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

Case No: SS17/16

In the matter between:

THE STATE

v

HENRI CHRISTO VAN BREDA Accused

JUDGMENT

DESAI, ADJP:

Introduction

[1] This is an alleged parricide.

[2] The Accused, HENRI CHRISTO VAN BREDA, is indicted before us for the murder of his brother, father and mother, and the attempted murder of his

sister. He faces a further charge of defeating or obstructing the administration of justice. The State contends that the deadly assaults upon the victims were committed by the Accused who repeatedly hit them with an axe or a similar sharp object and committed other unknown acts of violence. The last charge relates to the apparently false information given to the police and related activities in order to mislead them as to the true identity of the perpetrator of these crimes.

[3] The incidents underpinning these charges occurred at [..] G. Street, […] Estate, Stellenbosch.

[4] The Accused, his parents, MARTIN and TERESA VAN BREDA, and his siblings RUDI and MARLI VAN BREDA resided at the said premises. The Accused was the middle child. I shall refer to the victims by their first names for the purposes of this judgment. It is convenient to do so.

[5] [...] has controlled access and is a security estate with a wide range of security features, inclusive of electronic fencing and cameras as well as regular patrols of the property by security personnel.

[6] On the morning of 27 January 2015, the emergency services (EMS) were summoned by the Accused to the residence. A true copy of the emergency call made by the Accused at 07h12 was handed up in evidence and played in court.

[7] Upon their arrival on the scene, the police found the Accused at or near the front entrance of the property. He was only wearing a pair of sleeping shorts and socks. Superficial injuries on parts of his body were discernable.

[8] Two of the deceased, MARTIN and RUDI were found inside the bedroom on the first floor. This was the bedroom used by the Accused and RUDI. TERESA and MARLI were found nearby in the doorway or rather the passage area outside the same room. MARLI was still alive, but barely so.

[9] The deceased and MARLI had severe head injuries probably caused by the axe found on the stairway leading up to the first floor. Although MARLI did not succumb to her injuries, the injuries sustained by her are similar to the injuries sustained by the deceased.

[10] Some of the family members were last seen alive the previous afternoon by the domestic worker Ms P Munqongani when she left the house to go home.

[11] These events lead to the case before us.

[12] The State indicated that the provisions of the Criminal Law Amendment Act 105 of 1997 are applicable. The offences in Counts 1 to 3 are specified in Part I of Schedule 2 of the said Act in that the murders were planned or premeditated and that a minimum sentence of life imprisonment would therefore be applicable. At the commencement of the proceedings, counsel for the Accused, Adv P Botha, appearing with Adv M Combrink, confirmed that the aforesaid provisions were explained to the Accused and that the Accused is aware of the applicable minimum sentences. Adv S Galloway, together with Adv M Blows, appears on behalf of the State.

The Plea

[13] The Accused pleaded not guilty in respect of all the charges and an extensive written plea explanation was placed before the court.

[14] In the said statement it was, *inter alia*, alleged that the persons responsible for the attack upon the Van Breda family were unknown intruders, one of whom wore dark clothes, gloves and a balaclava-type mask. This assailant, whose silhouette the Accused saw from the toilet door was busy attacking RUDI when the dad – MARTIN – switched on the lights of the room and came to the assistance of his son. MARTIN was also hit with the axe by the attacker who was laughing as the attack continued.

[15] The Accused then heard TERESA's voice. She wanted to know what was happening. He did not see what occurred next as the attacker was outside his field of vision. He does not recall hearing any sounds of the attack upon his mother.

[16] The laughing attacker then came towards him. He managed to remove the axe from the attacker who came at him again, this time with a knife. A scuffle ensued in which the Accused sustained certain injuries. He hit the attacker with the blunt side of the axe. The Accused pulled the knife out of his side and dropped it, probably to the ground.

[17] The attacker fled the room with the Accused following him. The Accused heard persons speaking in what sounded to him like Afrikaans. As he left the room he had a "glimpse" of MARLI and his mother lying outside the bedroom door.

[18] He threw the axe at the attacker, lost his footing and fell down the stairs. He got up and followed the attacker toward the kitchen and out the backdoor.

[19] When the attacker or attackers left, the emergency services were not called as he did not have a number for them. Instead he tried to call his girlfriend, Bianca.

[20] Upon re-entering the house, the Accused then lost consciousness on the stairs and is unable to state whether this was due to shock or to the injuries sustained by him or to a combination of both. He was unsure for how long he was unconscious.

[21] In any event, when conscious again, he endeavoured to find the emergency number and lit a cigarette to calm down. Because of his Australian accent and because he stuttered as a child, he spoke slowly and calmly. In his plea explanation the Accused also refers to the circumstances in which he later made a statement to the police. He concedes that the gist of what is contained in that statement is correct but it contains some inaccuracies and, in particular, the grammatical errors were made by the police officer who was Afrikaans speaking.

[22] That, in essence, is what is contained in the written plea explanation in terms of Section 115 of Act 51 of 1977.

[23] While the contents of the plea explanation constitute a disclosure of an Accused's defence, it is not evidence. It forms part of the evidential materials upon which an Accused may be cross-examined. The State is, of course, obliged to disprove the defence raised in it (see S v Cloete 1994 (1) SACR 420 (A) at 424)).

The Legal Issue

[24] It was the State's contention that the Accused was responsible for the attack on his family and that he subsequently tampered with the crime scene. The State's case is based on circumstantial evidence. There is no direct evidence implicating the Accused. The State contends that no one else could reasonably possibly have committed the crimes and that the Accused's version, of intruders committing the crimes, is simply not true.

[25] Defence counsel argued that the circumstantial evidence presented by the State to prove its case against the Accused does not warrant, as the only reasonable inference, that the Accused was the person who attacked his family. It was argued that the circumstantial evidence presented by the State supports the Accused's, and not the State's, narrative.

The Van Breda Family

[26] Mr Cornelius Andries van Breda, the brother of the deceased MARTIN van Breda, described the Van Breda family as a close-knit decent family with no enemies. The Accused also testified that the family had no real enemies and that he was not aware of anybody who had a grudge against the family.

[27] MARTIN and TERESA van Breda were married on 16 February 1990.

[28] The children RUDI, the Accused, and MARLI, were born on 10 July 1992, 01 November 1994 and 12 October 1998, respectively. The family emigrated to Perth, Australia in the beginning of 2006. The Accused matriculated at Scots College in 2012.

[29] MARTIN, TERESA and MARLI van Breda relocated permanently back to South Africa in January 2014. MARTIN had launched a new school project in South Africa called Edugro. They relocated primarily because of the demands of MARTIN's business and TERESA's desire to live closer to her family. RUDI and the Accused remained in Australia and studied at the University of Melbourne.

[30] MARLI attended school in Somerset West (upon the family's return to South Africa). In March 2014 the family moved from Gordon's bay to [...] Estate. The Accused terminated his studies in Australia and joined the rest of the family at [...] Estate in August 2014. RUDI and his girlfriend visited the family in December 2014. RUDI's girlfriend returned to Australia in mid-January 2015 and RUDI intended to return to Australia by mid-February 2015.

[31] The members of the Van Breda family were described as well-educated, intelligent and well-mannered. MARTIN was respected in the business community for his achievements and integrity. MARTIN was described as a dominant figure and a strong man. No evidence of financial difficulties was evident.

SECURITY AND LAYOUT OF [...] ESTATE

General Layout and Functionality of the System

[32] The Accused alleged that the Van Breda family had been attacked by an intruder during the early morning hours, shortly before 04h24, when he made his first call to his ex-girlfriend Bianca van der Westhuizen.

[33] [...] Winelands Estate near Stellenbosch is what is can be termed a “medium security estate”. Ms Marcia Rossouw, who was employed at [...] Estate as Security Manager since February 2014, explained the layout of the Estate with reference to the map in Exhibit “P2”. The house at [...] G. Street is indicated with a red rectangle block on the map. On the right side of the map is the R44, a public road. At the top of the map is the Protea Hotel, Kleine Zalze, the Terroir restaurant and the Techno park area; on the left side of the map are surrounding farmlands, an open field, including Spier farm; and at the bottom of the map is the airfield and municipal land. A river runs through the Estate.

[34] Lorenzo Afrika, a security officer employed by Thorburn Security Solutions at [...] Estate, described the area at Zone 23 (where the river runs) as agricultural land, with vineyards at certain times of the year. The green bushes alongside the river can be seen in Exhibit “V”. here is a dam on the left side of the map at Zone 15, as can be seen in Exhibit “W”. A line of trees can be seen above the golf course and throughout the Estate. A gravel road runs alongside the electric fence around the entire Estate.

[35] On 29 January 2015 Warrant Officer Andre Hitchcock, stationed at the Criminal Record Centre in Worcester as a photographer, plan draftsman, a crime scene investigator and forensic fieldworker, took aerial photographs of [...] Estate and the house at [...] G. Street. This can be clearly seen in Exhibit “A1 – 6”. A close-up of the Van Breda residence with a police vehicle parked in front of it, can be seen in the middle of the two neighbouring houses in Exhibit “A6”.

[36] Thorburn Security (hereinafter referred to as “Thorburn”), contracted by the Estate, provided the security personnel who man the entrance gates as well as the guards who patrol the Estate. Thorburn monitored the electric

fence alarms, beams and the camera surveillance system of the Estate; this was done remotely from its control room situated in Parow.

[37] The Estate is protected by an electrified fence around the approximately 7,5 kilometres perimeter of the Estate, a barrier fence, anti-dig at some places, cameras at certain points, patrols by security guards and access gates. Proper access to the Estate can only be gained through three access controlled gates. The unmanned gates were generally kept locked. The river is protected with an electrified fence as well. At the river inlet was a gate and barbed wire stretched across the river.

[38] Defence witness Jaco Pietersen, employed by Thorburn as the Security Manager at [...] Estate from January 2013 until February 2014, testified that the airfield gate had an anti-dig foundation. Mr Pietersen testified that the anti-dig was a good foundation of deep cement or pressed barbed wire under the ground. It prevented people and animals from digging a hole underneath the fence. The anti-dig was limited to the residential and farm boundaries. Zones 16 – 39 had no anti-dig. A person could not climb over the fence because the opening spaces were too small. To be effective the fence had to be electrified with a reaction unit like an alarm.

[39] Mr Jaco Pietersen confirmed that the Estate had, and still has, more than one phase of security. Thermal cameras were installed during Mr Pietersen's tenure that could pick up or spot something or somebody twenty (20) metres from the fence. A further phase was the security guards who did patrols. The security guards served as the foot soldiers. Visible patrolling by driving around was also an important deterrent. Mr Pietersen testified that if a camera did not spot a person, the alarm would alert the security personnel to the person's presence.

[40] When, and if, an alarm was activated by an object or person touching the electric fence, the remote monitoring room in Parow would, upon seeing that an alarm had been activated, send out the shift manager or first responder to that specific area. The system would only be reset remotely by the Control room once the cause or reason for the activation had been established and removed. The alarm could not be switched off by the guards patrolling the Estate, only by the remote monitoring room in Parow. Defence witness, Mr Charl Rabie, the owner of Energized Fencing, testified about the conventional system used by the Estate and confirmed that the activation remained until the problem was addressed physically and the alarm system reset.

[41] Edgar Wyngaard, a security officer employed since 2014 by Thorburn Security as a shift manager at [...] Estate, testified that they had to go around the entire fence to test whether it was functioning.

[42] Ms Rossouw prepared a map of the “optic” and “thermal” cameras installed at the gates and other strategic points in January 2015. Prior to the incident a limited area of the estate perimeter was covered by cameras as, at the time, cameras were installed at only nine locations. There were cameras and a fence on both sides of the river.

[43] It is common cause that the Van Breda residence at [...] G. Street is situated more or less in the middle of the Estate in a fairly built-up part of the area, near the end of a cul-de-sac. It is the second last house in a cul-de-sac. There is a road and an open space next to the last house, with a hedge between the road and the last house. The house itself is bordered by other residences. The houses on the Estate are similar in architecture and are all in close proximity to one another, with narrow winding roads linking all properties to access roads, and with open fields at some places.

[44] Ms Rossouw testified that the distance from the main gate to G. Street is 1.233 kilometres; from the river to G. Street it is approximately 2.43 kilometres; and from the gate at the airfield to G. Street it is 1.690 kilometres.

[45] The Court conducted an inspection *in loco* and recorded its findings with regard to the general layout of the Estate and the house:

(i) House number 10 on the sketch plan included in Exhibit “A” is the Op’t Hoff house directly across the road from the scene of the crime. The two houses face each other and have a full view of each other;

(ii) Alleman Street runs at the back of the property situated at [...] G. Street;

(iii) The walls around the house are plastered and painted white;

(iv) When exiting the back door of the house from the pantry, there is a narrow pathway around the house for the greater part of the route around the house. Currently there are washing lines in the narrow pathway closest to the back door, as can be seen in Exhibits “A 556” and “A 557”;

(v) None of the windows of the erstwhile Van Breda residence have burglar bars. The windows on the ground floor were open as can be seen in Exhibits “A 84”, “A 85” and “A 87”. The windows can open wide enough for a person to get through the window, albeit with some difficulty;

(vi) In normal circumstances, access can be gained to the property via the front door, and a gate on the side of the house, as can be seen in Exhibits “A 87” and “A 88”;

(vii) The electric fence surrounding the Estate has an additional flat piece of electric wire on top of the fence at some places. The fence is two (2) meters in height at its lowest point;

(viii) A small space is visible between the electrical wire and the pillar at a gate leading to the airfield and an open field some distance away from the houses on the Estate. At the time of the incident, cameras were mounted on poles near the electric fence at certain places to cover a specific area and, *inter alia*, at the gate leading to the air field.

[46] Extensive evidence was presented with regard to the security of the Estate and access to it.

[47] Defence counsel handed in several exhibits and showed CCTV footage in an endeavour to illustrate weak points and problem areas in the system.

[48] Mr Pietersen referred to five (5) incidents that occurred during his tenure as Security Manager from January 2013 until February 2014 (also see Exhibit “DD”). In all the incidents referred to by the witness, the system worked in the sense that the prospective intruders were spotted on the camera, the alarm was activated or foot prints were spotted.

[49] Mr Wyngaard testified that he was aware of only one incident of theft since 2014. The perpetrator was a registered visitor to the Estate and was

caught. Mr Wyngaard and Ms Rossouw testified that residents sometimes reported crimes directly to the police. Significantly, Captain Nicholas Steyn testified that no robberies or murders were reported at [...] during the 17 years he was stationed in Stellenbosch.

[50] Statistics of the crimes committed at [...] Estate, were presented by the State and handed in as Exhibit “CCC”. During the period February 2014 until February 2015, ten (10) cases were registered with the police. State counsel argued that the crimes all show a marked difference from the matter at hand. Only one housebreaking case had been registered and the rest were all theft cases. Sergeant Marlon Appollis, the Investigating Officer in this matter and stationed at the Stellenbosch detective branch since 2007, testified that no evidence of forced entry exists with regard to the housebreaking. The theft cases were registered mainly for purposes of insurance or the crimes were committed by a domestic worker or employees from a removal company.

[51] The Court finds that it is certainly possible for an intruder to gain access to the Estate – despite the fairly tight, but not impenetrable, security. Defence counsel somewhat desperately argued that access to the Estate could be gained over or under the electric fence or via the relatively unsecured areas of the perimeter fence or as a result of ineffective control at the Kleine Zalze gate. Witnesses employed by Thorburn and the Estate all conceded the possibilities put to them by Defence counsel of how entry could be gained, as possible but unlikely. Ms Rossouw correctly conceded that the human factor always played a role. However, someone attempting to gain entry would had to have extensive knowledge of the Estate and its security features, the expertise to overcome the barriers to entry and was at risk either of injuring himself or of being detected by the security measures in place. It was most unlikely that an intruder entering the premises would have committed the crimes undetected.

The Night of the Murders

[52] Was there a possible breach of security during the night of 26 – 27 January 2015?

[53] Mr Pietersen, testifying on behalf of the Defence with regard to the security measures at [...], conceded that he had no knowledge of what transpired at [...] Estate on the night of 26 – 27 January 2015. Mr Rabie, who also testified on behalf of the Defence as an expert on security systems, said he could not say whether the security system was in working order that particular night.

[54] Lorenzo Afrika, a security officer employed by Thorburn, tested the functioning of the fence and the alarm system when he came on duty at 18h00 on 26 January 2015. Mr Afrika testified that everything was in working order. Both Mr Afrika and Mr Edgar Wyngaard, who were on duty that night, testified that no alarms were activated and that the security was not breached during the period 26 – 27 January 2015.

Visitors and the Access-Controlled Gates

[55] No unknown visitors went through the access controlled main gate during the night of 26 – 27 January 2015. Nobody signed in at the main gate from 23h57 until 07h05 according to a report, Exhibit “Y”, handed in by Defence counsel. Ms Rossouw verified the report with regard to access cards and the times persons went in and out of the Estate.

[56] CCTV footage of unlogged comings and goings at the Kleine Zalze gate the morning of 27 January 2015 was presented by Defence counsel. A restaurant and a lodge are located at Kleine Zalze at Zone 39 and 40 which is situated quite some distance from the residential area of [...], as can be seen

on the map: Exhibit “V1” and “W”. Ms Rossouw conceded that a proper record had not been kept at the Kleine Zalze gate.

[57] Neither the security guards, the neighbours, Ms Op’t Hoff and Ms Taljaard, nor the Accused, testified about the presence of a suspect motor vehicle in the residential area of [...] Estate. The Kleine Zalze gate is situated far from [...] G. Street and there were probably more suitable places for a prospective perpetrator to gain access to the Estate, for example via the uninhabited open field or an area without access control. Furthermore, Sergeant Appollis testified that all vehicles entering the Estate had been accounted for although statements of all the drivers had not been taken.

The Integrity of the Perimeter Itself

[58] Mr Afrika and Mr Wyngaard were on duty as Responder and Shift Manager respectively during the night of 26 – 27 January 2015. Two patrol routes were followed; they did several general patrols and so-called “blood hound” patrols within the Estate and around the boundary of the Estate or the perimeter fence in a marked security vehicle and on foot. They inspected and patrolled a radius of approximately 7.5 kilometres.

[59] During the night of 26 – 27 January 2015, between 18h00 and 07h00 the next morning, Mr Afrika did five patrol checks and found that all was in order. He also did three (3) “blood hound” inspections with the last one at 02h50 on 27 January 2015. During the course of the night no alarms were activated and no trespassers/intruders were found or reported on the Estate. If any such event had taken place, the monitor would have been activated and he would have responded. Therefore there was no security breach on the night of the murders.

[60] During his first patrol at the start of his shift, Mr Afrika made sure that no obstructions touched the fence and ensured that it was still the case the following morning. Mr Afrika checked the anti-dig zones, whether the energisers were damaged and tested the fence. He also checked the "high risk" places like the fence along the R44 road near Zone 4 and Zone 40 because it was adjacent to municipal property.

[61] Mr Afrika checked the entire green barrier fence for holes the night of the murders. He has never seen holes or damage since his employment at [...] Estate as can be seen in Exhibits "X10" and "X11". On 26 January 2015, Mr Wyngaard reported for duty at approximately 18h00 as his shift started officially at 19h00. His shift ended at 07h00 the next morning. Mr Wyngaard testified that nothing unusual was reported or spotted that particular night, nor on the camera footage afterwards. Nobody complained about strangers or any other undue occurrence. Mr Wyngaard testified that he did not notice any holes in the barrier fence that night. There was also no report that Mr Afrika had picked up anything at the fence. Mr Wyngaard testified that they patrolled the Estate approximately six (6) to seven (7) times along the road close to the Van Breda residence. He did two "blood hound" patrols himself per night but could not remember whether he assisted Mr Afrika with his patrols of the outside perimeter of the Estate that particular night. He testified that the last "blood hound" patrol ended at 02h50.

The Functionality and the Integrity of the Fence

[62] Mr Afrika confirmed that he had tested whether the fence was functioning when he came on duty but not when he went off duty. He stated that he had tested the voltage of the electric fence around the Estate and checked for obstructions when his shift started. There was also a barrier fence to ensure that nothing, for example branches, blew against the electric fence causing a low voltage. When the electric fence was tested in this manner, it

went straight to the monitor in the Control room in Parow to ensure that it had been done. All was in working order with the fence on the evening of 26 July 2015.

[63] Mr Wyngaard was confronted with the possibility of the alarm not being activated if somebody stood on something or someone's shoulders and jumped over the fence to prevent the wires of the fence touching him or if insulated material was used. Mr Wyngaard responded that the fence was high and that it was risky to do that; he would not risk it. A person jumping over the fence would have to wear protective material. If there were ways of getting over the fence, the Control room would have detected the tampering, even if the alarm did not go off.

[64] On 27 January 2015 when Mr Wyngaard reported again for night duty, he found nothing wrong with the fence. On 27 January 2015 he went through all the video security footage and inspected the fence and gates physically. Mr Wyngaard testified that it was impossible for any intruder to have gained access to the Estate during the night of the incident.

[65] Both Mr Afrika and Mr Wyngaard were confronted with an alleged alarm that went off at Zone 39 at 01h37 on Tuesday 27 January 2015, and a patrol that was conducted in that area at 01h41 (see paragraph 5.5, page 3, Exhibit "Y"). They denied responding to an alarm, and the possibility that an alarm was activated at 01h37 as suggested by Defence counsel. There seem to be a discrepancy as to which one of the security personnel did the patrol at 01h41. The Court is not persuaded that the patrol was done as a result of a response to an alarm. The Controller, Mr Calvin Vergotine from Thorburn Security, can be seen at his console in a photograph taken at 01h37 (page 3, Exhibit "Y"). According to the report handed in by the Defence, the Controller would have heard the audible alarm and seen the zone flashing in red. Ms Rossouw confirmed that there would be a loud sound and a pop-up screen on the monitor when an alarm is activated. It caused an irritating sound meant to

alert the Controller. In case of "not true" alarms, there would be no signs or lights and the activation would go straight to the history of the computer. The alarm activated on 01h37 was described as a "not true" alarm. It was not the normal activation alarm and it went automatically into the history report of the system. Mr Rossouw testified that in case of "not true" alarms, a responder was not sent out to check. Ms Rossouw testified that the system was not available on the internet for anybody to learn the workings of the system. It was a so-called "stand alone" system.

[66] Defence counsel handed in a report, Exhibit "Y", *inter alia* indicating that four alarms, described as "not actual" or "not true" alarms, occurred during the night of the incident. According to the report, the Controller that worked on the [...] console on that particular night, did not receive any positive fence or CCTV alarms. Mr Rabie, an expert on security systems, was referred to the report by Thorburn pertaining to the four incidents when the alarm had been activated during the period 26 January 2015 at 19h38 until 27 January 2015 at 03h36 and at Zones 11, 37, 39 and 40. The witness could not say what activated these alarms referred to in the report that particular night. Of significance is the fact that one of the security guards did a patrol at 01h41, only a few minutes after the "not true" alarm had been activated at 01h37, and no problem had been detected or nothing strange or suspicious had been reported. Furthermore, it is interesting that the problems indicated in respect of all four false alarms, were similar or the same at four different zones. It is unlikely that (the) intruder(s) would enter or leave the Estate at four different zones at different times and not at the same zone at the same time, in case of more than one intruder.

[67] Zone 11 seems to be the closest to G. Street and the other relevant zones with "not true" alarms were quite far from the crime scene. The alarm at Zone 11 was registered at 19h38 on the evening of 26 January 2015. The murders were probably committed between 04h00 – 04h24 on 27 January 2015. If it was a true alarm, a possible intruder would have wandered around

the Estate or hid on the Estate for a few hours before committing the crimes the following morning. No other crimes committed at [...] Estate during that particular night, were reported. If a possible intruder entered the Estate later at Zone 39 or 40, he or they would have gone past a number of other houses before getting to G. Street. Such a person also had to leave the Estate again and no other alarms were registered after 03h36 and before 08h53 on 27 January 2015. The last mentioned alarm was not reported as a suspicious alarm and it was probably a deliberate alarm to test the functioning of the fence or for another ordinary purpose.

[68] Defence counsel argued that, in the absence of any explanation proffered by the Control room operators for not contacting the responders regarding the "untrue alarms", the most probable explanation is that the operators had simply omitted to inform the responders of the alarm activations. This contention is without merit especially in the light of the report handed in by Defence counsel, the report dated 27 January 2015 by Rejeanne Botha, the Operations Manager of Thorburn Remote Monitoring. There seems to be no plausible explanation why the operators would have chosen to ignore those four "not true" alarms but not the others.

[69] Immediately after Ms Rossouw learnt about the incident on 27 January 2015, she gave an instruction that the perimeter fence be inspected centimetre by centimetre to establish that there was no sign of entry to the Estate. After the incident apart from the fence being inspected, Ms Rossouw watched the video footage herself. Nothing unusual or suspect was noted or reported. She requested the remote monitoring system to check the activation of the alarms and the cameras and to furnish her with reports.

[70] Ms Rossouw testified that a report (Exhibit "AA") furnished by Thorburn and drawn from the security system, covered the "blood hound" patrols of the night of 26 – 27 January 2015 from 17h00 until 05h00. The patrols were done as expected. The security guards had to touch the clock-in points physically.

The witness checked the patrols and could confirm that the log entries and the alarms on Exhibit “Y, A3” corresponded. The log entries were done by Parow monitoring. At the time she had been informed that the actual alarms were activated deliberately.

[71] Ms Rossouw instructed Mr Brand and Mr Voorslag to inspect the fence the following morning. Defence counsel argued Ms Rossouw’s testimony about the state of the fence the morning after the murders, amounts to hearsay because Mr Brand or Mr Voorslag were not called to testify. The State submitted that it is hearsay evidence elicited under cross-examination and thus admissible as evidence. If there had been a problem with the fence, it would have been reported to Ms Rossouw and no such report came to her attention. Mr Wyngaard testified he had inspected the fence himself the following day after the murders when he came on duty for the nightshift again. He detected no problem with the fence. Ms Rossouw said she had no information to the effect that an intruder went to the Van Breda house.

[72] On a question during cross-examination whether it was possible for an intruder to dig a hole under the fence and enter the Estate through the hole, Ms Rossouw responded that there were no signs of footprints alongside the fence the morning after the murders. Defence Counsel pointed out that residents were active and could be seen running alongside the fence on CCTV footage on 27 January 2015 at 05h47. Ms Rossouw responded that one could distinguish between footprints right next to the fence and footprints some distance away where the residents were active. The fence had not been cut and no holes were dug. Ms Rossouw conceded that an intruder could wear protective gear or clothes to prevent shocking.

[73] It was certainly possible for an intruder to gain access to the house situated at [...] G. Street. As demonstrated during the inspection *in loco*, access to the property could, for example, be gained over a side boundary wall near the kitchen. There was also a black side-gate with a Yale lock and a

key that was on a piece of string, next to the house that locked automatically. The windows on the ground floor were open and had no burglar bars. The back door of the house was also left closed but unlocked from time to time for the domestic workers, according to Precious Munqongani and the Accused.

[74] During cross-examination the Accused agreed that it was a fair assessment to make that possible intruders had to go to an enormous amount of trouble to get into the Estate surrounded by an electrified fence. He conceded that the intruders had to move from the perimeter fence, undetected, to their house in the central area of the Estate. The intruders managed to find the Van Breda house with an open back door, took nothing inside the house, nobody heard them fleeing from the house and they managed to exit the Estate by going over or under the fence without the alarm being triggered.

[75] The Accused could not say how the security was breached. He testified that it was a possibility that someone might have had access to a resident's key card and so gained access to the Estate to commit these crimes. With that scenario the card must have been given consciously to the intruder, or stolen for that purpose. He then conceded that the story with the card seems an unlikely scenario because his family had no real enemies.

[76] The neighbours of the Van Breda family, Ms Stefanie Op't Hoff and Ms Annalise Taljaard, testified that the Estate was a safe and secure environment to stay in. Ms Op't Hoff was of the opinion that [...] Estate was probably the safest or most secure place in Stellenbosch and testified that she felt very safe living there. Ms Taljaard, testified that she felt comfortable and secure, living in [...] Estate. She felt so safe that she left her children at home when she went swimming in the mornings. None of them reported any suspicious persons or incidents in the vicinity of G. Street on the day or night of the

murders. The only unusual event was the loud male voices coming from the Van Breda home.

[77] The Accused confirmed that he never felt insecure, unsafe or threatened whilst living in the Estate. They slept with open windows without burglar bars and keys in the doors without security gates. The back door was even left unlocked some times.

[78] The Court finds that intruders, if any, would have had knowledge of the weak points of the Estate and which route to follow. It is highly unlikely that a possible breach of the security by an amateur perpetrator took place that particular night. It is also highly unlikely that persons entered with a resident's card or with a motor vehicle at the entrance gates, as the registration number of the motor vehicle and/or the face of the driver were *inter alia* recorded. Such persons would have had to park the motor vehicle somewhere and wait until the early hours of the morning before they entered a house in the centre of the Estate and then have had to escape again with the same motor vehicle through the same gate. No evidence exists of an abandoned or suspicious motor vehicle on the Estate that particular night. Otherwise, the resident whose card was used, must have known for the purpose for which the intruders had used the motor vehicle and assisted the intruders somehow. No evidence existed of any resident having a grudge against the Van Breda family.

[79] Although [...] Estate experienced criminal activity since February 2014, there was only one dubious burglary reported and no robberies or murders in the preceding seventeen (17) years. [...] Estate seemingly has an effective security system as potential perpetrators were picked up by the cameras or the alarm system in recent years. Mr Pietersen confirmed that no burglaries were reported during his tenure that were not picked up by the system. No evidence of criminal activity under Ms Rossouw's management, where crime by outsiders due to the failure of the security system specifically, was

presented. No murders or violent crimes were committed at [...] Estate prior to the incident. The Accused testified that he was not aware of any criminal activities at [...] Estate. It was submitted by State counsel that the security measures of the Estate, the location of the property on the Estate and the close proximity of the houses make it highly improbable for any intruder(s) to access the Estate and the property in question, commit these crimes and exit the property and Estate without being detected. Despite lengthy cross-examination, the Defence was unable to suggest or present evidence of a real breach of security. Considering the probabilities, and in the light of what is said here, the Court is in agreement with the State that it is highly unlikely that the security was breached that night by an intruder from outside [...] Estate.

The Emergency Call and the Demeanour of the Accused

[80] In the early morning hours of 27 January 2015, Janine Philander, employed as an operator by the City of Cape Town at the emergency communication centre, received a call from the Accused. The audio recording of the call, Exhibit “JJ”, was played in court. The recording started at 07h12 and ended at 07h37; it lasted 25 minutes. The Accused appeared emotional while the audio recording was played in Court. The Accused confirmed that the sound clips of the emergency call were correct and that the contents of it were what happened during the course of the call.The witness initially thought it might be a prank call because the caller was quite calm and co-operative during their unduly long and laboured interaction. Ms Philander said the caller did not get angry, agitated, shout or scream like when something life threatening happened to a person. He did not ask what he could do to assist the victims. The caller reacted strangely in her experience of callers reporting a home invasion or an assault. She also heard a sound that she interpreted as a giggle but someone else could come to a different conclusion. From the outset it must be said that there was no clear evidence of a giggle although a sound of some sort could be heard on the audio recording. The Accused testified that he never giggled but was saying the word “please”.

