible for her death, but did not murder her.

He persisted with the version that when he called reception, he had indicated that the bathroom door was locked from the inside and that he repeated this to Daniels upon his arrival at the room. He did not tell Daniels that there was someone in the bathroom. He also did not alert the receptionist, Mavis, that there was someone in the bathroom, namely Susan.

He denied that the noose had been loose around the deceased's neck or that he placed the cord around her neck. He reiterated that he could not comment on whether there was a knot in the cord, or whether there was more than one loop around the deceased's neck, as he did not note either fact. He was in complete shock and that he cannot remember details. When he tried to resuscitate Susan he thought that he could revive her.

As at the time of their return to the hotel room, Susan did not complain of any other injury other than the one to her toe, but does not know whether she had attended to that before going to bed. He testified that whilst his blood was found at the scene, he cannot recall having bled at any point. When presented with a replica of the Spier hotel gown, he demonstrated how he saw it on the deceased when he found her, but could not confirm whether the gown had been open or closed, or whether the belt had been on or not, although he vehemently denied that she was naked when the bathroom door was opened. He conceded that when Susan wore the hotel robe, he would have recalled if at any time the robe was wide open and that the belt must have been on and tied during those times.

Later in testimony and with more specific reference to her wearing the gown when she stood at the foot of the bed, he indicated that he does not remember if the gown was open or close, however, he would have recalled if she was naked. He turned over and fell asleep at that stage.

When he called Susan to open the door, he had an uneasy feeling in his gut. When he made the call to reception, he had been worried, but did not explicitly state that Susan was in the bathroom. He did not attempt to peer through the bathroom window from the outside, as it never occurred to him to do that. He did not go outside for help nor looked down at the handle of

the bathroom door. He denied that he smothered his wife or that he staged her murder when he realised that she was dead.

On being questioned by the Court, he clarified that when he told his wife that he was done and would want to sort things out back in Johannesburg, he did not say that he wanted to get divorced, but that is what he meant. As to where in the bathroom him, Daniels and the deceased was positioned, he inferred that Daniels must have been standing on his left-hand side when he removed the cord from the deceased's neck, which would have given Daniels a side-view of the deceased's face. He had to draw inferences as he could not specifically remember. He explained that he was so shocked at the time and that his memory is slightly blurred.

[15.2] **DR GANAS PERUMAL ("Perumal"):**

Perumal's CV as to his qualifications, experience in autopsies and medico-legal experience was placed on record. He stated that a second autopsy is not ideal; the body will have been anatomically altered during the process of the initial autopsy and it is not always easy or possible to reconstitute the tissues to their original state or position. Also, depending on the time between death and autopsy, decomposition could have begun. Interpreting

the findings from a second or further autopsy requires more experience and expertise than would be necessary for conducting the initial autopsy. The anatomical changes would be autopsy artefacts and injuries caused to the removal from the scene to the mortuary or when the body would be subject to predation. Autopsy artefacts are not necessarily recorded at subsequent autopsies, as the practitioner would be aware that there had been a previous autopsy.

His autopsy report (Exhibit E) in this matter had been produced without having had sight of the State's autopsy report.

He attended Court during the testimony of Drs Khan and Abrahams. He produced a second report summarising his autopsy, photos, special investigations as well as his input concluded from the testimonies of Drs Khan and Abrahams.[58] He explained that his first report was of factual observations, hence the absence of interpretations as critiqued by the State pathologists during their testimonies. He indicated that when a specialist is called to the scene their primary purpose is to determine time of death, and that they should refrain from making any other pronouncements prior to the actual autopsy. Ideally, scene visits should be done after the autopsy, as

[58] Exhibit JJJ – Letter from Dr. Perumal addressed to Attorney Daniel Witz dated 4 June 2018 titled: "Medico Legal Report – State v J Rohde"

the specialist then has a better understanding of the events. This also prevents the pathologist from prematurely coming to any conclusion regarding the cause of death, as it would be difficult to turn one's mind to any other idea once that has happened.

With reference to photo 6 "HHH" he noted parallel linear abrasions (not tramline abrasions) which tended to go upwards on the right side. A ligature imprint was almost circumferential around the neck. It was centrally blanched, with redness above and below the blanched areas. The imprint on the front of the neck sloped upwards and to the right of the deceased (towards the ear). The blanching was more pronounced at the front and to the right; towards the left there was an area of friction, which was red and felt leathery.

In cases of hanging the main insult is deprivation of oxygen to the brain, which can occur by various mechanisms, which makes it difficult to predict which one is operative in a particular case. After as little as 8 seconds consciousness is lost and between 10-19 seconds, convulsions set in. On average after about 2 minutes the body becomes flaccid, and after 3 minutes the individual is deceased. The individual can often sustain injuries during convulsions, as the limbs flex and retract, and there will also be traction of the tissues in the neck. As a result of this the person may

end up dying in a different posture than he or she had originally hanged in. Depending on the environment of the hanging, the person can strike something and sustain injury during convulsions.

In his opinion, since the ligature marks trend upwards towards the ear, the most likely point of suspension would be related to the right ear. According to him the most common site of application in cases of suicidal hangings, is either the left or the right ear. The greatest pressure will be at the point opposite to the point of suspension – in this case the deepest lesion associated with the ligature is on the left side laterally, showing some abrasion. He referred to photos 10 and 11 of "C", the photos of the first autopsy, which according to him showed a parchment-like or leathery area in the ligature imprint. He indicated that this set of photos was the best to work with, as it had been taken the closest to the time of death. He indicated that an electrical cord would not create the same amount of friction injuries as a rope, as the outer cover is smooth. Also, from the lack of abrasions above or below the ligature mark, he determined that there had been no attempt to grab at the cord by the deceased which could be indicative of an afterthought.

He noted that one had to be careful about making definitive findings regarding the neck region when there had been prior autopsies, as the

tissue would have autopsy artefacts. As a result he did not make any definitive findings regarding injuries in the soft tissue in the neck, and did not dispute the findings of the first autopsy on this point. As a result of post mortem artefacts he found a break / interruption in the thyroid cartilage (with no associated haemorrhage). In his view the thyroid cartilage was not fractured ante-mortem, but that it was an artefact (cut) from the first autopsy.

He noted small abrasions on the second toes of both left and right feet, a small abrasion on the left shoulder, and a small abrasion just below the left eyebrow, with associated blood seepage around the eye. He also noted a bruise below and behind the right ear. There were 2 small abrasions on the knuckle of the index finger and a bruise on the left wrist. He further noted ill-defined bruising on the right and left forearms posteriorly, and healing bruises on the upper right thigh and the left upper leg (both anterior). The fingernails on the hands and feet were all intact.

In cases where the deceased is female and has injuries, it is mandatory to do a facial flap dissection (to reveal injuries in areas that are difficult to see as well as the inner aspects of the lips and cheeks). Dr Khan said it was the right ribs that were fractured. CPR was on the left side. It was not done in the first autopsy. If a person is smothered and offers resistance then

there will be injuries in the soft tissue over the underlying bone structure. In the present case there were no injuries indicative of smothering. He also did not find any bruises on the scalp, but would not contest the finding of the first autopsy that there had been. He found bruising on the left lateral edge of the tongue, which he attributed to convulsions.

Ribs 2 to 5 on the left side anteriorly were fractured, but with no associated haemorrhage at the fracture site. There was also a fracture of the middle third of the sternum, again with no associated haemorrhage. There was however haemorrhage associated with fractured ribs 3 to 6 on the right side anteriorly. Fractures in the ribs are difficult to see unless the intercostal muscles are cut and the bone removed. The haemorrhaging in his view indicates the presence of some degree of circulation (which could include cardiopulmonary resuscitation).

The site of the fractures mentioned is in his view typical of resuscitation injuries. Both lungs were oedematous and congested, and there was petechial haemorrhaging and ecchymosis in the pleura of the right lung. In his opinion the contusions on the lungs were related to resuscitation. He indicated that if an individual had a fracture of the sternum as well as bilateral rib fractures, that individual would be in a significant amount of pain, with associated disability. So if these injuries had been ante-mortem,

the deceased would have been seriously affected. However, the lack of circulation in relation to the external fracture and the left side fractures indicated to him that these were either peri-mortem, or post-mortem injuries.

He also indicated that there must have been an injury to the nose, which bled posteriorly, and was swallowed into the stomach. He stated further that there must have been two episodes of bleeding, as there was blood in both the stomach (the second episode) and blood in the proximal duodenum (the first episode). It was however impossible for the blood to have come from pulmonary contusions as testified by the State pathologists, as that would require vascular injuries (noting the lack of leopard skin appearance in the lungs). He did not find any fluids in the guts or stomach, but any such fluids would have been discarded after the first autopsy. He found no pathology in the mucosa of the gut that could have caused bleeding.

The takeaway from his report was that multi-organ congestion is non-specific, but that it is also in keeping with asphyxial death.

Regarding the block that had been suggested as the origin of the marks on the posterior of the neck, he indicated that he himself used such a block.

He stated that in pathology a negative finding is as important as a positive one. And also, that he had never in his experience seen the mark he noted on the neck being made by such a block. This is so also because the edge of the block does not touch the middle of the neck. The mark in question is also a tramline mark, not a single edge. During the examination of the neck the block would be placed under the shoulder blades, to allow for drainage, in order to create the bloodless field necessary for the neck dissection. The darker area above the ligature was explained as most likely post-mortem lividity.

Regarding the calculation of time of death he stated that one could not say that the time of death in this case was 05:40, as that was the mean time. All that could be said was that there was a 95% chance that death had occurred between 02:50 and 08:30, with a 5% chance that it occurred outside those times. He stated that it was not material in this case that the temperature of the floor had not been measured, or that a rectal temperature had not been taken. The bigger issue was that the findings had not been correctly interpreted. He also noted that environmental factors had to be added to the calculation, as per the textbook guidelines.

Returning to the hyoid bone, he stated that fractures therein (or even the absence thereof) does not definitively support either strangulation or

hanging as cause of death. What is pertinent in this case is the presence of haemorrhage on the inner side of the hyoid bone. This could not be accounted for by external pressure being applied with a hand (which would cause external injuries). He stated it to be related to convulsions, as tension within the neck structures would cause haemorrhage in the thyroid hyoid membrane. The fracture of the superior horn of the thyroid cartilage is the commonest skeletal structure injury in cases of hanging even if it appears as an ante-mortem injury.

A bundle of authorities prepared by the witness was handed up as "LLL". He referred to the definitions total versus partial hanging: total hanging being when the individual is totally suspended, with the full weight on the noose, as opposed to when some of the weight is transferred to a surface, so that some of the weight is taken away from the suspension point. With reference to authorities, he indicated that if the person is standing with feet flat on the ground, the weight on the suspension point could be reduced to as little as 65% (meaning that in this case there could have been as little as 33.8 kg on the suspension point). In this case, the feet being to the right could be as a result of convulsions, it does not necessarily reflect their original position. However, it will reduce the amount of weight on the suspension point. He stated that it would be relatively easy to hang one

self, as loss of consciousness sets in quite quickly therefore provided one could create enough pressure from the suspension point even a sitting position is possible.

He explained lividity to mean that when circulation ceases and blood settles in the lowest parts of the body, in a light skinned individual the skin will appear red where the blood has settled. This does not however indicate the position in which the person died, only the position the body was in when lividity set in. Precisely when lividity sets in is difficult to determine, and cannot reliably be used to determine time of death. This gravitational settling could be an explanation for the pallor in the lips that Khan noted at autopsy, though he could not see it in the photographs, and it would not be an indicator of smothering.

Further he explained rigor mortis to be the stiffening of the voluntary muscles, which starts at the same time throughout the body, but manifests first in the smaller muscles like the hands or the jaws.

With reference to Khan's finding that there was an absence of leathery appearance of the ligature mark, he stated that due to the smooth surface of the cord, one would not necessarily find a leathery appearance, one might only find blanching. He mentioned that there is abundant authority

for the view that the longer the person had been suspended, the more pronounced the ligature mark would be. He stated that the scratch marks to the lower jaw could either have happened during application of force or during resuscitation to extend the jaws to keep the airways open. While he could not conclusively exclude manual strangulation, he stated that the scratches were more likely associated with hanging and resuscitation. The two focal abrasions behind the right ear might be related to the knot more particularly placement thereof.

Based on his finding related to blood alcohol, he stated that the deceased would have been intoxicated. The blood alcohol level was sufficient to have affected the central nervous system.

He listed the things which Khan missed in his report, including the ligature mark at the back of the neck[59], a u-shaped scar under the right breast, bruises on the left and right arms, bruising on the left forearm, fractures of the ribs on the left side, fracture of the sternum, the facial flap dissection which was not done[60], the haemorrhaging into the tongue, and the organs were not histologically examined. This is particularly important with respect

---

[59] The state pathologists denied that there was a mark at the back of the neck when they conducted their autopsy and that this mark would have been sustained by the body after the first autopsy

[60] Khan testified that in light of the fact that the findings were overwhelmingly pointing to the cause of death, further tests were not necessary in their view

to the lungs, as it is not possible to comment thereon with scientific accuracy when considering aspiration of blood or gastric content.

He referred to authority regarding the saliva which the accused testified he had noted on the deceased, that being that it is a classic feature of ante-mortem hanging, but that it will not always be present (depending on the precise mechanism by which death is caused in a particular case).

Perumal testified that after taking into account the testimonies of the State pathologists as well as the accused, he set out in his report at paragraph 9.18.4:

> *"...my findings are consistent with ligature strangulation (i.e. hanging). However, on a post mortem examination alone it is simply not possible, and in a case like this, to be adamant about the cause of death."*

He conceded that ligature strangulation (hanging) would not be the only possible conclusion which he could make from the injuries of the deceased.

With reference to his bundle of authorities, he mentioned that the injuries to the face and neck must be very carefully interpreted, as they may be very similar to those found after throttling. He also added that there may be ecchymosis at the beck of the neck after resuscitation, and that bruising

and abrasions may occur to the face and neck during resuscitation. There is also authority for the view that injuries to the sternocleidomastoid muscle are the most common soft tissue injury found in cases of hanging; that the vast majority of such cases showed pale white glistening tissues beneath the ligature mark and that only a small number of cases showed mild contusion of the neck structures; and that fracture of either the left or right superior horn of the thyroid cartilage is most frequent in right-sided hangings. Soft tissue injuries occur at high rates in cases of hanging deaths and the presence of such injuries are not necessarily indicative of manual strangulation. Also virtually bilateral rib fractures are usually associated with resuscitation.

Under cross-examination he stated that if a blood sample is taken within 4 days of death, then the blood alcohol reading is taken to be a fair reflection of the level at time of death. Again, he would not be dogmatic about it as there could be minor variations either way. In this case there had not been much time between death and the body being removed to the cold storage facility, the first autopsy (at which the blood samples were taken for analysis) was done within two days, the blood samples were taken from a femoral artery and the body showed no signs of decomposition.

A bundle of photos he had taken at autopsy was handed up as "QQQ". He stated that it is incorrect to say that there is no continuity between the ligature mark on the left and the mark on the back of the neck, as the mark on the left is 95mm below the ear. During autopsy, he was unable to join the two marks, as a result of the reconstruction done after the first post mortem, which created a distortion at that level. He indicated that when he made the markings on the mannequin in Court, it had been merely illustrative, not to scale. According to his observations, the mark on the back of the neck was almost horizontal, before tilting slightly upwards towards the right lateral neck, just before the suture mark on the right lateral neck. For that reason he concluded that the point of suspension had most probably been on the right. The mannequin had not been drawn for accuracy. The reason the ligature mark is less pronounced at the right side, is indicative that the ligature was not firmly against the skin at this point in other words it was moving away from the skin at the point of suspension. Explained differently, the knot is not tight against the skin, therefore when the head leans to the left, the ligature pulls away in an inverted V shape. The absence of marks on the right, as well as the fact that the marks are deepest on the left, confirms his reasoning that the point

of suspension was on the right. The marks are always deepest, and almost horizontal, on the side opposite a point of suspension.