[81] The Accused testified that he had a speech “impediment” and stuttered. He received speech therapy from grade 4 until grade 10. The Accused said that he panicked, was breathing very fast and lit a cigarette at the kitchen counter while the emergency call was dialling to calm himself down. He smoked three cigarettes in short succession and dropped the last to the floor where it burnt out. He said the reason for that was that his hands were shaking so much that the cigarettes just fell out of his hand. In normal circumstances it was not acceptable to smoke inside the house. The Accused was taught the technique to speak slowly and calmly because as soon as he started speaking fast, he would get stuck. When listening to the audio recording, it was quite clear to the Court that the Accused stuttered slightly. The witness conceded that towards the end of the call the Accused appeared to be calmer than he was initially and that it could have been the case because she had stayed calm. It is apparent from the recording that it was not necessary for the operator at any specific time to request the Accused to calm down.

[82] Ms Philander asked the Accused whether he was the patient and he replied in the negative, saying that someone had attacked his family. The Accused gave his address and an alternative address several times to the operator. The operator struggled to locate the given addresses. The Accused could not find his address – [...] G. Street – on Google maps and referred the operator to the address he picked up on Google maps, namely 10 Alleman Street. He also furnished his home telephone number and his cell phone number. He confirmed no one else was in the house. Initially the Accused said that three adults and one teenage girl were injured in an attack by someone. He said that his sister was moving. The injured persons had head injuries. Later he said the perpetrators ran away and that he and his family were attacked with an axe. The Accused also said he thought that he had blacked out, and that he had just woken up. He asked for more than one ambulance to be dispatched. Conference calls were also made with the police and the ambulance dispatcher during this long conversation.

[83] Although Ms Philander conceded that the Accused did nothing wrong when making the call, the lack of urgency and the demeanour of the Accused, during a disturbing and unduly long conversation with the emergency services, seemed to be highly unusual for a traumatised victim.

[84] The Court is mindful of the testimony of Dr James Butler, the neurologist that testified on behalf of the Defence, but will deal with his evidence at a later stage. At this stage it suffices to mention that the Accused testified that he could not recall feeling confused or dizzy while on the phone to Ms Philander. He testified that he was fully conscious at that stage and conceded that he gave Ms Philander details of his whereabouts in a coherent manner, even providing them with an alternative address and other landmarks such as spelling street names and the name of the estate. At one stage he even corrected the spelling of the name of the estate when the operator spelled it incorrectly during the conference call to the ambulance dispatcher. He also established the coordinates on Google maps to relay his location to the operator.

[85] The Accused testified that he decided to contact the emergency services directly to save time and not make use of other obvious options to get help. During cross-examination the Accused was confronted with the fact that he verbalised certain emotions to the Court but it was not evident from the emergency call. The Accused said he did not get angry because he was under the impression that they were having some sort of technical issue. Later he testified that he was trying his best not to reflect his agitation and get as angry over the phone as he should have been. The Accused testified that he did get frustrated with the emergency services when they did not react quickly. He said he did nothing to convey his feelings of frustration to the operator despite being in dire need and instead suppressed those feelings of frustration. He felt that it would only confuse the communication and not help.

[86] Emotion of some sort is to be expected whether the Accused was a victim or the perpetrator. The Accused's explanation regarding the lack of urgency on his part could possibly be expected in less traumatic circumstances. Initially the Accused sounded anxious and short of breath on the sound clips. However, the composed, calm, almost calculated and self-controlled manner in which the Accused dealt with an extremely traumatic situation, for the greater part of the call, seems inconsistent with human nature. Both Ms Philander and Captain Steyn from the Detective branch in Stellenbosch, testified that, in their vast experience, victims of crime are emotional although they might be quiet, hysterical, frantic, shouting, confused, unable to remember certain things like contact numbers, persistent or angry. Ms Philander herself seems to get impatient with the police operator at some stage. The Court bears in mind that victims react differently in similar circumstances. The Accused's largely calm demeanour, however, seemed so out of the ordinary to Ms Philander that she thought it was a prank call and flagged her supervisor.

[87] The Accused testified that he was aware that it was a very serious situation. During his evidence-in-chief the Accused testified that at that moment he was still under the impression that both RUDI and MARLI were alive. He heard gurgling sounds from above. Peculiarly enough, the Accused made no mention to Ms Philander that his brother was also alive; he only mentioned his sister being alive. During cross-examination by the State, the Accused was unable to explain why he did not mention that two of his family members were still alive. The Accused conceded that the gurgling sounds could have emanated from MARLI only and not from both RUDI and MARLI. Despite being uncertain in this regard, the Accused stated it as a fact in his plea explanation that he could hear what sounded like RUDI making gurgling sounds in their room.

[88] During cross-examination it was put to Ms Philander that the Accused will say that he told her they were bleeding from the head because in Australia they will send an ambulance immediately, and treat it as a real emergency if head injuries are involved. When confronted with why the Accused deemed that explanation necessary, while his family indeed sustained head injuries, the Accused merely explained that it was part of his thought process and an effort to get help as quickly as possible.

[89] The Accused stated during cross-examination that he immediately went and phoned the emergency services *again* (my emphasis) after regaining consciousness. This is simply an incorrect statement. Considering the timeline as set out in Exhibit "UU", the Accused never phoned the emergency services before he lost consciousness. He did an internet search for an ambulance at 04h27 and attempted to phone the emergency services from his mobile phone for the first time at 07h12.

[90] Dr James Butler *inter alia* testified about the Accused's behaviour on the audio clip of his emergency call, during which he appears "inappropriately calm and lacking in urgency, given the gravity of the circumstances", and also not knowing about his family's status. Dr Butler said he suspected the general public who have heard it would be struck by the inappropriateness of the Accused's behaviour. The witness said it was consistent with the behaviour of someone in a post-ictal state after a seizure. Dr Butler testified that a post-ictal state, where the brain is dysfunctional, would very easily account for his behaviour. Adv Galloway questioned the fact that the Accused managed to reason with the emergency operator and give them Google Maps co-ordinates as well as the proper address details. It was also put to the witness that the Accused was able to make an alternative plan with reference to his phone calls to his ex-girlfriend and the different addresses given. Dr Butler testified that the frontal lobes are still working, the thought process is consistent and

the person can make plans. This is in contrast to the Accused's cognition immediately before he lost consciousness.

[91] Defence counsel argued that insofar the Accused's behaviour prior to the loss of consciousness may be held to be somewhat apathetic and inappropriate, it is possible that it may be attributed to the brief electric discharges leading up to a generalized tonic-clonic epileptic seizure (GTCS), which impairs cognitive processing speed, concentration and attention. The Accused did not testify that he experienced brief electric discharges in the period leading up to his loss of consciousness. There is no other evidence from another source to this effect. Counsel's argument amounts to sheer speculation and is not based on objective proven facts.

[92] Dr Butler agreed that the demeanour of the Accused and his communication in the emergency call was inappropriate and peculiar if not for the witness's diagnosis. The witness said it was possible that the Accused was malingering and conceded that if one takes other data and probabilities into account, that could sway a person one way or another. The Accused explained why he spoke in a calm manner but a different picture was painted by the Accused to the witness. It was put to the witness that the Accused's memory was much clearer in court than the fragmented version that was alluded to by the witness. Dr Butler testified that the fact that the Accused was lucid beforehand and less so afterward is more pertinent to him. He said he did not go into a lot of detail, the incontinence and neglect were more compelling to him. In a court case the need to justify and the imperative is even greater. On a question whether the Court must accept the witness's view, the Accused's version, or both, Dr Butler responded that the evidence presented to him gives a strong impression that the Accused had post-ictal delirium. During cross-examination the witness conceded that it would be a problem for him if the Court were to conclude differently on the facts, but stressed that the incontinence aspect was important.

[93] Dr Butler said it was more likely that the Accused suffered a seizure before the phone call to the emergency services at 07h12. The witness agreed that his opinion was based on the assumption that the Accused had a seizure. Dr Butler said that the fact that the Accused wet himself and was unaware of it and also the forehead injury, shows a more severe post-ictal delirium. Dr Butler said the severity was much greater, therefore he doubted that the Accused had a short seizure and recovered quickly. The witness agreed that only the Accused could say where what happened, and where and when the seizure happened; the witness could not scientifically determine that. Dr Butler could also not with scientific certainty say how long the seizure lasted, but was drawing inferences. The Court will later deal with Dr Butler's testimony in more detail and the weight to be attached to it.

[94] The audio recording of the emergency call is indeed a silent, unemotional, trustworthy, unbiased and accurate witness to the Accused's demeanour and seemingly inappropriate lack of emotion after the extremely traumatic events, as argued by the State. Although State counsel conceded that not every person reacts the same in traumatic circumstances, it was argued that the emotional state of the Accused during the call is inconsistent with being a victim of a crime and losing most of his family members. The Accused was calm, fully conscious and able to relay his version of the events to the police at the scene and later at the police station. Dr Michelle van Zyl also described the Accused as confident, not emotional, and conversing casually and relaxed with staff. She noted that he was orientated to person, place and time.

The Emergency Numbers

[95] Sergeant Adriaan Kleynhans, stationed at the Stellenbosch police station for the past twelve (12) years, was the first police officer that attended

the crime scene at [...] G. Street, [...] Estate. The witness observed a piece of paper with telephone numbers stuck on the fridge on the ground floor of the house, as can be seen in Exhibit “D”.

[96] Marcia Rossouw, the Security Manager at [...] Estate, confirmed that a newsletter with emergency numbers (Exhibit “D”) that was stuck to the fridge door *inter alia* contained her telephone number, the number of Rene Coetzee from the home–owners’ association, and the numbers of the house doctor as well as the hospital in Stellenbosch. A twenty-four (24) hour emergency number was distributed to the residents, as was the number of the remote monitoring service, by regular newsletters issued by the home-owners’ association. The number was also written on their bakkies.

[97] Precious Munqongani, the domestic worker at the Van Breda household, since October 2014, worked at the house three times a week. The witness testified that when she started working at the house, she was told that the paper stuck to the fridge in the kitchen, as can be seen in Exhibit “D”, contained numbers that she had to contact in case of emergency.

[98] James Reade-Jahn, MARLI’s ex-boyfriend, recognised the emergency numbers stuck to the fridge as can be seen in Exhibit “D”. His own inference was that the paper contained an emergency contact list for the children if ever they needed it.

[99] During the cross-examination of Ms Rossouw, it was admitted on behalf of the Accused that he knew about the numbers on the fridge. According to his plea explanation, the Accused scanned the numbers on the fridge when he regained consciousness after his alleged blackout (see paragraph 41, Exhibit “J”). In his plea explanation, and during his evidence-in-chief, the Accused said that he looked at the emergency numbers on the fridge door but they did not appear to him to be of any assistance. During

cross-examination by the State, the Accused advanced a slightly different reason for not making use of the emergency numbers on the fridge. The Accused testified that it was not that he decided that it would not be of any assistance, but he thought that he would do more by getting the number for the emergency services himself. He indicated that it would have taken too long to explain what happened and that such a person had to repeat it again to the police. He thought he'd be better-off speaking directly to the people that were going to help. The Accused explained further that he thought he could get an ambulance quicker rather than getting the people on the list to do it. It was pointed out by the State that the numbers were nicely categorised with medical support indicated as one heading. There were at least two 24-hour emergency numbers on the piece of paper stuck to the fridge, and also the number of a hospital. The explanation advanced by the Accused seems to be quite irrational. The general practitioner who had a twenty-four (24) hour emergency number, or the hospital personnel would have been able to assist the Accused directly without further explanations to more persons. The hospital would probably have been able to dispatch an ambulance even quicker than the emergency services. In his evidence-in-chief the Accused testified that he started googling the number for the emergency services on his phone when he was on his way from the back door walking through the kitchen to go upstairs. He was busy googling on his mobile already as he was entering the house. The fridge in the kitchen was close to the back door and the Accused would probably have been able to get the emergency numbers on the fridge quicker than googling it.

[100] If the Accused's intention was to get help as quickly as possible by speaking to the emergency services directly, it does not explain why he first tried to contact Bianca van der Westhuizen, his girlfriend at the time, at 04h24 before googling the number for the emergency services at 04h27 on 27 January 2015 (see Exhibit "UU"). The Accused confirmed that the landline and mobile phone numbers indicated in Exhibit "UU" belong to him and Bianca and their home landline. He said he accepted that the information downloaded from the mobile phone was correct. Furthermore, the Accused was confronted

with the fact that he did not seek help from other obvious sources like neighbours, [...] security or the other emergency numbers on the list against the fridge, while on the cordless phone to the emergency services. Instead he called a minor school girl residing in a hostel, several times from his mobile phone. The Accused explained he just wanted to speak to someone and Bianca was pretty much his only friend in South Africa at the time. James Reade-Jahn testified that he got along really well with the Accused and that they had a good relationship. Later that day the Reade-Jahns and Alex Boshoff were also at the police station during his interview with the police, waiting to take the Accused home. It seems that the Accused had a support system as well at the time. The Accused testified that he did not know what he would have said to Bianca and what assistance she could have rendered.

[101] During cross-examination the Accused created the impression that he was not aware of the 24-hour emergency numbers on the fridge after staying permanently with his family for approximately five months and also did not see it when he scanned through the numbers. The fridge was close to the kitchen counter and place where Sergeant Kleynhans found three cigarette butts and a packet of cigarettes, as can be seen in Exhibits “A117 – 120, “A117 – 135”, “A117 – 502” and “A117 – 503”. The distance from the kitchen counter to the fridge in the kitchen with the paper containing emergency telephone numbers, was 1.53 meters. The Accused’s version in court was that he smoked the cigarettes at the kitchen counter whilst making a call from the landline, the cordless telephone that was lying on the kitchen counter. He testified that if he reconsidered the list while on the phone with Ms Philander, he would probably have ended up seeing the 24-hour emergency numbers. The Accused conceded that he had the opportunity and should have called [...] security as well. He also conceded that they presumably would have been able to get the emergency services straight to the Estate. He also did not think of calling the doctor whose emergency number was also on the list. It is unlikely that the Accused was not aware of what emergency numbers or whose numbers were on the list as the occupants of the house and workers were made aware of the numbers.

[102] The Court is cautious not to adopt an armchair approach when evaluating the conduct of the Accused who found himself in a very traumatic situation. Apart from the medical emergency numbers, the numbers of the Control room, the Security manager and four friends were on the fridge list (see Exhibit “D”). In his plea explanation the Accused said that he struggled for a very long time trying to get the operator to send an ambulance. According to the Accused the operator seemed confused and he did not get the quick response that he was expecting. He was trying his best to formulate a plan to get help as soon as possible. The Accused did not try any of the numbers on the fridge from his mobile phone while being on the landline with the emergency services. As stated above, an ambulance could probably have been dispatched much quicker by phoning one of the numbers on the fridge than by googling an emergency number followed by a twenty-five (25) minute call for help. The very reason for the list of numbers on the fridge was to make use of it in case of an emergency and for it to be at the quick disposal of the person needing it.

Attempts to Seek Other Assistance

[103] It is common cause that the Accused did not attempt to alert the security officers at [...] with regard to the presence of an alleged and seemingly very dangerous intruder at large on the grounds of the Estate. The Court accepts that the wellbeing of the injured would take preference, especially in a traumatised person’s mind, rather than the presence of a dangerous assailant. It is also common cause that the Accused did not seek help from the security officers to obtain medical assistance.

[104] Ms Annalise Taljaard was aware of patrols being undertaken by security guards; they often did their rounds in the vicinity of her son’s room at the front of their house in G. Street. Ms Taljaard resided with her three children at [...]4 G. Street, [...] Estate, since approximately February 2014. The

house situated at [...]3 G. Street was uninhabited. The Van Breda residence was situated between [...]1 and [...]3 G. Street.

[105] The Accused did not seek assistance from Ms Taljaard. Ms Taljaard testified that she herself did not hear the Accused shouting for help or the three persons being murdered. The witness said she was stunned that she did not hear anything, being a light sleeper.

[106] Ms Stephanie Op't Hoff resided at 10 G. Street right across the street from [...] G. Street. She testified that she had heard an argument from the direction of the Van Breda residence on the night of 26 – 27 January 2015. She said that she did not want to interfere with their affairs because she respected their privacy and wanted to save them the potential embarrassment. Ms Op't Hoff said she would have reacted if somebody was yelling for help. She testified that nobody shouted for help or knocked on her door for help. She displayed disbelief that the Accused did not break down her door to seek help. During the inspection *in loco* the Court noted that there is a balcony door leading from the boys' room, to an outside balcony with a view of Ms Op't Hoff's house across the street.

[107] In his evidence-in-chief, the Accused testified that he shouted for help in one way or another when he saw the assailant attacking his brother. He said he could not remember what he said or if he said anything but he had made some sort of noise. The Accused testified that he did not call for help from his neighbours when he went out of the back door after the attack. He said that there was no particular reason why he did not call for help. With the benefit of hindsight, that is something he should have done. The Accused confirmed that the houses on the estate are close to each other. The Accused conceded that Ms Opt' Hoff would have come and helped, but he thought she could not do anything. He was of the opinion if people were not medical professionals they would not have been able to help.

[108] There is no evidence that the Accused yelled for help when his father was being attacked. He also did not call out to warn his mother and sister to flee after the attack on his father nor when he heard his mother's voice asking what was going on. The Accused also did not call for help after the attacker had left the room. The Accused testified that he thought he was doing the most he could to get help. He could not explain why he did not shout to his mother to run away. He did nothing when the attacker moved in his mother's direction and out of the room. The Accused said that he also did not try and attract MARLI's attention at the time. He explained that if he had been thinking clearly, he probably would have done these things. The Accused said he was scared and unable to decide upon what action to take. The Accused conceded that, in ordinary human experience, one instinctively tries to help your loved ones. However, he put his total inaction down to his state of fear. The Accused, however, appeared to be brave enough to chase after the attacker and other intruder(s) after the attack on his family.

[109] The Accused furnished different versions about the presence of a person that he encountered outside:

(a) In his plea explanation the Accused said he went outside via the front door while still on the phone to the emergency operator. When he was outside, he noticed someone. As far as the Accused could recall, he requested this person to get help. The Accused could not recall who this person was (see paragraphs 47 and 48, Exhibit "J").

(b) His statement to the police is silent in this regard; the Accused merely stated that he went outside for a bit via the front door. Then he went back inside and waited for the emergency services in the kitchen, having some cigarettes while waiting (see paragraph 10, Exhibit "SS").

(c) During his evidence-in-chief the Accused testified that he told a lady outside in the street to please get help whilst busy communicating with the emergency services. He did not interact further with the lady.

(d) During cross-examination the Accused testified that the processes of the trial jogged a lot of his memory and that there is a statement in the police docket of a lady that was outside their house. He could not recall whether he mentioned it to the police or not. Surprisingly he also testified that it did not seem relevant information to him. Such a person could possibly have assisted the police with information on the alleged intruders; the Accused was not aware of what she had seen or known about the incident/intruders. When probed again about his failure to mention it to the police, the Accused responded that he was fairly sure that he did mention it to the police but that they just did not include it in his statement. He then testified that he did not deem it necessary to point it out to the police that he sought help from a lady on the estate and that the police had to find her. Both scenarios as stated by the Accused can simply not be true; he either told the police about the lady or he did not deem it necessary to mention his encounter with the lady.

[110] It is unlikely that a complete stranger would have been wandering in that particular cul-de-sac street in a security Estate like [...] Estate at that time of the morning. Ms Taljaard testified that no strangers were roaming inside the Estate. The Accused thought it was a domestic worker at one of the neighbour's houses, even possibly Ms Op't Hoff's employee (babysitter). The Accused testified that he was dressed in his sleeping shorts with blood spatter and socks when he encountered the lady after the attack. He also had wounds on his body at the time.

[111] This alleged unknown person apparently never contacted security or the management of the Estate or another resident/person for help. The Accused testified that it appears that the lady did nothing. It is highly unlikely that the lady would not have raised some sort of alarm after witnessing a bloodied person asking for help at that time of the morning in a quiet, safe and secure Estate. None of the residents came to assistance of the Accused which is strange if they were alerted to the murders that had taken place at the Van Breda residence. Even after the discovery of this gruesome scene by the police, it seems that nobody came forward claiming that the Accused had requested help from them.

[112] As mentioned above, a witness statement of a lady, possibly a domestic worker at one of the neighbour's houses, was filed in the police docket. This important witness was not called by the Defence to corroborate the Accused's version, justifying an adverse credibility finding against the Accused in this regard. No evidence exists supporting this averment by the Accused.

[113] In summary, the State argued that the conduct of the Accused after the attack on his family is inexplicable:

1. The internet search for emergency services whilst there was no need for it in the light of the list mounted on the fridge for emergency purposes;

2. Not seeking assistance from neighbours living in close proximity;

3. The failure to attempt to make use of the easily accessible security and emergency services available to the residents of the Estate;

4. The inability of the Accused to explain sensibly why he opted to call Bianca, a minor school girl living in a hostel, instead of other people who could render assistance; and

5. His failure to attempt to assist his family medically or comfort them in their dying hour. Instead he smoked three cigarettes.

6. The failure to, at least, warn his mother and sister about the intruder in the boys' room after the attack on RUDI and his father, can be added to the State's submissions.

[114] Defence counsel initially ascribed the unusual behaviour of the Accused due to a fall and possible concussion, and later it was attributed to a post-ictal stage with which the Court will deal during the discussion of Dr Butler's evidence. The failure of the Accused to contact or approach obvious sources of help or persons in his immediate vicinity and his behaviour towards his family in need, is certainly most extraordinary.

The Time Period between the Incident and Attempts to Seek Assistance

[115] On the Accused's version the attack happened not long before 04h24 on the morning of 27 January 2015. Ms Op't Hoff testified that she heard loud male voices with an aggressive undertone from the Van Breda residence on the night of the murders from 22h00 until 00h10. The sound of the monitor for her son woke her up at 04h00. She found it strange that both her sons were awake at 04h00 that morning as her eldest son never woke up at night. The windows of the children's room opened towards the Van Breda residence. The Accused attempted to call Bianca immediately after the attack when he went out at the back door at 04h24 on 27 January 2015. He said he searched for

the number of the emergency services on the internet on his mobile phone at 04h27, shortly after he tried to phone Bianca. The Accused accepted that the information downloaded from the cell phone was correct and, therefore, the timeline in Exhibit “UU”. He did not know why the calls to the emergency line from his mobile phone at 07h12 were not successful. The first successful call to EMS was from the landline at 07h12 on 27 January 2017. The Accused confirmed that the attack on the family was completed at approximately 04h24.

[116] Taking into consideration the testimony of Ms Op’t Hoff, the incident probably took place at approximately 04h00 to 04h24 on 27 January 2015. The Accused attempted to contact the emergency services for help at 07h12 for the first time, in other words approximately two hours and forty-eight minutes later. The question is what transpired during that period of time and the significance thereof, if any.

[117] During this period the Accused smoked at least three cigarettes at the kitchen counter. The Accused smoked the cigarettes one after the other. Three (3) cigarette butts on the floor close to the kitchen counter can be seen in Exhibit “A42 - 44”.

[118] In his statement the Accused said that he got hold of the emergency services, went outside for a bit, then went back inside and sat in the kitchen having some cigarettes whilst waiting for the emergency services (see paragraph 10, Exhibit “SS”). In his plea explanation the Accused said that he lit a cigarette at the kitchen counter to try and remain calm whilst he was dialling the emergency number on the landline (see paragraph 43, Exhibit “J”). During cross-examination the Accused was confronted with his police statement saying that he smoked while waiting for EMS and after going outside the house (see paragraph 10, Exhibit “SS”). The Accused explained it was incorrect. He told the police that he had cigarettes at the kitchen counter, the police probably misunderstood him and wrote down something different.

The Accused said it was a misinterpretation because he had to repeat his story. Adv Galloway said the sequencing or time line in the statement was also different from his testimony in court. In the statement the Accused said he was smoking after making the call. The Accused responded the word “then” established a misleading sequence. The Accused said he smoked at the same time when making the EMS call.

[119] James Reade-Jahn testified that he never saw the Accused smoking when any of his family members were around, especially his parents. He witnessed no other family member smoking. It was put to Sergeant Kleynhans that the shoes at the bottom of the staircase belonged to the Accused and that the Accused put a packet of cigarettes in one of the shoes behind the staircase. The Accused testified that only one packet of cigarettes was hidden in his shoe that particular night. He said he kept both shoes at the bottom of the stairs to go for a walk with Sasha, the family dog. MARLI was not supposed to know that he smoked; it could have influenced her. He normally hid his cigarettes in his shoes behind the stairs. The Accused testified that the shoes had been standing at the bottom of the stairs for a few days before the incident. Considering the secrecy of him smoking and hiding the shoes and cigarettes from MARLI at the insistence of his parents, and the tidy appearance of the rest of the house on the ground floor as can be seen in Exhibit “A”, it seems odd that the shoes would be standing at the bottom of the staircase for a few days (see Exhibit “A20 and A23 - 26”). Domestic workers apparently cleaned the house every day except for Sundays. Adv Botha put a different version to Sergeant Kleynhans, namely that the Accused put the shoes at the bottom of the stairs before the arrival of the police. The Accused said the bloodspots on his shoes were presumably from the blood dripping from upstairs as could be seen on the carpet next to the shoes.

Loss of Consciousness

[120] The Accused claimed that he lost his footing and had a severe fall during his pursuit of the attacker. He said that he got up again and only lost consciousness later as he moved past the middle landing, ascending the stairs, after having tried to google the emergency number on his phone. The Accused could not explain why he wanted to go upstairs again after returning from the back door. He was unsure whether he lost consciousness due to the shock of seeing his mother and MARLI, or to the injuries sustained when he fell down the stairs, or a combination of both (see also paragraphs 37 and 39, Exhibit "J" and paragraphs 8 and 9, Exhibit "SS"). He allegedly lost consciousness or blacked out for approximately two hours and forty-eight minutes. The Accused testified that he was initially very, and even completely, disorientated when he regained consciousness. He was confused for a while before he stood up from the stairs. He testified that when he saw MARLI, he sort of snapped back into consciousness.

Examinations by General Practitioners and the Possibility of Concussion

[121] Dr Lizette Albertse, a District Surgeon from Stellenbosch, testified that she did not get a clinical picture of concussion when she examined the Accused later that day at about 10h30. However, she did not perform further tests on the Accused in this regard.

[122] She examined the Accused approximately 5 – 6 hours after he had sustained the injuries. Dr Albertse testified that she would have expected signs of concussion or a head injury. The head injuries of the Accused could possibly have fitted in with a significant fall. However, if he had fallen with his head against the edge of the step, one would have expected a burst wound. In her opinion it was improbable that the Accused fell like that. She was also of the opinion that it was unlikely that the injuries to his body, thorax, back and knee fitted in with a significant fall. The knob on his forehead could have been

caused by blunt force like a fall against a wall or an assault. The abrasions on his back were the superficial part of the skin that had been scrapped off; the lineal appearance of the injuries could be indicative of the body pressing against an object or being scraped.

[123] During cross-examination it was put to Dr Albertse that when the Accused ascended the stairs, he fainted when he saw his mother and sister on the landing. The Accused wet himself. It was put to the witness that the spelling on the Google search was distorted and that he was for a period of time disorientated once he had regained his consciousness. Dr Albertse testified that it could fit in with a head injury. Dr Albertse said it was possible that he bumped his head with the fall as the injury presented as blunt trauma. The abrasion under the right knee of the Accused could fit in with either a fall and losing consciousness or with hurting oneself. The abrasions on his back could also fit in with someone falling down the stairs on his backside. The head and knee injuries could have been sustained on the stairs or during a scuffle.

[124] Dr Albertse testified that a person would not be disorientated for a long time in the case of a light bump against the head. In the case of a more serious injury, a person would be disorientated for a longer period and the recovery time would be longer. Dr Albertse testified that a person who suffered from concussion would not necessarily be unconscious, but the person's reactions would be delayed.

[125] Dr Michelle van Zyl is a general practitioner specialising in emergency medicine since 2007 and saw the Accused twice that evening at 20h25 and 21h45 respectively.

[126] During the first visit the Accused was fully orientated. The witness had a good and proper conversation with the Accused. When the Accused

returned for the second time accompanied by the police, he was still a hundred per cent orientated.

[127] The Accused was orientated to person, place and time. During the second visit the Accused answered specific questions coherently. With reference to the injury against his forehead, Dr Van Zyl testified that there were no signs of concussion or brain injuries.

[128] The discolouration of the eyes could have been as a result of the bump/injury to the head. Adv Botha asked whether it would be possible that the blood could flow from one eye to the other if a person had laid flat on his right side. Dr Van Zyl responded not likely but it was not impossible.

[129] Dr Van Zyl did tests for concussion during the Accused's first visit, *inter alia* movement tests and the "Nystagmus" test. Such tests excluded the possibility of concussion. The Accused experienced no middle-ear problems; if that had been the case, she would have sent the Accused for further tests. She would have expected signs of concussion to be present, but there was no history of nausea, vomiting or amnesia.

[130] According to Exhibit "J", MARLI had an injury on her right hand and the bump was caused by blunt force trauma. During cross-examination the Accused denied sustaining the injuries when MARLI defended herself against him. The Accused said MARLI did not hit him with a fist.

Comment on the Period of Unconsciousness and a Brain Injury by a Specialist Forensic Pathologist, Dr Tiemensma

[131] Dr Marianne Tiemensma, is a medical specialist and was employed at the Clinical Forensic Unit at Victoria Hospital, Wynberg at the time of her

testimony; she has emigrated since testifying. Apart from forensic pathology, she also practiced clinical science. Her qualifications and experience were listed in Exhibit “NN”; her expertise includes pathology which she started to practice in 2007. The Court finds that Dr Tiemensma was an exceptional witness and the criticism by Defence Counsel that she was not an objective witness, was unfortunate and unfounded.

[132] Dr Tiemensma testified that the swelling above the left eye and the bruise under the left eye of the Accused, were in keeping with blunt force injuries. The skin overlying these wounds was intact. The wounds to the head, swelling and bruise on the eye, could be caused by a blow to the face or a fall. On a question whether the injuries would be consistent with a fall on the stairs as the Accused allegedly blacked out, Dr Tiemensma said the Accused could have fallen on the stairs because the back and head injuries were consistent with a fall. She testified that there seemed to be minimal bleeding from the wounds; a tiny amount of blood was not enough to go into shock as a result of blood loss. Therefore she was of the opinion that the Accused would not have fainted due to blood loss. However, he could have fainted because of shock. Dr Tiemensma said if a person had fainted because of a medical reason, his unconsciousness would have continued for some time. In case of shock, a person would recover quickly. She did not expect a person to be out for hours. Bruising and injury might have caused a mild concussion but she said Dr Albertse did not mention anything about disorientation.