He conceded that purely from a scientific point of view, the ligature could not have been tight around the neck, based on the observations from the two autopsies. If the ligature had been tight around the neck, one may more likely to have seen a knot imprint.

He could not state that the small abrasion pointed out to him on Khan's photo 121, was definitely related to the knot. He did however state that that abrasion would not necessarily imply that the cord had been tight as it could be related to pathophysiology or convulsions.

To the statement that the mark at the back of the neck looks different than the one at the front, he stated that one must consider the structure of the neck tissue. The back of the neck has denser connective tissue. Hence the ligature will not manifest the same all the way around the neck, on account of differences in pressure as well as differences in types of skin subcutaneous tissue.

In his opinion, it looked like a single ligature mark. He agreed with Khan that the death was unnatural and that it was consistent with asphyxia. While he did not exclude the possibility of manual strangulation, based on

his findings as well as what had been documented (from the scene to the first post mortem), he favoured on a balance of probabilities the hanging scenario. When he did his dissection he found no evidence to support smothering as a cause of death. He postulated that it was an observer error on the part of Khan to state that there was no parchment like appearance to portions of the ligature mark and thus that it was applied post-mortem), as he noted it in his own autopsy.

He stated that many pathologists will consider a ligature mark to be a post-mortem phenomenon. Since death occurs relatively quickly in cases of hanging, the mark only becomes more prominent the longer the person is suspended. Therefore, as per the recognised textbooks in the field, one cannot use the appearance of the ligature mark to determine whether it was applied ante- or post-mortem. He indicated that if the person had been deceased when the smooth cord was applied, only an impression of the cord would be seen. If the individual was still alive, the friction between the cord and the neck, with the movement of the body, would create the mark seen on the deceased. His findings do not accord with the suggestion that the cord was applied after the person had died. He reiterated that he would not conclusively exclude any other possibility, but based on his findings he believed the ligature marks to be ante-mortem.

Also, if the deceased was already dead when she was hanged, one would not see saliva being expressed although an absence of saliva would not necessarily indicate that the person was already dead.

He would not adamantly say that there had been no fracture in the thyroid cartilage, but that based on the probabilities it was more likely to be an autopsy artefact in other words that the cartilage was incised during the first autopsy.

He indicated that the injury above the left eye was either a deep abrasion or a superficial laceration, and that it was the result of blunt force trauma. He was not convinced that the mark under the eyebrow constituted a separate injury, but rather that it was extravasation of blood. Again though, he would not exclude it being a separate injury. He stated that if the supraorbital ridge had impacted any blunt object (like the retaining wall), it would create a wound, but that that would not create blood spatter as depicted on the photographs. Spatter required impact with a blood source. While he could not exclude the retaining wall as the source of the injury, he stated that it was most likely something broader, as he would have expected the wall to cause a deeper and larger laceration. He also could not exclude a fist with a ring as being the source of the injury. Also, if someone had fallen and attempted to break their fall he would expect

injuries on the prominences of the body (knuckles, elbows, etc.). A number of injuries were pointed out to the witness, and he was asked if they could be related to the fall that the deceased took on the way back to the room. He indicated that they were all blunt force trauma injuries, and that with the exception of the injury to the wrist, they could have been sustained in the manner suggested.

The deceased must have had some injury to the nose, as she had blood in her nostrils. That could account for some of the blood found at the scene. However it would be difficult to state when that injury was sustained. The blood in the intestines of the deceased cannot be precisely "timed" due to there being many factors that influence gastric emptying time, but he estimate that it had not happened at or about the time of her death. The blood that was still in her stomach however could have been swallowed at or about the time of her death.

The ligature mark would not look the same throughout, as one cannot predict the movements in the convulsive state and those are the ones causing the imprint. He could not exclude the possibility of a pre-existing injury from a digit (fingers) underneath the ligature mark, though he did not believe it to be likely.

His later report had been drafted after having heard evidence in Court. He could not exclude the possibility of bias having crept into his findings, but stated that his testimony was based on science and logic.

Regarding the faecal staining Khan noted (specifically that he did not find any on the door or the gown) he stated that he would not have expected staining on the door, as she had been wearing a gown. The faecal stain on the bathroom tiles outside the bathroom in his view had possibly been caused by the body being dragged along the floor in that area and a stool between her buttocks smeared on the floor. This would occur if her buttock had been exposed.

On re-examination he stated that he has never come across a specialist pathologist that has not made an observer error at some point. On a question from the Court he explained that when someone is strangled and death is prolonged, then there may be an inflammatory response to that trauma, but when someone is hanged and the death is rapid, there will be no such response.

[15.3] DR LARISSA PANIERI-PETER

Dr L Panieri-Peter's CV was handed up as exhibit NNN1. She confirmed that Mr Rohde was referred to her for an independent psychiatric evaluation during September 2016. The purpose was for her to conduct a broad forensic psychiatric assessment as well as to comment on any findings that might or might not in forensic psychiatric terms be congruent or incongruent with an intimate partner homicide. In addition, she was requested to conduct a retrospective independent psychiatric assessment in other words a so called psychological autopsy of the deceased in terms of her known history. She was also specifically requested to comment on any features pertaining to Mrs Rohde that might or might not in forensic psychiatric terms be congruent or incongruent with suicide.

She confirmed that she compiled a report which was finalised on 6th June and sent to defence counsel by email. She confirmed the report was hers. The report was handed up as exhibit NNN2. She confirmed that he had made a summary or table of contents of the report which was also handed up in court as exhibit NNN3.

The witness explained the term psychological autopsy to the Court as the factors that occur or lead someone to commit suicide but obviously as

mental health professionals they need to try and understand why people get to the point that they kill themselves. So there has been a wealth of literature on it to help them understand what facts are ideally, so that it could be prevented. Therefore they use psychological autopsy which entails gathering information from people who knew the deceased to work out what lead to the suicide.

According to her our Supreme Court of Appeal has also accepted this exercise even though it has been subject to criticism academically. According to her it is important to get as much information as possible, from as many people, closest to the time of her death. She had interviews with Mr Rohde on a number of times. She also interviewed the eldest daughter in her home. Ms Suzanne Long, the clinical psychologist of the accused was also interviewed as well as other professionals known to the deceased. The remaining persons interviewed were also close to the deceased. These said persons were asked to discuss their observations of both parties over the years they had known them.

The strengths and weaknesses of the couple were also discussed while specific questions were asked at the end of the interviews. She testified that there was no bias from the witnesses.

Upon being asked by the Court as to how was she informed on who to consult to gather information from, she testified that she got the information from the legal team of Jason Rohde and Mr Rohde's family and deceased friends.

She disputed that her sources of information got polarised but did admit that a number of persons did not want to speak to her, such as the deceased's family who flatly refused to meet with her.

She was however impressed by the marriage counsellor who reported to her that the deceased was a suicide risk. She elaborated on a question by the Court as to the fact that Nader did not have the qualifications to make such a diagnosis to which she indicated that Nader was reflective on behaviour and that it were those observations which were reported to her.
Continuing with Mrs Rohde's assessment she looked at her family history, forensic history, her medical and surgical history, her personal and developmental history, her educational and occupational history, substance addiction history and her psychiatric and psychological phenomenon.

During her testimony she stated that she did not intend to usurp the functions of the Court, but merely looked at the issues within the scope of her psychiatric knowledge

She divided Mrs Rohde's situation to when she heard about her husband's affair, to February to July 2016, and the moment leading to Spier.
She then looked at deceased's life as a student, then as a parent, her children's schooling. It was testified that deceased was an outdoor person, athletic but not very religious. She suffered hypertension. She bruised easily. She started to smoke during the months before her death. She was a perfectionist in her appearance and her daughters. She was obsessive about her weight and what she consumed. She was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). She could never let go of an argument. The deceased had long standing trust issues of men with regard to extra marital affairs.
She testified that according to the marriage councillor there were six out of nine points of these diagnostic criteria, whereas one needed five of the following symptoms that had been present during the same two week period and represent a change from previous functioning. According to the DSM diagnostic manual these indicators include a depressed mood, most

of the day by either subjective self or hopeless observation made by others; a marked diminished interest in all activities of most of the day; significant weight loss or weight gain; insomnia (unable to sleep) or hypersomnia which means to sleep all the time, nearly every day; psychomotor agitation or retardation everyday observable by others; feelings of worthlessness; fatigue or loss of energy and recurrent thoughts of death.

She explained symptoms of anxious distress which requires feeling tense, restless, difficulties concentrating, a feeling that something awful might happen and the individual might lose control.

According to Panieri-Peter there is evidence from observed facts and reports from professionals, the accused, other persons, including reference to previous witness testimony that the affair was in a crisis and that it resulted in a drastic change in her demeanour. In addition to her insecurities, vulnerabilities, genetic risk factors to suicide, narcissistic traits, perfectionism and wanting the world to see her as being perfect, resulted in Susan having been suffering from major depression which increased her risk of suicide. The fact that she did not triumph over the mistress also affected her resulting in a narcissistic wound.

So overall, taking into account all the information and the facts that were brought before Court and the information she got from her sources she disagreed with the deceased's clinical psychologist that she was not a suicide risk. According to the witness, the deceased was a suicide risk with her framework of understanding of the evidence before the Court and her evaluation of the testimonies as well as the information that had been provided to her from certain sources.

Even though she confirmed that the deceased's clinical psychologist was in a better position than her, because the psychologist had consulted with the witness she believe that the deceased was not properly diagnosed by her psychologist. This concluded her report on the deceased. Her report proceeded on to her investigation regarding the accused.

Upon recommencement of the proceedings, the Court made a ruling curtailing the further testimony on the contents of the report, however, the witness was invited her to provide other information other than relating to the report, for the reasons that the expert's report went about to usurp the function and role of the Court. It sought to embellish the testimony of the

accused, as well as regurgitating testimonies of previous witnesses. The ruling further indicated that the report was referring to information from anonymous sources and persons without giving their names. References to *"someone said"* go against the hearsay rule. Reference to evidence already given before the Court was not in accordance with the best evidence rule. Those testimonies and supporting exhibits had been placed before the Court and subjected to cross-examination. It is the function of the Court to evaluate, analyse and consider such evidence. This was not the role of the expert. The evidence which Panieri-Peter further sought to give in terms of the report also attempted to give evidence which the accused did not testify to. She also sought to give, as set out in her report, her evaluation of the probabilities of the evidence of the accused in respect of the events in question. She also sought to testify to her view that the deceased was most likely to have murdered the accused.

The witness was afforded an opportunity to draw the Court's attention to any other facts or evidence. No further evidence was tendered by the witness and the witness was excused. The reports of Panieri-Peter appear on the record as had been marked. Exhibit NNN4 was added to the record containing the bundle of authorities referred to by the witness. I will deal

with the evaluation and admissibility of the evidence Dr. Panieri-Peter as well as the value of her reports further in this judgment.

15.4 Examination of Dr Isak Adriaan Johannes Loftus ("Loftus"):

The CV of Dr. Loftus ("Loftus") was entered onto the record as exhibit "ZZZ". A flow-diagram of his "agenda" for his testimony was handed up during his testimony as exhibit "AAAA", while a bundle of documents he intended to refer to during his testimony was handed up as "BBBB".

He explained that histological tests are not routinely done, due to the cost factor, but that they are always done in cases of sudden death, and in order to determine microscopically whether tissue is bruised or whether it is hypostasis, and to evaluate tissue response (vital reaction).

A vital reaction is used to date a specific event, and, more importantly, to differentiate between events that occurred before death (ante-mortem) and those that occurred after death (post-mortem).

In the present matter two categories of pulmonary haemorrhage are pertinent: petechial haemorrhage and contusions. Due to the history of blood in the deceased's stomach, the question is whether there was pulmonary pathology severe enough to explain that finding. In his opinion,

it did not play a role. He stated that when he looked at all the images of the lungs, he did not see any haemorrhage in any of them. In his view there were no signs of aspiration of blood.

With reference to Khan's post mortem findings that blood-stained fluid was present in the trachea and main bronchi, the witness critiqued that Khan did not indicate if there was any blood in the smaller airways. For blood to get from the periphery to the main bronchi's it would have to go through the smaller ones first.

Khan did not note any signs of haemorrhage other than the contusions and petechial haemorrhages at autopsy, which he stated supported his own findings that the deceased's respiratory function had not been compromised preceding death.

He considered the photos of the neck area of the deceased captured during the first autopsy and indicated that from the photos it was difficult for him to say whether the ligature was horizontal, as the deceased's shoulders were not at the same level and the face was tilted to the right-hand side. He stated that the reason the marks looked so different, the posterior aspect as opposed to the anterior aspect of the neck, is that the posterior contains thick fibrous tissue which would result in very little

haemorrhage when pressure is applied. The skin texture differs substantially between the front and the back of the neck, so that haemorrhage in the skin of the anterior neck will be much worse.

As to whether the ligature mark was ante or post-mortem he indicated that the multiple bruises and contusions found above the ligature marks may be post-mortem, however, when they are below the ligature mark, they are usually ante-mortem. He indicated that while there is some debate on the point, the leathery-like appearance of the ligature mark is usually associated with ante-mortem application situations, rather than post-mortem.

He had some concerns regarding the interpretation of the neck dissection, including spatially relating external injuries to internal injuries, as the photos were not taken from the same angle / distance from the body and the body was not in the same position in all the photos. This would have to be accounted for in the assessment. However, he had performed a digital bloodless neck dissection. According to him, the extensive haemorrhages seen in the area of the submandibular gland indicated that the deceased was still alive when the injury was sustained. He also stated that an area of haemorrhage in the region of the sternomastoid muscle indicated convulsions, and the muscle taking the brunt of the force of the body

hanging against the ligature. He commented that Khan should have incised the cut differently and that the fracture so observed in the first autopsy is in his view not a fracture.

He stated that a number of haemorrhages shown in the neck dissection slides had not been correctly interpreted by Khan. He noted haemorrhages closer to the spine, which he indicated are often seen in people who were free hanging in the lumbar region (lower spine), in which case there is a jerking motion. While he accepted that there were injuries outside the ligature marks, he stated that these could have resulted during convulsions, which are common when people commit suicide. He also pointed out that although the bruises under the jaw of the deceased were geographically in a different location to the ligature mark, the hyperextension of the neck during dissection would cause the layers below to appear higher up than the ligature mark on the skin of the neck.

Regarding the use of temperature to determine time of death, he indicated that a number of factors needed to be taken into account, including whether the person had been clothed, the type of surface the person was lying on and so forth.

He proceeded to the matter of bruising of the deceased left eye and referred to a quote from an article to the effect that it is usually caused by a direct punch or kick to the eye socket, but that a pathologist must also consider alternative explanations. These included direct violence which may or may not be associated with an abrasion or laceration on the upper cheek, eyebrow, nose or other parts of the face, gravitational seepage of blood beneath the scalp from a bruise, laceration on or above the eyebrow would result from survival and if the person was in an upright posture for some minutes. He stated that the important point is there must have been survival of some minutes between when the deceased sustained the injury and when she died. While he could not say how many minutes in context, it was not an injury sustained at the time of death.

He was asked to indicate, based on his expertise, in view of the probabilities, whether this was an ante-mortem hanging, or whether it had been staged post-mortem. He indicated that he believed a ligature had been applied ante-mortem and that the cause of death was hanging, that when the ligature exerted its force, the deceased was still alive. Though he could not, as a pathologist, exclude other causes, he believed that the most probable cause of death was hanging.

He indicated that he was familiar with the scenario called para-suicide – where suicide was not intended, but was instead a cry for help. He could not confirm or exclude the possibility of a failed para-suicide in this case.

As regards the faeces at the scene, he expressed doubt whether it was human or animal faeces. After confirmation by the Court that it had not been placed in dispute and that it can be accepted that the faeces to be that of the deceased, the witness referred to photos depicting a swab taken from the inner thigh during the first autopsy, which also contained faeces. He noted that the only fluid on the tiled floor of the bathroom was that found underneath the deceased. He believed it to have been urine, as the passing of urine and faeces are common upon somatic death due to the muscles relaxing and is indicative as to where the deceased has passed away.