[133] Dr Tiemensma had the opportunity to read the Accused’s plea explanation. When asked to comment on the fact that the Accused could recall certain details vividly, but could not correctly type words in a Google search, Dr Tiemensma said a bit of dizziness was not recorded. Warrant Officer Jeremias Engelbrecht, stationed at the Directorate of Priority Crime Investigations, testified that a Google or internet search was made by the Accused at 04h27. The words “emergency” and “South Africa” were spelled incorrectly, but the words “ambulance” and “number” were spelled correctly.

The Court is of the view that these could be simple spelling mistakes under stressful circumstances and that these were not in themselves necessarily indicative of a medical condition. At 07h45 the Accused sent a text message to Bianca with no spelling mistakes. Dr Tiemensma said it was quite obvious some incidents were described in detail in his plea-explanation, and others not. She said it was interesting how “selective” it was. In the case of a concussion one would suffer short-term amnesia but the Accused displayed selective memory loss.

[134] Dr Tiemensma testified that there were at least two causes for loss of consciousness; one was an emotional shock or trauma, the other was a medical reason. The witness explained that fainting was short-term with a brief loss of consciousness. Emotional shock, for instance when a person saw blood, would have symptoms like stress, light-headedness, fast heartbeat, resulting in a person passing out and losing consciousness. The average duration is a couple of seconds to one minute at most. Low blood pressure increases once you fall to the ground. A person did not need medical help to recover. The second type was a form of shock because of blood loss or a bump to the head. The rate at which a person lost consciousness depended on the amount of blood lost. If a person lost less than 500 ml of blood, the person could tolerate that and not lose consciousness. Medical correction was necessary if a person experienced fifteen (15) to thirty (30) per cent blood loss; such a person would need fluid replacement. Adv Botha indicated that it was not the defence case that the Accused lost consciousness due to blood loss. He indicated it was the defence case that the Accused sustained concussion, not a brain injury.

[135] Dr Tiemensma testified that a head injury, blow to the head or a concussion is a mild traumatic brain injury, and can result in a loss of consciousness for a couple of seconds at most as stated above. Ninety (90) per cent of persons suffering from concussion do not lose consciousness. If it

lasts for more than one minute, it involves a serious medical condition and is in keeping with a more serious brain injury.

[136] Dr Tiemensma testified it was unlikely that the blood spot on the stairs could be as a result of a fall. The witness testified that there seemed to be minimal bleeding from the wounds of the Accused. Dr Tiemensma testified that the injuries of the Accused would not fit in with a fall on that particular spot on the stairs as can be seen in Exhibit “A124”. Superficial abrasions would not cause a blood spot like that. She was of the opinion that a 10 mm wound would not have entered the abdominal cavity. It penetrated the skin and the body fat. To go through the skin and body fat, it depended on how much force was used, the build of the person and where on the body the injury was inflicted. Keeping in mind the build of the Accused, he was sturdy, the knife wound did not penetrate the abdominal wall. The wound was below the spleen and did not enter the internal cavity to cause such a spot of blood on the step. There should be at least a 40 mm penetration to go through the skin and tissue.

[137] During cross-examination an enlarged photograph of part of the staircase of the same area as in photograph “A124”, was shown to Dr Tiemensma and marked as Exhibit “NN5”. A blood spot or smudge can be seen on the vertical part where cone 69 is. It was put to the witness that the Accused said when he regained consciousness, he was on the stairs in that vicinity, and noticed the stain on the stairs. It depends on the position of his body when he fell whether the smudge on the stairs could have been caused by the stab wound. The police did not take a swab of this blood. Dr Tiemensma conceded that if the Accused fell forward and his body was fixed in that position, it was possible. She conceded if the Accused was lying on the stairs, bleeding, that it could have resulted in that blood smudge. However, Dr Tiemensma questioned why the blood would flow in an opposite direction against gravity and not running down.

[138] Dr Tiemensma conceded that a neurologist would be in a better position to comment on concussion but said that she often dealt with head injuries sustained by patients and with concussions. Dr Tiemensma said the bump to the Accused's left forehead and the discolouration could have resulted in concussion. Defence counsel put it to the witness that the spelling of emergency services on the phone was distorted. She replied if the Accused was able to Google, he was not that confused. He knew what he was doing when he googled emergency services. A mild concussion would not result in loss of consciousness for hours. Adv Botha said the Accused had constricted pupils and slow reaction to light and asked whether those signs were indicative of concussion. However no evidence in this regard was presented. Dr Tiemensma said it was not because the pupils were equal. If one received a bump on one side, there would be a difference in the appearance of the pupils. Constricted pupils could be as a result of drugs or any other condition, it was not limited to concussion. Dr Tiemensma referred to page 250 of the article by James Kelly, *Journal of Athletic Training*, "Loss of Consciousness", issued in 2001, Volume 36, saying that periods of brief unconsciousness might be common to concussion and that longer periods of unconsciousness would occur in case of a brain injury.

[139] The Court adjourned for cross-examination of this witness in respect of the concussion aspect only at the request of the defence. However, counsel did not request that the witness be recalled.

Possible Reasons Advanced by a Neurosurgeon for the Loss of Consciousness and the Period, Dr Du Trevou

[140] Defence witness Dr Michael Du Trevou is a semi-retired Specialist neurosurgeon in private practice since March 1993.

[141] Regarding the version of the Accused and the loss of consciousness due to shock or his injuries (see paragraph 37, Exhibit “J”), the witness testified that all retrograde and post-traumatic amnesia was a feature of traumatic brain injuries, including concussion. It could last from minutes to days depending on the severity of the impact. During that time normal physical activity (for example playing rugby) was possible but the person might have absolutely no recollection of those activities. That loss of memory was usually permanent. To determine how to make a finding, Dr Du Trevou said concussion was a temporary alteration of functioning. Symptoms of headaches and nausea would be indicative of the condition. Primarily one looked at the history of the patient. The neurological examination of the patient was almost always normal.

[142] Any episode of loss of consciousness lasting two (2) hours and forty (40) minutes following a head injury was an indication of a mild to moderately severe traumatic brain injury. The witness said he doubted however that this kind of injury, that could not be picked up on an MRI scan, would have resulted in retrograde amnesia (which was a loss of recall of events before the insult) as it was an indicator of severe or a more severe brain injury. It was not possible to determine, *ex post facto*, whether the Accused had lost consciousness or whether he merely lost recall of the incident.

[143] The mere fact that no evidence of a prior injury was visible on the MRI scans, did not exclude the possibility that the Accused had lost consciousness or recall of the events subsequent to hitting his head. Absent Nystagmus, as reported by Dr Van Zyl some 16 hours later, was also of no value in excluding previous concussion, especially after such a prolonged period. The witness indicated that he saw the photographs of the Accused in the ambulance which showed the bump on his forehead. When Dr Van Zyl’s testimony to the effect that she would have expected to see signs of Nystagmus in case of concussion, was put to the witness, he responded that one could get such

signs but mostly one did not expect that. Passing-out or being confused after a fall for such a period as the Accused had described, was consistent with a mild head injury.

[144] Concussion does affect decision making, patients frequently could not operate normally, that why a sportsman would be taken off the field. It takes ten days to recover fully, on average. For a period of time thereafter, it was possible for the person to operate and function fairly normally for a period of two hours or longer. A person would have no recollection of the period that he was unconscious.

[145] Most importantly, Dr Du Trevou testified that he did not examine the Accused and rightfully conceded that he was asked to comment blindly on memory loss and loss of consciousness. Dr Du Trevou was asked to comment on whether the Accused could have had a 2 hour 40 minutes post-traumatic amnesia spell. The witness responded that it was a common scenario to lose consciousness but said that he needed more information to determine the length of post-traumatic amnesia.

[146] Dr Du Trevou conceded that history was very important to the concept of diagnostic medicine in order to eliminate possibilities and get to the cause of a problem. There are many causes for a loss of consciousness.

[147] One cause is a medical condition. The witness was not informed that the Accused suffered from any related medical condition. Therefore the witness had not been informed of any condition that would have made the Accused lose consciousness or of a similar episode since the incident. The Court is of the view that this is very important information in the light of the testimony of Dr James Butler, a neurologist, whose evidence the Court will deal with later. The possibility of a seizure or unusual episodes experienced by the Accused in the past, were not dealt with. The Accused was clearly not

aware of any medical condition with similar consequences or effects before or after the murders, otherwise the witness would have been informed about it. After the conclusion of Dr Du Trevou's evidence, the Accused also testified that he did not suffer from any underlying medical conditions that would cause him to randomly lose consciousness.

[148] A vasovagal attack (fainting occurs when the body malfunctions because of shock or extreme emotional stress) was a possible cause. Dr Du Trevou confirmed that the symptoms of such an attack are a pale skin, light headedness, nausea, yawning, blurred vision, etc. as a result of lack of blood to the brain. When a person falls to the floor, the blood supply improves when being horizontal and the person recovers and would feel better. Dr Du Trevou said he imagined a person will not lose consciousness except if he falls and bumps his head. Dr Du Trevou said the Accused could have been unconscious for 2 hours and 40 minutes if he suffered a vasovagal attack and fell on his head.

[149] Physical injury was another possibility. The bruising on the left side of his forehead, a black eye and the bruising under both eyes (see Exhibit "C8 and 9") could have caused a loss of consciousness, or a minor brain injury, assuming that he had hit his head. The witness agreed that the injuries, a mild bruising and injury to the soft tissue, were not severe. The injury to the brain could be mild to moderate. The Accused could also have suffered concussion from a punch to the head.

[150] The State's counsel confronted the witness with the text book scenario stating that when a period of unconsciousness lasting longer than thirty (30) minutes occurred, it was indicative of a more serious brain injury. Dr Du Trevou responded that the length of time of unconsciousness was controversial; various times were proposed regarding this issue. It was not clearly defined. Dr Du Trevou conceded that it was not normal to lose consciousness for 2 hours and 40 minutes. Dr Du Trevou testified that it was

common that patients that were concussed, were entirely normal. On a question by the State's counsel what the likelihood was of a person suffering such a long period of unconsciousness recovering on his own without medical intervention, Dr Du Trevou said that it was unlikely; it was more likely a loss of memory or a post-traumatic amnesic period. When a person lost consciousness due to the loss of oxygen, it could cause brain damage within a few minutes. With reference to the issue whether a person would have known whether he had amnesia or lost consciousness, the witness said it was not possible for him to determine that.

[151] Dr Du Trevou testified that the loss of memory of the period during which one has been unconscious, will be permanent. One can also lose one's memory of a period prior to losing consciousness. It is called retrograde amnesia when one cannot recollect a period before the injury. That is indicative of a serious injury. One can suffer retrograde amnesia as a result of mild to moderately severe traumatic brain injury. Retrograde amnesia is not selective, it is complete and the amnesia regarding that period is permanent. As time progresses, one's memory does not recover. In the case of post-traumatic amnesia, in the period after regaining consciousness, one might not have a recollection of one's activities or might have a patchy memory which improved with time.

[152] The witness conceded that he had no objective verification of the Accused's condition; his opinion was based on what he had been told. He would physically examine a person and admit the person for neurological observation to determine whether the person was concussed. This is a very important concession and the Court finds that Dr Du Trevou's opinion regarding the condition of the Accused after the attack is merely of a speculative nature. The bottom line is that he did not examine the Accused at the time, nor did he do any tests in this regard. He did examine an MRI scan, presumably done on 25 July 2017. The scan was normal except for two minor

congenital abnormalities which the Accused was born with. There were unrelated abnormalities which had no effect on the issue at hand.

[153] Dr Du Trevou testified that it was impossible to exclude malingering. It is a proper medical diagnosis and simply means faking an illness. His opinion on the entire issue was a theoretical comment without having the medical history of the Accused.

The Loss of Consciousness and the Significance of Blood Flow Patterns

[154] Captain Marius Joubert has 27 years' experience in the SA Police Service. He is currently stationed at the Forensic Science Laboratory in Plattekloof as a Bloodstain Pattern Analyst and Forensic Crime Scene Expert. His qualifications and experience are stated in paragraphs 2 – 4, Exhibit "DDD1". He commented on the blood flow patterns on the body of the Accused and a possible fall, which could be related to the issue of concussion, unconsciousness and the approximately two hours and forty minutes time line.

[155] The Accused testified that in pursuit of the fleeing attacker, he lost his footing and fell down the stairs. He landed on his back near the bottom of the top half of the stairs. During cross-examination, the Accused said he fell as he was throwing the axe after the attacker. He explained how the actual fall happened and, whether he was falling backwards or forwards, he ended up on his back. He could not recall rolling forward but if he had tumbled down the stairs, it could have only been one forward roll, or alternatively he had slid onto his back and down the stairs. The Accused conceded that it was two very different motions. He felt a little disorientated but it seems that he got up immediately and moved through the kitchen to the back door. The Accused agreed that the fall down the stairs did not have very much of an effect on him until he went up the stairs again.

[156] He walked back up the stairs and when he was already past the middle landing, he lost consciousness upon seeing MARLI and his mother lying on the top landing. He testified that he lost consciousness just above the middle landing. The Accused claimed after he regained consciousness, to have seen blood on a spot on the stairs where he had blacked out (see Exhibits “A124” and “NN5”). The Accused claimed seeing a patch of dry blood on the vertical side of the stairs that was at the exact height of where his stomach had just been and he inferred that it was caused by the stab wound. He saw the blood as he was getting up; he was on his knees about to stand up and pushing himself off the stairs. He did not see other blood spots on the stairs because he did not specifically check.

[157] Captain Joubert was of the opinion that the flow patterns on the upper body of the Accused at point “CS13”, photographs 73 – 75, Annexure L, Exhibit “DDD2”, suggested the Accused’s torso was erect when the flow pattern was created, with insignificant movement of the upper body before the bloodstain pattern dried. A slight deviation of the blood flow occurred just above the left nipple and it was caused by the pooling of blood at the bottom of the flow pattern; the blood was pushed to one side depending on the contours of the skin.

[158] The flow pattern at point “CS14” on the left arm of the Accused indicated no deviation within the flow pattern and followed the contours of the Accused’s left arm. The flow pattern indicated that the Accused’s left arm was in a similar position, as observed on photograph 73, Annexure L, Exhibit “DDD2”, when the flow pattern was created, with insignificant movement of his left arm until the bloodstain pattern dried.

[159] Captain Joubert accordingly confirmed that the flow pattern originated from one superficial stab wound sustained by the Accused on his left upper torso and the stab and cut wounds on his forearm did not indicate deviation

and therefore insignificant movement (see paragraphs 18.1 and 18.2, Exhibit “DDD2”).

[160] A slight zig-zag pattern was visible on the photograph 75, Annexure L, Exhibit “DDD2”. The witness explained that it was because the blood was drying and flaking off. The chest hair of the Accused could also have caused the zig-zag pattern.

[161] There was no significant movement of the upper body. Captain Joubert testified that running after the attacker, falling on the staircase and possibly fainting, would change the upper torso position; the gravity angle changes and the deviation changes. Lying on one’s side, the deviation would be towards that particular side; it was true for the fainting as well. He said it all depended on the movement, taking into account the running. The forearm cutting was superficial and indicated no deviation within the flow pattern with insignificant movement of the left arm until the bloodstain pattern dried (see par 18.2 and photograph 76, Annexure L, Exhibit “DDD2”). The witness agreed that the blood was only oozing out of the wounds on the Accused’s arm with a slow flow.

[162] A smear indicating a disturbance could be seen on photograph 73, Annexure L, Exhibit “DDD2”. Captain Joubert agreed that the blood could have been smeared against a surface close to the skin area. The witness conceded that such a smear could have been created when the Accused fell, brushing his arm.

[163] No significant deviation of blood flow from the stab wound in his left side towards any side of the Accused’s body can be seen on photograph 74, Annexure L, Exhibit “DDD2”. On the photograph it seems that wound dressing was applied and removed.

Reason for the Loss of Consciousness and Period Advanced by a Neurologist, Dr Butler

[164] The Accused was of the view that he possibly passed-out because of the shock of seeing MARLI and his mother at the top landing or from the fall down the stairs earlier. The Accused confirmed that he had never before suffered such a random loss of consciousness for more than two and a half hours. He confirmed that he did not consult any doctor regarding his loss of consciousness for that long a period. He consulted with Dr James Butler after the conclusion of his evidence and when his girlfriend's father, Dr Janse van Rensburg, arranged for him to consult with Dr Butler on 09 November 2017. Dr Butler was approached as a result of an incident that occurred on 08 November 2017 where the Accused lost his memory without warning and *inter alia* his arms and legs were shaking for approximately one minute.

[165] Dr James Butler obtained an MBChB in 1988 and a FCP (SA) Neurology in 1995. He did a Canadian Society of Clinical Neurophysiology EEG Examination in 1998. Dr Butler is a neurologist with a private practice at the Constantiaberg Medi-Clinic since 1998 to date. He is also a part-time consultant neurologist at Tygerberg hospital and the University of Stellenbosch as well as at the Department of Neurology, Groote Schuur hospital and UCT. He specializes in epilepsy and epilepsy surgery. The witness is involved in the Epilepsy Research Unit, of Constantiaberg Medi-Clinic. He worked in Canada, did peer-reviewed publications and did epilepsy related conference presentations, internationally and nationally. Dr Butler's Condensed CV is contained in his report on pages 48 – 50, Exhibit "GGG". The list of publications in his CV is incomplete and not updated. Dr Butler testified on behalf of the Defence and attempted to explain the probable cause of the unaccounted time loss and the reason why the Accused behaved in a certain manner after the incident.

[166] Dr Butler testified that the diagnostic process starts with pre-test probabilities which could change once seeing and examining a patient. This comment by the witness is significant in the Court's view as will be pointed out later. Dr Butler testified there were three possible diagnoses:

(i) Psychogenic non-epileptic seizures: the loss of blood to the brain causes loss of consciousness. Seizures are developed or memory loss occurs related to previous emotionally traumatic events. Experiencing emotional trauma is embedded in memory and parts of the brain. The individual experiences emotional trauma, it is buried in the brain and the brain converts it into neurological processes, like seizures. Dr Butler explained it is a subconscious process resulting in psychogenic non-epileptic seizures. The loss of blood to the brain causes loss of consciousness;

(ii) An epileptic seizure; or

(iii) Malingering which is a deliberate conscious attempt to fabricate a medical condition. It can be described as a fabrication of symptoms of mental or physical disorders.

[167] The witness arranged for a twenty minute outpatient electroencephalogram (EEG) to be performed on 09 November 2017. A slide of the Accused's EEG report was shown in court and the result was normal (see also page 37, Exhibit "GGG"). On 10 November 2017 Dr Butler consulted with the Accused in the Epilepsy Unit in the afternoon between 17h00 and 19h00. On 10 November 2017 he arranged for the Accused to be admitted to Constantiaberg hospital for a 24-hour video-EEG recording to be performed and brain electrical activity was recorded. Dr Butler explained subsequent tests were done for a diagnosis.

[168] The history of the Accused's problem was obtained from the Accused and his girlfriend who was present during the consultation. Dr Butler said she was present at the consultation because he needed an independent account of what happened after the patient had a blackout or lost consciousness. They need as many people as possible to give a collateral history. The witness said he was aware that the girlfriend could be part of the malingering. History taking is obtaining spontaneous history and systematic interrogation. The purpose of the systematic process was to establish pre-existing symptoms and individualised symptoms. The Accused had no family history of seizures, no childhood seizures, and no injuries or trauma to the brain or infections in the brain.

[169] The Accused and his girlfriend described two events or episodes when the Accused became abruptly amnesic in approximately February 2016 and on 08 November 2017. No history of incontinence of urine or laceration of the tongue was present in any of the instances. With regard to the incident in February 2016, the Accused consumed at least six glasses of wine and apparently did not have a lot of sleep the night before. The Accused also reported intermittent shivers of his whole body while completely awake and dated these shivers to the early part of 2015.

[170] Dr Butler testified that he did not discuss the events on the night of the murder preceding the loss of consciousness. He focussed on the details around the period of amnesia. The version of the Accused appears on page 6, paragraphs 19 and 20, Exhibit "GGG".

[171] There are a myriad symptoms, of which only two are indicative of generalised seizures and all the others are indicative of focal epilepsy. The two symptoms for generalised seizures are brief absences, which the Accused denied the presence of, and a funny twitch or jerk. According to Dr Butler the only symptom the Accused confirmed, were jerks. Dr Butler testified that many

people do not see it as seizures. The witness testified that persons could live their lives experiencing these jerks without it affecting their daily functions. When examining the subsequent EEG reports and seeing the abnormalities, Dr Butler was confident that the Accused had epilepsy. The abnormalities found could be seen on the EEG on page 38, Exhibit “GGG”, a 10 second excerpt from a 24-hour recording, and were also discussed on page 32 of his report, Exhibit “GGG”. The spikes were an indication of generalised epilepsy or seizures. A video clip of a thumb movement by the Accused was handed in as Exhibit “GGG1” and the other video with a bigger movement by the Accused, as Exhibit “GGG2”. The witness diagnosed the Accused with Juvenile Myoclonic Epilepsy (JME). JME starts in the teenage years or twenties as the age of onset, and sometimes even in a person’s thirties. People could suffer from JME and experience a generalized tonic-clonic epileptic seizure (also known as a grand mal seizure or a fit). Dr Butler testified that he was as certain of his diagnosis as he has ever been of anyone with an epilepsy condition.

[172] The Court accepts that the Accused indeed suffered from a seizure in November 2017 and it is not necessary to go into the detail of the evidence in this regard. In November 2017 Dr Butler not only consulted with the Accused, he also did tests before making the diagnosis. The only other source of information about the episode in approximately February 2016, is the girlfriend of the Accused. She did not testify and therefore the Court is not in a position to evaluate the independence and reliability of her version of the history. The Accused himself did not testify about the circumstances pertaining to the incident in February 2016. Even if he did not remember much about it, his girlfriend surely would have alerted him to it. Therefore the Court makes no finding in this regard. The fact is that Dr Butler did not examine the Accused or do tests on him in February 2016. Dr Butler testified that it is highly likely that the Accused had a generalised tonic-clonic seizure in February 2016. He conceded that he will only use the word “definite” when he has a video EEG running on somebody. The Court will come back to the relevance of this issue.

[173] The question that the Court must decide is whether sufficient evidence existed to conclude that the Accused suffered his first so-called "grand mal" seizure during the night of the murders in January 2015.

[174] The Accused said he felt disorientated and he was in shock when he had woken up from the period of amnesia on the night of the murder. The Accused also has a vague memory about certain things as set out in Dr Butler's report (see paragraphs 25 and 26, Exhibit "GGG"), *inter alia* of the arrival of the ambulance and being in the ambulance. Subsequently the Accused also indicated to Dr Butler that his memory from the time he got up from the toilet until he walked up the stairs prior to losing consciousness, was "a bit fragmented" and he could not really put a time reference to how it happened, but said he could remember clearly what he saw at that time (see paragraph 32, Exhibit "GGG"). The Accused testified that he thought that Sergeant Kleynhans asked him a couple of questions but he could not recall what Sergeant Kleynhans had asked him. The EMS personnel arrived after that. He remembered them walking past him. The Accused said he spent a while outside the front door and one of the officers brought Sasha to him and put her on his lap.

[175] During the cross-examination of Dr Tiemensma, it was put to the witness that the Accused would say that he was certain that the paramedics did not clean his wound as the person who took the photo wanted to document them as it was at the time. Dr Butler stated in paragraph 25, Exhibit "GGG", that the Accused had no recall of some of the questions put to him and was told that he did not answer some of the questions. Dr Butler could not say by whom the questions were put to the Accused. None of the police witnesses testified that the Accused did not answer their questions and no such allegations were made during the cross-examination of the State's witnesses. The Accused even gave an account of the events to Captain Steyn at the crime scene. The Accused gave a detailed account at the police station and in

court of the sequence of events after he had woken up until the arrival of the police and he had a coherent conversation with EMS and Captain Steyn. On behalf of the Accused it was put to Sergeant Kleynhans that the Accused put his shoes at the bottom of the stairs before the arrival of the police. Even more telling was the statement put by Adv Botha to Sergeant Kleynhans that the Accused will say that the piece of cement from the floor, as one entered the front door, was not chipped out from the floor until he left the scene. This statement is indicative of acute awareness of one's surroundings. The Accused remembered observing a blood mark when he got up after regaining consciousness.

[176] According to Dr Butler the Accused remembered "bits of the interrogation" at about midday. From his testimony it was clear to the court that the Accused contested the contents of his comprehensive statement to the police (Exhibit "SS") taken the same day, being fairly certain of the events that transpired at the police station.

[177] Dr Butler concluded that there was compelling evidence that the Accused had a "generalised tonic-clonic (epileptic) seizure" on the night of the murders (see paragraphs 33 – 37, Exhibit "GGG"). He testified that there was a high probability that the Accused had a seizure the night of the incident. He based this conclusion upon the following:

(i) The Accused had a proven diagnosis of JME in 2017;

(ii) He had two generalized tonic-clonic ("grand-mal") seizures since the family murders. These type of seizures are more visible and the most serious. They last for up to five to ten minutes and a person passes out. As stated previously, it cannot be accepted as a fact that the Accused had a "grand mal" seizure in February 2016 without being able to verify the incident with reliable independent

evidence and medical tests. Dr Butler said the seizures of February 2016 (if any) and November 2017 were unrelated to the murders. Effectively, Dr Butler made an inference from another inference regarding the alleged seizure at the time of the incident in January 2015;

(iii) The Accused's myoclonus, started around the time of the family murders according to Dr Butler. A myclonic seizure is another type of seizure that goes with jerking. The presence and time of onset of his myoclonus was not "cherry-picked" by the Accused as he was completely oblivious to the significance of these shivers. On 10 November 2017 the Accused denied a long list of brief, episodic neurological symptoms, each of which may present minor seizures, except myoclonic jerks. Dr Butler stated that the Accused was unaware of his condition; he did not pick the timing of the myoclonus and did not fake symptoms. The myoclonus coincided with what was found on the EEG in November 2017. The aftermath of a myoclonic seizure suffered by the Accused can be seen on page 38 of his report. It lasted 330 to 350 milliseconds (a third of a second). It was quick occurrence. The movement was brief and had it not been for the machine and the video, he would not have picked it up. The EEG could not be faked; either the result is on the scan or not. Dr Butler said deliberate twitching would not reflect on the EEG. The presence of myoclonus is highly unlikely to be a "false positive" or coincidentally correct symptom as this symptom was the only one in a long list of symptoms presented to the Accused that he reported to be present. The Accused would have been completely ignorant of the importance of this symptom in the diagnosis of his condition. According to the doctor, the Accused's girlfriend often noticed jerks, would ask him if he was alright and therefore provided corroborative evidence for his history. There is no basis for this statement as the reliability of the girlfriend's version could not be tested. Dr Butler testified that the mild vagueness with regard to

> dating the onset exactly, is to be expected. It happened with many patients with minor seizures that were not recognized as such. To summarize, the history obtained from the Accused about the myoclonus is at a time when he was oblivious to its diagnostic significance. Hence, the dating of its onset to the early part of 2015 is deemed to be reliable, according to Dr Butler. The "early part of 2015" was not defined.

[178] The Accused had no warning immediately before his period of amnesia as he walked up the stairs. Lack of warning, as reported by the Accused, indicates a generalized tonic-clonic (grand-mal or major) seizure rather than one that starts in one part of the brain. The absence of symptoms of syncope, namely light-headedness or dizziness, blurred or receding vision and or the sound and the feeling of an imminent faint, effectively excludes this as a cause for his loss of consciousness. Syncope is typically brief and recovery usually occurs in seconds, without residual symptoms or confusion. It is unlikely that the Accused was hit on the head because there is no evidence to that effect. This is true if one has to accept the Accused's version that he was not hit on his head. During the testimony of Dr Tiemensma, it was the Accused's case that he possibly suffered from a concussion as a result of the fall on the stairs.

[179] The Accused had a bump against his head and discolouration of the eyes after the incident (see Exhibit "OO"). Dr Butler testified that in this instance there are no other possible causes of amnesia. The Accused was perfectly lucid while he walked up the stairs immediately prior to becoming amnesic. His vivid recall of certain moments is evidence of relative preservation of his brain's functioning, including memory, in the minutes leading up to his amnesia. The lack of retrograde amnesia is a hallmark of an epileptic seizure. Patients with moderate and severe traumatic brain injuries frequently have varying durations of retrograde amnesia. Dr Butler concluded

that an epileptic seizure represents the only plausible explanation for the abrupt onset of amnesia, without premonitory symptoms.

[180] The witness was of the opinion that the corroborative evidence suggests that the Accused blacked-out for a period of 2 hours and 40 minutes before he woke up in exactly the same place where he became amnesic, lying face down on the stairs. According to the Accused it was dark when he became amnesic and light when he awoke, indicating a long period of amnesia consistent with independent evidence. In paragraph 38 of his report, Exhibit “GGG”, Dr Butler listed possible causes for this. He testified that a traumatic brain injury can readily cause unconsciousness for the entire period of 2 hours and 40 minutes of lying in exactly the same place, and not simply being amnesic. In the event of a brain injury, the period of loss of consciousness would indicate a moderate diffuse traumatic brain injury. A full neurological recovery over hours, characterised by amnesia and immobility or very little movement for 2 hours and 40 minutes, is highly unlikely. There is confirmation in literature that a “grand mal” seizure can last 2 hours and 40 minutes or longer. Most last a few minutes. It is impossible to say how long the seizure lasted; it might have been a three minute seizure, followed by a post-ictal state. Lying in the same place, the level of consciousness is depressed and the whole brain is not working. When a seizure lasts a few minutes, then the brain cells recover and the post-seizure state can last hours or days. The brain does not work properly during that period. One cannot say whether the Accused had a three-minute seizure or an hour long seizure with amnesia.

[181] The witness disagreed with Dr Du Trevou, the other Defence witness, that the Accused lost consciousness possibly because of a head injury, a syncope or a combination. Therefore, contradictory evidence by two expert witnesses on the same topic was presented during the Defence’s case, although the Court bears in mind that Dr Du Trevou’s opinion was based on theory. However, Adv Botha indicated during the cross-examination of Dr

Tiemensma that it was the Defence's case that the Accused lost consciousness as a result of concussion. Dr Butler, like Dr Du Trevou, did not examine or consult with the Accused at the time of the incident. They had to rely on photographs of the injuries of the Accused, like all the other medical expert witnesses, except for Dr Albertse and Dr Van Zyl.

[182] Dr Butler said no other medical cause for lying in the same position like this, is apparent. The Accused's failure to move is indicative of dysfunction in the motor systems of the brain, which are represented in the frontal lobes, while amnesia is indicative of dysfunction in the temporal lobes. Lying in the same position/place can only be explained by diffuse brain dysfunction (a depressed level of consciousness) or by fabricating the history. Lying in a relatively immobile, amnesic state in exactly the same place for a few hours, after an abrupt onset of amnesia, is typical of an epileptic seizure. There are no other diagnostic possibilities, other than malingering, which can explain the time period. Abruptness of onset of amnesia can only be caused by a seizure if one accepted the correctness of the facts of the black-out.

[183] Dr Butler referred to the bruise around the Accused's left eye, and said he was struck by the fact that the Accused failed to mention this, and possibly did not realise it had happened. His clear awareness and memory of his other injuries is evidence that his brain was functioning well prior to the period of loss of consciousness, and dysfunctional from the moment he lost consciousness and remained dysfunctional until it was pointed out to the Accused by the District Surgeon. If the Accused was malingering, he would have pointed out all the injuries (if he was aware of them). The Accused's lack of awareness that his pants were wet is equally crucial, indicating that his brain was dysfunctional, as is always the case during a post-ictal period following a generalized tonic-clonic seizure. It is a form of neglect. Adv Botha put it to Dr Albertse that the Accused would say that when he went up the stairs again, he fainted when he saw his mother and sister on the landing. Adv Botha said the Accused wet himself, creating the perception that the Accused

was aware that he wet himself at that moment. The witness was of the view that incontinence with neglect and the unawareness of the bump to his head exclude the possibility of malingering. Dr Butler conceded that he is not qualified to testify about the psychiatric aspects of the case. Dr Butler testified that incontinence is of profound significance in this case despite the traumatic background. Dr Butler said his conclusion was not based on the incontinence only, but also on the neglect and amnesia. He said the evidence and probabilities were so overwhelming that he was forced to come to this conclusion.

[184] State counsel pointed out that the Accused had access to the police docket before the commencement of the trial in April 2017. A part of the docket contains the findings of the blood spatter expert. Captain Joubert reported on the urine stain on the Accused's pants (see Exhibit "DDD" and "DDD1, Annexure C, photographs 182 and 182") and testified in this regard. Therefore the Accused did not forget about the stains, he was well aware of the evidence before consulting with Dr Butler.

[185] Dr Butler fully agreed that there are other conditions and reasons that can cause incontinence; it cannot be ascribed only to a tonic-clonic seizure. Defence counsel argued that no alternative scientific explanation for his incontinence had been put forward. In the light of the concession made by Dr Butler, it can be accepted there are other explanations for it. Dr Butler was of the view that a combination of losing consciousness and wetting oneself indicate something else. In a case of extreme fear or fright, a person will be prone to it. Dr Butler conceded that it was an extraordinary situation and said there are exceptions to everything. Dr Butler testified that urine incontinence could have occurred prior to the black-out. The Accused was on the toilet when the sequence of events unfolded. There appears a lot of or substantial amount of urine in front and at the back of the pants as can be seen on photographs 182 and 183, Exhibit "DDD1". The bladder function is controlled by the nervous system. It could not be determined from the photographs when

the Accused wet his pants. Dr Butler said that no objective evidence existed and he had to look at what the Accused had told him. The Accused was lucid prior to the period of amnesia and he would have remembered wetting his pants because he remembered other details; he had a recall of events up to the period of amnesia. Therefore he was of the view that the Accused wet his pants during the period of amnesia. As indicated above, the perception was created that the Accused was aware of wetting himself during the cross-examination of Dr Albertse. Dr Butler conceded that undoubtedly trauma would also make one want to urinate if one is conscious.

[186] If the seizure lasts longer than five minutes, the person is in a continuous seizure, and it is considered a medical emergency to prevent a disaster. One seizure, not separate seizures, or recurrent seizures in the case of a grand-mal seizure lasting 30 minutes without regaining consciousness, indicate big problems and will be considered as a medical emergency. It is clear that the Accused could not have suffered a seizure lasting that long as there is no evidence of such a medical emergency suffered by the Accused.

[187] The witness agreed that only the Accused could say where and what happened and where and when the seizure occurred, the witness could not scientifically determine that. The witness could also not, with scientific certainty, say how long the seizure lasted but was only inferring it. In justification of his opinion that the Accused was not hit on the head, Dr Butler explained that the Accused was perfectly lucid immediately prior to becoming amnesic, while he walked up the stairs. The Accused's vivid recall of certain moments is evidence of relative preservation of his brain's functioning, including memory, in the minutes leading up to his amnesia. Adv Galloway asked whether given the facts and circumstances, there is a possibility that the Accused committed the murders, did things and then had the seizure. Dr Butler replied that the answer is emphatically yes. However, in that instance, Dr Butler said, whether the Accused was lucid or not amounts to speculation.

[188] Dr Butler also agreed that it is more probable that the self-inflicted injuries, if such, would have occurred after the murders, but before the seizure. Dr Butler also agreed that the Accused had to think about the circumstances, made a decision and execute it. Adv Galloway asked whether the Accused would have been able to inflict injuries, being self-inflicted according to two doctors, in a post-ictal state. Dr Butler again confirmed that it was much more likely that the injuries were inflicted in the pre-ictal stage before the seizure, when the brain was working well.

[189] The witness testified that he did not focus on the events of the night of the murders, instead he focussed on what happened on 08 November 2017. The witness agreed that only the Accused could say where and what happened and the witness could not scientifically determine that. The witness could also not with scientific certainty say how long the seizure lasted, but was only inferring it. During cross-examination it was put it to the witness that his source, the Accused, gave the impression of a fragmented memory, but in court (and also to the police) he gave a more detailed account. Dr Butler responded that there is a reasonable probability of memory problems but conceded that he relied on the Accused's version. Dr Butler also conceded that the reliability of the truth told by the source, was important. State counsel said the Accused described the interrogation by the police as fragmented to the witness, but in court he told a different story with details from what he had worn to what he had eaten. Dr Butler conceded that it discounts the strength of that evidence. Dr Butler agreed that at the time when the statement was taken, the Accused could have recovered sufficiently but said he did not see the Accused at the time. It needs to be mentioned that the Accused not only gave a reasonably detailed account of the events to the police a few hours later at the police station, but also provided a coherent version to Captain Steyn at the scene not too long after he had woken up from the alleged total black-out.

[190] Dr Butler confirmed that he diagnosed the Accused with JME in 2017 and that he was also of the view, based on the history, it was highly likely that the Accused had a seizure in January 2015. Dr Butler conceded after a seizure, there is no objective medical evidence to confirm it like after a heart attack. If an EEG is not done shortly after a seizure, one relies on the totality of the evidence. The witness said clinical skill then comes in, circumstantial evidence is used. When he takes a history, there are three bits of information he needs: two come from the patient regarding what happened in the moments leading up to the seizure and how the patient felt and function after regaining consciousness. The other part of the information comes from observers of the patient or an outsider. The Court is wary of the fact that, on Dr Butler's own version, he did not have much information about what happened leading up to the suspected seizure in 2015, and nor were there any observers of the patient or information from an independent outsider. Dr Butler conceded that his backdated diagnosis of 2015 was based on the history provided by the Accused, and also his girlfriend's, regarding the 2016 incident. The witness confirmed that the history is uncorroborated. As mentioned before, the witness testified that he only can be certain about a diagnosis when he gets a video EEG running on the patient at the time.

[191] No other symptoms of epilepsy were reported until the seizure in February 2016 occurred. Between February 2016 and the seizure in November 2017, there were no other reports of symptoms apart from twitching. No reports of urine incontinence or amnesia were made pertaining to the 2016 and 2017 incidents. Dr Butler conceded that the Accused was the only source of information about any symptoms prior to February 2016. Dr Butler said he had no knowledge of the Accused consulting with another doctor in this regard. He confirmed that he first made the diagnosis.

[192] The witness agreed that the best time to make a diagnosis is at the time of the incident or occurrence but said it is not always possible. It was

pointed out that his diagnosis comes two and a half years later and that it makes his diagnosis complicated. Dr Butler responded that he had an independent way of verifying his diagnosis. Dr Butler testified that he cannot see on an EEG what happened in 2015 and that his diagnosis was simply based on history. He testified that the diagnostic process starts with pre-test probabilities which could change once he saw and examined the patient.

[193] For the Court to accept Dr Butler's evidence, the Court, at the very least, has to accept the version of the Accused, that he wet his pants as a result of the seizure and that he suffered from amnesia for a prolonged period after the seizure. The Court is of the opinion that Dr Butler's backdated diagnosis pertaining to the night of the murders is a conclusion with, perhaps, exaggerated inferences as it is based on information that is incomplete, not necessarily reliable and it is also not corroborated by independent sources or objective evidence like medical tests. According to the witness himself accurate diagnosis needs careful history and examination, as per standard clinical practice, although, in this instance, he was prepared to make a diagnosis with some certainty without an examination or consultation with the patient in 2015.

[194] Even if the Court accepted Dr Butler's view that is was likely that the Accused suffered a "grand mal" seizure on the night of the murders, no evidence exists that it had any bearing on what transpired prior to it, his actions and decision making before the seizure. Therefore it would have had no bearing on the commission of the murders, if the Court finds the Accused to be responsible for the crimes. In that instance, it could at most explain the inappropriate behaviour of the Accused after the murders.

[195] The question is whether there is another explanation for the two hour forty-eight minute period and what transpired then. The State alleges that staging took place, *inter alia* the Accused sustained the self-inflicted injuries

and the axe was hit into the wall above the stairs with a controlled action. The Court will deal with these submissions later.

The Scene of the Crime and the Demeanour of the Accused

[196] On 27 January 2015, Sergeant Kleynhans and a colleague were busy with patrols when they received a complaint from the Radio Control room and attended the scene at [...] G. Street, [...] Estate. According to CCTV footage shown in court, the police arrived at the contractors' gate of the Estate at 07h40:42 and went through the main gate at 07h41:16. With the assistance of a security guard, it took them less than a minute to get from the main gate of the Estate to G. Street.

[197] Upon arrival Sergeant Kleynhans observed that the front door of the house was slightly open. He approached the house with his firearm in his hand. It was pointed to the ground. The Accused came out of the front door of the house wearing grey sleeping shorts and white socks. The Accused had minor injuries and dry blood on his body. Blood spatters could be seen on the sleeping shorts of the Accused and his boxer shorts in Exhibit "C4" (see also Exhibit "DDD1, Annexure C, photographs 5, 9 and 170). The Accused appeared to be nervous, very emotional, scared, panic-stricken and trembled slightly. He also appeared to be traumatised. He did not cry and was not tearful. The witness testified that he was sympathetic towards the Accused and that he treated him as a victim. It would have been surprising if the Accused was not traumatised or affected by the brutal events, whether he was a victim or the perpetrator.

[198] The Accused said that his family had been attacked with an axe and requested Sergeant Kleynhans to check on them. The Accused testified that Sergeant Kleynhans instructed his partner to sit him down at the front door. One of the officers put Sasha on the Accused's lap. The Accused sat there for

quite a while and was then taken to the ambulance where a patch was put on his stab wound and pictures were taken. The police took his grey sleeping pants and white socks that he was wearing, leaving the Accused dressed only in boxer shorts.

[199] Sergeant Kleynhans smelled alcohol on the breath of the Accused. He testified that he encountered persons under the influence of alcohol or that had consumed alcohol on a daily basis throughout the years. Sergeant Kleynhans did not communicate further with the Accused and the Accused did not enter the house again. The witness was challenged by Defence counsel with the fact that Dr Albertse did not find any clinical signs of alcohol or drugs on the Accused. The result of a blood sample taken from the Accused by Dr Van Zyl the same day of the incident, obtained the following result: "No drugs could be detected in the blood specimen". On his own version, the Accused had had a beer before seeing Dr Van Zyl and the family had had a bottle of wine the previous night. According to his statement to the police, Exhibit "SS", the Accused had consumed other drinks as well the previous night. There is a discrepancy in the evidence of the Accused whether he denied having the other drinks or whether he could not remember having them. The precise amount of liquor consumed during the relevant period is not of much significance in this case, save to say that the Accused probably did smell of alcohol.

[200] Sergeant Kleynhans found the scene as reflected in the photo album, Exhibit "A", except for the presumable blood drops and marks as well as the shoe prints on the floor, possibly caused by the paramedics who attended to the victims. TERESA was also not found in the same position as she appeared in the photo album, Exhibit "A". At the insistence of the paramedics, Sergeant Kleynhans took photographs with his cell phone, reflecting the correct position of the female victims when he discovered them, as can be seen in Exhibits "B1" – "B4". The witness saw MARLI's right leg and foot move as well as her right arm, while lying on her back. He immediately requested

the Radio Control room to contact the Emergency Medical Services (EMS) for help. The paramedics carried MARLI down the stairs with a stretcher. The bodies of the male victims were discovered in the first bedroom, known as the boys' room.

[201] The axe, Exhibit "1", was found on the first landing of the staircase as can be seen in Exhibit "A111". Sergeant Kleynhans observed an open packet of cigarettes on the kitchen counter and three cigarette butts lying on the floor as can be seen in Exhibits "A42" – "A44". Sergeant Kleynhans testified that the back door was slightly open and he opened it wider. According to the Accused, the back door was in a wide open position after the attack, as can be seen in Exhibits "A228" and "A229". Sergeant Kleynhans went around the house and saw a closed black gate with a key as can be seen in Exhibit "A88".

[202] Experienced members of the SA Police Services testified that the crime scene was not consistent with a house robbery or a burglary.

[203] Sergeant Kleynhans, with twenty (20) years of service in 2015, testified that the appearance of the ground floor did not give the impression of burglary or a crime scene. The house on the ground floor was not in disarray and items of value were not taken. It is clear from the crime scene photographs that items of value were within the view of anyone entering or exiting the house. The items were easily accessible and portable.

[204] Captain Nicholas Steyn, with twenty-eight (28) years of service, also testified that the profile of the crime scene did not correspond with other robbery crime scenes. The scene was not turned upside-down and there were no signs of forced entry. Captain Steyn testified that it appeared strange to him that electronic appliances, cell phones, laptops and purses/wallets were

left behind in the house by the possible intruders. The items in Exhibit “EE” were recovered from the scene and handed to the family.

[205] An open handbag was standing on the dining room table and there was an open laptop bag in the study (see Exhibits “A30”, “A38” and “A98”). The cupboard doors in the study were open but the content of the cupboard was neat (see Exhibit “A102”).

[206] Defence counsel suggested that the open handbag on the dining room table as well as an open laptop bag and open cupboard door and drawer of the desk in the study would fit in with somebody looking for valuable items. The open bags are of no real significance as these could have been left open by the Van Breda family members when they last used them, as conceded by the Accused. Sergeant Kleynhans testified that the cash was not taken out of the handbag. The Accused agreed that nothing appeared to be missing from the handbag.

[207] The open cupboard door and desk drawer is the one aspect that seems out of the ordinary. Touch DNA samples were taken from the doors and drawer in the study as a matter of routine. No DNA results could be obtained from the samples. What is significant is that the contents of the cupboard and drawer were not disturbed as nothing was thrown out; everything appeared to be very neat. Captain Steyn and Sergeant Kleynhans testified that usually in a case of house robbery or burglary, one would see items thrown out of cupboards and drawers. Apart from the unusually neat condition of the ground floor, there was no evidence of obviously missing items.

[208] The Accused could not shed light on the issue of the open doors and drawer in the study, although he found it strange. The Accused testified that he did not change anything at the scene after the incident.

[209] During the cross-examination of Sergeant Kleynhans and Captain Steyn it was implied by Defence counsel that a balaclava gang was involved in the commission of the crimes, as such a gang was operating in the Stellenbosch area. Captain Steyn was part of a task team established as a project by the Provincial office to investigate a spate of house robberies by the balaclava gang. The task team investigated house robberies in the Stellenbosch and Helderberg Districts and covered fairly vast areas.

[210] They were called out when they received a description of suspects wearing balaclavas, communicating in a foreign language and involving a group of four suspects with a small person in charge of the group. In the current matter the Accused initially alleged that the intruders communicated in Afrikaans but later said they could have communicated in English; he only assumed they spoke Afrikaans because of the harsh tones. During the Court proceedings it was evident that the Accused is quite familiar with the Afrikaans language.

[211] The balaclava gang targeted isolated or free standing houses, for example farms in the abovementioned districts. The balaclava gang only once targeted a house in a populated area, situated some distance from the other houses. The house at [...] G. Street was almost in the middle of the Estate and there were houses in close proximity and all around [...] G. Street. It was a fairly built-up area.

[212] Captain Steyn testified that the project lasted from June 2014 until August 2015. The members of the balaclava gang were arrested. They were charged with ten (10) matters and *inter alia* linked with DNA.

[213] With the previous fifty (50) to sixty (60) crime scenes that the task team investigated, the intention of the perpetrators was robbery and theft. All

moveable items of value, for example jewellery, televisions and laptops were stolen.

[214] Valuable items like laptops, mobile phones, a television, electrical appliances and money were still inside the Van Breda house, and seemingly not disturbed or moved. Captain Steyn conceded that items of value could have been left behind if the intruders were interrupted. Although it was possible, Sergeant Kleynhans testified that the scene did not present with a disturb-scenario.

[215] The Accused conceded that it was strange that nothing valuable was taken on the way out by the intruders, but said that he had interrupted them. The Accused initially agreed that there were no signs of interruption but tailored his answer after an objection by Adv Botha saying that the cupboard doors and drawers in the study and kitchen were open. The Accused conceded that the study cupboard and drawer were not in disarray. There was also no stuff packed up or stacked up somewhere in the house near an exit or entrance to the house. The Accused confirmed that nothing was missing from the house as far as he was aware. He did not notice anything that could be ascribed to the intruders being downstairs and conceded that the house did not look burglarised.

[216] Sergeant Kleynhans testified that the valuables were mainly on the ground floor of the house and that the attack took place on the first floor, therefore an intruder had ample time to remove the items on the ground floor. For an intruder to kill the three victims, injure a fourth victim seriously and have a physical altercation with the Accused, must have taken some time. If the intention of the perpetrator(s) was to steal, one would have expected them to remove the numerous valuables from the ground floor without disturbing the assumingly sleeping or oblivious occupants on the first floor.

[217] It is nonsensical that an intruder, with the intention to steal, would go upstairs and start attacking a member of the household in bed with an axe, with the risk of alerting the other occupants of the house to his presence. During cross-examination, the Accused conceded that had the initial attack on RUDI not taken place, the intruders could have cleaned out the house and gone away quietly.

[218] The Accused testified that the study light was on when he went downstairs; he remembered seeing a ray of light across the bottom of the stairs. When they went to bed the night before, all lights had been switched off. After the attack, no lights were on in the living room and lounge area, except for the study. On the top floor only the boys' room light was on. The Accused said he would have been able to see the intruders despite the fact that the lights were off, there was enough light to do so. It is unlikely that the intruders would have switched on lights but if so, they opted to switch on a light in a room with less valuables. Items like electrical appliances, a television, a laptop, a handbag and other items had to be in their immediate sight when they entered the house on the ground floor, before even getting to the study.

[219] The Accused agreed that one could not normally get access to the property from the kitchen side of the house. After the attack the intruders had to run out of the back door, down the side of the house where the washing line was and exit through the side gate on the other side of the house. Otherwise they had to go over the neighbour's wall. The route around the house contained hard surfaces. The Accused conceded that the intruders had to have some knowledge of the area to escape.

[220] Defence counsel argued that two blood drops on the wall of the adjacent property and near the rear gate, are indicative of the presence of intruders fleeing after the commission of the crimes. Captain Joubert testified

that the drops could have been deposited on the wall by an object or they could have been spatter from the window of the boys' room. There is no corresponding dripping trail or blood drops inside or outside the house to support the inference drawn by counsel.

[221] Cornelius van Breda had no knowledge of the personal items belonging to the victims, but testified that no report was made to him that anything was missing from the house. They went through the entire house and, according to Mr Van Breda's observation, nothing in the house was tampered with or missing.

[222] The Court agrees with the State's submission that it is highly improbable that (an) intruder(s), who has (have) the intent to rob or steal, having gained undetected access to the Estate and the house, would then leave without taking anything of value that was clearly visible and easily removable.

[223] Captain Steyn was tasked to establish the version of the events from the Accused at the crime scene. The witness described the Accused as quiet and calm when he told the witness what had happened. According to Captain Steyn, most victims in his experience would show emotion, although reactions differ from person to person. During cross-examination Captain Steyn agreed that the Accused was severely traumatised. The Accused testified that he was asked questions by the police officers attending the scene while he was in the ambulance. He said he had a vague recollection thereof.

Visits to Medical Practitioners and the Demeanour of the Accused

[224] The police took the Accused from the crime scene to the District Surgeon in Stellenbosch. The Accused confirmed that he was taken for medical attention by the police. On 27 January 2015 at about 10h30 Dr

Albertse examined the Accused as a victim and recorded the injuries sustained by the Accused on a J88 form, Exhibit “LL”. She took a buccal swab from the Accused for DNA analysis and nail scrapings or swabs from his hands as admitted in Exhibit “K”. Dr Albertse could not find any clinical signs of alcohol or drugs. The emotional status of the Accused during the examination was recorded as very quiet. Dr Albertse recorded the length of the Accused as 1,84m, which is relatively tall. He weighed 93.5 kg at the time and had a normal build.

[225] Dr Michelle van Zyl, a General Practitioner and a Senior Medical Attendant overseeing the Casualty department of the Vergelegen Mediclinic in Somerset West at the time, was on duty at the Mediclinic when she attended to the Accused later that evening. She saw the Accused twice on 27 January 2015 at 20h25 and 21h45 respectively.

[226] When she saw the Accused for the first time at 20h25, the Accused came to the hospital together with a friend, Mr Reade-Jahn senior. Dr Van Zyl had to examine a laceration wound to the left upper abdomen to establish whether stitches were required. She did not consider the wound deep enough for stitches and just cleaned it and clipped it with staples.

[227] During the first visit the Accused was talkative. She noted on the J88 form that the Accused was confident, not emotional, conversing casually and that he was relaxed with the staff. During cross-examination it was put to the witness that the Accused was considered to be very traumatised by the police and that he was emotional and crying when he met with his family after he had been released by the police. It was denied that the Accused was friendly and relaxed. Dr Van Zyl was adamant that if that had been the case, she would not have made such a note about the emotional status of the Accused. Dr Van Zyl testified that there was no indication of trauma as alleged by his family during the first visit. The Accused was fully orientated. She noted that there was a slight smell of alcoholic metabolics on the breath of the Accused.

According to the Accused's version, he had a beer before he went to the mediclinic the first time.

[228] The Accused testified that he was in shock and his hands were shaking before he went through to the Vergelegen Mediclinic the first time. No allegation to this effect was made regarding the preceding period that the Accused spent at the police station. The Accused merely said that he shivered from cold because of the aircon and his scant clothing at the time. The Accused said Ms Reade-Jahn gave him a tranquiliser prior to him visiting Dr Van Zyl. The Accused denied that his mood was jovial, or that he was conversing casually and said he was not relaxed with the staff. During cross-examination the Accused said he presumed that niceties were exchanged between him and Dr Van Zyl. He said he could not recall the specific conversation because it was a long time ago. The Accused said he could even have been confused then.

[229] When the Accused was brought in the second time, the police informed Dr Van Zyl he was a possible suspect in a murder case. The second visit was conducted on a question/answer basis and the Accused was less friendly, than the first time. He appeared to be less forthcoming and more formal. Dr Van Zyl took a blood sample from the Accused and had to record his injuries on a J88 form, Exhibit "OO". He did not dispute that he was in a quiet mood during the second visit to Dr Van Zyl.

[230] Although the Accused was understandably emotional during his meeting with family and friends, the Court has no reason to reject the evidence of the police and the doctors regarding the Accused's state of mind which was, *inter alia*, described as traumatised, quiet, relaxed, confident, talkative and showing no emotion. If the Accused was indeed the perpetrator, his state of mind during his first visit to Dr Van Zyl might be indicative of his relief that the formalities with the police were finalised. On his own version, the Accused even had a beer between the time that the police interviewed him

and his first visit to Dr Van Zyl. A different mood was displayed during the other visits to the doctor when he was accompanied by the police. During the second visit to Dr Van Zyl he was introduced as a suspect.

Visits to the Family House and the Demeanour of the Accused

[231] Cornelius van Breda testified that after the incident he visited the house twice together with other family members. On one of the visits the Accused accompanied them; it was on this occasion they packed MARLI's personal belongings. The Accused was inside the house on the ground floor and indicated what he wanted and took whisky. The Accused denied going inside the house but confirmed requesting to have the Japanese whisky that he bought for his father in Australia. It was put to Mr Van Breda that the Accused also requested to have a bottle of his father's aftershave. The witness was adamant that the Accused was indeed inside the house during one of the visits and that the Accused went to sit in the car when they packed MARLI's belongings. Requesting no other valuable or sentimental items belonging to his loved ones does not take the matter any further. No adverse inferences are drawn by the Court from the visit to the house after the incident.

[232] The Accused displayed no emotion of note during the inspection *in loco*.

The Demeanour of the Accused in Court

[233] During the court proceedings, the Accused became emotional from time to time, for example when clips of the emergency recording were played in court and during the testimony of the pathologist. It is to be expected that it would be emotional to relive the traumatic events and his reaction was not unusual in the circumstances.

[234] During his testimony the Accused appeared to be uncomfortable at times and at other times he appeared confident. On a question whether he was the only person alive that could remember what transpired the night of the murders, the Accused, almost sarcastically, responded that he had no idea what the attacker's memory is like. He would make statements like "we made every effort to minimise my exposure to those photos" with reference to the photo album Exhibit "A". At one point he wanted to clarify what his counsel was objecting to. What struck the Court, was that the Accused did not show a great deal of emotion, even when he demonstrated the blows when the attacker hit RUDI and his father as well as the altercation between himself and the attacker. At times he would give a lot of factual detail just to be vague when he was confronted with difficult issues, eg the dog's illness and why it was not barking, in what position his father was when he was attacked by the intruder, why he did not warn and help his mother and sister.

[235] The Accused testified after the other defence witnesses except for Dr Butler. During cross-examination the Accused agreed that the totality of his version is that he was a victim to a serious violent crime or a witness thereto. When confronted with the reason why he did not testify first under those circumstances, he said that he was given advice by his counsel not to testify. The Accused explained that he "always wanted to have his say" and that he decided near the end of his case that he will be testifying. However, Adv Botha applied, before the start of the defence case, to have the Accused testify last. It was argued that the defence witnesses would not be testifying about factual aspects and that the Accused had given his version already. It was stated previously that the plea-explanation was not meant to be a detailed account of the events (see paragraph 6, Exhibit "J"). State counsel argued that the Accused could tailor his evidence or alter his decision to testify. The Accused was probably always going to testify but he elected not to do so when the application was dismissed by the Court. Despite this manipulation of the process, it cannot be said that the evidence of the defence

witnesses could influence the testimony of the Accused in any significant way, except maybe the evidence of Dr Olckers and Dr Du Trevou. For example, the Accused offered the same explanation as Dr Du Trevou for his loss of consciousness. In this regard the Court does not make an adverse finding against the Accused.

The Weapons Used During the Commission of the Crimes

The axe, Exhibit "1"

[236] Defence counsel admitted that the axe, handed in as Exhibit "1", is the same axe that appears in the photo album, Exhibit "A" and agreed that the axe appeared to be new.

[237] It is clear that the axe in the photographs had been used to attack the victims. Apart from the visuals contained in the photo album, Lieutenant-Colonel Sharlene Otto, attached to the SA Police Services as the Chief Forensic Analyst and Reporting Officer at the Biology section of the Forensic Science Laboratory, testified that the DNA profile of the majority of the victims could be read into swab blood samples taken from the axe (see Exhibits "ZZ1" and "ZZ4").

[238] Captain Candice Brown, stationed at the ballistics section of the Forensic Science Laboratory in Plattekloof since 2004, examined the axe, Exhibit "1", and measured the actual sizes of the Lasher axe with a wooden handle. The axe weighed in total 1.17 kg. On the top silver part of the blade area, there was damage to the "nose" (the top corner edge of the blade), namely a little nick in the metal where the metal was folded to the left side if one was to hold the axe in one's right hand. On the right hand side of the blade, Captain Brown noticed some scrapings off the head of the axe on the green paint underneath the eye of the axe on the blunt side. There were also

chip marks at the rear pole area on the blunt side. Lower down on the left side, a void area was observed underneath the top of the edge as could be seen on photographs 9 and 10, Exhibit “YY2”. After cleaning the axe, that void area (grey and white in appearance) was no longer visible.

The Place Where the Axe Originated from

[239] The State submitted that the axe belonged to the Van Breda family.

[240] James Reade-Jahn, MARLI’s friend, did not recognise the axe, Exhibit “1”, as the one belonging to the Van Breda family. However, he recognised the size and shape of the axe as similar to the one he had seen in the garage and at the fireplace. He never saw the Van Breda family using the axe. From his recollection, the head or top of the axe was black but said that he could be wrong about the colour. Exhibit “1” is a dark green headed axe with black at the top. Captain Joubert testified that the axe had a dark blade appearance. The description given by Mr Reade-Jahn was similar to Exhibit “1”, except for the colour.

[241] Ms Precious Munqongani, the housekeeper or domestic worker, testified that the axe she identified, was the same type of axe, and similar in size and appearance, as the one she had seen at the house (also see Exhibit “F”). The axe was normally stored in the scullery on the shelf behind the ironing board as can be seen in Exhibit “A72”. It had been kept there ever since she started working for the Van Breda family in October 2014. The ironing board was usually stored in the same position unless she was using it. She said that she had seen a lot of axes in her lifetime and described the axe as a small size axe. The axe was hardly used and always in the pantry.

[242] Sergeant Appollis testified that only one axe had been found on the crime scene by the police. There was no indication of a second axe and no axe was found in the pantry.

[243] Although Precious Munqonqani and James Reade-Jahn were aware of the presence of the axe in the house, the Accused distanced himself from the axe in his statement to the police (see paragraph 8, Exhibit “SS”) and in his testimony. According to the Accused he did not know the family had an axe in the house, despite living with his family since August 2014. It is noteworthy that Mr Reade-Jahn and MARLI were in a relationship from February 2014 onwards and he, as a visitor, was aware of the axe. According to Mr Reade-Jahn, MARTIN bought the axe in 2014. It does seem that the axe was hardly used by the family. Importantly, the Accused conceded that Exhibit 1 and 2 originated from their house during cross-examination by the State.

A Second Axe and the Absence of MARLI’s Blood on Exhibit “1”

[244] It is the State’s case that the injuries sustained by the deceased and MARLI were caused by the axe found on the scene, Exhibit “1”. Defence Counsel suggested that a second axe was possibly used during the commission of the crimes. It was the contention of the Defence that the chance of Exhibit “1”, being the weapon with which MARLI was attacked, is virtually nil. MARLI had eight (8) penetrating wounds without leaving any trace on Exhibit “1”. It is assumed that Defence counsel is referring to blood or swab DNA. Defence counsel argued the DNA evidence refutes the State’s narrative completely. In Court, the Accused maintained that there was more than one attacker in the house on the morning in question. It was argued that the only reasonable possibility is that MARLI was not attacked by the same assailant who attacked the other family members and that she was also not attacked with Exhibit “1”. This submission was made on the premise that the DNA evidence is accepted by the Court.