He differed completely with Abrahams regarding the blood in the deceased's stomach and bowels as he indicated that it would not have been possible not to inhale that volume of blood.

As to the possibility of the deceased's functioning in the scenario where she sustained rib fractures prior to hanging herself, he indicated that pathologists should not be dogmatic when commenting on a victim's

capacity pursuant to an injury and disagreed with Abrahams who held a different view to this aspect. In his view it is difficult to state or rule out that a person could not perform some or other activity due to the fight or flight response, citing the example of a soldier injured on a battlefield and continuing with battle. He agreed with Perumal that the rib injuries and lung contusions were sustained as part of the CPR process.

In cross-examination he conceded that he was at a disadvantage when commenting, as he had not been present when the first autopsy was done by Khan, or when the second autopsy was done by Perumal. He maintained though that he was in a position to interpret the findings made during the autopsy. He conceded that he had been working with material (photos) that was sub-optimal.

He stated that convulsions did not make any noise however it depended on whether a part of the body was in contact with surrounding surface. Unless she kicked against the door while convulsing, it may have been completely soundless. He could however not exclude the possibility of her having made any noise.

When put to him by the State that on the accused's version, there was a period of some 25 minutes that the deceased was supposedly hanging on

the back of the door before the accused and Mr Daniels entered, and that as a consequence the State would argue that the deceased was already dead when CPR was commenced, he stated that the time was irrelevant. He explained that some mechanisms involved in hanging could take as much as 20 minutes to result in death, so that the deceased was in his estimation probably unconscious, but in the process of dying when she was found hanging, and then died on the floor though he could not exclude the possibility put to him. He stated that the urine found was more likely passed at the moment of death, but conceded that it could be passed after death or if pressure is applied to the bladder. He conceded that he could not definitively state that the rib fractures and surrounding haemorrhages were caused by CPR, and could not exclude an ante-mortem assault as the cause.

He indicated that the head would naturally flop to a side when hanging, therefore the lateral force applied to the sternomastoid muscles would be greater on the side the head flops to, than on the other side, to explain the difference in marks to the sides of the neck. There would also be a difference in markings between a static and a slip knot. He conceded that he could not comment on whether there was bruising on the back of the neck, as he did not have a histology section, thus he could not exclude it.

He conceded that the passing of urine and faeces did not definitively indicate place of death, that the body can excrete it at any time after death, however it was merely a strong indicator as to where the deceased died.

He indicated that the skin could have wrinkles or creases at autopsy when the neck is in a backwards position, but that these are usually temporary, except when dealing with obese patients or babies. In those cases one could have what looks like ligature marks, but they are in fact artefacts. He disagreed that the lines on the back of the neck could be caused by lividity, due to the appearance of the surrounding tissues. He stated that the lines are mostly parallel. He also stated that the marks were in his view ante-mortem, not caused post-mortem by the neck block, as lividity would have been fixed at that point.

In his opinion, having taken account of all the evidence, he believed that the deceased hanged herself in the bathroom, that she was alive when the ligature was placed around her neck and that she did not die instantaneously. She was taken off the hook and unsuccessfully resuscitated. She died on the bathroom floor.

In re-examination he indicated that taking into account all the objective facts and the transcribed record of testimonies before the Court, he is of

the view that it is beyond reasonable doubt that the cause of death is suicide by hanging. Forensic medicine is the merging of science and law. He reiterated that his scientific and objective findings allow him to form a legal opinion.

[15.5] MR BRANDON ALAN MILLER

Mr Miller confirmed that he works at Sotheby's International Realty and is in charge of the Sea Point offices and is presently an independent franchise holder. He gave a statement to the police, confirming his account of events when the accused and the deceased entered his hotel room. To a large extent his evidence was similar to that of the State witness, Ameermia. In his view however Susan appeared calm but that she did not touch the accused when she called him. A short while later he sent the accused a message to enquire if he was okay. He received a reply to that message shortly after 7 am. He confirmed that Jolene worked in the same office as him but he was not aware that she had an affair with the accused. Asked by the Court as to why the atmosphere was tense in the room, he clarified that it was because there had previously been rumours of an affair.

Under cross examination, he conceded that his memory might have been blurred as he had been drinking that evening. His recollection is though that Susan was not screaming but that he could not dispute Ameermia's testimony that Susan came across agitated.

THE DEFENCE ELECTED TO CALL NO FURTHER WITNESSES AND CLOSED THE DEFENCE CASE.

APPLICABLE LEGAL PRINCIPLES:

EXPERT EVIDENCE:

Experts have become a prolific feature in litigation. Expert testimony was a substantial part of the evidential tapestry in this matter. Given the extent to which expert witnesses have asserted themselves in the course of these proceedings, it is necessary for me to consider the role and function of experts in our courts as developed through case law.

For several centuries, decisions about issues of fact, in certain cases, have been assisted by experts. As early as 1554, it was held in the English decision ***Buckley v Rice Thomas***[61] that:

> *"...if matters arise in our law which concern other sciences or faculties, we commonly apply for the aid of that science or faculty which it concerns. Which is an honourable and commendable thing in our law. For thereby it appears that we do not despise all other sciences but our own, but we approve of them and encourage them as things worthy of commendation."*

Centuries later, this rationale has taken such effect that it has become the order of the day. The dramatic term of the battle of the experts has become a commonplace phenomenon in our courts. Experts from the same discipline testifying diametrically opposed opinions about the same facts has become the norm in litigation and regular visitors in our courtrooms. The misguided belief is seemingly created that the dispute is decided not on the merits by the adjudicator but rather as to which party presented the most compelling experts.

---

[61] (1554) 1 Plowd 118 at 124.

Over a century has passed since the poet mused: *"When doctors differ, who decides amid the milliard-headed throng?"*[62]

The fundamental principle for the hearing of expert evidence must remain central in the proceedings. Experts are there to assist the court. They must remain unbiased and true to their disciplines and expertise. The Court remains the trier of fact. Adjudication of the dispute before it is the expertise of the Court, not the expertise of any expert witnesses.

GUIDING PRINCIPLES OF EXPERT EVIDENCE:

Our law has through various decided cases developed principles applicable to the admissibility of expert opinion evidence.[63] The list is not exhaustive. Relevant to this matter, I also consider the following:

i) *Specialized skill or knowledge*:

The witness must be called to give evidence on matters calling for specialized skill or knowledge.[64] Evidence of opinion on matters which do

---

[62] *Sir Richard Francis Burton* (19 March 1821 – 20 October 1890).

[63] *Holtzhauzen v Roodt* 1997 (4) SA 766 (WLD) at 771H- 773C. See also *Twine v Naidoo* 2017 JDR 1732 (GJ) at para 18.

[64] *Holtzhauzen* (supra) at 772C.

not call for expertise is excluded because it does not help the Court. At best, it is superfluous and, at worst, it could be a cause of confusion. In ***R v Turner***,[65] the Court held:

> *"If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary."*

The underlying rationale is that expert opinion dressed up in scientific jargon given by an expert with impressive qualifications does not on its own render his or her opinion relevant or probative. For example, expert testimony on behaviour within the limits of normality is not helpful to the Court as the Court is capable of evaluating and determining that on its own. The danger of course is that the expert thinks it does.[66] An expert witness should also make it clear when a particular question or issue falls outside his expertise.

Expert opinions in the form of conclusions about the credibility of a witness or a party are beyond the scope of the witness's expertise and in the realm of speculation and conjecture.

ii) <u>*Faculty of science or expertise*</u>:

---

[65] [1975] 1 All ER 70 at 74.
[66] See footnote 4 supra.

The discipline in respect of which the expert wishes to testify must be accepted by the Court.[67] A topic on which the expert renders his or her knowledge has to be proven not just as a faculty beyond the scope of the skill of the Court but also that the science or model upon which the topic is based has been the subject of peer review and accepted within the society from which the expert hails. It is the duty of the expert to furnish the Court with the necessary scientific criteria in order that the accuracy of the expert's conclusions be capable of being independently assessed.[68] The Court must also be placed in a position to consider whether the evidence sought to be given is applicable to the facts of the matter.[69] Failing to do so may render the evidence inadmissible.

The oft quoted *Daubert-rule* enunciated in the decision of the Supreme Court of the United States in ***Daubert v Merrell Dow Pharmaceuticals Inc.***[70] deals with determining the reliability of expert evidence: Whether the theory can be or has been tested; whether the technique has gained general acceptance within the scientific community; whether the technique has been subjected to peer review and publication as a means of increasing the likelihood that substantive flaws in methodology will be

---

[67] *Holtzhauzen* (supra) at 772H. *Menday v Protea Assurance Co. Ltd* 1976 (1) SA 565 (E) at 569E-F.
[68] *Davie v Edinburgh Magistrates* 1953 SC 34 at 40.
[69] *Ibid.*
[70] 509 U.S. 579 (1993).

detected; the known or potential error rate and the existence and maintenance of standard controlling the operation techniques have to be placed before the Court by the expert.[71]

iii) *Relevance:*

The guidance offered by the expert must be sufficiently relevant to the issue/s in dispute.[72] This would by implication require that the testimony of the expert must be demarcated and aligned to the issues in question and must remain charged to the facts of the case. Doing more than that would be to complicate the record, burden the Court with scientific garble designed in my view to do no more than attempt to confuse.

iv) *Sufficient Data and Admissible Evidence:*

The expert opinion must be based on sufficient data and information upon which the investigation has been done. The expert must refrain from expressing an opinion where he or she could not obtain sufficient information from which to consider an expert opinion, failing which this must be stated with an indication that the opinion is no more than a

---

[71] *The Decision Makers' Dilemma: Evaluating Expert Evidence,* Lirieka Meintjies-van der Walt, (2000) 13 SACJ 319 at 327

[72] *Twine* (supra) at para 18(c) and *Holtzhauzen* at 773B.

provisional or preliminary one.[73] The facts upon which the expert opinion is based must be proved by admissible evidence.[74] This point was made in the case of ***R v Turner*** (above) at 73 where the Court stated:

> "*Before a court can assess the value of an opinion it must know the facts on which it is based. If the expert has been misinformed about the facts or has taken irrelevant facts into consideration or has omitted to consider relevant ones, the opinion is likely to be valueless. In our judgment counsel calling an expert should in examination in chief ask his witness to state the facts on which his opinion is based. It is wrong to leave the other side to elicit the facts by cross-examination.*"

These facts are either within the personal knowledge of the expert or on the basis of facts proved by others. The expert must properly identify his or her sources of information and set out a factual basis upon which the opinion is based. In the absence of same, the Court is left to sift through the evidence to determine what remains reliable and relevant. With such shortcomings, the expert's role in assisting the Court becomes questionable and it places the sifted evidence in the shallow side of

---

[73] *National Justice Compania Naviera S.A. v Prudential Assurance Co. Ltd ("The Ikarian Reefer")* 1993 (2) Lloyds Reports 68 at 81.
[74] *Holtzhauzen* at 772I.

credibility. This conduct falls terribly short of being helpful to the Court and the expert testimony which is borne therefrom ought to be rejected.

In the case where an expert witness, who has prepared a report, cannot assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report.[75]

v) *Beware the Hired Gun*:

Expert evidence must be the independent product of the expert. In the matter of ***Stock v Stock*** 1981 (3) SA 1280 (A), the Appellate Division at 1296F held that:

> *"An expert . . . must be made to understand that he is there to assist the Court. If he is to be helpful he must be neutral. The evidence of such a witness is of little value where he, or she, is partisan and consistently asserts the cause of the party who calls him."*

The expert must guard against buckling to the hype and demands which comes with litigation. The Court must not be presented with a product which is tailored to suit the party who calls for his or her expert opinion. It must not only be the independent product of the expert, but it must be seen

[75] *National Justice Compania Naviera S.A.* (above) at 81.

to be so. An expert witness should provide independent assistance to the Court by way of objective and unbiased opinion in relation to matters within his or her expertise. An expert witness should never assume the role of an advocate and should refrain from giving evidence beyond the scope of the field from which he or she yields. He or she must acknowledge expert opinion which traverses his or hers in the matter and provide the Court with a reasonable explanation for distinguishing the opinion so held. An expert acknowledges shortcomings in his or her testimony, makes concessions where necessary and must consider material facts.

vi) *Second bite of the cherry:*

Particularly in the context of evidence of a psychological/psychiatric nature, the expert is not allowed to embellish the evidence of another witness, in this case the accused, by augmenting his testimony with "facts" coming through the back door, so to speak. Testimony in that respect would amount to contaminating the record, for the evidence so given is not capable of being contested, the value of which takes the matter no further and ought not to be admitted.

vii) *Judicial Independence and Expert Evidence*

Opinion evidence must not usurp the function of the court for this remains the domain of the Bench. Furthermore, "*the expert witness is not permitted to give opinion on the legal probabilities or the general merits of the case. The evidence of the opinion of the expert should not be proffered on the ultimate issue. The expert must not be asked to answer questions which the Court has to decide.*"[76] In ***S v Gouws*** 1967 (4) SA 527 (EC) at 528D it was stated:

> *"The prime function of an expert seems to me to be to guide the court to a correct decision on questions found within his specialized field. His own decision should not, however, displace that of the tribunal which has to determine the issue to be tried."*

JUDICIAL INDEPENDENCE:

The principle of judicial independence is a fundamental and widely cherished element of democracy and has been enshrined in the Constitution under section 165, which provides in relevant part:

> *"(1) The judicial authority of the Republic is vested in the courts.*

---

[76] *Holtzhausen* (above) at 773C.

(2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

(3) No person or organ of state may interfere with the functioning of the courts.

..."

Judicial independence entails the ability of a Judge or Bench to make a decision without undue influence and interference from internal and external forces. This independence can be compromised in more ways than one. The battle of experts, as rival expert testimony lashes out in Court, can pose a threat to judicial independence. Whilst the judiciary acknowledges its limitations in relation to specialist knowledge in other fields, however this does not entail deferring its role and function or allowing its exclusive role to be usurped by another.[77]

The litigants and public enjoy the right to have disputes adjudicated by the Bench and not those who occupy the witness box. This constitutional imperative is encapsulated in section 165 (quoted above) read with

---

[77] See *Holtzhauzen* (above) at 773C and *Twine* at para 18(k).

sections 34 and 174 of the Constitution.[78] Judges take an oath of office to administer justice without fear, favour and/or prejudice. Experts and the legal representatives who call them must remain mindful of this fundamental rule and must not merely pay lip service to it. It must manifest in trial preparation, pre-trial procedures and submission of timeous reports to Court as well as to the contents of the testimony sought to be given. The experts are there to assist the Court and not the other way around. It must remain conscious of the capacity in which they appear and it must go about matters to help the Court through their expert knowledge. A disturbing feature in the course of this trial was the fact that expert reports were not provided to the Court before the testimony of the expert witness.[79] This manner of litigation places the Court at a disadvantage; being unable to properly obtain the assistance the expert is meant to offer. It blindfolds the Court, hampering the Bench from meaningfully ventilating issues and ensuring trial fairness, to the detriment of the litigants and the overall interests of justice. The ambush approach, if not guarded against properly, could pose a risk to the independence of the Judge as the trier of fact. Not

---

[78] Section 34 of the Constitution: *"Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."*

[79] A forensic Psychiatric Report was handed to Court at the commencement of the evidence of Dr. Panieri-Peter and Dr.Loftus gave evidence without a report, save for a flow chart that was handed up to the Court at the commencement of his testimony.

disclosing reports of experts prior to their testimony or at all as had happened in this case, takes the meaning of 'trial by ambush' to new heights. This expression is normally used in the context of litigants who keep their opponents in the dark thereby surprising the other side with evidence. In the present case, the defence team went further and kept the Court completely in the dark as to the content of the experts testimonies it had proceeded to tender in evidence.

16. EVALUATION:

16.1 MARK THOMPSON:

Thompson was a single witness in respect of the events which he had been called to testify. He entered the bathroom finding the accused sitting next to the deceased lying on the bathroom floor. Testifying as the first witness for the State, he placed the Court in the proverbial position of a *"fly on the wall"*. His well-reasoned observations lend expression to this view. He impressed the Court as a person with sound life experience and showed maturity in handling a most traumatic situation. Thompson was one of the earliest persons at the scene and spent a reasonably lengthy period in the bathroom. Steeped in these moments of horror and despair he

nonetheless observed features which according to him simply did not tally up to the notion that the deceased had hanged herself. His evidence laid the foundation for the suggestion that the deceased had not committed suicide.

The fact that he was familiar with both the deceased and the accused did not in my view impact the objectivity of his testimony. He withstood cross-examination and could not be shaken in the course thereof. He gave his account of events in a consistent manner and successfully explained the contradictions put to him.

In light of the fact that his evidence is that of a single witness, the Court evaluated his testimony with the required caution[80]. After taking into account all relevant aspects of his testimony as well as the shortcomings argued by the counsel for the accused, I am satisfied that the evidence of this witness was credible and satisfactory in all material aspects. Therefore his evidence may be safely relied upon.

16.2 DR. AKMAL COETZEE-KHAN AND DR. ABRAHAMS;

[80] See S v Sauls 1981 (3) SA 172 (A) and Stevens v S [2005] 1 ALL SA 1 (SCA).

The evidence of Drs. Khan and Abrahams was that the cause of death was determined by to be unnatural; consistent with asphyxia following manual strangulation and external airway obstruction. In their opinion the features of the ligature imprint mark or groove were not only of a post-mortem nature, but that it was superficial, not associated with the underlying injuries of manual strangulation. It was of horizontal application, consistent with it having been inflicted or staged whilst the deceased was lying flat. . They testified that the deceased had sustained substantial and distinct injuries before death which are not consistent with the suicide theory. They had performed a specialist technique to the neck of the deceased, known as a bloodless field neck dissection, which is limited to a first autopsy. They had noted various critical findings in the course of their post mortem examination, *inter alia,* that the haemorrhages of the subcutaneous tissue or muscle on either side of her neck were sustained whilst the deceased was alive, consistent with a squeezing action caused by a thumb on the right and fingers on the left. The scratch marks on the neck of the deceased were associated with manual strangulation by the hand. Significantly these injuries were not in the location of the ligature indentation on the neck.

It is significant that Dr. Abrahams testified that in all probability the deceased was strangled on the bed and that the pillow marked as B13 was used to smother her. The deceased's body sustained injuries consistent with having been dragged from the bedroom into the bathroom. The deceased also had a number of other injuries which were not found to be consistent with having committed suicide. Dr Perumal (as later discussed) also conceded that some of the injuries were consistent with drag marks.

Both Drs. Khan and Abrahams were subjected to vigorous and lengthy cross-examination. They made concessions where necessary and came across as unbiased and objective. Extensive literature on various aspects of forensic pathology put in particular to Dr. Abrahams were dealt with successfully and she could distinguish the contents thereof apropos the facts of this case. They impressed the Court as having the qualities of an expert and that the evidence they gave was trustworthy and reliable.

16.3 **WARRANT OFFICERS ENGELBRECHT AND VAN NIEKERK**:

These witnesses provided the Court with an understanding of the cell phone extractions and other electronic communication evidence. They

impressed me as credible witnesses, whose evidence can be safely relied upon.

16.4 **PETER NORTON AND MARK HOLMES:**

As relatives of the deceased, their evidence gave the Court insight into a number of aspects within the familial dynamics and how the deceased dealt with conflict generally. Both witnesses came across during their testimonies as fair minded and gave evidence in a satisfactory and truthful manner.

16.5 **NEWCOMBE AND STEENKAMP**:

Newcombe and Steenkamp were professional witnesses who provided the Court with crucial information relating to their interactions, observations and clinical findings of the deceased, particularly in the months and days before her death. The deceased had been their patient. The deceased had been a patient of Steenkamp since 2014 for general medical care and botox treatment. Her last consultation with the deceased was 9 days prior to her death. The deceased looked more relaxed and mentioned that she was

going to Spier in Cape Town with her husband the following weekend. She consulted Steenkamp during her last consultation for botox treatment and asked that the doctor make her pretty. This is one of many factors which would support a reasonable inference that the deceased was not in a pervasive state of despair or low mood, or that she was a risk to herself.

Newcombe's last consultation with the deceased was on 20 July, the Wednesday prior the deceased's death. She also had a 10 minute telephone call from the deceased during the weekend at Spier, as well as message exchanges between them. She did not in all her interactions find the deceased to be suicidal or depressed. Newcombe identified the deceased's statements or conduct displayed to the marriage counsellor, and the deceased's statements to herself, as being consistent with her anxiety, and an exaggerative attempt to get her husband to understand and favourably respond to her feelings.

The common thread in their evidence is that the deceased did not have mental health challenges and that she did not present symptoms of depression or anxiety disorder, nor that she was a suicidal threat. They withstood lengthy and vigorous cross-examination that they had misdiagnosed the deceased; however, they consistently stood by their

testimonies. The Court found them to be reliable witnesses who gave evidence in a credible and trustworthy manner.

16.6 **CAROL NADER:**

This witness observed the deceased and accused engage each other in the marriage counselling sessions with a view to restoring their marriage as it took strain with the discovery of the accused's extra-marital affair. Her early impressions of the behaviour of the deceased during sessions concerned her that the deceased may require further psychological and medical intervention, which she addressed with them. I understand from her testimony and written statements[81] that she is not qualified to diagnose mental conditions. The deceased heeded her advice for onward psychological intervention by engaging the ongoing services of a clinical psychologist, and visits with her doctor who prescribed medication for daytime anxiety and sleep difficulties.

Nader was persistent during her testimony that the information she gave Dr. Panieri-Peter, did not necessarily contain her professional findings, nor was it based on fact. I understood her evidence in this regard to be that

[81] Exhibit P

she engaged the topic more as being off the record banter with a colleague. She expressed her shock and surprise that much of her conversations with Dr. Panieri-Peter were placed before the Court. She also remained steadfast that she did not communicate to Dr. Panieri-Peter that the deceased was suicidal.

In evaluating the evidence of this witness it must be said that the Court was constrained to distinguish between her professional views and mere speculation or conjecture. Not much weight can be given to the view which she held of the deceased's mental state, as she was not qualified to do so. However, more importantly, any concerns which she had on a primary assessment level were superseded by subsequent psychological and medical attention, the evidence of which has been placed before the Court.

It must be said however that the witness transgressed the rules of medical privilege by providing a written report to the attorney appearing on behalf of the accused. Both the deceased and the accused were her clients under the umbrella of counselling. Information so given can only be released by her to other parties with their respective express consent. I deal with this aspect later in this judgment.

16.7 **MR K. MABETA, CAPTAIN SEPTEMBER AND CONSTABLE FERNANDES**

Not much turned on the evidence of these witnesses, save that their testimonies serve to corroborate aspects in various events and in the sequence in which they had unfolded from the early hours of the Sunday morning until after the death of the deceased.

Mr. Mabeta, the Spier security guard, confirmed that he saw the deceased and accused pacing along the pathways in between the hotel rooms and that he observed them to be arguing, with the accused pushing the deceased.

The evidence of Fernandes placed into context circumstances as to how Daniels' first statement came about. It was taken by him after arriving at the scene, outside in the parking area on a vehicle bonnet. This would reasonably explain why further statements were requested from Daniels, which also provided more details.

The Court is satisfied that these witnesses testified in a truthful manner and that it is safe to accept their evidence. The Court finds that these witnesses were credible and had nothing to hide.

16.8 **CAPTAIN JOUBERT AND COLONEL OTTO**:

The evidence of Joubert and Otto gives the Court an understanding of the DNA collected at the scene and the locations in the hotel room where blood stains were collected from.

Blood of the accused was found at various locations in the bedroom, which Joubert testified was either deposited by the accused before, during or after the incident. He makes a significant finding that the blood stain on the bathroom floor next to the body of the deceased is a contact transfer, meaning that the transfer was made when a bloodied object had come into contact with that surface. Otto testified that in order for a secondary transfer to be made, the blood had to be wet. She estimated that such a transfer can only happen within 30 minutes from the time the blood was produced, in other words from the time the person started bleeding.

The evidence of these witnesses is accepted as trustworthy and reliable.

16.9 **DESMOND DANIELS**:

Daniels was a single witness who gave evidence as to how he had come out to the scene and what he had observed. He gave his account in a

consistent manner. He was subjected to lengthy, hostile and vigorous cross examination often on matters which were irrelevant to the matter. He was consistent in recalling the events and did not come across as being malicious towards the accused or having an ulterior motive in testifying to events as he did. He is an independent witness. Daniels gave crucial evidence on a number of aspects such as the position the deceased was in when he opened the door; how and when the accused went into the bathroom; that the witness had pushed the door open after fiddling the lock; that he saw the legs of the deceased; the basic features of the cord tied to the towel hook and around the neck of the deceased; that she was not breathing when he removed the cord; that she was completely naked, importantly that the accused never told him that his wife was in the bathroom or called out to her before he was asked by the accused to get the bathroom door open and that the accused did not at any stage ask him to call for an ambulance or other emergency medical assistance.

Daniels gave account of the basic features that the cord was in when he saw it at the back of the door and tied around the neck of the deceased. He was taken apart in cross-examination for not being able to reconstruct how the cord was tied and being unable to repeat the demonstration. This witness was called as a lay person. He is not an expert in reconstruction

and he gave a sufficient and reasonable account of how he remembered seeing the cord in the fleeting minutes when he entered and exited the bathroom. His eyes were not fixed on the cord. In that fleeting time he would have had to direct his focus on a number of things, which from his evidence he clearly had done.

Section 208 of Act 51 of 1977 embodies the principle the Court must apply to the evidence of a single witness. This requires that the evidence of Daniels must be satisfactory in all material respects. The cautionary rule is a matter of common sense. In **Modiga v The State** (20738/14) [2015] ZASCA 94 (01 June 2015), at para 32, it was held that:

> *"I am mindful of the salutary warning expressed in **S v Snyman** 1968 (2) SA 582 (A) at 585G that even when dealing with the evidence of a single witness, courts should never allow the exercise of caution to displace the exercise of common sense."*

Equally important is the sentiments of the Court in **S v Sauls**[82] that there is no rule of thumb test or formula to apply when it comes to consideration of the credibility of the single witness. The Court must consider the merits and demerits of the testimony and having done so, will decide whether it is

[82] 1981 (3) SA 172 (A)

trustworthy and whether, despite that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told.

Van der Spuy subjected Daniels to vigorous cross-examination as regards what he considered and subsequently argued to be material differences between Daniels' testimony and that contained in the 3 statements given to the police. Counsel criticized the evidence of Daniels as being materially different to the statements made to police and being of such a poor quality that no reliance can be placed thereon. I disagree. In my view the difference between the statements and Daniels' oral evidence in Court are not material. Through other testimony it was apparent that the initial statement was obtained from Daniels at the scene by Constable Fernandes in the parking area. After the post mortem report was completed on the Tuesday and pursuant to the findings contained therein, the investigative team subjected Daniels to further consultations and recorded further information as sought.

Daniels maintained that the ligature around the deceased neck was loosely placed around her neck, allowing him to take it off her neck with ease. The cord of the curling iron is 3 metres long. The door is 2 metres in length, (the hook is 1,94 metres long) which makes it possible for the appliance to be tied around the hook with sufficient length (1 metre and 6 centimetres)

for the remainder to be tied around the neck of the deceased. Given the length of the cord the deceased would have been able to lie in a supine position. At the very least given the evidence of Daniels that her calves were on the floor, it would mean that her buttocks were on the floor and possibly so was her back, or at the very least her back could have been slightly raised, with the cord tied around her neck.

Daniels testimony in Court remained consistent in material ways. He testified to being sent to room 221 due to a bathroom door not opening, what he did upon arrival, his discussion with the accused, opening of the door and assisting the accused in removing the cord from the deceased neck. He left the bathroom and called for further assistance. His three statements, each containing further information, it was argued by Van der Spuy, have been the result of the police having suggested the further detail which he went on to elaborate. That he initially said that the deceased was lying on her back, was argued to be materially different to his testimony in court wherein he explained that he opened the door approximately 15cm when he saw the calves of the deceased flat on the ground. It is well known that police statements are as a matter of common experience not taken with the degree of care, accuracy and completeness.

This was dealt with in **S v Xaba** 1983 (3) SA 717 (A) at 730B-G. In cases where there are contradictions between the statement made by a witness to the police and subsequent viva voce evidence, the approach is the same as dealing with the contradictions between two witnesses.

In **S v Mafaladiso en Andere** 2003 (1) SACR 583 (SCA) 593E-594H reads as follows:

> *". . .in neither case is the aim to prove which of the versions is correct, but to satisfy oneself that the witness could err, either because of a defective recollection or because of dishonesty. The mere fact that it is evident that there are self-contradictions must be approached with caution by a court. Firstly, it must be carefully determined what the witnesses actually meant to say on each occasion, in order to determine whether there is an actual contradiction and what is the precise nature thereof."* (Own underlining.)

This Court is alive to the fact that the previous statements which Daniels made were not taken down by means of cross-examination, nor do we know what questions have been put to him which would have solicited the recorded statements. The Court observed Daniels to be a simple and

relatively unsophisticated man. He gave account of events, referring submissively and respectfully to the accused in the dock as *"die meneer"*[83]. He worked as a maintenance man for most of his adult life, for the first many years at Stellenbosch University followed by his present employment at Spier where he had been working for the past 15 years. He is not highly educated and his work experience and training is limited to general maintenance work at the hotel. He testified with the aid of an interpreter, he speaks with a cracked voice rasping at times during his testimony. This added strain to the interpreter's role which often required of her to confer with him that she had understood him correctly. Though his statements were recorded in Afrikaans, which is his chosen language, there may have been language, cultural and other communication challenges between the witness and the person taking down the statement which could stand in the way of what precisely was meant.

In Mafaladiso the approach is that not every error by a witness nor every contradiction or deviation adversely affects the credibility of a witness. Non-material deviations are not necessarily relevant. Furthermore it was held that the contradictory versions must be considered and evaluated on a holistic basis.

---

[83] A respectful way of referring to a man in Afrikaans

In addition to weighing up the previous statement against the viva voce evidence of Daniels, I considered his evidence with the necessary cautionary rules as a single witness whether it was credible and satisfactory in all material ways. Evaluated on a holistic basis I am satisfied that Daniels' account of the events of that fateful morning is reliable and notwithstanding any shortcomings, I am satisfied that the evidence is credible in all material respects.

Van der Spuy argued that Daniels lied about the fact that he spent the Court lunch adjournment, whilst under cross examination, with his supervisor, Mr. Joep Schoof. This was argued to be indicative of two things, one that Daniels could not be trusted and secondly that Daniels was influenced or coached by his employer. Daniels in reply maintained that his testimony relating that which he had been called upon to testify had been nothing more than that which he had experienced himself and as he had observed it and that even though he was prepared for Court with the assistance of lawyers for Spier, he was not coached as to the merits of his testimony. Schoof also testified (as dealt with hereinafter) that he did not tell Daniels how to answer questions put to him in Court and that Spier had no interest in the matter whatsoever. Corroboration that Daniels was not coached is also found in the testimony of Sergeant Adams.

Notwithstanding some shortcomings in the testimony of Daniels, it is my judgment that his evidence on the events in question was satisfactory and reliable in material respects. There were no material contradictions in Daniels evidence.

16.10 **MR. J. SCHOOF:**

Mr. Schoof, the general manager of the hotel, testified that Spier Hotel has no interest in the matter and that the support that the Hotel gave to Daniels, through their lawyers and the hotel management, was that of supporting their employee and that they did not seek nor did they in fact influence the testimony given by Daniels.

Schoof gave evidence in a consistent and truthful manner. The Court has no reason to doubt his evidence and accepts the contents thereof. Further corroboration that Daniels was not influenced or coached as to the contents of his testimony can be found in the affidavit[84] handed up by agreement with the defence that the contact with Daniels was for the purpose to prepare him for Court and that they did not instruct nor coach him in respect of evidence Daniels testified to.