[245] Captain Marius Joubert, stationed at the Forensic Science Laboratory in Plattekloof as a Bloodstain Pattern Analyst and Forensic Crime Scene Expert, testified that MARLI was repeatedly hit with an object similar to the axe, Exhibit "1". Of importance is that, according to Dr Daphne Anthony, the State pathologist, the type of injuries to MARLI's head was similar to the type of injuries sustained by the other three deceased members of the family. They sustained chop and incised wounds and the measurements of MARLI's wounds were more or less the same as in the case of the other victims. Prof Jacob Dempers, a registered medical practitioner and pathologist testified, with reference to the wounds of MARLI and the deceased, that all the wounds appeared to be large in length and penetrated quite deeply into the tissue. It is highly unlikely that the alleged perpetrators would fortuitously bring along a similar axe than the one kept in the Van Breda home inflicting similar injuries, and that a second attacker would inflict injuries with more or less the same degree of force.

[246] Different types of samples were taken from the axe, swabs for blood and Touch DNA samples. The blood or DNA of the deceased victims RUDI, MARTIN and TERESA was found on the axe, Exhibit 1, according to Lieutenant-Colonel Sharlene Otto (see Exhibits "ZZ1" and "ZZ4"). MARLI's blood or DNA was not found on the head or blade area of the axe, but her Touch DNA could be read into the mixture result from the axe on the stairs together with RUDI's and TERESA's (see Exhibit "ZZ1", paragraph 4.1.17). Dr Anthony testified that MARLI was probably the last victim to be assaulted; she probably struggled with the attacker, taking her injuries into account. It corresponded with her Touch DNA being found on the axe, although it could have been on the axe for another reason. Captain Joubert could not exclude the possibility that MARLI grabbed the axe as she had a defensive wound. It was a fairly new axe that was not used often. According to the Accused, he never saw the axe in the house since joining the family in August 2014. Therefore the chances are slim that MARLI handled the axe during the period

of about five (5) months prior to the incident, for example during a family barbecue, on his version.

[247] The Defence DNA expert, Dr Antonel Olckers, testified she could not explain the presence of MARLI's Touch DNA found on the axe. DNA could remain for quite a while on a surface depending on the type of surface. However, Dr Olckers was unable to confirm how long Touch DNA could remain on an item.

[248] TERESA's DNA was found on the head of the axe in mixture results. In the result the inference can be drawn that she had been attacked with the same axe as RUDI and MARTIN. A mixture of RUDI and TERESA's DNA or possible blood, was found on the axe blade and head of the axe (see swab 6(h), paragraph 5.8, Exhibit "DDD1" and paragraph 4.1.5, Exhibit "ZZ4" and paragraph 4.1.15, Exhibit "ZZ1"). Her Touch DNA was also found on the axe (see paragraph 4.1.17, Exhibit "ZZ1"). She also possibly might have touched the axe while defending herself.

[249] With reference to the relative positions of the victims and attacker during the incident, Captain Joubert documented and testified that TERESA was most probably attacked in the doorway of the first bedroom (boys' room) with reference to "CS30" on photographs 107 – 110, Annexure P, Exhibit "DDD2". The witness testified that his opinion was supported by the following:

(i) The impact/projected spatter at points "B15", "B25" – "B27" were most probably created by an object(s) in motion, or when an object(s) in motion came to an abrupt halt, which resulted in droplets being released/projected from the object(s). TERESA was the donor of the impact/projected spatter at point "B27";

(ii) The injuries sustained by TERESA, vertical linear lacerations sustained to the right side of her head;

(iii) The injury, defensive wound, suggested that the victim was most probably facing her attacker when the injuries were sustained;

(iv) The area where TERESA was found in the passageway on the first floor in close proximity of the first bedroom door and the absence of any blood trail or bloodstain patterns in other areas belonging to TERESA within the crime scene.

[250] MARLI sustained her injuries during the confrontation with the attacker, most likely in the same area as TERESA. It is highly unlikely that they were attacked by two different attackers in a relatively confined space with similar weapons at more or less the same time. The Accused confirmed during cross-examination that MARLI was eventually found in about the same position from where he initially glimpsed her in pursuit of the attacker. Although MARLI could move her limbs, no evidence was presented that she could make significant movements to move from one spot to the other.

[251] Captain Joubert conceded that it is expected to find some traces of MARLI's blood on the axe. He also conceded that an explanation for the absence of MARLI's DNA on the axe, would be if she was attacked with another weapon. However, he testified there could be many reasons for the absence of MARLI's blood on the axe and that is not inexplicable.

[252] The axe did not have as much blood on it as would be expected, if it was used in so many murders. All the victims were struck multiple times.

When one used the axe repeatedly and the axe impacted with the next victims, blood would be "projected" from the axe.

[253] Bloodstains from RUDI and MARTIN ("B25" and "B26" as can be seen on photographs 115 – 118, Annexure "A", Exhibit "DDD1") were found outside the first bedroom and against the passageway wall next to the window as can be seen on photograph 115, Annexure "A", Exhibit "DDD1". MARLI was found closest to the window in front of the cupboard in the passageway. Captain Joubert handed in a copy of the five stains at point B25 against the passage wall as Exhibit "DDD10". The donors of the bloodstains at point "B25" and "B26" were RUDI and MARTIN, suggesting that an object(s) was in contact with a blood source(s) from both victims before bloodstains at point "B25" and "B26" were created (see paragraphs 37.19 – 37.21, Exhibit "DDD1"). In his report dated 06 October 2015, paragraphs 10.25 and 10.26, Exhibit "DDD1", the witness stated that the mechanism responsible for the deposition of the stains suggests projection or alternatively impact. Although the bloodstains themselves indicated projection or impact, impact could not have created these stains as RUDI was attacked on the bed or close to it. The bloodstain at point "B26" were classified as "Cessation cast-off", and was most probably created by an object(s) in motion or where it came to an abrupt halt, which resulted in blood droplets being released/projected from the object(s). The stains could therefore be created when MARLI was attacked with the same axe covered with blood from RUDI and MARTIN, being attacked first inside the boys' room by the same attacker.

[254] He said there had to be blood from MARLI on the weapon in liquid form but it all depended on how much blood went from the wound onto the axe. There was not a lot of MARLI's blood identified at the scene. MARLI and TERESA were lying in a large pool of blood, so spatter stains could have been masked by all the blood near MARLI. The only bloodstains documented at the crime scene associated with MARLI, were at points "B12", "B13", "B14" and "B30" (as can be seen in Exhibit "DDD1, Annexure A", photographs 55 – 57

and 125 – 126), in close proximity to where MARLI had been found by the police. The donor of the bloodstains was MARLI (see the DNA reports of Lieutenant-Colonel Otto, paragraph 4.1.5, Exhibit "ZZ1" and paragraph 4.1.7, Exhibit "ZZ2"). Captain Joubert said it was possible that MARLI caused the spatter herself by moving her limbs. Captain Joubert testified that he did not know who the donor of stain "B29" was, as can be seen in Exhibit "DDD1", Annexure "A", photographs 123 – 124. Impact was the possible mechanism creating that stain. It is possible that the blood could be from MARLI and TERESA who were attacked outside the door of the boys' room, given the general direction.

[255] Captain Joubert testified that MARLI's injuries were spread out and in different areas (see Exhibit "H1 – 18"). She had blows to the head and neck area. MARLI also sustained one laceration to her left lower arm, which might suggest a defensive position when sustaining the injury. When MARLI was attacked, there was not a lot of spatter due to the distribution of injuries over the entire head. He explained that if one struck different areas with the axe, the possibility of blood on the object would be minimal; creating new wounds. There might not have been a lot of blood transfer if tissue was struck after the first blow. It explained the reason for less blood.

[256] In February 2015, Captain Joubert collected eight (8) swabs from the axe, four (4) swabs from the handle of the axe and four (4) swabs from the blade of the axe (see paragraph 15, Exhibit "DDD1"). The swabs 6a – 6h represented the entire axe (see Exhibit "DDD9"). Four swabs were also taken by Warrant Officer Hitchcock, namely swabs "121A – B" and "122A – B". Three of the swabs taken by Warrant Officer Hitchcock were tested for the presence of blood and one test was for Touch DNA. Despite the fact that the swabs were representative of the entire axe, only certain random blood spots on the axe were identified and analysed. Captain Joubert testified that it was possible that a spot on the axe had been missed when the eight samples were collected. Furthermore, Lieutenant-Colonel Otto testified that, in respect

of the blood swab collected from the bottom of the axe handle, she could only include the reference sample of the Accused in the mixture although there was more DNA. The other DNA belongs to family members, but she could not say to which family members (see page 7, Exhibit “ZZ1” and “ZZ5”). Therefore the additional DNA found was not enough to reach a result. The possibility that MARLI’s blood was also on the axe cannot entirely be ruled out. It was simply not enough to obtain a DNA profile.

A second axe and the absence of MARLI’s blood on the Accused’s shorts and socks

[257] Defence counsel argued that if MARLI was attacked with another similar object, it would also explain the absence of MARLI’s DNA on the Accused’s sleeping shorts and socks. Captain Joubert pointed out that none of the stains on the shorts, socks and two duvets were presumptively tested for blood with reference to his assumptions contained in paragraph 8, Exhibit “DDD1”. Defence counsel acknowledged that the chances that the stains were anything other than blood where a DNA result was obtained, were so slim that it could be ignored.

[258] Captain Joubert confirmed that there were 19 spots on Exhibit 120 (the Accused’s shorts) for which he did not have a DNA result and that were not necessarily blood spots. Lieutenant-Colonel Otto testified that all the samples pertaining to the shorts that tested positive for blood were analysed, therefore other stains, not tested positively for blood, were possibly not analysed. Four (4) stains on the socks were unidentified.

[259] Captain Joubert testified that “The absence of evidence is not the evidence of absence”. One could actually strike a person with an axe without getting a single drop of blood on you. The witness said the position of the attacker would play a role. MARLI had five (5) very deep lacerations on her

skull and on her arm, ear and neck respectively (see the photographs, Exhibit “H” and Exhibit “BBB12”). All the wounds were on one side, namely the left side of her body, and one wound on the right side (Exhibit “H13”). Captain Joubert said the absence of MARLI’s blood could possibly be explained because the injuries were not close to each other. In the case of impact to the blood source, most spatter could be directed away from the attacker, very little would come back to the attacker. That might explain the absence of MARLI’s blood on the shorts and socks of the Accused.

[260] The blood stains identified as MARLI’s, were possibly projected in an opposite direction away from the attacker, coming from the staircase or the doorway of the first bedroom, ie towards the passage way and the passage wall next to the table.

[261] Captain Joubert did not examine the bottom part of the socks because there would have been blood on the floor and the Accused would have stepped on it. The witness said he just observed dark stains, it could be dirt or blood. Nothing else that the Accused had worn, had been presented to the witness.

[262] In conclusion, Captain Joubert confirmed the following possibilities as reasons for the absence of MARLI’s blood on the shorts of the Accused:

(i) The Accused was not the attacker;

(ii) The directionality of the blood spatter was away from the attacker; and

(iii) Some of the 19 stains where no DNA profile was found, could have emanated from MARLI or could be MARLI’s blood.

[263] Defence counsel argued that the absence of the DNA does not stand in isolation; it must be viewed against the improbability of the Accused being able to fabricate a version that fits perfectly with the objective scientific evidence at a time when he could not have been aware thereof. The Court considered this submission by Defence counsel and is in agreement that the DNA evidence must be weighed together with other objective reliable facts. The absence of MARLI's DNA on the clothing of the Accused, is not inexplicable. The Accused has intimate knowledge of the events that occurred that particular night. There are, however, other anomalies in this matter which the Court does not have to speculate about.

(i) MARLI and TERESA were lying on the top landing close to the doorway of the boys' room. MARLI was found with her feet and legs inside the doorway. Both victims were probably attacked in the vicinity of the doorway before the alleged altercation between the Accused and the alleged attacker took place. In the light of Dr Anthony's testimony, the head wounds would have bled profusely. Yet no obvious and identifiable blood could be seen on the bottom of the Accused's socks, whether he was a victim or the perpetrator.

(ii) The Accused testified that MARLI was found close to where he last saw her. He did not claim that his mother moved in any way. Despite running after the attacker, who was in flight, the bodies of the female victims apparently did not obstruct the path of any one of them where they were lying in close proximity of the doorway of the boys' room.

(iii) The Accused's fingerprints were not found on the axe, whether he handled the axe when trying to defend himself or to attack his family.

(iv) If there was a second axe used to attack MARLI, and carried by the attacker from the first landing to the back door, around the house to exit via the side gate on the other side of the house, the absence of a corresponding drip trail of blood appears to be unlikely. No DNA was found pertaining to the possible blood drop on the kitchen door and, according to Lieutenant-Colonel Otto, it could possibly have been animal blood. Only human DNA can be extracted from blood. MARLI was also not the donor of the two solitary drops below the boys' window on the wall of the adjacent property.

(v) The position of the duvet that originated from the Accused's bed, that was found on top of a relatively huge amount of blood on the floor in the boys' room, was not explained.

(vi) The neat appearance of the ground floor despite the presence of more than one intruder and the amount of blood on the first floor.

(vii) If the DNA results are to be accepted, without deciding the issue, it is strange that a mixture of both the Accused's and RUDI's DNA ended up together at the same specific corner of the shower.

MARLI's position and the presence of a second attacker

[264] According to his plea-explanation and testimony, the Accused could not recall the positions of the female victims when he exited the room. He could recall MARLI's feet were not lying inside the doorway due to the fact that the doorway was unobstructed. Therefore he was certain that MARLI's feet were not in the same place as they are on the photographs taken by Sergeant

Kleynhans, Exhibit "B". On a question of how MARLI's feet ended up in the doorway, the Accused said she must have moved there during the events. Dr Anthony testified that movement by MARLI depended on the blood loss and the compensatory mechanism. Due to the extent of the head injuries, it was possible that MARLI would have been able to move a limb despite the trauma although she could not exclude severe movements. Sergeant Kleynhans and the Accused testified that they only saw MARLI's one leg and arm moving. According to the Accused, MARLI was lying next to his mother in the passageway on the top landing when he saw them before and after he allegedly lost consciousness. Given the space between the table against the wall and TERESA's body, it is unlikely that there had been significant movement by MARLI, at least not before the paramedics attended to her.

[265] Captain Joubert testified that it is possible, taking into consideration MARLI's body position and her legs inside the doorway of the first bedroom, as can be seen on photographs 175 and 176, Exhibit "DDD1", that the attacker came from inside the room. There was nothing in the blood spatter pattern that contradicted that scenario. He could not exclude the possibility that MARLI was attacked by somebody from the outside of the bedroom as suggested by Defence counsel. With regard to MARLI's body position, Captain Joubert said she was most probably attacked from the front, she could have been collapsing and extending her legs. It is noticed that the bottom part of the doorframe was higher than the floor at the entrance of the first bedroom, making it difficult to extend her legs into the bedroom. The Accused said MARLI was in around about the same position when he saw her. The position and general direction of both MARLI and TERESA's legs was near the doorframe towards the boys' bedroom door, indicating that they were probably facing their attacker coming out of the boys' bedroom.

Concessions by the Accused regarding a second axe

[266] During cross-examination by State counsel, the Accused conceded that the attacker used the same type of weapon (an axe) and executed the same type of attack (blows to the head) on the victims. It is highly unlikely that a second person would have executed blows in predominantly the very same area as the other attacker, ie the head of the victims, and with more or less the same degree of violence or force. It is also unlikely that TERESA and MARLI would have been attacked by two attackers almost simultaneously in the same area.

[267] The Accused said it was plausible that there was a second axe on the scene. However, the Accused conceded that his family members were all attacked by the same attacker, wielding the same weapon. He said he only saw one attacker and one axe. When asked whether he accepted that no other axe was found and that it was unlikely that there was a second axe on the scene, the Accused agreed. He agreed that no evidence of a second axe exists.

[268] During the emergency call the Accused told Ms Philander that "someone" attacked his family, three adults and one teenager, with an axe. No allegations of a second attacker with a second axe was made by the Accused shortly after the incident.

Conclusion re second axe

[269] Apart from the fact that it can be clearly seen on the photographs in the photo album, Exhibit "A", that Exhibit "1" had been used to commit the crimes, the Accused himself only mentioned one axe used by an alleged intruder. Captain Brown testified that she cleaned the axe herself during her investigation. The Court finds that there is no convincing basis for the contention that a second axe had been used during the attack. The Court is

satisfied that Exhibit “1” is the only axe used during the commission of the crimes and that it belonged to the Van Breda household, being fairly new as well as similar in size, shape and appearance as the axe kept in the house, as well as the fact that no other axe was found in house or the pantry. No evidence of the presence of a second axe exists on the Accused’s own version.

The knife, Exhibit “2”

[270] A knife, handed in as Exhibit “2”, was found on the scene, partly hidden under RUDI’s bed (see Exhibits “A205”, “A206”, “A208”, “A237”, “A238” and Exhibit “F2”). The Accused alleged that an intruder stabbed him with a knife. The Accused testified that the attacker recovered fairly quickly after being disarmed and came back at him with a knife in his right hand. The Accused did not see where the knife came from. The Accused said that he pulled the knife out of his side and dropped it, presumably somewhere on the floor in the first bedroom (also see paragraph 33, Exhibit “J”).

[271] Captain Brown examined the Swiss-manufactured 19cm slicing/carving knife with the inscription Victorinox, (Exhibit “2”). The weight of the knife was 0.0824 kg. The exposed blade was 18.3 cm from the tip to the plastic handle.

The place where the knife originated from

[272] Exhibit “A36” shows the kitchen area of the Van Breda household. The top drawer of the kitchen cabinet left from the stove, appears to be slightly open. The knives and spoons were kept in that particular drawer. Ms Munqongani testified that the knife, as can be seen in Exhibit “F2” looks the same as a set of knives kept in the drawer with the spoons. She testified both the axe and knife, Exhibits “1” and “2”, look the same as the ones that were kept in the Van Breda residence.

[273] On 24 August 2015 Captain Steyn and Warrant Officer Hitchcock compared Exhibit “2” with the knives inside the house. The contents of the drawer in the kitchen where the knives were kept and a set of Victorinox knives can be seen in Exhibit “E3”. According to Captain Steyn, two knives and a fork inside the drawer in the kitchen looked the same as Exhibit “2”.

[274] The Accused confirmed that Exhibit “2” resembles their kitchen knives and agreed that the knife came from the kitchen. The Accused confirmed that the knives were kept in the top drawer. The extended view of the kitchen can be seen in Exhibits “A33” – “A36”. The kitchen appeared to be undisturbed excepting for the two drawers in the same location; these were the only cabinetry disturbed in the kitchen.

[275] The Court is satisfied that Exhibit “2” belonged to the Van Breda household, being part of a set of Victorinox knives kept in the kitchen drawer.

Motive of alleged intruder(s) and the weapons used

[276] An axe would be a peculiar choice of a weapon for a burglar or thief to take along to the intended crime scene. Before the attack, the Van Breda family were presumably all asleep, except for the Accused who was in the en-suite bathroom of the first bedroom. The Accused did not hear intruders inside the house before the attack on his brother. There was no risk of identifying the balaclava-wearing intruder(s) and therefore no reason for the intruder(s), with the intention to steal, to wipe out almost an entire family who were oblivious to the presence of the intruder(s). The violence prevalent in the country does not serve as a convincing explanation, as argued by Defence counsel, for this scenario.

[277] If the intention of the intruder(s) was to kill the occupants of the house, it would be senseless not to bring a weapon along. The alleged intruder clearly planned the commission of the crimes by wearing gloves, dark clothes and a balaclava mask. Laughing, whilst attacking family members, certainly appears to be strange behaviour for a random assailant. It can possibly be expected from a perpetrator with a personal issue.

[278] The Accused conceded that it would be strange that the persons who planned to enter the house and attack the family, came unarmed or armed inadequately that night. He found it strange that the one person who went upstairs was also incidentally the same person who was armed with both the knife and the axe that came from the house.

The severity of the attack

[279] The degree of violence displayed towards the deceased victims and MARLI, seems to be excessive. All the deceased and MARLI had several wounds directed at the part of the human body with a high mortality rate, according to Dr Anthony.

[280] The attack on the Accused was certainly not launched with the same intensity than those on the other family members, so it is unlikely that the attacker had a grudge against the Accused. On a question why the Accused did not have potentially fatal wounds, he conceded that the attack on him was more restrained compared to those of the other family members.

Motive to commit the crimes

[281] Cornelius van Breda testified that his brother, MARTIN, had no enemies. He was not involved in underhanded business transactions and that MARTIN's former colleagues had the greatest respect for him. Mr Reade-Jahn and Ms Van der Westhuizen testified that the Van Breda's were a normal family with normal differences.

[282] The Accused testified that he was not aware of anyone bearing a grudge against the family members. If the alleged intruder wanted to kill MARTIN, it does not explain why he attacked RUDI first. The Accused agreed that initially the attacker targeted RUDI and then the rest of the family. The Accused testified that he could not think of a reason why RUDI appeared to be specifically attacked and why the intruder(s) did not simply remove valuables from the house. RUDI studied and lived in Australia before the attack and was home only for a short while on holiday. It is unlikely that he made enemies, going to that extent, in such a short time.

[283] Defence counsel argued that the Accused had no reason to attack his family and had no motive as the family was a close-knit family without serious issues. Furthermore, it was argued on behalf of the Accused that there seemed to be no tension or unresolved issues in the Van Breda household up to 22h00 on 26 January 2015, based on communication via Whatsapp between the Accused and Bianca and the lack of communication between MARLI and James after 22h00 that particular night.

[284] The Accused's version is that there was no argument amongst the family members on 26 January 2015. Arguments in the family, centred around MARLI because she was growing up and starting to rebel. The Accused denied having any serious arguments with his family and stated that there was nothing out of the ordinary in the evening before the attack.

[285] No evidence exists to indicate a specific motive for killing any of the apparently decent family members, whether they were killed by an unknown intruder or by the Accused.

[286] The neighbours of the Van Breda family, Ms Op't Hoff and Ms Taljaard, testified that the Estate was a safe and secure environment to stay in and none of them reported any suspicious persons or incidents in the vicinity of G. Street on the day of the murders. Ms Taljaard heard nothing untoward that particular night, despite being a light sleeper and the fact that the murders were committed not far from her house. The only unusual event or evidence of something unusual, were the loud male voices coming from the Van Breda residence, heard by Mrs Op't Hoff between 22h00 and midnight that particular evening.

[287] Ms Op't Hoff resided at 10 G. Street across the street from the Van Breda residence. She testified that she had heard loud male voices, with an aggressive undertone that sounded like an argument, from the direction of the Van Breda house the night of 26 – 27 January 2015. It lasted from 22h00 until after midnight (00h10) without stating that it was unabated or uninterrupted; it went on continuously. She confirmed there were plants and shrubs in front of her house and that the windows and curtains were closed. Ms Op't Hoff testified her house consisted of a lot of glass and French doors. During the inspection *in loco* it was evident that there is a balcony door leading from the boys' room, to an outside balcony with a view of Ms Op't Hoff's house across the street. Ms Op't Hoff's uncontested evidence is that audio specialists tested the reliability of her version afterwards and confirmed the possibility of her having heard sound coming from the Van Breda residence. Her sons were also woken at approximately 04h00 the next morning, fortuitously the time that the murders probably happened. Considering that it happened at a quiet time at night in a quiet environment and the other abovementioned factors, the

Court finds that Ms Op't Hoff must have been able to hear the sounds as she testified.

[288] According to the Accused, the Van Breda men watched a movie called "Star Trek 2 into Darkness". It was suggested that the movie was approximately two hours long and that was what Ms Op't Hoff had heard between 22h00 and midnight the night of the murders. Ms Op't Hoff was adamant that she did not hear a movie with music and a sound track and testified that she was familiar with the Star Trek theme song. The loud voices were so disturbing that she had a fright. Ms Op't Hoff is an independent witness who was unwilling to get involved. She did not implicate any specific person, including the Accused. Ms Op't Hoff impressed as a witness and the Court has no reason to reject her evidence.

[289] Sergeant Appollis testified that the police had the cell phone data of the entire family and they could not find any threatening messages, except for the message of James Reade-Jahn to MARLI. Mr Reade-Jahn's cell phone data confirmed that he was at home the night of the incident. Mr Cornelius van Breda was not aware of enemies MARTIN or TERESA had, personally or in terms of business.

[290] Mr Reade-Jahn, Ms Van der Westhuizen and Mr Cornelius van Breda testified that there seemed to be no major problems amongst the family members before the incident. Ms Van der Westhuizen spent only two-and-a-half weeks with the Accused as a friend before the incident. Mr Reade-Jahn testified about a heated argument between the family members at some stage that upset MARLI and TERESA to such an extent that the witness actually wanted to murder the family around MARLI. He said that he was concerned about the reason why TERESA got so upset and he felt there might have been something more to the argument than was let on. The reaction by MARLI, Mr Reade-Jahn and possibly TERESA seems to be a bit excessive if the argument simply revolved around MARLI's weight. Mr Cornelius van

Breda lived with the family for a few months when the children were still at a young age. He probably did not share the day-to-day trials and tribulations of the Van Breda victims. The aggressive male voices heard by Mrs Op't Hoff on the night of the murders indicates that everything was not as it seemed on the surface in the Van Breda household.

[291] It is inconceivable that an unknown perpetrator would gain entry to the Estate and house with great planning and effort, seriously injure the entire family in that manner for no apparent reason (except for the Accused), and flee again without taking obvious valuable items from the house. The Court does not have to speculate about the motive of the assailant.

The intention of the perpetrator

[292] On 29 January 2015 Dr Daphne Anthony, a Senior Specialist in Forensic Pathology Services based at the Tygerberg campus of the University of Stellenbosch, performed the post-mortem examinations and recorded her findings in the post-mortem reports marked as Exhibits "L", "M" and "N". She was appointed as a Senior Specialist Forensic Pathologist at Stellenbosch mortuary from May 2009 until June 2016.

[293] RUDI had extensive scalp lacerations and injury to the brain, consisting of seven (7) wounds. The wounds were located more towards the left side and back of the head. He also had three (3) minor blunt force trauma wounds to the leg and wrist. Wound eleven (11) was a defensive wound, a small incised wound on the left little finger, and wound twelve (12) was the loose nail of the left little finger. Dr Anthony concluded that a severe skull fracture caused damage to the brain itself and contributed to death, together with a large amount of blood. Five (5) wounds in themselves could be fatal. Dr Anthony said the use of the axe, Exhibit "1", would fit in with the injuries. She described the axe as a heavy object with a sharp edge, and that it was consistent with

the chop wounds inflicted with a tremendous amount of force and high rate of speed.

[294] MARTIN presented with sharp and blunt force trauma involving the head and upper back consisting of four (4) lacerations and incised wounds as contained in Exhibit “M”. All the wounds were potentially fatal except for the incised wound on the upper back at the junction of the neck. A considerable amount of force was required to cause the injuries and the skull fracture. Dr Anthony was of the opinion that the trauma was most likely inflicted from behind. She based her opinion on the fact that no evidence of protecting vital parts could be found as well as the location of the wounds.

[295] TERESA had a chop wound or laceration that had split into two wounds, involving the right side of the top aspect of the scalp. Dr Anthony was of the opinion that a heavy bulky object moving with a tremendous amount of force and a high rate speed had been used. TERESA also had an incised wound to the right frontal-middle aspect of the scalp. Both wounds were potentially fatal. There was evidence of skull fractures and brain injury. Furthermore she presented with abrasions on the nose bridge and contusions on her back. An incised wound on the inner side of the right thumb is suggestive of a defensive wound caused by a sharp object. Her injuries are contained in Exhibit “N”.

[296] The wounds sustained by TERESA and MARTIN, were also caused by the axe as the weapon that was used. The axe fitted the instrument in terms of wounds sustained, taking into consideration the size and characteristics of the wounds.

[297] A report from Dr Marius Small-Smith, who treated MARLI at Vergelegen Mediclinic, citing the injuries sustained by MARLI, was handed in as Exhibit “BBB12”. Photographs of her injuries were handed in as Exhibits

"H1" –"H18". She had five (5) deep lacerations to her head with the brain tissue visible; four (4) lacerations on the left side and one (1) laceration more to the right side (see Exhibits "H9" – "H11"). She also had a deep laceration to her left ear that was partly severed from her head (see Exhibit "H4, 5 and 7") and another deep laceration to the left side of her neck (see Exhibits "H1", "H2", "H4", "H5" and "H7"). Furthermore, MARLI sustained a wound to the inside of her left lower arm (see Exhibits "G5 and "G6" and Exhibits "H17" and "H18") as well as bruising and an abrasion to the dorsal aspect of her right hand (see Exhibit "G8").

[298] According to Dr Small-Smith the injuries presented by MARLI are not only potentially fatal, they are in fact usually fatal (see Exhibit "HHH"). He confirmed that MARLI's prognosis upon admission was very poor. The injuries fit in with infliction with a sharp instrument like an axe.

[299] The deceaseds' injuries were mainly confined to the head. RUDI suffered the most violent attack of the deceased, in terms of the number of injuries. Second was MARTIN and then TERESA, with lesser injuries. Dr Anthony testified that MARLI's injuries to her head and neck were consistent with injuries sustained by the other three deceased family members. Injuries involving her hands and extremities were indicative of self-defensive wounds and were multiple in origin, indicative of a severe scuffling. Considering the seriousness and number of head injuries, the location of the wounds and the considerable amount of force with which they were inflicted, there can be no doubt that the attacker had the intention to kill all the deceased and MARLI. Dr Anthony testified that traumatic head injury has a high mortality rate. The Accused conceded during cross-examination that the intent was to kill if one hit a person over the head with an axe. Defence counsel rightfully conceded that MARLI's injuries were life-threatening and were inflicted with the intension to kill her.

[300] Taking into account the type of weapon, and the number and nature of the injuries, the Court finds that the perpetrator had the intention to kill the victims in the form of *dolus directus.*

[301] Whether an intruder entered the house armed with an axe or the perpetrator armed himself with an axe from the pantry inside the house, the attack on the presumably sleeping family members on the first floor of the house and in the early hours of the morning, had to be planned. The weapon had to be taken to the first floor; it would not have been readily at hand at the time of the attack.

Other relevant aspects about the injuries of the victims

[302] The cause of death in all three post-mortem reports was listed as being head injuries and the consequences thereof. Lacerations or incised wounds will bleed profusely which can cause shock leading to death. Scalp injuries lead to loss of a large amount of blood. The skull bone is rigid and the skull can fracture if the limits of elasticity are exceeded. In the case of a compound fracture one can see the bone end or fracture which protruded through a scalp wound. One can deduct from skull fractures that a considerable amount of force had been applied. It was not a skull fracture that caused the death, but the underlying brain injury. To put it differently, it was the injured brain tissue which would cause the death. Injury to the base of the brain can be indicative that a considerable amount of force was applied to the head. Intracranial (inside of the brain) haemorrhage can also occur, leading to raised intracranial bleeding causing space-occupying lesions, swelling, and the eventual death of the person.

[303] Dr Anthony dealt with the injuries sustained by RUDI van Breda as contained in Exhibit “L”:

(i) The relevant chief post- mortem findings indicated external blunt and sharp trauma involving the neck and left lateral upper neck.

(ii) Evidence suggestive of defensive wounds on his left little finger and a loose nail was present. Defensive wounds are normally an indication that the individual attempted to ward off an attack on his vital parts, face and head area.