---

[84] Affidavit dated 15 March 2018 by candidate attorney Mr. James Michael who assisted Mr. Daniels c/o Cliffe Dekker Attorneys -

16.11 **COL D.POOLEMAN**:

Pooleman testified on a number of engineering aspects relating to the bathroom door and the curling iron. He impressed the Court as a sound expert and his evidence is accepted.

16.12 **SERGEANT ADAMS AND SERGEANT APPOLLIS**:

Appollis was the investigating officer assisted by Adams. They testified on a number of aspects in the course of investigating the matter. The Court did not get the impression that their evidence was false or that they had ulterior motives for implicating the accused. It is significant that Appollis did not find any evidence indicating an intruder. It was not placed into dispute that the deceased and the accused were alone in Room 221 during the early hours of the Sunday morning until Daniels arrived on the scene. The Court also accepted their evidence as reliable and trustworthy.

16.13 **FARRAH AMEERMIA:**

The evidence of this witness was concise and confirmed that when the deceased entered this bedroom after the accused, she had worn a white robe and called for the accused to come. It was not suggested in her evidence that the deceased had any notable injuries. The Court has no reason to doubt the truthfulness of her evidence.

EVALUATION OF DEFENCE WITNESSES:

16.14 **JASON THOMAS ROHDE**:

Rohde remained consistent throughout his testimony that he was not guilty of the charges proffered against him. Whilst he was able to give a comprehensive and coherent account of the weekend's events, his testimony as to the events between the hours of approximately 7h00 am to 08h30 am on the morning of his wife's death, was evasive and specious. This period is also significantly the period during which the deceased by all accounts must have died.

When the deceased and accused returned to the bedroom at around 3 am, he testified that he got into bed and fell asleep and was awoken by the deceased shortly after 7 am. Whilst the deceased was irate at the earlier events and her toe bleeding from a fall outside, objective evidence though

supports his evidence that he had fallen asleep. Cell phone records show that he only responded at 07h06 to a message sent by Miller a few hours earlier. Blood stains in the bed consistent with her lying in bed with a bleeding toe support his testimony that the deceased had been in bed when he woke up. Cell phone activity on the deceased's phone shows that after attempting to phone Jolene at 03:11 am, further activity on her phone continued sometime around 05h50 am with enraged messages exchanged between the two women. This carries on intermittently until 07:06 am when the deceased wakes the accused up and screams profanities that Jolene had sent her messages. This seemed to have reignited the fury between the accused and the deceased. The accused maintains that at this point he told her words to the effect that he was done and wanted to sort things out when they returned home. She responded by getting out of bed and went to the bathroom. Jason fell asleep until he woke up some time later. The events which followed thereafter are as set out in the summary of his evidence.

The accused testimony as to the events of the fateful morning is interspersed with inherent improbabilities and seen within the factual matrix of the matter falls to be rejected as not being reasonably possibly true.

The accused disclosed in his plea explanation and testified that he had a physical altercation with the deceased in the early hours of the Sunday morning. Using terms such as *"colliding"* with the deceased and his body *"connecting"* with the deceased was clearly a way of ducking the reality that the accused had assaulted the deceased by using physical force and violence to overcome her resistance, including resorting to shoving her by her neck to stop her from blocking his exit from their hotel room. He did not squeeze his hand over her throat, though it gave him the success of getting her out of the way. Clearly the accused showed the propensity to go for the deceased's throat to overcome her and render her powerless over him.

The accused testified over 6 days. His version of events on the morning of his wife's death came across as scripted, he showed difficulty in answering questions beyond the facts to which he testified in chief, could not answer questions crucial to the events of that moment and contradicted himself in a numbers of ways. During cross examination he initially illustrated that the cord was around her neck in a double strand. However, later he changed his version that the cord was around her neck in a single strand. As in the case of Daniels, the Court does not make much of the fact that the accused could not do a reconstruction as to how the cord was tied behind the door and to the neck of the deceased. He is not an expert in the field. However,

it is reasonably expected from the accused to be able to give basic features as to how the cord was around his wife's neck. He became argumentative and belligerent when challenged under cross-examination, answering questions to that effect with questions and inferences. He struggled with the details of events when he testified on this aspect.

As far as the accused demeanour during his testimony, it must be borne in mind that it is seldom ever decisive in determining the outcome of a case. On its own, findings of demeanour have limited value. Demeanour should be considered with all other factors, including the probability of the witness' story, the reasonableness of his conduct, his memory, the consistency of his version and his interest in the matter. The risks of accepting demeanour evidence is diminished if the evidence accord with the inherent probabilities, is corroborated, is not contradicted, or if it is contradicted, then only by evidence of a poor quality. The demeanour of the accused should be measured against adequate facts and tested against probabilities and improbabilities of the case as a whole.[85]

The accused explained that his inability to remember crucial details was as a result of his shock and trauma. However, measured against the events surrounding his arrest, which had clearly been shocking and traumatic, he

[85] S v Shaw 2011 JDR 0934 (KZP)

testified with clear and specific details. Emotional and evidently distraught by recalling the manner of his arrest, he was able to give a clear account of where he was when he heard the bell ring; what time of the morning it was; how many police officers he saw from the landing of his house and the police vehicle through the window; what his mother put to the police officers and upon returning to the room what clothes he put on. He also described in detail how he was taken from various police stations and eventually driven from Johannesburg to Cape Town. These events were very upsetting to him and traumatized him. Notwithstanding the trauma he gave his account in quick successive expression with events particularised in coherent detail. As he described the events relating to his arrest, he became tearful for the first time during his testimony.

The accused's account of events leading up to his wife's death and his discovery of her body had been relayed in his evidence without the emotional anguish which he exhibited when he testified to his experience of his arrest. The demeanour of the accused must however be seen within the limitations of its evidentiary value.

It is a significant feature of the crime scene that the accused's blood was found at the scene, more particularly on the white duvet cover, pillow and on the bathroom floor where the body of the deceased was found. The

accused could not explain why his blood was found at various areas in the room. In view of the fact that he sat down next to the deceased the contact transfer in the bathroom highly likely means that the accused was bleeding from an injury sustained 30 minutes earlier meaning when his blood was still wet. Though counsel for the defence pointed out that the accused and deceased had been occupying the hotel room since the Friday, it was not suggested that the room had not been serviced on the Saturday morning. This would reasonably imply that the accused had bled from a wound between the Saturday and the Sunday morning. The evidence suggests that this time frame is narrowed down substantially to the accused having had a bleeding injury 30 minutes before he sat down on the bathroom floor next to the body of the deceased. It is not in dispute that he sat down next to her at around 08h25 – 08h30. Blood of the accused was not noted on the bedsheet[86]. This would reasonably suggest that he did not have the bleeding wound at the time that he was sleeping **in** bed. The various bloodstains on the bedsheet were all those of the deceased consistent with her lying in bed with a bleeding toe. The accused must in all probability have sustained the injury of which he claims he was not aware **after** he got out of bed that Sunday morning. The bloodstains of the deceased on the

[86] Accused's blood was on top/side surfaces of duvet and pillow case/Not the bedsheet or inside of duvet cover.

pillow on the side of the bed where the accused had been sleeping are consistent with the abrasion she had on her left eyebrow, two mascara marks consistent with the position of her two eyes and a smaller round blood stain on the right. This is not the pillow on which she had slept. It is the pillow on the accused side of the bed.

State witness, Norton, the brother in law of the deceased, testified that his father in law, in his presence, asked to see the accused's hands, to which the accused obliged. However, the district surgeon, Dr. Tiemensma on the J88 recorded 4 days after the death of the deceased, that the accused that a tiny cut or scratch on his hand to which he explained that he had cut himself on a vase after the deceased's death. During his testimony the accused repeated that the cut on his hand was sustained from a vase which he had reached for and had dropped in the days after the deceased's death. He further testified that it was quite a deep cut from which he bled somewhat and that his mother-in-law, Mrs Diane Holmes, was present at home to administer some aid to reduce the bleeding and assisted him with a plaster. The defence did not call his daughter or Mrs. Holmes to corroborate this event. Whilst it could be that as the mother of the deceased, she may have not wished to co-operate with testifying, this was however never indicated to the Court, nor was the suggestion made

that the accused wished to call her as a witness. Mrs. Diane Holmes had earlier in the trial given a statement explaining the deceased's bruise on her thigh and that the deceased had a bruising condition. That being the case, no explanation was tendered why another affidavit by her could not be obtained to confirm how the cut on the deceased hand had been sustained. Therefore an adverse inference can be drawn from the fact that the defence did not tender evidence to corroborate his testimony in this regard. (See **S v Teixeira** 1980 (3) SA 755 (A).) The Court is justified to infer that the failure to call Mrs. Holmes was that she might possibly have contradicted the testimony of the accused in this regard. In **S v Teixeira** the Court held that the failure to call an available witness may not be without consequences. The blood at the scene, on the bathroom floor and the white duvet cover, appears conspicuous and it is inconceivable that the accused would not notice his blood on these areas some time during the time that he had occupied the room or that he would not have felt the pain from the infliction of the wound. Apart from 2 healing scratches on his back, the district surgeon could only find one cut on his left hand which he claimed was sustained subsequent to the deceased's death. If that was true and he did not sustain the cut on his hand on the weekend of the deceased's death the corollary would mean that two cuts or wounds would

have been found on his body, that being, a cut from which he bled unknowingly over the weekend leaving bloodstains at the scene and the cut sustained from the broken vase after the deceased's death.

Blood stains on the bedsheet (bottom half) all belonged to that of the deceased which is interpreted to be consistent with the deceased lying in the bed on the right, bleeding from her toe/s. Whilst her blood was found on the other two pillows consistent with an abrasion on her left eye, it is significant that these were not the pillows on her side of the bed where the deceased had slept. One pillow is on the left side of the bed where the accused was sleeping and the other on the floor next to his side of the bed. On the blood pattern analysis/reconstruction of crime scene form, prepared and signed by Joubert at the scene on 24 July, the pillow on the left side of the bed is marked as B13 and the pillow on the floor on the left side of the bed is marked B11. This is also so illustrated in the photo album marked as Exhibit B on photos 38 and 39. The latter photo also appears at Exhibit D Bundle 2 Annexure 3 (photo 2). The markers at B11 and B13 are differently illustrated, pointing to the pillow on the bed as B11 and the one on the floor as B13. I have engaged counsel during argument on this and it had been agreed that the locations of the markers must be accepted as set out in the reconstruction scene and the photos of Exhibit B. Hence the

pillow on the bed is B13 and the one on floor is B11. Either way, the pillows marked B11 and B13 were not used by the deceased. They were both on the side on which the accused slept.

Joubert conceded during cross examination that the quantity of blood produced by the accused could have been from an insignificant injury, so small that he could not possibly have been aware thereof. In my view this does not detract from the fact that the accused bled at the scene. Whilst it was a minimal quantity of his blood, it was nonetheless conspicuously noticeable on the duvet, pillow and bathroom floor. Everything indicates that the accused bled during the time when the deceased was fatally wounded and the accused cannot account for it.

The accused was adamant that the deceased wore her robe when she was found in the bathroom. When viewing the photos it was clear that her forearms only are inside the sleeves of the robe and that it is inside out. Photo 15 clearly shows the inside seam on the outside at the sleeve. The back of the robe is essentially cascading on the side of the deceased with the sleeves half over each of her forearms. Some of the blood stains were noted to have been on the inner aspect of the left shoulder, which if worn inside out would cause the blood to be on the inner aspect of the left shoulder. This serves as corroboration that she had not been wearing the

robe when she was discovered by the accused and Daniels. It is unlikely that had she worn the robe when he lifted her and placed her down on the floor that the robe would end up being around her body and next to her for it would have been under her. It is most likely in the light of the evidence that she was naked when she was 'discovered' as Daniels testified. After Daniels left the bathroom, the accused appear to have attempted to hurriedly put the robe on the deceased body, which would have been a futile and difficult exercise without help. He mistakenly donned the robe onto the deceased inside out. Daniels had just exited the bathroom and staging further would have been pressurised by the shortage of time and limited opportunity before others arrived. With the deceased being a *"dead weight"*, as the accused testified, it is likely that he could not don the robe on her completely, save for placing the limbs which would have been more capable of moving into the robe. The belt was on the bed. The accused had either forgotten to place same into the loops of the robe or he had run out of time to do so. Either way, this was part of staging to cover his tracks.

The finding that the robe was placed onto and around the body of the deceased lends independent corroboration to the testimony of Daniels that the deceased was completely naked.

The accused said that he resorted to phoning his wife after she did not respond to him. He could hear the phone ring from inside the bathroom unanswered. From records this call was placed at 08h02. Though his concerns at this point had grown to a *"gut feeling that something was wrong"*, he waited in the room for 20 minutes before placing a call to the hotel reception. The call to hotel reception in these circumstances is even more perplexing. Whilst knowing that his wife was in the bathroom and believing that something was wrong, he informs the receptionist that the bathroom is locked from the inside, that it cannot open and that she should send a **maintenance worker to open the door**. This is preposterous in these circumstances. He was convinced that something bad had happened, a maintenance worker would only serve to open the door. What supposedly would a maintenance worker do once the door was opened? The accused's conduct is consistent with someone who knew that his wife was dead on the inside of the bathroom. Whilst the call to reception is to call for assistance, he limits the assistance to merely opening the door and excludes raising the alarm that his wife may need emergency aid, let alone mentioning that she was inside the bathroom. At the point of being so convinced that the deceased was in danger, it is a peculiar feature that the accused did not seek emergency or medical assistance.

The accused thereafter waits for a maintenance worker to arrive, however long that may take as he did not know when exactly aid would come. Some 5 - 6 minutes later, Mr. Daniels arrives knocking at room 221. The accused is not waiting outside in anticipation. Instead the door of the hotel room is shut. The accused opens after Daniels knocks for attention and the accused then tells him that the bathroom door cannot open. The accused claimed that he mentioned to Daniels that the bathroom was locked from the inside. Daniels testified that the accused simply told him that the door could not open. The difference is not material. For either way, the accused did not relay to Daniels that his wife was inside the bathroom or that he was concerned that something may have happened to her which would have cautioned Daniels that she was inside. He does not call out to his wife as a last caution that he got someone from the hotel to open the door. After all, forcing the bathroom door open with his wife inside has the effect of invading her privacy. She may have been exposed in the bathroom or in a compromising position which would embarrass her. Logic would dictate that a man in the position of the accused would raise the alarm to someone who would be opening the door on his wife, possibly naked in the bathroom or in a comprising position, so as to exercise caution when opening the door.

The accused said in cross-examination that by stating that the bathroom was locked from the inside he would not have to spell out to anyone that his wife was inside as it was obvious that by it being locked from the inside that *"someone"* was inside the bathroom. But this was not *"someone"*. It was his wife. According to his account of events she had gone to the bathroom some time earlier, was naked save for a hotel robe and he had initially thought that she was in the bath.

The accused claims that shortly after coming to the apprehension that his wife had done something bad, he rammed against the door in an effort to force it open and gain access. *"It did not move an inch"* he testified. This being so, he did not resort to any other attempts to gain access. He does not bend down to look at the door handle. The first port of call when a door cannot open is to check the handle. Realising that he is in a corner during cross-examination on this point, he answers that he is not technically inclined. How would he have known that it requires technical knowledge, if at all, if he had not even looked at the handle or its lock. When the State counsel probed whether he had previously experienced someone being locked inside a room or bathroom for example his children, he answered that they do not have keys to their home bathrooms. The accused started

adapting his version when questioned on aspects which did not make sense.

The Court had the benefit of an inspection in loco of the hotel room. The room is located on the ground floor. The front door as depicted on various photos clearly illustrates the bathroom window situate on the left, approximately a meter or so adjacent to the front door. The bathroom windows upon inspection was noted to be opening vertically, and a member of the forensic unit, a well built, adult male accessed the window with ease as depicted on photo 50 of the in loco photo album. The window was opaque, but the top was clear glass. A retractable shutter is on either side of the window accessible from the inside of the bathroom, which appeared as an aesthetic accessory. I find it strange that during this crucial period, the accused did not open the front door to engage help from persons passing by nor had he gone outside to the window to, at the very least, check if the window was open or to see if he could open the window to access his wife. Possibly the bathroom window was open, this would allow him ease of access in one way or the other. Many other feasible possibilities flow from simply coming out the hotel room, such as knocking on the window to get her attention or enlisting the help of others. It was after 8 am, people and staff would be passing. He surely could address his

concerns that his wife was in danger and see if they could open the bathroom door. He could knock on the window, call out for her, if all else fails, break it. No doubt breaking the window would have been easier to do as compared to breaking the bathroom door down, which did not move an inch. Clearly he wanted to retain control of the scene.

The evidence of the accused leaves more questions than answers. But moreover, it disintegrated with illogical statements.

A clear picture emerges that the accused wanted to create an alibi by calling upon a handyman from the hotel as opposed to a paramedic aid. Daniels arrived, not only willing but also obliged to act upon the instructions of a hotel guest. The accused refrained from expressing his apparent concern regarding his wife inside or that she was inside the bathroom in the first place. Daniels was unsuspecting that he was being used as a prop. He was unknowingly given a key role as a "witness" or an "alibi" to corroborate the version that the deceased had killed herself. Clearly the accused wanted Daniels to be ambushed by the discovery that the deceased was locked inside the bathroom and hanged herself. It is inconceivable that after being asked to fiddle the mechanism so as to get the door open, that the handyman would simply stand back without checking that the door could in fact open or to ascertain that the lock

mechanism had been the cause of the door not opening. It is more probable that he would turn on the door handle to see if he was successful in unlocking the door and through a process of elimination he could determine if his fiddling had solved the problem.

The two distinct versions as to who opened the door, also lead to the unravelling of two diametrically opposed theories: suicide v homicide. Daniels claims that he turned the handle to see if the door now opened and upon doing so stopped immediately when he saw two legs on the floor. He testified that he saw the deceased legs more particularly her legs flat on the bathroom floor in the direction under the basin area which is on the right of the bathroom door. The accused maintained that he opened the door, but the deceased body caused resistance against the door. He contradicted himself during his testimony when describing at which point he saw the deceased's feet. At some point he said he felt her against the door, then he said he saw her feet as he opened the door changing it to seeing her feet when he wedged himself through the door opening.

The accused's testimony that he is a "100%" sure that the deceased had on her bathrobe is also questionable. Even if she had on her bathrobe (which Daniels states she did not) and that she was completely naked, leaves the reality that without the belt, which is clearly seen on the photos

to be on the bed, the deceased would have been significantly exposed of her private areas. The accused did not make any concessions as to the fact that her body upon "discovery" would have been exposed, but maintained that she had been dressed in the bathrobe. Had this been the case, Daniels would not have had such a clear view of the electric cord tied around the deceased neck.

The hotel robe is made of a thick towelling fabric and has a fold over collar running behind the neck to the front of the robe. When Daniels removed the cord from the neck of the deceased by sliding it over her head, he would according to the accused version, have had to manoeuvre his left hand underneath the robe collar and her hair to access the cord from the back of her head and his right hand would have to take the cord from the front of her neck with her face leaning on the chest of the accused. This would have taken some effort, particularly as accused claimed the cord was tight. The accused did not provide this detail. Upon further questions from the Court as to where Daniels was standing and exactly what the positions of the three persons were, the accused struggled with the construction of the narrative of his version. In my view, this is so, because the manner in which the deceased was found and how the cord was removed by Daniels was based on a fiction. His version had to be adapted

to answer questions from the Court. This presented a problem for him in relaying the events as it simply did not happen that way. Given that the deceased was in a crouched position with her back against the door, he had to construct his version to the effect that he picked her up facing her.

It was an established pattern of the testimony of the accused that he could not remember crucial details and became argumentative when asked questions as to the state of the cord around her neck. He repeatedly asked counsel for the State of what interests the cord around his wife's neck was as all he wanted was for it to be removed. If anything is to be said of his opportunity and need to observe it is that he would have had a longer opportunity to observe the ligature around the deceased's neck and a greater interest than Daniels to gather how it could come off her neck. Finding the deceased suspended from a ligature with a noose around her neck would have compelled him in that moment to check how the noose was tied as picking her up could potentially have tied the noose tighter around her neck causing further injuries.

After Daniels removes the cord from the deceased, it is not disputed that the accused lets Daniels leave the bathroom without calling out for him to get medical attention. Not calling for medical or emergency assistance remains a peculiar feature throughout the evidence of the accused.

Daniels is left to his own devices, which he does by going in to the room to call reception for immediate assistance. The accused says he went about attempts to resuscitate his wife. Bizarrely the accused denies that he heard Daniels calling for assistance and to ask of Daniels to do so. This would be all the more reason for him to call for assistance. He testified that he has only seen CPR on television dramas. The reasonable response of the accused would have been to call for emergency or medical assistance as soon as he feared that something was wrong. He had various opportunities on his own version to do so and at various instances during this crucial period. Instead he remained in the room; phoned his wife; waited for 20 minutes then phoned reception; waited for an indefinite period for the handyman to arrive; when the handyman gets the door open he yet again does not call for medical attention or assistance.

The affidavit of William Lee (exhibit "RR") also states that when Lee stood at the bathroom door, he asked the accused seated on the floor next to the deceased if he should call anybody, but got no response. Once again the accused does not, even upon invitation, call out for emergency or paramedic assistance.

16.15 **DR PANIERI-PETER:**

PSYCHOLOGICAL AUTOPSY:

According to literature on the topic, the psychological autopsy is thought to be the cornerstone of suicide research.[87] It is also called psychiatric autopsy, retrospective death assessment, reconstructive evaluation and equivocal death analysis. This is a procedure for investigating a person's death by reconstructing what the person thought, felt and did preceding his or her death.

It was developed in the 1950's by two psychologists working in a hospital in the United States of America. The term 'Psychological Autopsy' was coined in 1958 by Edwin Shneidman, Norman Earberow and Robert Litman, the directors of the Los Angeles suicide prevention center[88]. There is no well-developed conceptual or theoretical basis for deriving conclusions from the various sources of information collected as part of such an autopsy. It appears that the professionals involved draw upon their experience to relate the facts to symptoms or syndromes that they would encounter in their daily practices. Information is collected by interviewing relatives, friends, employers, physicians and others, including

[87] Psychological Autopsy – A review by Vasudeva Murthy CR – Al Ameen J Med Sci (2010) 3(3): 177-181
[88] Ibid.

teachers and in some cases even bartenders, who could provide relevant information in an attempt to reconstruct the deceased's background, personal relationships, personality traits and lifestyle. The nature of information collected would usually include biographical information (age, marital status, occupation); personal information (relationships, life style, alcohol/drug use, sources of stress, social networks, life events and chronic life stressors); and secondary information (family, history, police records, diaries, clinical histories and suicide notes); physical illnesses; medical and police records.

The term psychological autopsy is neither particularly well defined nor standardized. One major concern in this discipline is that there does not appear to be a systematic procedure in place for the conduct of these interviews. Depending on the nature of the case under review, the procedure will vary from case to case and the time interval between the death and the interview will also influence the quality of information obtained. The assessment involves the subjective views and opinions of those willing to participate. However, despite many weaknesses of the evidence and procedure used in the autopsy, it would appear from various literatures on the topic that it its strength lies as an investigative tool. The burden of proof required during the course of investigations is different from

that which is required in Court. Authors in the field consider that psychological autopsies could have a more productive role outside the Court, than inside. Whilst there are many benefits to a **comprehensive** psychological autopsy, scholars are guarded against extending its use beyond research or clinical practice. Although some believe that the science is a standard which is reliable and a valid tool, others argue that it is still in its infancy and requires far more empirical support before its scientific basis is established. Based on the literature, the psychological autopsy is still searching for its legitimacy and place as an evidentiary tool in the investigation of a crime, let alone a criminal trial[89].

The persons interviewed by Dr. Panieri-Peter for the purpose of conducting the autopsy were as set out in the report as being the accused, his eldest daughter , the housekeeper of the deceased, identified as Ms. MM, friends of Mr. and the late Mrs. Rohde (individually and anonymously cited as Mr. PC, Mr. GP and Mr. TC), Ms. Suzanne Long (clinical psychologist of the accused), Dr. Kevin Stoloff (psychiatrist of the accused who has been attending to the accused post the event in question), as well as the two State witnesses, Nader and Newcomb as referred to earlier herein. Save for Newcombe, whose testimony is before the Court, the witnesses are all

[89] Ibid.

closely linked to the accused. In **S v Botha**, Case No: K/S19/12 (unreported decision)[90] the accused was charged with the murder of her husband by shooting him twice with a revolver. The version of the accused was that the deceased committed suicide. Dr. Panieri-Peter did a psychiatric assessment of the accused, as well as a psychological autopsy of the deceased, and concluded that the deceased was suicidal and that the accused did not present as a person capable of murdering her husband. In its judgment the Court, with reference to the guiding principles applicable to the admissibility of expert opinion, found that Dr. Panieri-Peter's report could not carry weight. The conviction was confirmed on appeal to the SCA, under citation **Botha v S** (901/2016) [2017].

It is rather clear that Dr. Panieri-Peter had accepted, as fact, her client's allegation of suicide and then set about finding confirmatory evidence for this conclusion. She did not, during her testimony or in her report, consider whether the exhibited behaviour of the deceased could be associated with the discovery of the extra-marital affair of her husband. Author and therapist Robert Weiss in his article titled: **"A Better Understanding of Betrayed Spouses"**[91], writes that if most of the time, a cheated-on

---

[90] This was a judgment of the Northern Cape Division, Kimberley by Phatshoane, J.

[91] Robert Weiss LCSW, CSAT-S is an infidelity and addictions expert and the Senior vice President of National Clinical Development for Elements Behavioural Health

patient's current emotional state was the only guideline for diagnoses, they would be labelled as rage-filled, vengeful, impulsive, inappropriate, unstable, and the like (possibly as having some personality disorder or some other mental disordered label). The result is that patients are often misdiagnosed, as many betrayed spouses experience stress and anxiety, symptoms characteristic of posttraumatic stress disorder (PTSD) but not in fact PTSD, including flashbacks, nightmares, severe anxiety, hyper-vigilance and powerful mood swings. Crucially, Newcombe, (the deceased's treating psychologist), testified that the deceased displayed many or most of these symptoms, however, whilst it is similar to PTSD, she viewed it as the deceased experiencing the normal emotions and symptoms resulting from coping with the accused's infidelity and not that she had suffered from a mental disorder.

Reference to communication between the deceased and Newcombe on the Friday and Saturday of the Spier weekend, had been interpreted by Dr. Panieri-Peter as the deceased having been in emotional turmoil and out of control. Newcombe's testimony however, corroborated in part by the cell phone extraction of their conversations, points to a far more positive impression of the deceased's emotional state and her exhibited behaviour. Panieri-Peter's interpretation of the same event is misleading, creating a

picture of the deceased as being in complete despair, hopelessness and simply that she was an emotional wreck.

In terms of the best evidence rule, the Court must be guided by the best evidence available to support the communication between the deceased and Newcombe. In this case, the Court is in possession of the best evidence of these events, that being the testimony of Mrs. Newcombe and the extraction of the messages exchanged between them. The evidence of Dr. Panieri-Peter in this regard is not only misleading but also superfluous and can be rejected.

The report also refers to various unidentified informants, relying on hearsay information and constructing her opinion on information provided by the accused which was not provided in his testimony, for example that there was a strong indication of a genetic predisposition to suicide as according to the accused the deceased's father had occasion to express a desire to commit suicide by hanging himself with a rope, furthermore that other family members of the deceased had suicidal tendencies or thoughts; and that the deceased had previously expressed suicidal intent by threatening to jump out of the car. The accused did not testify to this, nor was it put to the members of the deceased's, family who had been called as State witnesses, that being Holmes, the brother of the deceased and Norton, the

brother-in-law of the deceased. The majority of the deceased's personality traits was pointed out in the report in an extremely negative light and expressed as indicator of depression, suicide and being out of control. By and large every act or conduct of the deceased was stretched and taken out of context to fit the mould of a depressed and suicidal woman. Whilst the deceased was not diagnosed as having a personality disorder of narcissism, Panieri-Peter finds that the circumstances at Spier and the consequent humiliation amounted to a narcissistic wound, so severe that she took her own life.

The report indicates that State witnesses, Newcombe and Nader, were respectively interviewed on 22 August and 12 September 2016. The former took the form of a 15 minute telephone interview and the latter a 3 hour consultation. . In the matter of S v Botha[92], Dr Panieri-Peter countered criticism by counsel for the State that her evidence was biased and that she had been selective in her choice of interviewed subjects in that that she had not consulted three specific parties on account of them being State witnesses. In its judgment the Court also expressed concern that Dr. Panieri-Peter read and considered the transcribed evidence of witnesses

[92] See footnote 19 supra

but yet additionally interviewed them and drew adverse inferences therefrom as to the quality of the evidence rendered by them.

In my view, the evidence upon which Dr Panieri-Peter formed her opinion of Mrs Rohde was wholly insufficient, and the contents of the report and the reasoning employed in coming to her conclusions that the deceased was suicidal, and in fact committed suicide, was biased. The anonymous views expressed in the report are untestable and throughout the report reference is made to the opinions or statements of unknown persons, the probity of which cannot be determined by this Court. Various relatives and/or friends of the deceased did not wish to be interviewed. Clearly divide within the family and close friends had resulted in polarized or contrary views as to the cause of the deceased's death. It is common cause that the deceased had a wide social circle. The deceased was a volunteer counsellor and tutor in disadvantage communities, an avid member of the gym and had friends from vastly different social groups. This would have allowed this witness to compile her report from a greater perspective. Instead the sources of information seemed to have been limited to persons linked to the accused. Furthermore the science upon which a psychological autopsy is based was not sufficiently explained to persuade the Court that it is reliable or enable the Court to assess the probative value thereof.

In the course of her evaluation of the accused, Dr. Panieri-Peter was of the view that he gave a consistent account of events of the weekend. This evidence is not relevant. Whilst the purpose is to show consistency in the statements made by the accused, these statements and her evidence to vouch for same, is superfluous. The accused had testified before the Court and the probabilities of his evidence must be evaluated by the Court. In *Holtzhauzen supra* the Court held that statements by the defendant made on previous occasions to a psychologist adds no greater weight to that which the defendant had been testifying to in Court. The expert's guarantee as to the believability of prior statements of the accused adds no greater weight to his testimony and falls to be rejected. Whilst it is so that the accused did not exhibit a history of violence towards the deceased, the weekend during which the deceased died appear to have been different. I will deal with that in the final analysis of the evidence.

Dr. Panieri-Peters' "evaluation" of the version of the accused and her "pronouncement" of the probabilities thereof is not only an attempt to usurp the exclusive role and function of this Court to do so, it amounted to a modern day version of an "oath-helper". The 12th Century English Court System resorted to adjudication of criminal liability by the accused taking

an oath as to his innocence and oath-helpers concurring with him. Such expert testimony is to be rejected without exception.

The adjudication of the issue in *casu* - *homicide versus suicide* - requires of this Court to determine whether the deceased had ended her own life or whether the accused murdered her. Testimony that the deceased was more likely to murder the accused, is not only irrelevant to the issue before this Court, but it only serves to castigate the deceased, takes the matter no further and can safely in my view be rejected.

In **S v Ramavhale** 1996 (1) SACR 639 (A) the Court held that it is the duty of a trial Judge to keep inadmissible evidence out, and not to listen passively as the record is turned into a papery sump of "evidence". I would add that the Judge as the gatekeeper of evidence does not sit back when evidence which is inadmissible gets woven into or sought to be entered into the record. The end result would be that the Court has to try to separate scrambled eggs, the yolk from the egg white. It would be impossible to do so, resulting in a miscarriage of justice.