(iii) There were also skull fractures to the base of the skull and the skull cap. Furthermore, the small focal abrasions on the right anterior knee and left and right dorsal wrist could be due to any form of blunt trauma or the body could have been in contact with a rough surface.

(iv) Blood was found in the deceased's stomach. It indicated that RUDI was alive for some time subsequent to the injuries sustained for the blood to enter the oesophagus and stomach, ie because he swallowed blood. It could not be done passively and he, as an individual, had to be alive for longer than a few minutes.

(v) The sustained injuries had to be very painful due to the head injuries.

(vi) With a head injury one would not necessarily be dead immediately, but could be unconscious or semi-conscious and actively inhale and swallow blood. The victim would still feel or suffer pain. To be incapacitated, it means that a person could be unconscious or dead. There were three different stages of

consciousness. One could be still able to survive for a period of time and able to make slight movements but not active movement. One might possibly be able to lift one's head, or move one's limbs and body slightly. With a head injury it was most likely for the person to be in an incapacitated state and the person would not be able to move around.

(vii) RUDI had five potentially fatal wounds, namely wounds three to seven described in the post-mortem report.

(viii) RUDI was wearing blue striped boxer shorts, considered to be "sleep wear".

[304] The Accused confirmed that MARTIN and RUDI, and probably TERESA and MARLI, were attacked with the axe that was found on the middle landing. During Sergeant Kleynhans' evidence-in-chief, Adv Botha indicated that it was admitted on behalf of the Accused that Exhibit "1" was the same axe that appears in the photo album, Exhibit "A".

[305] Dr Anthony then dealt with the injuries sustained by MARTIN van Breda as contained in Exhibit "M".

[306] The chief post-mortem findings on the body were as follows:

(i) External sharp and blunt trauma involving the head and central upper back were noted.

(ii) No evidence of defensive wounds could be found.

(iii) Microscopic evidence of blood aspiration of both lungs indicated that MARTIN was not dead immediately because he actively inhaled the blood.

(iv) There was blood in the stomach indicative that the deceased was not dead at the time of infliction of the trauma.

(v) The organs were pale which was indicative that the individual bled out.

(vi) Injuries to the skull and brain caused the death.

(vii) MARTIN had three potentially fatal wounds. Each one could have killed him on their own. The wounds are described in par 4.1, 4.2 and 4.3 of Exhibit “M”.

(viii) A considerable amount of force was required to cause the external injuries and skull fracture. MARTIN was most likely not aware of the attack from the back, and completely surprised by it. She based her opinion on the fact that no evidence of protecting vital parts could be found as well as the location of the wounds.

(ix) MARTIN was dressed in multi-coloured striped boxer shorts, considered to be “sleep wear”.

[307] Dr Anthony also dealt with the injuries sustained by TERESA van Breda as contained in Exhibit “N”.

[308] The chief post-mortem findings were described as follows:

(i) External evidence of sharp and blunt trauma involving the head.

(ii) Small focal abrasions on the nose bridge and focal contusions on the right back.

(iii) Evidence of a defensive incised wound on the right dorsal thumb (posterior). Dr Anthony testified that it was highly likely that TERESA faced the attacker and raising her hand to protect her face. There was no aspiration of blood which was an indication that she was most likely dead or she could have been in an unconscious state but not able to swallow blood. TERESA died fairly quickly after the trauma had been inflicted.

(iv) Evidence of skull fractures and brain injury.

(v) Bleeding between the rib spaces but no rib fractures.

(vi) Haemorrhage, severe head injury and hypertension due to severe blood loss.

(vii) The organs were pale, suggestive of extensive loss of blood.

(viii) The cause of focal left lateral intercostal contusions was a form of blunt trauma bleeding in the underlying tissue. She probably fell on her left side, sustaining contusions on the lateral aspect of her chest. The cause of the abrasions on the nose bridge was a form of mild blunt trauma. It was an indication that the deceased

fell on her face, having an impact on her nose and causing the abrasions. The contusions on her back indicated blunt trauma to her lower back, likely sustained with a fall.

(ix) Dr Anthony testified that the chop wound to TERESA's head could be potentially fatal, and also the incised wound to the head. The wounds are described in par 4.1 and 4.2 of Exhibit "N". The others were all minor injuries.

(x) TERESA was wearing beige underwear and a navy sleep vest.

[309] Photographs of MARLI and TERESA were taken by the first responder at the scene (Exhibit "B"); photographs of MARLI's hands and limbs (Exhibit "G"); photographs of the extend of MARLI's head injuries (Exhibit "H") as well as photographs of the Accused at the scene (Exhibit "C") were shown to Dr Anthony.

[310] MARLI's injuries to her head and neck were consistent with injuries sustained by the other three deceased family members. MARLI's injuries were indicative of a bigger scuffle between MARLI and the attacker, than between the attacker and RUDI, MARTIN and TERESA respectively.

[311] MARLI's injuries involving her hands and extremities were indicative of self-defensive wounds and multiple in origin, indicative of a severe scuffling. This was in comparison to RUDI's pinkie wound and TERESA's thumb. With MARLI, more severe injuries and specifically the location of the injuries more on the extremities and hands, were indicative of a more significant struggle going on during the attack in an attempt to save her life.

[312] Exhibit “B1 and 4” of the scene showed a large pool of blood around TERESA and MARLI. Dr Anthony said scalp wounds would bleed profusely so the bleeding would have developed quite quickly.

[313] The report from Dr Marius Small-Smith, who treated MARLI at Vergelegen Mediclinic, was handed in as Exhibit “BBB12”, citing the injuries sustained by MARLI. Defence counsel admitted the contents of the doctor’s report, Exhibit “BBB12”, including MARLI’s physical injuries and that she has no memory of the incident.

[314] State counsel asked Dr Tiemensma, a medical specialist, to comment on the photographs of the injuries sustained by MARLI, as can be seen in Exhibit “G”. The witness categorised MARLI’s hand injuries as a sharp force injury to the wrist. The injury that can be seen in Exhibit “G6” appeared to be a typical passive defence injury, ie holding one’s hands over whichever area was attacked. There was contusion or bruising on the back of MARLI’s hands, and on her knuckle visible in Exhibit “G8”. There was also a small abrasion. The injuries corresponded with someone actively fighting back, ie it had the appearance of active defence wounds. The witness was hesitant to comment on the injuries on the inside of MARLI’s calve as it looked faded in Exhibit “G10”.

[315] Dr Anthony said she could postulate the possible sequence of events, inferring from her observations.

[316] She postulated that RUDI’s injuries showed him lying on the bed on the right side of his face due to the fact that his injuries were located to the lateral aspect the neck and the left as well as the side of his neck. With the infliction of the trauma, he was aware of the blows and what was coming. He raised his hand in an attempt to ward off the attack, which was why he sustained an

incised wound on his little finger with lifting of the nail. First the two incised wounds described in paragraphs 4.1 and 4.2, Exhibit “L” were inflicted and the other wounds followed.

[317] The witness was asked to comment why RUDI was lying near the doorway of bathroom inside the room as could be seen in Exhibit “A191”, if he was assaulted on the bed. Dr Anthony said that it was possible after an attack, that the victim might still be able to lift himself up. A person would not immediately be immobile or unconscious; he could still move although he would not be mobile depending on the level of consciousness or survival period. Alternatively, if attacked in bed, he could have been moved by someone else to a different location.

[318] During cross-examination Dr Anthony agreed with the contents of paragraph 6.4 of Dr Reggie Perumal’s report, Exhibit “QQ”. According to the report RUDI lay on the bed for a while probably as a result of a concussive state, taking into account the pool of blood on the bed. It was highly unlikely that he died immediately in an unconscious state. Dr Anthony testified that there was no injury that could have either rendered RUDI immediately immobile or causing death soon after sustaining the injuries. It was very likely that RUDI was capable of physical activity after being injured. He might have been disorientated from a probable concussion and his vision might have been affected; RUDI would have been blind in at least the one eye. Dr Anthony responded that she was not at liberty to absolutely dispute the time period of 2 hours 40 minutes for RUDI to die, but one had to take into account the blood loss. Dr Perumal never testified and therefore his opinion is not considered, except for the parts with which Dr Anthony agreed. It would be highly co-incidental if the Accused phoned emergency services just after RUDI died.

[319] Captain Joubert testified that it takes 3 - 15 minutes for the clotting process of blood to start. He testified there are so many variables, like the

temperature playing a role. Looking at the bloodstains it was not possible to say how long RUDI was lying on the bed and the floor respectively.

[320] Dr Du Trevou testified that the gurgling sounds made by RUDI were most probably due to blood in his throat in the process of dying. RUDI would have had limited movement. Dr Du Trevou presumed that the blow to the head with the axe would have rendered RUDI unconscious. Then he could have recovered a level of consciousness and it was possible that he was able to move. RUDI would have been able to make purposeful movement but the witness did not know to what extent. The witness said the amount of blood on RUDI's bed was not his area of expertise. There was a lot of blood on RUDI's bed so he lay on the bed for quite some time. Head wounds bleed profusely and RUDI would have been in a state of concussion. Dr Du Trevou testified that RUDI would have been able to crawl but not to stand or walk. The witness said to have moved the duvet from the Accused's bed to the floor next to the wall on top of blood, would have been a goal directed movement. It was only a theoretical possibility that RUDI could have moved the duvet, there was no physical perspective to say that.

[321] The Accused testified that during the period that the attacker left the room, RUDI was moving around in his bed rather violently and was shaking. The Accused saw RUDI's arms and legs shaking around; it was not goal orientated movements. State counsel pointed out a discrepancy between his plea explanation and testimony and his police statement in respect of RUDI's movements after the attack. In his plea explanation the Accused said he heard RUDI making gurgling sounds and he saw him moving around violently, whilst in paragraph 5, Exhibit "SS" no reference was made to that. The Accused merely said that he saw RUDI lying there. The Accused agreed that it was a contradiction. Adv Galloway asked whether the version about RUDI's movements was an afterthought because of Captain Joubert's opinion regarding RUDI being dragged from the bed. The Accused denied using the words in his police statement. He heard gurgling sounds from the kitchen and

on the stairs. As stated previously, the Accused made no mention to Ms Philander that his brother was also alive; he only mentioned his sister being alive. During cross-examination by the State, the Accused conceded that the gurgling sounds could have emanated from MARLI only and not from both RUDI and MARLI. RUDI was not alive when the police and paramedics arrived approximately 30 - 45 minutes later.

[322] Dr Anthony testified that MARTIN was most likely completely unaware of the attack and had been attacked form behind.

[323] During cross-examination, Dr Anthony conceded that it was possible that MARTIN could have sustained the injuries if the attacker was physically higher than MARTIN and the latter faced completely downwards. It was put to the witness that the Accused's version was that his father came into the room and moved towards and onto the bed, over RUDI, towards the attacker, who was on the opposite side of the bed. His dad was struck with the axe as he lunged towards the attacker. The complete version of the Accused was contained in paragraphs 25 – 26 of Exhibit "J". The attacker was between the beds. RUDI was lying on the bed as per photographs "A188" and "A189". Dr Anthony responded that it was possible, MARTIN's injuries were located to the right.

[324] In his evidence-in-chief the Accused said MARTIN immediately moved towards the attacker; he moved onto the bed, looking like he wanted to tackle the attacker. MARTIN placed himself between RUDI and the attacker. MARTIN lunged and was hit on the head. MARTIN did not move again. The Accused said MARTIN was then hit several times by the attacker. The Court observed that MARTIN's body can be seen on the side of RUDI's bed next to a bloodied pillow and pool of blood in Exhibit "A188 - 189; 192, 198 and 202". MARTIN's head was lying in a pool of blood against a pillow with blood spatter. It seems that the blows were administered whilst he was in that area. During cross-examination by the State, the Accused said MARTIN

was next to Rudy; not on top of him. The Accused said his father never moved over RUDI that was the direction where his father was heading when he was hit.

[325] TERESA faced the assailant and was also aware of the infliction of the trauma. She instinctively raised her right hand to ward off the impact of the first wound to the right frontal area of the skull, resulting in the incised wound on the thumb. She most likely fell forward on her face with the abrasions on her nose bridge and also more to the left side where she sustained contusions. The other wounds were inflicted after that.

[326] MARLI, in terms of the pictures, had extensive defensive wounds and she was quite apparently in a more sustained and life threatening altercation with the attacker. The type of injuries to her head are similar to the type of injuries to the other three deceased members of the family. They sustained chop wounds and incised wounds and the measurements were more or less the same as in the case of the other victims.

[327] On a question how MARLI survived the attack, Dr Anthony responded that the issue of the survival period after infliction of trauma depended on various factors; i.e. age (the younger will survive longer), the amount of blood loss, compensation mechanisms and the severity of the wounds.

The injuries of the Accused

[328] Captain Nicholas Steyn communicated with the Accused at the crime scene. The Accused had a reasonably large knob on the left side of his head and a swelling under his left eye as well as superficial cuts and a stab wound. Captain Steyn could not remember a fresh bruise under the Accused's right knee.

[329] On 27 January 2015 at about 10h30 Dr Albertse examined the Accused as a victim. Dr Albertse recorded the injuries sustained by the Accused on a J88 form which was handed in as Exhibit “LL”. The recorded injuries were read out by Dr Albertse. The Accused had four parallel, “very superficial” cuts on his left forearm, two above his right nipple and another above that, a superficial stab wound on the left thorax, one superficial cut above his left nipple, and two stab wounds to the left abdominal area. Most of the injuries on the front of his body and forearm broke the skin. On his back, he had a scratch on the left side of his back over the scapula and a scratch on the right side of his back under the scapula. These scratches did not break the skin. He had two abrasions on his back. There was old scarring on his right knee, a bruise and swelling just below it, and another two old bruises. He had swelling above his left eye and a bruise under it.

[330] Dr Albertse testified that she did not regard his injuries as serious. The injuries of the Accused appeared as in the photographs, Exhibit “C”. Her description of the injury as a scratch mark in “A31” is incorrect, she would rather describe it as a cut wound. There were scratch marks also on the Accused’s back. The scratch marks could have been caused by blunt force that scraped off the top layer of the skin. The cut wounds (a)–(i) could have been caused by sharp trauma like a knife or a sharp object.

[331] Dr Van Zyl recorded the injuries of the Accused later that day as can be seen in Exhibit “OO”. The Accused was brought in as a possible suspect in a murder case when she saw him for the second time at 21h45. Colonel Beneke requested her to fill in the CAS number of the case. She referred to the injuries to the Accused’s chest as superficial scratch marks. The injuries to his left arm were parallel horizontal marks suggesting possible scratch marks approximately 3 cm each. Dr Van Zyl recorded a superficial puncture mark close to the left side clavicle of his chest. The laceration or stab wound to the left upper abdomen was cleaned and clipped; the Accused received no

stitches as the wound was not deep enough. Both eyes had surrounded bruises in early stages of development. She recorded a bruise to the left knee but testified that it could have been the right knee and that it could have been a mistake. She confirmed that the Accused had a bump against his head. Dr Van Zyl testified that the discolouration of the eyes could have been as a result of the bump or injury to his head.

Possible self-inflicted wounds

[332] The Accused alleged that one of the policemen that accompanied him to Dr Albertse, asked her whether the wounds were self-inflicted and that Dr Albertse replied that she would see what she could do. Dr Albertse could not remember whether the question was asked at the time. At a later stage Colonel Beneke asked her opinion about the cut wounds on the thorax and left forearm of the Accused and the method of inflicting the wounds. Dr Albertse did not give an opinion but asked Dr Tiemensma for an opinion. It was put to Dr Albertse that the Accused will say that the assailant had a knife in his hand and cut and stabbed whilst the Accused held onto the arm of the assailant. A demonstration by Adv Botha was described as follows: The Accused held onto the arm of the assailant with his hand close to the elbow of the assailant who cut the Accused over his thorax and arm. Dr Albertse replied that it was possible but unlikely. However, she indicated that she was hesitant to say it was unlikely. It is noted that during his testimony the Accused testified that he grabbed the attacker's right hand, holding the knife, just below his wrist – and not close to his elbow as stated by Adv Botha. In his plea-explanation it was alleged that the Accused was holding onto the right forearm of the attacker, not specifically just below the attacker's wrist (see paragraph 31, Exhibit "J") as he testified later.

[333] Dr Marianne Tiemensma is a Specialist Forensic Pathologist and Clinical Forensic Practitioner that was employed at the Clinical Forensic Unit at Victoria Hospital, Wynberg at the time of her testimony. Her expertise

include pathology which she started to practice in 2007. Apart from forensic pathology, she also practiced clinical science. Her qualifications and experience were listed in Exhibit "NN". Dr Tiemensma was asked by SAPS and Dr Albertse to comment on the method used and the manner in which the Accused sustained his injuries. The witness received a written request from Dr Albertse, the J88, a typed copy of the translation of Dr Albertse's findings in English and the photographs contained in Exhibit "C". The police brought the suspected weapon, Exhibit 2, in an evidence bag to her office. At a later stage she also had the plea-explanation of the Accused at her disposal. Colonel Beneke requested telephonically whether the witness could comment on the wounds of the Accused and the issue of self-inflicted injuries. She said it was not unusual to receive such a request. Dr Tiemensma compiled two reports on her findings with regard to the injuries sustained by the Accused, and handed in as Exhibit "NN2 and 3" respectively.

[334] Defence counsel submitted that the mandate with which Dr Tiemensma was tasked, was embedded with an inherent confirmation bias. There is no grounds for this submission as Dr Tiemensma not only motivated her conclusion thoroughly, she also referred to text book pictures for confirmation of her conclusion. The absence of bias is, *inter alia*, illustrated by her concession that it is a difficult task to determine whether injuries have been self-inflicted or not. She also identified certain injuries to be self-inflicted and others not necessarily. It was further argued that her analysis cannot be afforded the same weight as evidence stemming from a physical contemporaneous examination of the patient and his injuries. The same argument goes for the Defence experts on the injuries and condition of the Accused. Dr Tiemensma had the opportunity to form an opinion from enlarged photographs and the detailed notes of Dr Albertse. No tests were required to come to a conclusion.

[335] Dr Tiemensma summarised the Accused's injuries as thorax, head, back and leg injuries (see Exhibit "NN2"). Dr Tiemensma testified that the

injuries on the dorsal aspect of the left forearm, marked (a)–(d) and to the chest, marked (e), (f) and (h) were consistent with self-inflicted injuries (see the J88 completed by Dr Albertse, Exhibit “LL”). The other injuries were less likely to be self-inflicted and were unusual if self-inflicted. During cross-examination Dr Tiemensma conceded that it was very difficult to determine whether wounds were self-inflicted, as stated above, but she was adamant that it was indeed the case. The fact that the wounds were superficial and non-fatal, was not necessarily conclusive. One had to look at all the characteristics of the wounds. The more characteristics that were present, the more suspicious you would get. One would then look at how they would have been sustained, ie the history and discrepancies. Conclusions of possible self-inflicted wounds are determined by a number of factors and one had to look at it in totality.

[336] The cut marks on the chest were superficial and non-fatal. Incisions had an equal depth, were parallel and avoided sensitive areas like nipples. The chest injuries were in a reachable area for self-infliction.

[337] The forearm wounds were also in keeping with self-inflicted injuries, non-lethal, superficial, of an equal depth, and the cuts were parallel. It was unlikely for a victim who was being attacked, to stand still and not take evasive action to allow such multiple and uniform injuries to be executed. The incisions were on the left forearm and the Accused was reportedly right-handed. It was not a typical area where one would expect defence wounds with sharp instrument attacks; defence wounds were more likely to be found on the ventral/palmar aspect of the forearm or wrist, elbows, palmar surface of the hand in grasping motion in an attempt to grab the weapon, or on the backs of the hands or fingers from non-grasping movements in attempts to ward off a weapon. The forearm injuries were in reachable areas for being self-inflicted.

[338] Therefore the injuries to the forearm as well as the cuts to the chest were consistent with being self-inflicted. The other injuries of the Accused were less likely to be self-inflicted.

[339] The sharp force injuries to the thorax and abdomen had a slightly different appearance, and it seemed to have been inflicted with a stabbing action versus a slicing action. These wounds were still superficial with the one bigger stab wound having a depth of approximately 10 mm. Judging the shape and size of knife, it was virtually impossible for the knife to have been stuck in any of the stab wounds. On the stab wounds she was of the opinion that they were superficial and non-fatal.

[340] The swelling above the left eye and bruise under the left eye were in keeping with blunt force injuries. The skin overlying these wounds was intact and non-fatal. The wounds to the head, swelling and bruise on the eye, could be caused by a blow to the face or a fall. It was unlikely that it was self-inflicted.

[341] The wounds to the back and the right leg could be described as blunt force trauma and unlikely to be self-inflicted because of the location of these wounds and the type of injuries. Review of the wounds was difficult due to the absence of photographs of these areas but Dr Albertse described it as superficial. Scratches and abrasions were typically as a result of contact of the skin with a rough surface after a fall, a scratch with fingernails or other blunt objects, or from a blow with an object.

[342] Dr Tiemensma referred to her report dated 12 February 2015, page 2, Exhibit “NN2” with regard to the reasons for describing some of the Accused’s injuries as possibly self-inflicted injuries. If one looked at the type of wounds to his chest, abdomen and arm, they were superficial and non-fatal. The cuts

occasionally penetrated the skin and the incisions were regular and were linear and parallel. The wounds were grouped and similar in appearance. It appeared to be typical self-inflicted wounds. The wounds were therefore regular and equal in depth and origination, uniform, linear, no movement in the wounds, parallel, equally deep. A regular wound would be a straight linear line with no movement in the wound tract. Equal depth could be inflicted by another person but the track and direction of the wound would differ because a person would want to withdraw or evade the infliction of the wounds. There would be a deeper entrance and it would become shallower if someone was stabbed by another person. The cuts were not only parallel but also avoided sensitive areas. It was unlikely that someone would have stood still and not taken evasive action. Self-inflicted wounds would usually be found on the chest, abdomen, arms or hands of a person. The wounds were in reachable areas and were accessible.

[343] The witness added three more reasons to her report on which her opinion was based, ie the wounds were symmetrical, of uniform shape and that the same instrument had been used. Dr Tiemensma explained that symmetrical wounds were both sides of the body and have exactly the same appearance. The cuts could have been caused by one instrument. Conclusions of possible self-inflicted wounds are determined by a number of factors and one had to look at it in totality.

[344] State counsel described the circumstances to the witness, saying that the alleged attack took place in the bedroom, at the foot of the beds with two persons facing each other with sharp weapons and pushing and pulling each other. Dr Tiemensma responded that in the circumstances it would be very difficult to execute very uniform and similar incisions/wounds to another person’s body, holding on to each other. The angles and direction of the incisions would be different if a person pulled away. The wounds on the torso and left arm of the Accused were very similar.

[345] Counsel for the Accused demonstrated the Accused's version as to how the wounds were sustained. It was put to the witness that according to the Accused the knife had been close to his chest and the Accused would push the attacker's arm away from his body. It was put to the witness that the attacker cut the Accused in an attempt for the Accused to let go of the axe.

[346] Dr Tiemensma stated that in respect to the injuries to the arm, the Accused had a group of wounds, parallel to each other and with equal depth. Dr Tiemensma testified that the cuts were also very uniform and linear. There is lots of movement so it would be unlikely to inflict wounds of the same nature. One would expect different angles and depths. It was the same attacker who inflicted serious harm to other people. She testified that it was very unlikely that the wounds were inflicted as demonstrated by Defence counsel.

[347] During cross-examination she was questioned whether wounds (e), (f) and (h) could have been inflicted by another person. Dr Tiemensma replied that it was not impossible but said if pain had been inflicted, one would not stand still and one would be able to react to pain and would withdraw from the pain. It would cause different angles to the wounds. These wounds were neat and (f) and (h) were on different sides of the chest. She questioned the fact that the wounds were not more irregular if it had been inflicted by another person. The wounds could only be inflicted if the Accused was in a fixed position and that was not the case according to the plea explanation of the Accused. The Accused said in paragraph 31 that there was pulling and pushing between himself and the attacker and that the attacker slashed and stabbed at his chest (the witness moved forward and backwards). She said that there appeared to be quite a lot of movement; one would try to evade the attack.

[348] Defence counsel asked the witness whether wounds (f) and (h) that were on the same horizontal line, could be one cut wound due to movement in a struggle. Dr Tiemensma testified that wound (f) curved slightly upwards, so it would be unusual if it was the same cut on the same level. It was very unlikely. Sensitive parts on the chest were not cut and one would not expect a neat wound. One would expect the victim to pull away. The witness testified that she had seen the aftermath of knife attacks hundreds of times and she knew what it looked like. Adv Botha asked whether cuts (e) and (f) could be an attempt to slash across the Accused's chest. Dr Tiemensma said one would expect force to be involved but the cuts were superficial. With resistance, it would be even more difficult to have managed a precise cut wound in an awkward position. There would be pushing and pulling, not a static confrontation. The position described is slashing and stabbing. Dr Tiemensma said it did not correspond with the wounds.

[349] Defence counsel put it to the witness that a person's wrist could move and then only part of the skin would be slashed. The witness said with the movement, pushing and pulling, one could not slash with resistance applied to the hand; one might be able to stab but not slash. Dr Tiemensma testified that cuts (f) and (h) could be one cut, but it was unlikely due to the upward curve of the one cut. She conceded that wound (h) as per Exhibit "C3", was a cut in an ever so slightly upward direction. The one end of the wound was slightly higher than the other end but it was minimal. Wound (f) visible in Exhibit "C2" had a tail in an upwards direction. Dr Tiemensma conceded the cut wounds (f) and (h) were more or less on the same level but said the overall position of the body was unknown. The upwards tail of wound (f) suggested two separate cuts and not one. It was unlikely that the Accused did not move when the two wounds were inflicted because a normal person would react by pulling away if pain was inflicted. The witness also took into account what was said in the plea explanation.

[350] The wounds were suspicious even before the witness had the benefit of the plea explanation and when she compiled Exhibit “NN2”. The witness said the Accused indicated the degree of movement in paragraph 31 by saying that they pushed and pulled each other, stepping forward and backwards. She agreed that the adrenaline level of the Accused would have been raised quite high and that a person might not feel the pain with superficial cuts. She asked why anybody would stand still when the cutting happened. One would not be defending oneself by standing still. If the Accused stood still it would be possible to have made those cuts but the Accused never described that he was standing still during the struggle.

[351] It was put to the witness that the Accused will say that with the initial movement of the attacker, he got the impression that the attacker was aiming towards his throat and that he managed to pull the attacker’s arm slightly down. Dr Tiemensma replied that the attacker definitely did not strike anything close to the throat. You would expect the sharp force injury in a downwards direction toward the chest but that was not the case. Wound (f) was a horizontal cut and it was improbable that the Accused pulled the knife downwards. She based the opinion on what was put to her in court and paragraph 31 of the plea explanation. The throat was never mentioned in the plea explanation.

[352] The cut wounds (a), (b), (c) and (d) on the arm of the Accused can be seen in Exhibit “C5” with wound (a) at the top of the photograph. There was one blot of blood in wound (d) and the cut was close to the wrist. A close-up of Exhibit “C5” was handed in as Exhibit “NN4” (marked photograph 76). The wounds were in a reachable area. Dr Tiemensma said she looked at the totality of the appearance of the wounds. She testified that the wounds must not be evaluated in isolation. The wounds were on the left forearm of the Accused and he was right handed. The cuts were also superficial and non-fatal. There was dried blood in all of the wounds but the blood spots were not

relevant. Dr Tiemensma testified that the wounds were parallel and grouped. Cuts (b) and (c) would meet up if they had continued.

[353] Defence counsel put it to the witness that the Accused held with his left hand the right forearm of the attacker with the knife and the attacker moved his wrist from left to right and right to left, slashing the Accused arm by flicking the knife with his wrist. Dr Tiemensma responded it does not explain why the wounds were the same depth and parallel and of the same resistance. The wounds were on the dorsal side and not on the inside of the Accused's arm. The blade of the knife, Exhibit 2, was fairly long. The witness said the cuts followed the skin throughout. In the plea explanation the Accused said the attacker slashed at him, not flicked the knife. Dr Tiemensma testified that the injuries were probably inflicted with the tip of the knife. Stab wound (j) was the larger wound on the side and the skin was overlying the obliged muscles.

[354] Dr Tiemensma testified that movement or fighting with resistance would not have resulted in those wounds. Self-mutilation did occur. She explained that in case of self-inflicted cuts a person would be in control of the amount of pain, the depth and the location. Cutting and slashing and another person inflicting the wounds meant one did not have control of the movement. She said the cuts were not in keeping with flicking movements of a knife. The wounds would be deeper on one side and would go shallower. If one inflicted the wound oneself, one could control the movement.

[355] Dr Tiemensma did not describe the stab wound to the abdomen visible in Exhibit "C6 and 7" as self-inflicted.

[356] The wounds to the thorax and abdomen of the Accused seemed to have a stabbing action, not a slicing action. The wounds were very superficial. A similar instrument or implement was used to inflict the injuries to the forearm of the Accused. With the knife in the attacker's right hand and no injuries to

the ventral area of the arm, it did not fit in with the history of how the injuries were inflicted and the physical injury. Depending on the resistance on the knife when the Accused was stabbed, one would have expected ventral injuries in case of a counter clockwise grip. In terms of paragraph 33 of the plea explanation the Accused was still holding on to the arm of the attacker at that stage. Whilst the three cuts on the Accused's chest and the four cuts on his left forearm were consistent with self-inflicted injuries, Dr Tiemensma could not confirm that in respect of the other injuries.

[357] Dr Tiemensma testified the wound in Exhibit "C6 and 7" had a slight oblique angle. There was no track and it was not known whether the knife entered downwards or upwards. If the wound ran parallel, along the abdominal wall, it could enter the cavity to the side if inflicted downwards. She would have expected the knife to penetrate. Adv Botha said if the knife had been angled to the left side of the Accused, the handle would have stuck out. The witness responded that the wound was not completely on the side; it was in a more anterior position. It was put to the witness if the knife entered from the side, it would not necessarily have entered the cavity. The witness responded it depended on the angle.

[358] Adv Botha put it to the witness that according to Dr Albertse 10 mm was the minimum depth and that the shape of the wound was elliptical and 70 x 7 mm. Dr Albertse said one had to allow for the elasticity of the skin. Dr Albertse conceded that the wound could be 23 mm wide and the depth would be 50 mm. Dr Tiemensma responded that her information was 10 mm and the wound did not require other treatment than clipping. Five (5) cm sounded very deep, she would expect that the knife would have entered the clavicle cavity. She would go on less than five (5) cm.

[359] She was asked about the direction of the track of the stab wound. Dr Tiemensma replied that it could have been slightly downwards or upwards; it depended on the angle it had been inflicted. If the attacker was standing in

front of a person, the track on photograph 6, Exhibit “C” was superficial and just entering the fat at a slightly oblique angle from the front to the back. Dr Albertse did not describe the wound track; it was a superficial stab wound and only entered the tissue and fat. Dr Albertse only measured the outside dimension of the wound and did not describe the wound track as more than 10 mm. The witness accepted that it was the minimum depth. One could only determine direction of the track by dissecting it but it was known that the knife did not enter the abdominal cavity. No bone or other organs were involved, only loose tissue.