Curtailment of the expert testimony of Dr. Panieri-Peter is summed up by borrowing from the analysis of Prof John Wigmore, in his book: "Wigmore,

Evidence in Trials at Common Law 1917" in respect of a Court's decision in similar circumstances:

> *"The tribunal is on this subject in possession of the same materials of information as yourself; thus, as you can add nothing to our materials for judgment, your further testimony is unnecessary and merely cumbers the proceedings."*[93]

In the matter of ***Twine and Another v Naidoo and Another*** *[2018] 1 All SA 297 (GJ)* the Court held that[94]:

> *"In certain cases of neurological, psychological and psychiatric evidence the expert is dependent on the honesty of the person who is the subject of the assessment for their evidence to be of any probative value to the court. This problem has manifested itself many times and the approach of the courts is succinctly captured in the following dictum, which while dealing with the evidence of an expert in psychiatry is no less applicable to an expert in the sciences of neurology or psychology:*
>
> > *'The weight attached to the testimony of the psychiatric expert witness is inextricably linked to the reliability of the subject in*

[93] Olicker, M.R. - The Admissibility of Expert Witnesses Testimony – University of Miami Law Review
[94] Para 18 (t)

question. Where the subject is discredited the evidence of the expert witness who had relied on what he was told by the subject would be of no value.[95]

Should the subject of the assessment not testify, it would render the views of the expert meaningless as it was based on the untested hearsay of the subject of the assessment."

The accused gave evidence in his own defence which was subject to examination, cross-examination, re-examination and questions by the Court. When the forensic psychiatrist provided her report, she gave evidence which was provided to her by the accused during consultation in preparation of the report. The accused did not testify to certain "facts", although he had an opportunity to do so under oath. In so doing, Panieri-Peter testifies to evidence on behalf of the accused that the deceased had displayed a previous suicidal attempt and had a genetic predisposition to commit suicide. This is an attempt to embellish the evidence of the accused and the defence having a second bite at the cherry in placing evidence on to the record.

---

[95] *S v Mthethwa* [2017] ZAWCHC 28 at para 98.

In these circumstances, I am of the view that the report of Dr. Panieri-Peter is inadmissible. Its worthy of mention, that even if I am wrong on any one of the reasons aforesaid for not accepting this report and if indeed the deceased was a suicidal risk, this would not mean that the death of the deceased was as a result of suicide. The evidence as a whole must be determined so as to support such a finding.

In **Mathebula v Road Accident Fund**[96] the Court held that:

> *"An expert is not entitled, any more than any other witness, to give hearsay evidence as to any fact, and all facts on which the expert witness relies must ordinarily be established during the trial, except those facts which the expert draws as a conclusion by reason of his or her expertise from other facts which have been admitted by the other party or established by admissible evidence."*

I may conclude with the following notion that a lie repeated 20 times remains a lie – similarly an uncorroborated or untruthful statement made through an expert does not detract from the reality that it remains a lie or an unsubstantiated statement.

---

[96] (05967/05) [2006] ZAGPHC 261 (8 November 2006) at paragraph 13

16.16 **DR. PERUMAL AND DR. LOFTUS**:

Their testimonies were lengthy. Both produced copious amounts of academic literature, based on which they proposed possible hypotheses for each of the injuries which the deceased had sustained. Crucially though, their findings did not account for a number of injuries noted at the first autopsy.

Dr. Perumal sought to remedy this defect by handing up a second report, Exhibit "JJJ" drafted 4 June 2018, which he had drafted after having heard evidence by the State pathologists and the accused. As a result, this report was not put to the State witnesses. Having performed his autopsy on the 1st of August 2016, surely all of the injuries observed – as well as the interpretation of such injuries – ought to have been expressed in the first report. That was, after all, the report tendered during the trial proceedings and no indication *ex facie* the report suggests that the post-mortem report was incomplete or a preliminary finding. That he did not do so, is undoubtedly mischievously misleading. He also failed to mention that the specialised technique employed, (the bloodless field neck dissection), could not be repeated at a subsequent autopsy – a fact he attempted to

escape by suggesting that the advantage of his extensive experience rendered his testimony immune to this difficulty. He did, however, concede that he could not dispute the findings of the first autopsy as regards the injuries to the soft tissue of the neck. In my view Perumal deliberately avoided any sound bites in his report which would ring the bell of injuries not consistent with suicide.

As pointed out by Dr. Khan, Dr Perumal's initial report also appeared to have accepted the provided history – suicide by hanging – as fact. Injuries to the face and neck, which he had not interpreted in his initial report, were described during testimony as being associated with resuscitation. Curiously, he stated that such injuries must be carefully interpreted, on account of their similarity to throttling injuries.

The above calls into question his credibility, and the reliance this Court can place on his evidence.

The principle value of his testimony appears to be in the concessions he made: that he could not exclude the possibility of manual strangulation, or the existence of a pre-existing injury from a digit (finger) underneath the ligature mark, or that the mark under the left eyebrow constituted a separate injury, which could have been inflicted with a fist bearing a ring, or

that the deceased could have been dragged from the bedroom into the bathroom and that the cord around her neck would not have been tight as accused testified it to have been.

Perumal's misrepresentation of the deceased's injuries starting with his report dated 1 August 2016 tendered both in the bail proceedings and before this Court as Exhibit E resonates the ever increasing phenomenon that certain experts tend to protect the interests of the group that hired them. Experts sometimes tend to suffer from the quest to help find facts beneficial to the commissioning party and similarly conceal those features which would point to the latter's guilt.[97] That being said, I need state that not every expert hired by a party can be labelled a "hired gun". The same can however not be said of Dr. Perumal.

Of the four pathologists who testified in this matter Dr. Loftus was the only one who did not view the actual body. His findings were entirely based on the original autopsy photos, which he described as suboptimal. His testimony was highly academic in nature and often scenarios not related to the facts of this matter. Whilst Dr. Perumal acknowledged that he was constrained in the extent to which he could comment on the initial autopsy by virtue of his own being a later examination, Dr. Loftus misrepresented to

[97] Mingxiao Du – Legal Control of Expert Witness Bias – China University of Political Science & Law

the Court that he had done a digital or virtual autopsy and gave his comments and conclusions accordingly. When the matter reconvened after the July recess, the Court engaged Dr. Loftus on the fact that the notion of his having performed a digital autopsy was clearly misleading; however he refused to concede this to be the case and continued to insist that the "autopsy" he performed was virtual. This is quite clearly incorrect.[98]

Dr. Loftus testified that after taking everything into account, he believed that *"beyond reasonable doubt"* the deceased, on that morning, hanged herself in the bathroom. With respect to Dr. Loftus, whether or not a fact has been proven beyond reasonable doubt, amounts to a judicial determination, which he has neither the training nor the experience to make. Through asserting his views he attempted to argue the case for the defence as an advocate and failed in his position as testifying as an expert. His expert testimony flies in the face of the truism that an expert witness may not give an opinion to the Court on an issue of law. On this issue the United States Court of Appeals (8th Circuit) held in the appeal of the matter **Hogan v American Telephone and Telegraph Co., 1987** that expert testimony ought to be excluded where the expert uses terms which has a specific

---

[98] A digital autopsy is a non-invasive autopsy in which digital imaging technology, such as with Computerized Tomography (CT) or Magnetic Resonance Imaging (MRI) scans, is used to develop three-dimensional images for a virtual exploration of a human body. – Wikipedia

legal meaning. The terminology "beyond reasonable doubt" as expressed in expert testimony is an attempt to instruct the Court as to the findings of law, effectively telling the Court how to decide the matter before it.

Much was made of the question whether the ligature had been applied ante- or post-mortem, with both sides relying on their respective findings to support their conclusions. In the fracas an important point was lost. As stated in Knight's Forensic Pathology, pages 170 -171:

> *"...it is unreasonable to expect dramatic changes within minutes in skin wounds, etc., until progressive hypoxia alters biochemical processes and enzyme activity. . . Another problem with differentiating 'ante-mortem' from 'post-mortem' injuries is the definition of the moment of death. Again, lawyers, judges and coroners tend to assume that death is an event, whereas, in reality, it is a process. . ."* (Own emphasis.)

DISCUSSION:

Dr. Loftus had concluded that the deceased had hanged herself, had not died instantaneously, was unsuccessfully resuscitated and died on the bathroom floor. The possibility cannot be excluded that she had been

strangled, did not die instantaneously, that a suicide had been staged, and that the process of death concluded on the floor.

Both Drs. Perumal and Loftus insisted that the injuries to the deceased's ribs were related to CPR. Drs. Khan and Abrahams held that the injuries preceded CPR attempts, based on their finding of blood in the stomach and intestines, the ingestion of which they indicated must have occurred at least 20-30 minutes prior to death. As it relates to the fractures on the right side of the ribcage, the timeline becomes an important point to bear in mind: all the pathologists agreed that the latest point at which the deceased could have died, was 08h28. The accused testified that he started performing CPR on the deceased shortly after Daniels had left the bathroom, which would have been approximately around 08h30. Thompson testified that he arrived on the scene at or around 08h35 and took over performing CPR. As a consequence, any CPR related injuries could not have occurred prior to 08h30. At this point, the deceased would have been dead, and unable to swallow blood, for it to be found in her stomach and intestines.

Regarding the fractures to the left side of the ribcage, as none of the pathologists found haemorrhaging associated with these fractures, it would tie in with the evidence of Thompson, who indicated that he sat on the deceased's left side, and performed chest compressions. Conceivably then

the fractures to the left ribs could have been CPR injuries, caused after circulation had ceased. Significantly these fractures do not have associated haemorrhaging indicative that the deceased did not have blood circulation at the time.

This brings me to the possibility raised during the trial that the deceased could have sustained the fractures to her ribs during her fall in the flowerbed, as she and the accused were returning to their room. Dr. Abrahams was adamant in her testimony that the fractures to the ribs would have resulted in substantial pain and that the deceased's mobility would have been greatly limited. Dr. Perumal agreed that someone so injured would have been severely affected, but stated that he believed the injuries to have been either peri- or post-mortem. Dr. Loftus remained a sole postulator of the theory that the deceased could have sustained the rib fractures to her ribs when she had fallen. In support of this he pointed to literature and explained that doctors ought not to adopt a dogmatic approach in determining the actions or capabilities of persons who had been injured as the flight and fight response could in reality prove otherwise. He made the example of a soldier injured on the battlefield who carries on fighting notwithstanding otherwise incapacitating injuries. The deceased was not a soldier on a battle field and she was not subject to a

fight or flight response. The accused had maintained during his testimony that the deceased gave no indication of having sustained injuries to her ribcage, or of having given preference to any side of her body after she had fallen. Furthermore, had she in fact sustained these injuries during the fall, she would have been incapacitated to such an extent that walking would have been a challenge, let alone stretching her arms over her head to affix the cord to the towel hook, to commit suicide. The idea that, in this state, she could thereafter have gone down into a crouched position in order to suspend herself in a partial hanging position so as to commit suicide, while seriously injured and swallowing blood, can safely be rejected as logically impossible.

The deceased sustained blunt force trauma to the face, more particularly to the left supraorbital ridge, associated with an abrasion to the bridge of her eye, just under the left eyebrow. It was not placed into dispute that blood oozed from the abrasion. Fine blood splatter can be observed on the photos[99], as pointed out by Dr. Loftus. Dr. Khan testified that in his view the injury was more consistent with a punch with a fist and that the abrasion would likely have been caused by a ring. Whilst the accused testified that the deceased sustained the injury when she fell on the wall of

[99] Exhibit "B" photo 101-103.

the flower bed, Drs. Perumal and Loftus conceded in cross-examination that the injury was more likely to have occurred from another form of blunt force trauma instead. Exhibit M contains data extractions by Warrant Officer van Niekerk recording sms, whatsapp and iMessage exchanges between various persons during the weekend at Spier, including the accused and Jolene. Messages exchanged between them on the morning of Saturday, 23 July, reads as follows:

At 09:12:54 Jolene to Jason: ***"Nice ring, renew your vows this weekend?"***

At 09:13:29 Jason replies: ***"You made me put it on for your benefit."***

The inference from these exchanges is that the accused had been wearing his wedding ring, or a ring, during that weekend. There was no suggestion by the defence, or testimony by the accused, to the contrary. It would therefore be safe for the Court to assume that the accused had worn a ring at the time of the deceased's death. Therefore the Court accepts that the accused wore a wedding band or otherwise on the day in question consistent with the above stated injury.

The accused testified that the deceased had two injuries from having fallen outside: that her toe was cut and bleeding and that he noted the abrasion

on her left eye. He testifies however that she only complained of the cut to her toe. The blood splatter pattern on the bed sheet corroborates the fact that she had a bleeding injury to her toe and is consistent with the accused's version that she was lying on the right side of the bed after she had injured herself. It is highly unlikely though, that she had sustained the injury to her left eye as the accused testified, in light of the fact that the testimonies of the pathologists considered such an injury to be highly unlikely from her fall outside; secondly, according to the accused she exclaimed that she had cut her toe. Had the deceased been injured to her face, bleeding, as is evident from the photos, she would have expressed her dismay in that regard and not only at her toe. Possibly, as a woman who cared about and valued her appearance, she more likely would have focused more attention and exasperation on her facial injury than her toe. At the very least she would have immediately attended thereto by inspecting it, applying pressure or dabbing the wound. Abrahams testified that there was no trace of medication or facial tissue applied to the abrasion on her eye from which an inference could otherwise be drawn that she had attended to it after the accused had fallen asleep. There were also no items found in the bedroom or bathroom suggesting that the deceased had attended to this bleeding abrasion to her face. The only tissue paper

found on the bathroom floor, next to the deceased's body, was the one used by Thompson when he wiped blood from her nose during CPR attempts.

A blood stain consistent with the abrasion of the deceased's left eye brow is, however, found on the pillow case on the bed. This was not the pillow case on her side of the bed. Pillowcase marked B11 contained blood of both the deceased and the accused. Pillowcase marked B13 not only had a blood stain consistent with the abrasion injury to the left eye, but also a stain consistent with the round circular blood stain mark noted on the right upper eyelid. In between these bloodstains are two smudges of mascara, consistent with the mascara on both eyes of the deceased. Dr. Abrahams testified that the secondary cause of death (smothering) was most probably inflicted by a soft object being placed on the face of the deceased. The Court is able to see for itself that the markings on this pillow are identical to the markings on the face of the deceased, as noted at the time of her death. The bloodstain on the left of the pillow, consistent with the abrasion on her left eye, is imprinted twice on the pillow, one slightly above that of the other. This is consistent with the imprint caused by a repeat smothering action, consistent with the pillow being pushed down more than once in order to sustain the pressure on the face of the deceased and to

get a further grip in the course of smothering her. The pillow (B13) was not the pillow on the side where the deceased had slept. Further to that it must be born in mind that the evidence of Captain Joubert was that his interpretation of the bloodstain evidence was that the deceased had only been on the right side of the bed in other words not on the side where the "facial imprint" pillow was and it is highly improbable that the deceased would sleep or lie on that pillow with her face sucked or pushed right into the pillow especially as she was injured, wearing make-up and would not be able to breath. This was by no account a voluntary action on the part of the deceased.

Justice Birss[100] made some important observations about findings of fact and expert evidence. It shows the importance of primary findings of fact and the limitations of expert evidence. The appropriate approach is for the Judge to make findings of primary fact and then consider the expert evidence. If one expert's theory fits the facts and the other's does not then the Court is entitled to prefer the former over the latter.

The opinion of the expert is based on scientific probabilities. The evaluation and hypothesis employed is given in a vacuum of the science to which it applies. The scientific measure of proof is the ascertainment of

[100] Graham & Anor v Campfield & Anor [2017] EWHC 2746 (Ch)

scientific certainty, whereas the judicial measure of proof is the assessment of probability. In **Maqubela v The State** (821/2015) [2017] ZASCA 137; 2017 (2) SACR 690 (SCA) (29 September 2017) at paragraph 6 thereof the Court found the trial Court misdirected itself in failing to appreciate the distinction between the two measures of proof, that being, scientific on the one hand and judicial measure on the other. The Court emphasized the legal principles that a Judge must assess the balance of probabilities by reviewing the whole of the evidence. It went on to criticize the trial court for painstakingly measuring up one expert evidence against the other.