[360] Dr Tiemensma was of the opinion that it would have been impossible for the knife to get stuck because the depth of the wound was 10 mm. If it was as deep as 50 mm, it could get stuck for a second. If a person was moving, it would not have stuck. Only skin and tissue were involved, no bone and fat. She said she did not believe the Accused’s abdominal knife wound was up to 50mm. A sturdy adult male his size had a layer of fat about 40 mm thick. There was no indication that the wound entered the peritoneal cavity. It only penetrated his subcutaneous fat. If it was 50 mm, the knife would have entered the peritoneal or abdominal cavity. She would differ from another witness with another opinion on this aspect. If the wound track was slightly downwards, the knife could have stuck for a second or two but not long.

[361] Dr Tiemensma testified that there was a very strong contrast in comparison to the serious and fatal head injuries that the rest of the family suffered. All the described injuries of the Accused were superficial, minor and non-fatal with the most severe injury being the superficial stab wound to the abdomen (wound g) with a reported depth of 10 mm. None showed any characteristics that it was inflicted with the same intent or force as the deceased’s wounds. The rest of the family had extensive wounds caused by an axe with underlying skull fractures. The Accused had no defensive wounds one would have expected, if another party was present. If one would try and

disarm an attacker and grab at a knife or axe, one would expect there to be defensive wounds.

[362] Prof Jacob Dempers qualified as a medical practitioner in 1994 and was a Professor in Forensic Pathology since 2003. He was head of the Clinical Unit, Division of Forensic Medicine, University of Stellenbosch, Faculty of Medicine and Health Sciences, Tygerberg and also served as a Consultant for the Western Cape Government. He was registered as a Medical Practitioner and a Pathologist. Prof Dempers compiled a report on 27 August 2015 on the injuries sustained by the Accused which was handed in as Exhibit “PP”. He relied on the typed notes of Dr Albertse and photographs to come to his conclusion. The witness also perused the statements of Dr Anthony and read the plea explanation of the Accused.

[363] Prof Dempers testified that all the information at his disposal should be taken into consideration in order not to thumb suck a conclusion. One had to look at the wounds without the background history, then look at the defects against the background of what was said to have happened and thirdly one had to look at the wounds of other victims. All the factors in the case needed to be taken into account. Prof Dempers testified that it is rare to see self-inflicted wounds. The Accused’s wounds were consistent with what the theory said about self-inflicted wounds. The witness was of the opinion that the wounds on the person of the Accused conformed in almost all of their characteristics to the description in medico-legal texts.

[364] He testified that it was not a common occurrence for, when a group of people were attacked, the wounds to differ significantly from one person to the others. If an axe or a knife was utilised as the object to create force, usually in a situation where malice was intended towards people (i.e. not accidental injury), the wounds show some similarity. They see this in forensic pathology in cases where more than one member of a family was injured. In this instance all the defects pertaining to the Van Breda family members appeared

to be similar. Similar wounds were not present on the body of the Accused. Prof Dempers found it hard to believe that the assailant would only scratch the Accused. A right handed person possibly inflicted the wounds because of the fact that the wounds were predominantly on the left side of the Accused's body.

[365] Prof Dempers testified that the same assailant slashed people with an axe and showed significant violence towards the deceased; there was no reason why he would be fighting differently with the Accused.

[366] During cross-examination Defence counsel said the Accused's injuries were caused by a knife, and not an axe and that would explain the difference. Prof Dempers agreed that he would not expect the wounds being caused by an axe. Prof Dempers noted that similar wounds were not present on the body of the Accused in comparison to the injuries and the defensive wounds of the deceased. The witness said that he had not seen defensive wounds on the body of the Accused. Prof Dempers confirmed that RUDI sustained an incised defensive wound to his finger with reference to the post-mortem report, Exhibit "L". It was a small incised wound. The witness was not sure what object caused it. In case of an axe he would expect a gaping wound. With reference to the post-mortem report, Exhibit "M", MARTIN had no defensive wounds.

[367] With reference to the post-mortem report, Exhibit "N", TERESA had a 2cm small incised wound. The witness would not expect it to be so small if caused by an axe but said that it was not impossible. MARLI also sustained defensive wounds to her ventral arm and hand.

[368] If a second attacker, armed with a similar axe, was present in the house on the top floor, it does not make sense that the attacker did not yell for help during the altercation with the Accused.

[369] In his report dated 27 August 2015, Exhibit “PP”, Prof Dempers stated that the scratch wounds on the Accused’s arm were all equal in depth and were almost perfectly parallel. Two superficial stab wounds were present on the chest and abdomen which might represent tentative or “test” stab wounds. The distribution pattern was equal in terms of the wounds on the chest. The witness indicated it was hard to believe that the assailant had succeeded in causing linear scratches, some only a few millimetres apart, without the Accused flinching and causing further wounds to change direction in the same region, or at least resulting in a variation in the depth of the wounds. The witness found it hard to believe that they were standing still when the injuries were inflicted. If people were fighting, they would move around quite vigorously.

[370] During cross-examination Prof Dempers said it was possible that the Accused might have pulled away, but if a person was determined, he would sit quite still in case of self-inflicted injuries. The witness conceded that the adrenaline levels of the Accused would have served to mask the pain if the cuts had been sustained during the course of an attack.

[371] The witness was referred to photographs of the Accused sitting in the ambulance, Exhibit “C2 and C3”. Adv Botha asked if the two cuts marked (h) and (f) on a similar horizontal level on either side of the Accused’s chest could be caused by one action. Prof Dempers testified he could not exclude the possibility, but the smaller one on the left came from the top and curved downward, and the one on the left breast curved up; it appeared to be coming from a different direction. There were scratches, if there had been a slash, it was impossible for them to be exactly the same depth or morphology. They had the same appearance, same depth, so the likelihood was very rare. Adv Botha said if the Accused was cut from right to left, it would explain the curve. The witness responded that it could be, but that it was unlikely.

[372] Defence counsel demonstrated how the cuts occurred and said, *inter alia*, the attacker had tried to cut at the Accused's throat and the Accused tried to pull away; they wrestled. Thereafter while still holding onto the arm of the attacker with the knife, the attacker executed cuts horizontally by flicking at the Accused's arm. Their arms were not crossed but Adv Botha was not sure whether the Accused was holding on to the wrist of the attacker. Prof Dempers said he found it unlikely. If the Accused was holding the attacker's arm at the wrist, the scratches would have been different. The parallel lines could not be explained; the cuts were perfectly perpendicular. Fights did not happen like that; the witness had never seen that in a fight. A close-up photograph of the Accused's left forearm, Exhibit "NN", was shown to the witness which indicated that the first three cuts were not perfectly aligned or parallel and that the bottom one was facing towards the wrist of the Accused. Prof Dempers said the cuts were aligned at the same axis, but not aligned absolutely in the same direction. The cuts did not criss-cross in weird directions; it was parallel and running in the same direction.

[373] Prof Dempers said self-inflicted injuries in text books, made with a free hand and a controlled movement, had exactly the same appearance. In case of a struggle or any significant movement, it would not look like that and would not virtually have the same length etcetera. The cuts were made with the tip of the knife, which the witness referred to as scratches, causing blood spots. Furthermore the witness said it could be possible that the Accused sustained the cuts in a struggle, but it was highly unlikely. If part of a struggle, chances of the cuts having virtually the same length and being parallel were not likely. Prof Dempers said it was not plausible and highly unlikely.

[374] Prof Dempers commented on the alleged position of the attacker and the Accused involved in an altercation as described in the plea explanation of the Accused, Exhibit "J". Allegedly the assailant had a knife in his right hand,

and the Accused had an axe in his right hand. The Accused got hold of the hand of the attacker and would have had control of how the knife penetrated.

[375] A larger stab wound was present just above a smaller one in the left abdominal area. The witness referred to the severity of the larger of the stab wound, which was 17 mm x 7 mm in dimension with a depth of 10 mm. Prof Dempers confirmed that it would be hard to determine the depth of the wound in the circumstances. The width of the blade measured to the tip had to be taken into account. He said he had to go on the notes of Dr Albertse, which indicated that the stab wounds were superficial. They did not go into the muscles and the bone. The stab wounds were from the front but more to the side where you will find more tissue. There was no reason to believe that the peritoneal cavity was penetrated.

[376] Prof Dempers illustrated that the blade of the knife (Exhibit “2”) goes wider from the tip. He measured the blade across the blade width as 17 mm and the depth of the tract as 26 mm or slightly deeper. He conceded that the depth of the stab wound could be deeper than 10 mm. Prof Dempers indicated in his report that even at 40 mm it was difficult for him to maintain the knife in a horizontal, upright position by grasping the tip of the blade tightly between the thumb and forefinger. The witness said the knife was sharp, but not razor sharp, and pointed out that the human dermis was relatively strong. In a 17 mm wound, there could be some stretching. Adv Botha put it to the witness that the Accused still had a scar of 23 mm. According to Adv Botha the width of the knife, as can be seen in Exhibit “LL1”, was measured as 23 mm. Prof Dempers was comfortable with the measurement to allow for the benefit of the doubt. Prof Dempers said if there was some stretching the blade did not cut into tissue/skin.

[377] Prof Dempers conducted experiments pertaining to the stab wound of the Accused. He used photo evidence and said the depth came to 2.5 cm to 3

cm, depending on the stretching of the skin. Referring to the experiment performed by Prof Dempers with a knife inserted into a piece of pork, Adv Botha said that the knife remained lodged for 2 to 3 seconds. Prof Dempers said he did not shake the pork but held it still. The underlying tissue could not clamp the blade.

[378] The experiment performed by Prof Dempers does not carry a lot of weight because of the uncertainties and the difference between pork skin and human skin.

[379] Prof Dempers testified that the Accused was right-handed, and the fact that the abdominal wound was on the left side meant that it was more likely to be self-inflicted.

[380] During cross-examination Prof Dempers was asked whether the injuries documented are all consistent with self-inflicted injuries. The witness was assuming that there had been a scuffle. He was of the opinion that, looking at the wounds themselves, they were superficial scratches and parallel, which was already suspicious. He looked at the abdomen and the history, then looked at the other injuries of the Accused and the injuries sustained by the other family members. The witness conceded that there were other possibilities and explanations with regard to the classification of the other injuries.

[381] He believed that the scratches on the Accused's arm and chest were more likely to be self-inflicted, and the wound in the abdomen may be too. As for the back and head injuries, he could not say that those were definitely self-inflicted. A scratch meant a sharp-tipped object broke the superficial epidermis. A cut meant something caused penetration of the underlying tissue. A superficial cut was considered to be a scratch. The history is important. If the cuts to the arm or chest were caused by someone else, the

victim had to stand still. The depth and the characteristics of the cuts were not in keeping with an attack. However, he said it is possible that someone stabbed the Accused.

[382] In conclusion the Court finds that there is a striking similarity between the appearance of the wounds of the Accused on his forearm and thorax and textbook photographs of self-inflicted wounds. Prof Dempers corroborated the testimony of Dr Tiemensma. The general criticism against their testimonies is directed at the premise that they are biased witnesses. The Court finds they were both highly professional, outstanding and reliable witnesses. Despite the fact that Dr Perumal advised Defence counsel on self-inflicted injuries and despite his presence in the Court, no expert witnesses were called by the Defence on this vital issue. During argument it was submitted by Defence counsel that Dr Perumal was not qualified to comment in respect of self-inflicted injuries, and therefore he was not called in this regard. No evidence was tendered to gainsay the State's compelling evidence in this regard. If the Court accepts that some of the injuries of the Accused were self-inflicted, the credibility of the Accused is adversely affected to a significant extent.

[383] During his testimony the Accused explained that the attacker was holding the knife in his fist, with the blade downwards and the sharp edge facing away from the attacker. The attacker allegedly inflicted the injuries by flicking his wrist, despite the blade pointing away from the attacker. State counsel confronted the Accused with the appearance of his wounds and said that they matched the textbook version of self-inflicted wounds. They were similar in nature and of similar depth, all horizontal and more or less parallel to each other. The Accused conceded that his wounds did conform to those descriptions but denied that he inflicted harm upon himself. The Accused said that the match between his wounds and self-inflicted wounds was purely fortuitous.

Collection of forensic samples and exhibits

[384] Warrant Officer Hitchcock, with 22 years' service at the time of his testimony, testified that he had covered thousands of crime scenes. He was a trained evidence collector, proficient in the sealing of exhibits and dispatching thereof. He arrived at the crime scene at 10h22 on 27 January 2015; other policemen were already there. No persons who were not part of the investigation were present. Warrant Officer Hitchcock testified that the crime scene at [...] G. Street, [...] Estate was the crime scene where he collected the most blood samples in comparison to other scenes. It had taken the police a period of three (3) weeks to collect all the blood samples at the crime scene. The witness collected approximately 143 exhibits, including blood samples and Touch DNA samples as per Exhibit "K1, Annexure A". Certain swabs were taken by the blood spatter analyst, Captain Joubert, but the witness was present the entire time when the swabs were taken.

[385] Warrant Officer Hitchcock explained the procedure followed by him and demonstrated the use of the evidence collection kit. The witness opened the packet with an instruction kit inside it. Three carbon copy papers in white, pink and green were *inter alia* inside the packet. The evidence collection kit consisted of an exhibit plastic bag approximately 50cm x 20cm, with a pre-labelled unique ID number on it. It also contained two boxes with seals in a sealed paper bag inside the original bag. Two sealed swabs were inside the bag together with six seals (stickers on a piece of paper). The box would be sealed on three sides and all the seal numbers were the same. Each box was issued with a seal number printed on it. Swabs would be submerged in distilled water. After the swab had been put into the box, the exhibit number and a description would be written on the box. A form would also be completed and everything would be sealed in the big plastic evidence bag. A tape would be removed to seal the big evidence bag, and the bag could not be opened if it was stretched on the sides. The bag would be damaged if somebody attempted to open it, so one would know if it was tampered with. All the swabs or samples on the scene were packed as the witness described. The date and time that Warrant Officer Hitchcock collected a specific sample

appeared on the three (3) carbon copy papers inside the collection kit, as well as a description, in his handwriting of the evidence collected, as can be seen in Exhibit “VV”.

[386] Before the commencement of Warrant Officer Hitchcock’s testimony, State counsel indicated that the State wished to amend certain mistakes in respect of the numbers contained in Exhibit “K”, the admissions made by Defence counsel in terms of section 220 of the CPA, pertaining to the collection of material for forensic examinations. Surprisingly, Defence counsel was not prepared for the amendments to be made and effectively was prepared to risk confusion with regard to incorrect admissions. A criminal case is not a game: the correct facts should be presented to the Court by all parties.

[387] Several problems with *inter alia* the marking and sealing of exhibits were pointed out by Defence counsel. Some samples were numbered incorrectly, in comparison with the photographs in Exhibit “A”. For example, a blue T-shirt with possible blood on it, collected at the crime scene, as can be seen in Exhibits “A552” and “A553”, should be Exhibit “124”, not Exhibit “118” or “119”. It was a typing error on the part of the witness. Exhibit numbers for Exhibits “121A and B” and “122A and 122B” had to be swabbed (see Exhibits “A547 – A550” and “VV7 – 8”). The Court is satisfied that the numbering of the exhibits was explained and rectified by Warrant Officer Hitchcock during his testimony. Except for Exhibit “117”, all samples were properly sealed and no evidence of tampering or contamination was presented.

[388] Warrant Officer Hitchcock allegedly collected swabs pertaining to Exhibits “113” – “117”, as can be seen in Exhibits “A539” – “A543” of the washing basin, shower, and shower floor respectively. The witness conceded that there were a number of problems regarding the collection of Exhibit “117”, the swab collected from a corner in the shower in the en-suite bathroom to the first bedroom. The swab consisted of a mixture of DNA, with the DNA profiles

of RUDI and the Accused that could be read into it. The witness conceded that he did not take the swab himself but he was present. He did not take a photograph of the evidence collection kit and sealed bag, as was the case with other exhibits. The form on which the sealed box appears, Exhibit “VV4”, was amended from Exhibits “118” to “117”. The witness said it was possible that he changed the numbers. The correct number appears on the box itself, as can be seen in Exhibit “VV4”. He confirmed that the middle seal of the box did not appear in Exhibit “VV4”. The witness could not explain the reason for that except to say that it could be his mistake. The witness testified that evidence swab kits that were not sealed should not be sent to the laboratory. The reason that exhibits have to be properly sealed is to prevent contamination.

[389] Warrant Officer Lorraine Nel, attached to the Biology Unit of the Forensic Science Laboratory in Plattekloof as a Forensic Analyst, clarified discrepancies in what was sent to her and what she had received. She prepared affidavits in terms of section 212(4)(a), 6(a), 6(b) and 8(a) of the CPA that were handed in as Exhibits “WW1” and “WW2”.

[390] All the exhibits she had received appeared in her affidavits, Exhibits “WW1” and “WW2”. She noted such discrepancies as that the covering minute did not correspond with what she actually received. The evidence bags containing an inventory form and a covering letter were also sent by a LCRC member. She contacted a LCRC member to sort out discrepancies in her case file. She used the actual exhibit and swab guards that had been given to her to prepare her record of exhibits, as noted in pages 27 – 33, Exhibit “WW1”.

[391] Defence counsel referred, for example, to the numbering of Exhibits “121A and B” and “122A and 122B”. However, it was clear from the handwritten notes of Warrant Officer Hitchcock on the evidence box that swab numbers “121A and 121B” were applicable to the head of the axe (see also

Exhibit “VV7”) and swab numbers “122A and 122B” to the handle of the axe (see also Exhibit “VV8”).

[392] With reference to Exhibit “117”, as mentioned in Exhibit “VV4” and paragraph 5.1.57, Exhibit “WW1”, the witness confirmed that the exhibit box was not sealed: it arrived unsealed. She received the document, Exhibit “VV4”, with the number “7” written over the number “8”, with reference to the exhibit number. It was applicable to the swab taken from the corner of the shower floor in the first bedroom. She confirmed that the swab taken of the shower corner tested positive for the possible presence of blood. Lieutenant Colonel Otto testified that unsealed evidence bags will not be accepted at the case management and reception section of the FSL where exhibits are handed in and registered.

[393] Normally, it would be fatal if the exhibit bags and boxes are not sealed, because of the risk of contamination. Warrant Officer Nel testified that in this instance the evidence bag (with seal number PA4002130723) containing the swab box was sealed. The other swab guard in the bag, together with the unsealed swab guard box, was also sealed. Therefore it was unlikely that contamination could have taken place unless it was picked up during the DNA analysis on the same swab.

[394] Warrant Officer Nel did presumptive tests for blood on the exhibits as contained in Exhibit “WW1”. Any sample or exhibit where no test for possible blood could be done was sent straight for DNA examination. The witness conceded that she did not follow certain Standard Operating Procedures (hereinafter referred to as “SOPs”) – for example, by not making a drawing or taking photographs of the exhibit tested. Expiry dates of reagents were also not recorded – for example, the expiry date with regard to Exhibit “117”. The swabs were not available and the results of the presumptive tests could not be verified by the Defence. Warrant Officer Nel testified that the end result of the DNA tests would be reliable with regard to the samples tested for blood.

Because the reliability of the presumptive tests for blood could not be verified, the Court will not take the results of the presumptive tests into account unless it is confirmed by DNA results.

[395] Warrant Officer Hitchcock testified that his investigation diary consisted of his docket, the scene report, the video report, exhibits, sketches and general notes. After exhibits were collected, the witness went to the office and booked the exhibits into the SAP459/2/2015. The LCRC did not make use of SAP13 registers: they used SAP459 for exhibits. The exhibits were kept there until the witness compiled the forensic reports and letters and sent the exhibits off to the Plattekloof Forensic Laboratory. In this instance, Warrant Officer Hitchcock took the exhibits to the Laboratory himself. The witness dealt with his own exhibits, sealed them and resealed them in bigger exhibit bags himself.

[396] The photo album was compiled by him as it appears in Exhibit “A”. The aerial photographs contained in Exhibits “A1 - A6” were taken on another occasion, on 29 January 2015. Photographs “A7 - A226” were taken of the scene without marked places. In photographs “A227 - A586” the places had been marked with cones where he collected exhibits/evidential material. The post-mortem photographs appeared from photograph “A587”.

[397] The State presented the crime scene video taken by Warrant Officer Hitchcock, Exhibit “3”, to show that the scene was not tampered with between the recording of the video and the taking of the photographs.

DNA analysis and the relevance thereof

[398] The significance of DNA evidence depends crucially on other circumstantial evidence; it does not stand in isolation. In the present matter, a few inconsistencies in the numbering of the exhibits and the sealing of one of

the exhibit boxes were pointed out, but the chain of custody was not otherwise disputed. The scientific validity of the DNA results were strenuously disputed by Defence counsel. It was the Defence case that the results had to be ignored, save for results in respect of twenty-three (23) samples. In summary, Defence counsel submitted that the DNA evidence is inadmissible for reasons stated hereunder.

[399] Lieutenant Colonel Sharlene Otto is attached to the SA Police Service as the Chief Forensic Analyst and Reporting Officer at the Biology Unit of the Forensic Science Laboratory**.** She stated her qualifications as contained in paragraph 2 of Exhibit "ZZ1". She has been attached to the Biology Unit of the FSL since November 1993. Since then she has received intensive training in *inter alia* DNA techniques and attended various national and international workshops, seminars and conferences pertaining to statistics, Short Tandem Repeat (STR) and forensics-related practices. She successfully completed both internal and external proficiency tests on a regular basis. In total she has thirty-one (31) years' experience in the biological sciences.

[400] She prepared four reports on the Van Breda murders. The reportswere handed up in evidence as Exhibit "ZZ1 - ZZ4".

[401] Lieutenant Colonel Otto testified that DNA is the abbreviation for a chemical molecule, or the molecule of life. It can be found in all nucleic cells in the body of a human being. The DNA for a specific individual will be the same from hair to toe. Half of each and every person's DNA profile comes from that person's mother and half from his or her father. Each person's DNA is unique and therefore, indicates differences between individuals. STR is an abbreviation for Short Tandem Repeat, a technique used throughout the world. Lieutenant Colonel Otto referred to Appendix B, attached to her affidavits in terms of section 212 of the CPA, Exhibits "ZZ1 – ZZ4", to explain the DNA analysis process.

[402] In all cases, exhibits are received at the laboratory in a sealed condition, then analysis takes place. In this matter preliminary analysis was done by Warrant Officer Lorraine Nel. The DNA process started after the preliminary analysis. Lieutenant Colonel Otto was not involved in the analysis processes. The analysts are all competent and proficient and are specialists, according to the witness. The analysts have a supervisor and everywhere along the way checks and balances are used. They receive a work list and would not know which case they are working on or where the samples come from. The reason for this is that the analysts dealing with the samples work completely objectively and blindly in the sense that they are just following a procedure. At no stage of the process is any fact established. Lieutenant Colonel Otto, as the reporting officer, is the person interpreting and establishing and stating facts. Lieutenant Colonel Otto also does the statistical calculation. No affidavits in terms of section 212 of the CPA were requested from the specialists who dealt with the samples.

[403] In the case of Touch DNA samples, no preliminary process takes place. The polymerase chain reaction (PCR) process is where specific areas in the DNA molecule are targeted to distinguish between individuals. Ten (10) areas are targeted, and each area is biochemically tagged by a fluorescent tag or colour. Data analysis is done with the assistance of software, looking at raw data and profiles. The initial step which brings everything together and is done after the preliminary analysis is sample preparation. The analyst dealing with it attaches to the sample a barcoded sticker that can be traced throughout the entire process.

[404] The witness testified that Defence counsel requested documents about the process. All instruments are serviced and maintained according to the manufacturers. The witness indicated that she had in her possession at court an affidavit in terms of section 213 of the CPA from the service engineer; it was available. The reliability of the instruments was not disputed. Lieutenant

Colonel Otto testified that the laboratory has a strict and stringent quality control system in place. They are guided by international standards, namely ISO 17025, specific for testing and calibration laboratories. They are guided by Standing Operating Procedures (SOPs), handed in by Defence counsel as Exhibit “AAA”. Repeatability is to confirm that the instruments are in perfect working order. Errors do occur, but the quality system enables them to pick it up and apply corrective measures and correct it before affidavit is submitted. In the case of contamination a test will not be used. In terms of ISO 17025, the laboratory and analysts always have to comply with international standards by using positive and negative controls. When the witness gets to the stage of writing an affidavit, it will reflect a true and reliable result.

Basis on which the DNA results were challenged

[405] Defence counsel challenged the competency and proficiency of Lieutenant Colonel Otto and the reliability and functioning of the laboratory according to international standards. Defence counsel did not challenge the reliability of the equipment or machines used or the correctness of specific results, except where specifically pointed out.

[406] In 2001 Defence expert, Dr Antonel Olckers, started DNA Biotec (Pty) Ltd and has served as its CEO since then. Her curriculum vitae was attached to her report dated 06 October 2017, Exhibit “EEE”. Her skills and experience included DNA isolation, DNA quantification via qPCR, electrophoresis, STR analysis, DNA sequencing, as well as the interpretation of DNA sequences, qPCR analyses, STR results and STR-based DNA profiles. She has eighteen (18) years of experience in the interpretation and audit of forensic DNA evidence. Her mandate was to assess the scientific validity of the results reflected in the reports compiled by Lieutenant Colonel Otto and Warrant Officer Nel.

[407] At best it was the Defence case that a sample taken near where MARLI van Breda's body was found presented with foreign allele not belonging to the family. Lieutenant Colonel Otto disagreed with the Defence expert, Dr Olckers, in this regard.

[408] The result of the blood or DNA found in the corner of the shower floor in the first bedroom was also challenged to the effect that it covers two donors and not three donors as testified by Lieutenant Colonel Otto. Lieutenant Colonel Otto conceded that it could be the case that only two donors are covered.

[409] The Defence argued that the results of forty (40) other samples, where less than one (1) ng of input DNA was used in the PCR, should be ignored as they were of no value.

[410] Further, it was the Defence case that the bulk of the DNA results were scientifically invalid because certain Standing Operating Procedures (SOPs) were not complied with.

[411] The Court is satisfied that Lieutenant Colonel Otto's competence was established above any significant doubt. She is a seasoned and qualified member of the FSL with extensive experience. Defence counsel referred to a proficiency test the witness participated in in 2015 (see Exhibits "AAA4 and AAA5"). It was suggested by Defence counsel that the witness failed the test as 120 laboratories found that both male and female DNA profiles were found on the known bloodstains in a sexual assault scenario. Three laboratories found only the male DNA profile, including the laboratory that the witness was attached to. Lieutenant Colonel Otto explained that they found the same profile as the other laboratories. They had done the test in the context of the evidential value and the SOPs' governing their own laboratory; it was not right

or wrong. Since October 2016 they identify all profiles. During cross-examination of Dr Olckers, she elected not to answer the question whether she had information at her disposal on the circumstances in which the test was presented to Lieutenant Colonel Otto.

[412] The witness had been a reporting officer for more than ten years. Lieutenant Colonel Otto testified that her competence was verified by training and mentorship. A reviewer reviewed the work of the witness. She had to do at least one proficiency test a year, national or international. All analysts would also be tested and therefore the whole system would be tested. The results of the laboratory are measured against the company's results and compared with the results of other laboratories.

[413] The functionality and non-accreditation of the FSL in Plattekloof was also challenged by Defence counsel.

[414] Lieutenant Colonel Otto testified that the Profiler Plus kits used in SAPS laboratories are bought from US companies and are in accordance with international standards. Laboratories all over the world make use of them. It must have certain loci (genetic markers) which must be scientifically accepted. The witness testified that FSL now uses the Identifier Plus Kit which identifies 15 loci. It might have a better identification and match probability. In 2015 other countries like Australia and the UK used 16 and more loci. The STR kit was used in 2015 because the Identifier kit was not validated by the FSL at the time. The results would not have been affected if the new kit had been in use, though one might have had an extra allele to differentiate between family members.

[415] Equipment manufacturers have their own guidelines for use. The Pretoria laboratory has to validate the process but the Plattekloof laboratory does a verification as well. There might be slight changes used between

laboratories but it will be within acceptable limits. To each and every amplification a SOP is applicable. Instructions will be incorporated to make it practical for their laboratory. Lieutenant Colonel Otto testified that the user manual for a PCR kit would remain the same, but every laboratory had different platforms. She said they did not work in isolation and compared their profile results with the results in other countries.

[416] Lieutenant Colonel Otto testified that for the 24 years she had been working at the laboratory the SAPS laboratory had not been accredited with SANAS. The only difference between the SAPS laboratory and an accredited laboratory is an audit by SANAS. The SAPS laboratory is audited internally but not by SANAS. It is an international standard to be accredited. Accreditation of the laboratory is not a legal requirement in South Africa. She said there are not many accredited laboratories in South Africa. The FSL follows ISO guidelines. Accreditation is not proof that a laboratory is perfect. Lieutenant Colonel Otto testified that compliance with international standards is more important. A laboratory can be accredited and a month later lose its accreditation. Proficiency testing takes place to prove that the SAPS laboratory is on par with other laboratories. The SAPS laboratory does not operate in isolation.

[417] Adv Combrink questioned the fact that there is no international or national oversight of the work at the SAPS laboratory. The witness did not agree: duplicate tests or retesting of samples can prove it is trustworthy. Some of the processes used by US laboratories are accredited, like the PCR system. She said there is a perception amongst the courts and labroartory's clients that accreditation is the answer to reliability. Lieutenant Colonel Otto testified that by following ISO guidelines the FSL follow the same checks and balances as those followed by an accredited laboratory. In terms of ISO 17025, they always have to comply with international standards by using positive and negative controls. They also have internal checks done by the quality section, which is not part of the laboratory.

[418] In this matter two hundred and sixteen (216) samples were analysed. Lieutenant Colonel Otto testified that they did not struggle to get optimal DNA. Dr Olckers testified that this was a case with more samples than she had ever seen before. The DNA results of the samples analysed appear in her reports, Exhibits "ZZ1" – "ZZ4". Lieutenant Colonel Otto brought the raw data with her to illustrate and explain the results better. The document containing the raw data results was handed in as Exhibit "ZZ5".

DNA results

[419] The reference samples of the Van Breda family are contained in Lieutenant Colonel Otto's first report, Exhibit "ZZ1", dated 15 April 2015:

(i) The reference sample "WC12/0032/2015" (PA4002208787) on page 4 belongs to TERESA. TERESA's profile was obtained as illustrated on page 1, Exhibit "ZZ5". The gender marker is XX, indicating it is the profile of a female person.

(ii) The reference sample "WC12/0033/2015" (PA4002208791) on page 5 belongs to MARTIN. MARTIN's profile was obtained as illustrated on page 2, Exhibit "ZZ5". The gender marker is XY, indicating it is the profile of a male person.

(iii) The reference sample "WC12/0034/2015" (PA4002208786) on page 5 belongs to RUDI. RUDI's profile was obtained as illustrated on page 3, Exhibit "ZZ5". The gender marker is XY, indicating it is the profile of a male person.

(iv) The reference sample "Victim" (PA5002187712) on page 5 belongs to MARLI. MARLI's profile was obtained as illustrated

on page 4, Exhibit "ZZ5". The gender marker is XX, indicating it is the profile of a female person.