The evidence, when viewed holistically, paints a vivid picture: at 07h06 a.m. on Sunday morning, or shortly thereafter, the deceased's sheer indignation at the events as it had unfolded in the prior hours, would have been further inflamed by the furore of exchanges between herself and Jolene. To sum it up as adding fuel to the fire is putting it mildly. The accused testified that his wife woke him shortly after 7 o' clock, enraged and spewing that: *"Look what your whore has sent me"*. Both the deceased and the accused would have lashed at out at each other. It is conceivable that the accused had retorted with his desire to end their marriage. I pause here to state that the evidence in this matter points to the inescapable inference that it was at this point that the *"wrestling match"*,

which had started earlier, had re-ignited. Heated exchanges on the bed must have led to physical violence. At this point the deceased is on the right of the accused and in all likelihood he struck a punch at her, whilst on the bed, hitting her left eye and causing the abrasion to her left occipital bridge with his ring bearing fist. At some point during this *"wrestling match"* the accused manually strangled the deceased. The evidence clearly reveals that the accused manually strangled the deceased and smothered her with a pillow and exerted pressure on her chest resulting in her ribs being broken. Possibly it was at this point that he accused sustained a bleeding defensive wound to his finger. For how long he remained in this position is uncertain, but when he got up, he devised a plan to set a scene telling a story of the deceased ending her own life. The accused must have dragged her from the bedroom, across the carpeting, into the bathroom, causing the tangential injury to her left arm and shoulder, the abrasions to her toes, and leaving a faecal smear stain on the bathroom floor. He could not lift her up unaided to wind the cord around her neck, as she was too heavy, so he would have laid her flat on the floor, wound the cord around her neck, retreated to the bedroom and locked the bathroom door. The plan was almost complete, he only needed to cover his tracks, so he called her cell phone at 08h02 and at 08h22 calmly called reception requesting

assistance with the locked door. Thereafter the innocent bystanders started coming in: first Mr Daniels, to open the door and make the horrifying discovery; Lee offering assistance, then Mark Thompson, who desperately attempted to do what he could and thereafter attempted to comfort the accused followed by others.

At some point after her "discovery" he had attempted to dress her in her hotel robe, but with her body being unwieldy, he could only manage to slip her arms into the sleeves. In his haste, he did not notice that the robe was inside-out, and that the belt was still on the bed.

Staging:

Playwright and author George Bernard Shaw (1856-1950) wrote:

> *"In order to fully realize how bad a popular play can be, it is necessary to see it twice."*

The evidence indicates that the accused had set a scene to tell the story that his wife had committed suicide. He staged her death as a play, setting in motion various "actors" as his alibis: phone records at 08h02 and 08h22, the hotel receptionist, the handyman and the "extras" who followed. It was

after Daniels exited from the stage, that he revisited the scene with a change of the stage setting in an attempt to improve the play. He donned the robe around his wife's dead body and changed the cord from which she had allegedly hanged herself, believing (as he must have) that his account of events would triumph over that of an elderly handyman. The accused in his own words were used to and "good" at throwing off his guilty tracks, ducking and diving the truth, and concealing his mischiefs is what he was good at. He clearly took this to the next level.

The views of the pathologists were diametrically opposed as to whether the ligature had been applied pre- or post-mortem and the evidence presented in this regard was substantial. The Court does not have to determine at which point during the staging process the accused affected the ligature imprint on the deceased's neck. The fact that the accused had by this time already applied the fatal force to the deceased, makes such a determination unnecessary for the purposes of this judgment. The ligature mark was superficial and there were no underlying associated injuries which could have resulted in her death, or which could have contributed thereto. By the time the indentation was created, the deceased was, at the very least, fatally wounded, and death was inevitable.

The evidence through the testimonies of various witnesses before the Court illustrates that the deceased conducted herself with a tenacious pursuit of her husband and their life together. She by all accounts was relentless in this regard. Notwithstanding various occasion, particularly during the Spier weekend, where she becomes aware of the continued affair, she nonetheless remained resilient in her endeavours. For example, a cell phone exchange between herself and the accused on the Saturday morning shows that she was alive to the fact that her husband's affair was not over.

She states at 12:00:25 PM: *"Thought it was finished."*

He responds at 12:00:37 PM: *"We are finished."*

Notwithstanding these exchanges and evident acrimony around that, they go to have lunch at Rust En Vrede at Stellenbosch together. Hours before the gala dinner, the deceased sent accused a message at 11:23:35 AM: *"You are a devious fucking bastard!!!!"*

They proceed nonetheless to attend the gala dinner together and she insisted that they leave together. Which they do. I do not infer from the evidence that her discovery that the deceased sent a message to Jolene was a revealing moment to her, for she had by that time already known of

the accused's underhandedness. She was not *"apoplectic"* as the accused described her at the moment of catching him *in flagrante delicto*. Though she was clearly furious and agitated, she was by no account disabled by her fury. She continued the fortitude to commit to her goals, that , keeping her husband in her company and saving their marriage. This is confirmed by the evidence of Farrah Ameermia and Brandon Miller who were in the room with Jolene when the deceased fetched the accused. This she exhibits through following him around on the Spier estate until he returns with her to their room. Quite clearly her actions until her moment of death were consistent in assuring a life together for them. The deceased and the accused from their cell phone exchanges and other independent evidence illustrates that their fights would see-saw between extreme anger which would soon turn into a loving and reconciled state. It was not unusual for the talk of divorce or termination of their marriage to enter into the fray of their argument. Notwithstanding that it had always returned to rational talks about their marriage and their future. The suggestion by the accused that his words at 07h06 or shortly thereafter to the effect that he was "finished" with the marriage would not have altered the deceased's regular reaction and fortitude as she had exhibited in the past. It is highly improbable that with those words and after her message to Jolene that she would have

turned on her heels to the bathroom, lock the door and hang herself from the towel hook. For the sake of completion it must be said that the evidence proves that the deceased, beyond reasonable doubt, did not commit suicide nor does it prove that she had taken her own life. The Court accepts from the evidence that the accused beyond reasonable doubt murdered the deceased.

MEDICAL PRIVILEGE:

On the facts before me there were clearly transgressions of medical privilege in the collation of the psychiatric forensic reports. I would be remiss not to add the following. Medical privilege still applied, even though the deceased had passed away. Patient confidentiality is enshrined in law. The National Health Act 61 of 2003 makes it an offence to disclose patients' information without their consent, except in certain circumstances.[101] Confidentiality is central to trust between practitioners and patients. The reason is simple. Without confidentiality patients may be reluctant to give practitioners the information they need in order to provide

[101] See section 14 read with section 89(1)(g).

good health care.[102] Confidentiality applies after a patient's death. Information should only be disclosed to third parties with the consent of the deceased patient's next of kin or executors, or by way of a subpoena or court order or in the event of public interest. Rule 13(2)(c) of the Ethical Rules of Conduct for Practitioners Registered under the Health Professions Act, 1974[103] states that confidential information about a deceased patient should only be divulged '*with the written consent of his or her next of kin or the executor of his or her estate*' except where such information ought to be disclosed in terms of a statute or court order, or the disclosure is justified in the public interest.[104] In the event of a dispute, the National Health Act describes the order of persons who can give consent on behalf of an incompetent patient.[105] This ought to apply *mutatis mutandis* determining which next-of-kin relatives should have the right to give written consent for the publication of personal medical information of a deceased person. In terms of the National Health Act, the specific order of precedence is a

---

[102] See *Disclosing details about the medical treatment of a deceased public figure in a book: Who should have consented to the disclosures in Mandela's Last Days?* by D.J.McQuoid-Mason, *South African Medical Journal* Vol 107 (12), December 2017.

[103] As published as a regulation to the Health Professions Act 56 of 1974 under GN R717 in GG 29079 of 4 August 2006 (as amended).

[104] Rule 13(1).

[105] Section 7(1)(b).

spouse or partner, a parent, a grandparent, an adult child or a brother or sister of the person.[106]

Though the accused was the surviving spouse of the deceased, he clearly cannot be considered in these circumstances to be a competent person to provide such consent. He was charged with murder of the deceased and the medical information he sought to obtain would be directly linked to the murder charges of which he is an accused. The situation would call for consent by the succeeding next of kin such as the parent of the deceased and if consent was unreasonably withheld, the leave of the Court could be sought.

The accused has a right to conduct whatever investigation he deems fit as long as it complies with applicable legal framework, required consent from the prosecution or leave from the Court.

I understand Nader's testimony to be that much of the conversation she had with Panieri-Peter about the accused and the deceased was 'off the record' conversations with a colleague. She expressed her shock and surprise that these conversations were placed before the Court. Nader's testimony was also that she did not communicate to Panieri-Peter that the

---

[106] Section 7(1)(b).

deceased was suicidal. The contemporaneous notes of Panieri-Peter were handed up during cross-examination, to which she became visibly agitated as she maintained that she had amended it before signing and returning it to Panieri-Peter. However, the changes she said she made do not appear on the notes.

Nader gave a written report to Mr. Witz, the attorney of the accused. The report is dated 18 August 2016. It set out various details, inter alia, the sessions attended, the information provided by Mr. and Mrs. Rohde and her observations.[107]

After she had provided this report, she was requested to meet with Dr. Panieri-Peter. Subsequent thereto emails recording communication between Webber Wentzel Attorneys (c/o Ms. Karin Prinsloo) acting on behalf of the Medical Protection Society and Mr. Witz appear from the record as Exhibit P.

On 5 September 2016, Mr. Witz replied to a request by Prinsloo to direct communication for Ms. Nader to their offices. His email states:

---

[107] Exhibit P – Client contract with Carol Nader – paragraph 3 titled "Legal Matters" reads at 3.1:
"The focus of the practice is therapeutic. This practice does not undertake expert witness work or agree to provide legal evidence of any kind, be it with regards to custody and divorce issues or any other matter. Assessment reports are intended to assist parents, teachers and caregivers and identify appropriate treatment, and not for use in legal matters. If legal related services are required a suitable referral can be given on request."

"...Dr. Panieri-Peter is a specialist forensic psychiatrist (MBCHB FC Psych (SA) Crime) and is preparing an investigation / report on Mr. Rohde. It is important to note that she is an independent practitioner and is not attached to either the prosecution or the defence team. She is preparing a balanced view on both Mr. Rohde and the late Susan Rohde...."

Webber Wentzel Attorneys replied on 5 September 2016 as follows:

"....please advise on whose instructions Dr. Panieri-Peter is acting as you note that she is not attached to either the prosecution or the defence team. Please further advise for what purpose Dr. Panieri-Peter is preparing a report in addition please advise who will be attending the consultation.... Lastly, please furnish us with a signed consent by your client, Mr. Rohde authorising Ms. Nader to consult with third parties and disclose confidential information pertaining to Mr. Rohde and the Late Mrs. Rohde."

To this enquiry, Mr. Witz replies on 7 September 2016:

"Dr. Panieri-Peter has been briefed by the [sic] Mr. Rohde's team however, she has been instructed to provide a balanced opinion on the matter as her report will be presented to both the defence and

prosecution. She is preparing a report on the psychological state of both Mr. Rohde and the late Mrs. Rohde."

Through their lawyers, the Medical Protection Society accepted written consent by Mr. Rohde who gave consent: *"to Carol Nader to consult with third parties and disclose confidential information pertaining to Mr. Rohde and the Late Mrs. Rohde and to disclose such information to WCIS Attorneys, my attorneys of record and Dr. Larissa Panieri-Peter".* The consent is signed on 6 September 2016.

Prima facie there appears to have been a breach of medical professional ethics in the course of the forensic investigation. For these reasons I am directing that a copy of this judgment be referred to the Health Professions Council of South Africa for further investigation as they may deem necessary in an endeavour that guidelines are provided to their members of the legal framework that is applicable when called upon to disclose confidential patient information and patient records in matters of this nature.

CONCLUSION:

In the final analysis of all the evidence before Court, I am guided by various legal principles to determine whether the charges against the accused have

been proven beyond reasonable doubt. The **S v Reddy & Others** [108] the court held that:

> *"In assessing circumstantial evidence one needs to be careful not to approach such evidence upon a piece-meal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by an accused is true. The evidence needs to be considered in its totality. It is only then that one can apply the off-quoted dictum in R v Blom 1939 AD 188 at 202-3, where reference is made to two cardinal rules of logic which cannot be ignored. These are, firstly, that the inference sought to be drawn must be consistent with all the proved facts and, secondly, the proved facts should be such 'that they exclude every reasonable inference from them save the one sought to be drawn'."*

Proof beyond reasonable doubt does not involve proof to an absolute certainty. It is not proof beyond any doubt, nor is it an imaginary or frivolous doubt. This is the standard that must be met by the State's evidence in a criminal prosecution. No other logical and reasonable explanation can be derived from the facts, except that the accused

---

[108] 1996 (2) SACR 1 (A) 8 C-E

committed the crime, thereby overcoming the presumption that a person is innocent until proven guilty.

In **R v De Villiers** 1944 AD 493 at 508 – 9 it was held that a Court should not consider each circumstance in isolation and drawn inferences from each single circumstance. The onus on the State is not to prove that each separate item of evidence is inconsistent with the innocence of the accused, but that taken as a whole, the evidence is beyond reasonable doubt inconsistent with such innocence.

In **S v Shackell** 2001 (2) SACR 185 (SCA) at 194 the court states:

> *"[30]…It is a trite principle that in criminal proceedings the prosecution must prove its case beyond reasonable doubt and that a mere preponderance of probabilities is not enough. Equally trite is the observation that, in view of this standard of proof in a criminal case, a court does not have to be convinced that every detail of an accused's version is true. If the accused's version is reasonably possibly true in substance the court must decide that matter on the acceptance of that version. Of course it is permissible to test the accused's version against the inherent probabilities. But it cannot be rejected merely because it is improbable; it can only be rejected on*

the basis of inherent probabilities if it can be said to be so improbable that it cannot reasonably possibly be true."[109]

In **State v Hadebe and others**[110] the Court enunciated the correct approach for evaluating evidence with reference to Moshephi and Others v R[111] as follows:

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

[109] See also S v Chabalala 2003 (1) SACR 134 (SCA) at para 15; S v Mia and Another 2009 (1) SACR 330 (SCA) at para 12

[110] 1998 (1) SACR 422 (SCA) at 426 E-H

[111] (1980 – 1984) LAC 57 at 59F-H

evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood for the trees."

There is no onus on the accused to prove the truthfulness of any explanation which he gives or to convince the Court that he is innocent. Any reasonable doubt regarding his guilt must be afforded to the accused.[112] See **S v Jaffer 1988 (2) SA 84 (C)** where the Court held:

"The test is whether there is a reasonable possibility that the accused's evidence may be true. . . the court does not have to believe the accused's, still less does it have to believe it. It is sufficient if the court thinks that there is a reasonable possibility that it might be substantially true."

In unpacking evidence on a piecemeal basis, the Court has to consider the strength and weaknesses in the evidence and consider the merits, demerits and the probabilities.[113]

In **S v Kubeka** 1982 (1) SA 534 (W) at 537 F-H, the Court held in regard to the version of the accused:

---

[112] S v Jochems 1991 (1) SACR 208 (A) and S v V 2000 (1) SACR 453 (SCA)

[113] S v Trainor 2003 (1) SACR 35 (SCA) para 9 and S v Chabalala 2003 (1) SACR 134 (SCA) para 15

"Whether I subjectively disbelieved him is, however, not the test. I need not even reject the State case in order to acquit him. . . I am bound to acquit him if there exists a reasonable possibility that his evidence may be true. Such is the nature of the onus on the State."

I am satisfied therefore, taking into account the entire conspectus of the evidence that the State had discharged the onus resting upon it to prove the guilt of the accused beyond reasonable doubt. The accused's version cannot reasonably possibly be true and is accordingly rejected. In short the accused is found guilty as charged in terms of both counts 1 and 2. The manner, cause of death and the nature of the injuries sustained showed that the accused had the direct intention to kill the deceased.

In the result the verdict is as follows:

Count 1: Murder - Guilty

Count 2: Defeating or obstructing the administration of justice - Guilty

SALIE-HLOPHE, J

The Chief Registrar of this Court is directed to forward a copy of this judgment to the HPCSA (Health Professions Council of South Africa).