(v) The reference sample "Henri van Breda" (PA4002209180) on page 5 belongs to the Accused. The Accused's profile was obtained as illustrated on page 5, Exhibit "ZZ5". The gender marker is XY, indicating it is the profile of a male person.

[420] The results for the single profiles obtained were as follows.

[421] The DNA result of the following samples matches RUDI's reference samples and profile (see paragraph 4.1.1, Exhibit "ZZ1", dated 15 April 2015; paragraph 4.1.1, Exhibit "ZZ2", dated 29 May 2015; paragraph 4.1.1, Exhibit "ZZ3", dated 27 August 2015; and page 3 and paragraph 4.1.1, Exhibit "ZZ4", dated 02 December 2015):

(i) swab "39a - possible blood on knife" on the blade (PA4002125823);

(ii) swab "86 - headboard" and swab "87 - wall" (PA4001946056);

(iii) swab "88 - wall above headrest" and swab "89 - carpet of room 1" (PA4001946052);

(iv) swab "91 - on floor in room" (PA4001946058);

(v) swab "92 - wall" (PA4001946054);

(vi) swab "94 - wall by stairs", where the axe hit the wall (PA4001946055);

(vii) swab "98 - blood spatter" (PA4001949040); swab "99 - blood spatter"; swab "100 - blood spatter" (PA4001949041); swab "107

- blood spatter" (PA4001949032); swab "109 - blood spatter"; swab "110 - blood spatter" (PA4001949036); and swab "111 - blood spatter" (PA4002130718);

(viii) socks "119 - stains 2, 3 – 6, 8, 13, 15 and 16" (PA4001274944);

(ix) shorts "120 - stains 1, 2, 3, 5 – 9, 11 – 16, 18, 19, 21, 25, 28 – 30, 32, 33, 35, 38, 40, 43 – 48, 54, 55 and 75" (PA4001275139);

(x) duvet "138 - stains 4, 5, 6, 9 and 12" (PA4001275138) and "138 - stains D1 – D11, D12(1), D12(2) and D12(3)" (PA5001558351);

(xi) duvet "139 - stains 4 and 6" (PA4001274951) and "139 - stains C1(2), C1(3), C2(2), C2(3), C3(1), C3(2), C4(1) and C4(2)" (PA4002208786);

(xii) swab "85 - blood on door - room 1" (PA4001946053);

(xiii) swab "90 - blood on floor in room" (PA4001946058);

(xiv) swab "33 and 34 - floor in bathroom in room 1" (PA4002125824); and

(xv) axe, swabs "6a, 6c, 6d and 6g" (PA4002208786).

[422] Match probability or the most conservative occurrence for the DNA result of the exhibits is an indication how easy or difficult it is to find another person in the South African population with the same DNA profile. The most conservative occurrence for the DNA result, matching RUDI's profile, from these exhibits that can be calculated is one (1) person in every 70 billion people. It is theoretical, on the calculation found in the national statistics basis.

[423] The DNA result of the following samples matches MARTIN's reference samples and profile (see paragraph 4.1.9, Exhibit "ZZ1", and paragraph 4.1.3, Exhibit "ZZ2"):

(i) shorts "120 - stain 17, 27 31, 37 and 41" (PA4001275139); and

(ii) socks "119 - stain 10" (PA4001274944).

[424] The most conservative occurrence for the DNA result, matching MARTIN's profile, from the exhibits that can be calculated is one (1) person in every 645 billion people. MARTIN was the biological parent of the three children.

[425] The DNA result of the following samples matches TERESA's reference samples and profile (see paragraph 4.1.7, Exhibit "ZZ1", and paragraph 4.1.5, Exhibit "ZZ2"):

(i) the swab "passage top floor - 81" (PA4001946060);

(ii) socks "119 - stain 11" (PA4001274944);

(iii) swab "77 - passage top floor" (PA4001946057); and

(iv) swabs "101 and 102 - blood spatter" (PA4001949037).

[426] The most conservative occurrence for the DNA result, matching TERESA's profile, from these exhibits that can be calculated is one (1) person in every 90 billion people. If her profile is compared with the three profiles of the children, at least one allele is exactly the same, which is what one would expect from the profile of the biological mother.

[427] The DNA result of the following samples matches MARLI's reference samples and profile (see paragraph 4.1.5, Exhibit "ZZ1", and paragraph 4.1.7, Exhibit "ZZ2"):

(i) swabs "blood spatter - 105 and 106" (PA4001949039); and

(ii) swabs "82 and 83 - passage top floor" (PA4001946061) and swab "84" - passage top floor" (PA4001946053).

[428] The most conservative occurrence for the DNA result, matching MARLI's profile, from the exhibits that can be calculated is one (1) person in every 35 billion people.

[429] The DNA result of the following samples matches the reference samples and profile of Henri, the Accused (see paragraph 4.1.3, Exhibit "ZZ1"; paragraphs 4.1.9 and 4.1.11, Exhibit "ZZ2"; and paragraph 4.1.7, Exhibit "ZZ4"):

(i) cigarette "45" (PA6002002527); cigarette butt "46" (PA6002002528); and cigarette butt "47" (PA6002002529);

(ii) socks "119 - stains 14 and 17" (PA4001274944); and

(iii) shorts "120 - stains 53, 62 – 64, 68, 72, 76, 77, 79, 82, 84, 85, 87 and 90" (PA40012755139).

[430] The most conservative occurrence for the DNA result, matching the Accused's profile, from the exhibits that can be calculated is one (1) person in every 261 billion people.

[431] Lieutenant Colonel Otto then referred to the mixture DNA results of the samples.

[432] The DNA results from TERESA, RUDI and the Accused can be read into the mixture DNA result from "Nail scrapings from the Accused's left hand" (PA4001788408) (see page 4 and paragraph 4.1.11, Exhibit "ZZ1", and page 6, Exhibit "ZZ5").

[433] The most conservative occurrence for the mixture DNA result of the "Nail scraping (L) hand (Henri van Breda, PA4001788408)", for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 709 000 people.

[434] The DNA result of the reference sample of the Accused can be read into the mixture DNA result on the swab "blood from the bottom of axe handle" – Exhibit 122B (PA4002126775) (see page 4 and paragraph 4.1.13, Exhibit "ZZ1", and page 7, Exhibit "ZZ5"). There was additional DNA but not enough to reach a result, according to the witness. Lieutenant Colonel Otto testified that she could only include the reference sample of the Accused in the mixture, although there was more DNA. The other DNA belongs to family members, but she could not say to which family member(s) it belongs.

[435] The most conservative occurrence for the mixture DNA result on the swab "blood from the bottom of axe handle" (PA4002126775), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 741 000 people.

[436] The DNA result of the reference sample of TERESA and RUDI can be read into the mixture DNA result on the swab "blood from head of axe" –

Exhibit 121 (PA4002126776) (see page 4 and paragraph 4.1.15, Exhibit "ZZ1", and page 8, Exhibit "ZZ5").

[437] The most conservative occurrence for the mixture DNA result on the swab "blood from head of axe" (PA4002126776), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 5.6 million people.

[438] The DNA result of the reference sample of TERESA, RUDI and MARLI can be read into the mixture DNA result on the swab "Touch DNA on axe on stairs" – Exhibit 44 (PA4002125827) (see page 4 and paragraph 4.1.17, Exhibit "ZZ1", and page 9, Exhibit "ZZ5").

[439] The most conservative occurrence for the mixture DNA result on the swab "Touch DNA on axe on stairs" (PA4002125827), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 240 000 people.

[440] The DNA result of the reference sample of TERESA, RUDI and the Accused can be read into the mixture DNA result on the swab "Corner of floor of shower" – Exhibit 117 (PA4002130723) (see page 4 and paragraph 4.1.19, Exhibit "ZZ1", and page 10, Exhibit "ZZ5").

[441] The most conservative occurrence for the mixture DNA result on the swab "Corner of floor of shower" (PA4002130723), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 429 000 people.

[442] The DNA result of the reference sample of RUDI can be read into the mixture DNA result on the swab "Touch DNA on handle of knife" – Exhibit 39

(PA4002125823) (see page 4 and paragraph 4.1.21, Exhibit “ZZ1” and page 11 of Exhibit “ZZ5”).

[443] The most conservative occurrence for the mixture DNA result on the swab “Touch DNA on handle of knife” (PA4002125823), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 38 million people.

[444] The DNA result of the reference sample of RUDI can be read into the mixture DNA result on the swab “Fingernail swabbing Right” (PAD000878447) taken from MARTIN (see page 4 and paragraph 4.1.23, Exhibit “ZZ1”, and page 12, Exhibit “ZZ5”).

[445] The most conservative occurrence for the mixture DNA result on the swab “Fingernail swabbing Right” (PAD000878447) taken from MARTIN, for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 14 million people.

[446] The DNA result of the reference sample of MARTIN and RUDI can be read into the mixture DNA result on the swab “Blood spatter - 96” (PA4001949034) (see page 4 and paragraph 4.1.25, Exhibit “ZZ1”, and page 13, Exhibit “ZZ5”).

[447] The most conservative occurrence for the mixture DNA result on the swab “Blood spatter - 96” (PA4001949034), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 2 million people.

[448] The DNA result of the reference sample from the Accused can be read into the mixture DNA result on shorts “120 - Stain 23” (PA4001275139) (see page 3 and paragraph 4.1.11, Exhibit “ZZ2”, and page 14, Exhibit “ZZ5”).

[449] The most conservative occurrence for the mixture DNA result on shorts “120 - Stain 23” (PA4001275139), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 5 million people.

[450] Both the DNA results of the reference samples of TERESA and RUDI can be read into the mixture DNA result on shorts “120 - Stain 34” (PA4001275139) see page 3 and paragraph 4.1.13, Exhibit “ZZ2”, and page 15, Exhibit “ZZ5”).

[451] The most conservative occurrence for the mixture DNA result on shorts “120 - Stain 34” (PA4001275139), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 5.6 million people.

[452] The DNA results of the reference samples of TERESA, RUDI and the Accused can be read into the mixture DNA result on shorts “120 - Stain 69” (PA4001275139) (see page 3 and paragraph 4.1.15, Exhibit “ZZ2”, and also page 16, Exhibit “ZZ5”).

[453] The most conservative occurrence for the mixture DNA result on shorts “120 - Stain 69” (PA4001275139), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 709 000 people.

[454] The DNA results of the reference samples of RUDI and MARTIN can be read into the mixture DNA result on duvet cover “139 - stain C1(1)” (PA5001558352) (see page 3 and paragraph 4.1.3, Exhibit “ZZ3”, and also page 17, Exhibit “ZZ5”).

[455] The most conservative occurrence for the mixture DNA result on duvet cover “139 - stain C1(1)” (PA5001558352), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 2 million people.

[456] The DNA results of the reference samples of RUDI and MARTIN can be read into the mixture DNA result on Axe “swab 6f” (PA4001275137) (see page 3 and paragraph 4.1.3, Exhibit “ZZ4”, and also page 18, Exhibit “ZZ5”).

[457] The most conservative occurrence for the mixture DNA result on Axe “swab 6f” (PA4001275137), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 408 000 people.

[458] The DNA results of the reference samples of RUDI and TERESA can be read into the mixture DNA result on Axe “swab 6h” (PA4001275137) (see page 3 and paragraph 4.1.5, Exhibit “ZZ4”, and also page 19, Exhibit “ZZ5”).

[459] The most conservative occurrence for the mixture DNA result on Axe “swab 6h” (PA4001275137), for all possible permutations and/or genotype combinations that can be calculated, is one (1) person in every 5.6 million people.

[460] Adv Combrink handed in Exhibit "AAA10", containing extractions from the results contained in Exhibit "ZZ1", ie the DNA profiles of five reference samples of the Van Breda family and the mixture of all alleles of the DNA profiles of the five family members. The mixture of all alleles of the DNA profile from the reference samples of RUDI and Henri gave the same profile. TERESA contributed fifty per cent to their DNA profile, and the rest would differ. The mixture profiles, looking at the alleles, would be the same whether they were a mixture of the Accused, RUDI and TERESA or TERESA and RUDI, but the gender would differentiate. However, both mixtures would include X:Y, indicating the male allele.

[461] Lieutenant Colonel Otto testified that she included those profiles that she could in respect of a mixture and also looked at the probabilities. She conceded that where there was a mixture profile from the Accused, RUDI and TERESA it could very well have been a mixture from the Accused and RUDI. For example, the DNA of the Accused, RUDI and TERESA found in the shower (Exhibit 117) could only be a DNA mixture of the Accused and RUDI. There was no distinction between the STR profiles of the three members of the family's in respect of the sample found in the shower. This was true for all the mixture samples with regard to the three family members. Lieutenant Colonel Otto explained that she mentioned everything and that their reference samples could be read into the mixture DNA. She only included someone in the mixture result if she looked at the whole profile. For instance, MARLI got a 13 at the D5 allele, so she could not be read into the mixture profile of the sample found in the shower. At the D13 allele the entire family was 12:12 if one looked at the comparison of the different loci.

[462] Defence counsel indicated that it is not in dispute that the Accused's DNA, mixed with that of RUDI, was found in the corner of the shower that they utilised (Exhibit 117). Lieutenant Colonel Otto testified that, because it is a shower, the use of soap and detergents or shower gel is expected. The

sample tested positive for blood. The probabilities are slim that one will be able to get body cells from a person washing himself. Body cells can be excluded because of the soap, shower gel and cleaning products used in a shower. Blood is more resistant to normal detergents. The Accused offered an explanation for the fact that RUDI's and his own DNA was found in the shower, namely that they occasionally used to shave in the shower. Later the Accused added that shaving in the shower was a regular occurrence and that his father also shaved in the shower. The Accused said that if the DNA in the shower was not blood then it might have been there as a result of them touching that part of the shower.

[463] Dr Olckers dealt with the number of STR loci used in DNA profiling in paragraph 3.5 of her report, Exhibit "EEE". The FSL used the Profiler Plus Kit to generate DNA profiles in this case. The test provides for a comparison of alleles at nine (9) STR loci at a time when many countries had already been using tests comparing the alleles at fifteen (15) or more STR loci. The manufacturer discontinued the Profiler Plus Kit in 2016.

[464] Dr Olckers illustrated in paragraph 3.5.3 the problematic nature of using only 9 STR loci in DNA profiles. The D13 locus in the Van Breda family was uninformative as the entire family had the same homozygous (two copies of the same allele) genotype at this locus, namely 12:12. The FSL was left with only 8 STR loci to distinguish between family members. The D5 locus was also not fully informative in respect of this family, with three members homozygous (TERESA, RUDI and the Accused) and two (MARTIN and MARLI) being heterozygous (two different alleles) at this locus (see Exhibit "AAA10" as an example where one would be unable to distinguish between family members in a profile). The DNA profile of TERESA could not be distinguished from the mixture of RUDI and the Accused at the remaining 7 loci. The DNA profile of TERESA could be distinguished from the mixture of RUDI and MARLI and MARLI and the Accused. The witness stated in paragraph 3.5.4 of her report that the FSL could not determine whether

certain samples reported by Lieutenant Colonel Otto as mixtures contained the DNA profiles of three individuals (TERESA, RUDI and the Accused), or whether the samples contained a mixture of the DNA profiles of only two persons (RUDI and the Accused). Nine (9) loci were not enough to distinguish between the family members or only two persons; 15 loci might have been enough to make the distinction.

[465] Dr Olckers dealt with the interpretation and reporting of certain mixtures in paragraph 3.6 of her report, Exhibit "EEE". According to Dr Olckers it appears that Lieutenant Colonel Otto took only the qualitative aspects of the DNA profiles (ie, the presence of alleles) into account when she reported her findings pertaining to the following DNA mixture profiles:

(i) nail scrapings, left hand of the Accused;
(ii) corner of the shower floor; and
(iii) shorts of the Accused, stain "120 - 69".

[466] Dr Olckers testified that Lieutenant Colonel Otto's report could have left the impression that the DNA of TERESA, RUDI and the Accused was present in the aforementioned samples. However, during cross-examination Lieutenant Colonel Otto confirmed that each of these samples could with equal possibility have been a mixture containing the profiles of only RUDI and the Accused. According to Dr Olckers, if one takes only the qualitative aspects of the DNA profiles into account; one could not distinguish between two or three family members' qualitative profiles. Taking all the data, qualitative and quantitative data, into account, one alternative could be eliminated.

[467] It is more probable that the three aforementioned samples contained mixtures of only male DNA, as stated on the sample status reports, belonging to RUDI and the Accused. In all three samples, the female component was calculated to be in the negative range; the male DNA concentration was reported as being more than the total human DNA concentration. The

Quantifier DNA Quantification Kit measures how many human DNA and male components are present. To get the female component, one must take the human component and subtract the male component from it (see Annexure AO3, Exhibit “EEE”). Therefore, it was only when the quantitative data were also taken into account that a female contributor to the three aforementioned mixture samples could be excluded (see paragraph 3.6.5, Exhibit “EEE”). Only RUDI and the Accused’s DNA could be read into the three mixture samples. Dr Olckers confirmed that she could say with certainty that only male DNA was found in the corner of the shower.

[468] State counsel questioned the fact that the witness used two of the 40 samples, that she said should not be used for further analysis, to make calculations to determine the amount of male and female DNA in the samples. The witness herself made calculations based on these allegedly flawed results (see Annexure AO3, Exhibit “EEE”). Dr Olckers was confronted with the fact that she used the same data to say that the Court could just read two profiles into the sample and not three. Dr Olckers said she took the document that Lieutenant Colonel Otto based her opinion on to show how wrong Lieutenant Colonel Otto’s conclusion was.

[469] The Court accepts that Lieutenant Colonel Otto included all the profiles that could be read into a mixture sample. It cannot be said that she was dishonest in this regard; she conceded the qualification immediately. However, it can be misleading if the result is not qualified, by stating all relevant information affecting the interpretation of results. Forensic analysts should be mindful of clouding the interpretation of ambiguous results.

[470] Dr Olckers listed non-compliances with the process followed by the FSL. Lieutenant Colonel Otto said that if a non-conformance had been registered and corrective action applied and the sample was retested there is no reason why the final result cannot be used. The witness could not recall whether she had dealt with an instance of non-conformance in this matter.

The FSL analysed 216 samples. There might have been non-conformance, but when the reports were sent out they had clear results.

[471] The 1997 certificate received by Lieutenant Colonel Otto had no date and could not be backdated. The ISO guide regulating the issue of certificates was dated 2005 (see Exhibit “AAA2”, read with Exhibit “AAA3”). Dr Olckers said the issue with the certificate was the absence of the date: the ISO guide stated that the certificate had to be dated. If the certificate had been issued prior to the ISO guide’s coming into operation in 2005, Dr Olckers accepted that the certificate could not be backdated.

[472] The second non-compliance was the proficiency test which was referred to as Lieutenant Colonel Otto’s proficiency test (see Exhibit “AAA4” and Exhibit “AAA5”). Dr Olckers said that on the basis of that test Lieutenant Colonel Otto was not proficient. She confirmed that she based her opinion merely on the answer given regarding Item 3 of the test. Dr Olckers said that the FSL did report a result, she only did not agree with Item 3 of the FSL results. Lieutenant Colonel Otto testified that the test was applicable to a rape case, so evidentiary value played a role. It would be prudent to report on a female profile in case of multiple victims in a rape case. The Court dealt with Lieutenant Colonel Otto’s proficiency earlier on in this judgment.

[473] Dr Olckers testified that the proficiency of six (6) analysts who worked on this case, including Lieutenant Colonel Otto, was based on that test referred to in Exhibit “AAA4” and “AAA5”. Therefore they were not regarded as proficient by Dr Olckers. Lieutenant Colonel Otto testified that the analysts who dealt with this matter are all competent and proficient and are specialists. It was never put to the State witnesses that the other analysts were not proficient. Dr Olckers testified that the proficiency issue of the other analysts, was indicated to Defence counsel. She did not know why they did not raise it. Once again, she based her opinion merely on the answer given regarding Item 3 of the test.

[474] Another alleged instance of non-conformation was that an alphanumeric signature did not appear on the relevant documents as required (see Exhibit “AAA6”). Dr Olckers conceded that there was an alphanumeric number on the document and that the letters “KS” were indicated as the signature. The witness said she could not see the signature initially but accepted that there was such a number and signature on the documents.

[475] Regarding the absence of a seal in the middle of the box containing swab guard 117 (Corner floor of the shower – see Exhibit “AAA6”), Adv Galloway pointed out that if the box was not sealed it had been put together with another box in a sealed evidence bag, with the other box sealed. Dr Olckers conceded that she did not have evidence or information to contradict what the State witnesses testified to in this regard. In light of the concession regarding the result, no evidence of contamination exists.

[476] Lieutenant Colonel Otto testified that the SOPs put control measures and check measures in place, ie quality control measures. So, if the FSL get a result, they can accept it because the sample moves through the process and passes through all other control measures. Lieutenant Colonel Otto will be able to determine that the SOPs were not followed, when there is a failure in negative or positive control, samples have been switched or in the case of contamination of the samples.

[477] There is also a database for the analysts called the personnel elimination database. It includes all analysts and everybody entering the laboratory – for example, visitors and cleaners. Should a person not wear gloves, that person’s profile will be picked up. If there was a breach of the SOPs, it depends on the seriousness of the breach. If the pixels, for example, are not correct but the data analysis is still perfect, one would nevertheless have a result.

[478] According to Dr Olckers, quality assurance and scientific validity of results are achieved through the implementation of the following interdependent systems (see Exhibit “EEE”):

(i) the validation of the processes used;

(ii) the use of standard operating procedures (SOPs);

(iii) the competence and proficiency of analysts; and

(iv) the accreditation process providing an external and independent audit as well as oversight.

[479] Dr Olckers pointed out that certain relevant SOPs were not followed during the course of the analysis of various samples and that the results were therefore scientifically invalid. The SOPs are part of the quality manual which is like a user manual. The SAPS laboratory follows ISO 17025, ie the international standard for calibration. All the SOPs govern the work at the laboratory and are made specific for the SAPS laboratory. Lieutenant Colonel Otto testified that if an analyst does not comply with the SOPs no result, or an unusable result, will be obtained.

[480] In this matter two hundred and sixteen (216) samples were analysed. The FSL did not struggle to get optimal DNA. Furthermore, Lieutenant Colonel Otto testified that nothing had gone wrong with the 216 samples of this case as the analyses were done in isolation or separately. In terms of the SOPs samples from a case should be separated with samples from other cases and should not follow each other on work lists. Dr Olckers testified that one hundred and sixteen (116) samples in this case had been done together with other samples from the same case on one work list. In other words, they followed each other on work lists (see Exhibit “AAA9”).

[481] Lieutenant Colonel Otto testified that isolation had been done as the tubes were not open and they were opened one at a time. Contamination could not have occurred. The purpose of the SOPs stated in Exhibit “AAA9” was to prevent contamination, and the SOPs were in place to get a reliable result. No contamination from any analyst was picked up. Although the SOPs were good laboratory practice that had to prevail, not following a SOP did not invalidate a sample. At the end of the day, the SOPs served as guidelines for a good reason but was not embodied in legislation or legal rules, nor was it inflexible. It is like a user manual. During cross-examination of Lieutenant Colonel Otto, Defence counsel never disputed the fact that no cross-contamination took place. No requests for the actual samples or the DNA extractions were made by the Defence. The samples and extractions are still available for testing.

[482] Dr Olckers confirmed that there were other samples in certain lanes between the samples from the current case. The work lists were created by the Star Lab program written to comply with the ISO guide, ie that every second lane had to be used for a specific case. Despite the logistical challenges posed by so many samples that had to be analysed within a reasonable time, one could not compromise the process. The last samples were done in December 2016. The samples in this case were done together with other samples from other cases.

[483] Lieutenant Colonel Otto testified that it was possible that some two samples of the 216 samples would end up on the same shortlist. The samples contained the DNA of five family members. The tubes were not open and there were spaces between them, therefore she disagreed that cross-contamination could have taken place and that the results should be invalidated. The samples were still available for retesting on different batches, but no request had been made by anybody to retest the samples.

[484] Dr Olckers testified that in paragraph 2.5 batch 852 of Exhibit "AAA9", Exhibit 119 stains 1, 2, 3, 5, 6, 8 and 19 were identified as RUDI's. The socks were included in the same batch. So, a sample containing no DNA could be cross-contaminated as to contain DNA. If the profiles of other samples or other cases were different, one would pick up cross-contamination. One could not prove contamination if the profiles were identical.

[485] Dr Olckers referred to an example where possible contamination could have occurred. On page 4/4 of Exhibit "AAA9", batch 1188, the sample shorts stain 75 followed the sample shorts stain 69 on lane 15 and 16. Stain 69 was a mix of the Accused and RUDI and stain 75 was RUDI. The electropherogram (EPG) reported 16:17:18 at the D3 locus. Lieutenant Colonel Otto did not look at the quantitative data; she reported 16:18 and said there appeared to be stutter peaks. The genotype of RUDI was 16:18 and that of the Accused 17:18. The 17th allele was not labelled, so Lieutenant Colonel Otto excluded the profile of the Accused. There was a low-level picture of the Accused too at this locus. The stochastic range effects were present. Dr Olckers could not say that contamination had indeed taken place but said it might have been low-level contamination.

[486] Dr Olckers conceded that the FSL did not mix up reference samples with the crime scene samples or samples of a suspect. Dr Olckers said the laboratory still operated in contravention of the SOPs in this regard. The samples should be separated with samples of other cases to prevent contamination. She could not point out an instance where actual contamination did take place.

[487] Dr Olckers testified that forty (40) samples with less than one nanogram (1 ng) of input DNA that had been analysed were not in accordance to the SOPs (see Exhibits "AAA7" and "AAA7a"). SOP BIO0017P determines

that the amount of DNA to be amplified using the AmpFLSTR Profiler Plus PCR Amplification Kit should be between one and two point five nanograms (1 – 2.5 ng) unless the sample is highly degraded. If the DNA amount is too small and below the threshold, it is not always true that there would be no result. It could cause what is called stochastic effects and it meant that the DNA result might no longer hold true.

[488] The affected results are those of:

(i) the reference sample of MARTIN (blood);

(ii) socks “119” – stains 2, 3, 5, 6 and 8 (blood from RUDI);

(iii) shorts “120” – stains 1, 3, 5, 6, 9, 11, 14, 15, 19, 23, 25, 29, 31, 37, 38, 40, 45, 46, 47, 53, 54, 55, 68, 69, 72, 75, 82 and 84 (blood from RUDI, MARTIN and the Accused; TERESA was excluded by Dr Olckers);

(iv) nail scrapings Left hand – Accused (epithelial cells: mixture of RUDI and the Accused; TERESA was excluded by Dr Olckers);

(v) handle of the knife (epithelial cells: mixture with RUDI’s profile);

(vi) swab “96” (blood on the wall in the passage: mixture of RUDI and MARTIN);

(vii) duvet “139” – C1(3), C2(3) and C4(2) (RUDI’s DNA).

[489] Dr Olckers said that the forensic evidence should be ignored when the input DNA is below the threshold and less than 1 ng for the purposes of crime detection. She said it was debatable whether such an approach would hamper the detection of crime. Asked whether she was not proposing an unrealistic standard for the 21st century, the witness conceded that it was a stringent test

but said it was not proposed by her but by the ISO guide. One could not look only at the end result but also at the process preceding the result and conclusion. When asked why science should be ignored if it leads to a result with some degree of certainty, Dr Olckers testified that she could only stand for what is in the scientific text. She also criticised the seven-point fingerprint system although she conceded that she is not a fingerprint expert.

[490] State counsel pointed out that the FSL is a forensic laboratory, not a research laboratory with perfect samples. There are not always optimal samples at a crime scene. The Crime Index stated that 0.001 ng per microlitre could be used. Dr Olckers conceded that crime samples were more challenging and said 0.02 ng could be used. Furthermore, State counsel put it to the witness that Lieutenant Colonel Otto testified that they had no problem finding DNA in the samples. Dr Olckers responded that the answer found was not necessarily valid; science worked with a standard. However, she could not say the results were wrong or false. Importantly, Dr Olckers conceded that one could not get different profiles even if less DNA was used. The results were merely technically invalid.

[491] The Court noted that the user's manual for the PCR Amplification Kit states that the kit components have been used successfully to type samples containing less than 1 ng of DNA. Individual laboratories may find it useful to determine an appropriate minimum peak height threshold based on their own results using low amounts of input DNA.

[492] Lieutenant Colonel Otto testified that their cut-off point is 0.05 ng per ml, as stated on page 1, paragraph 1(b)(ii), of the SOP manual, Exhibit "AAA7". The PCR needs a little bit of DNA. The FSL obtained good results in this case and could still accept the samples. It might not be the optimum situation, but the amount of DNA was sufficient. The FSL did not struggle to get full DNA profiles. The results were of excellent quality and the lesser amounts did not change the validity of the results.

[493] During cross-examination of Lieutenant Colonel Otto, Adv Combrink indicated that it was the Defence case that the samples should be ignored. Lieutenant Colonel Otto disagreed with the statement and testified that the prerequisites for the analysis of DNA were set out in the SOPs but stressed that the FSL dealt with forensic samples and not clear blood. They could not ignore samples with a DNA input below 0.05 ng. The Amplification PCR system could deal with any amount of DNA, and as long as the other processes complied with the standards, they could do an interpretation. The reason for a cut-off point for the DNA concentration was that one could get an allele fallout (ie, start losing alleles) if the concentration were below the recommended range for input DNA. It could be dangerous to work with less than the recommended range of input DNA, but that does not mean that the result would be invalid.

[494] The amount of DNA was more relevant in old techniques used, not in the PCR system. The PCR system prefers a lesser amount of input DNA. The 40 samples had been loaded with less than 1 ng, but the results were valid and reliable. One should look at the peak heights rather than the cut-off values. Should the DNA be degraded to an extent, there would be no result. Lieutenant Colonel Otto testified that quality rather than quantity was important, regarding the issue of input DNA concentration. The FSL definitely found sufficient alleles to have made a reliable and valid profile.

[495] In respect of paragraph 2, Exhibit “AAA7”, Lieutenant Colonel Otto testified that she thought there were other samples apart from the 40 samples which had more than 1 ng of input DNA pertaining to those specific exhibits. For example, there was a blood sample and a Touch DNA sample pertaining to the handle of the knife. Defence counsel indicated that it was not disputing that less than 1 ng of DNA could be used to obtain a DNA result: getting a result was not important but following the SOPs was.

[496] According to Dr Olckers the analysis of the printed electropherogram (EPG) data indicated that foreign unexplained peaks were present in three of the samples that could not be associated with members of the Van Breda family or that could be identified as obvious artefacts (see Exhibits “AAA11”, “AAA12” and “AAA13”). Exhibit “AAA11” deals with the profile for the grey duvet, Exhibit “138”, stain 4. Exhibit “AAA12” deals with the analysis of MARTIN’s fingernail. Lieutenant Colonel Otto testified that if the peak was an allele it was an allele of MARTIN’s fingernails. She included RUDI only even though the sample was of MARTIN’s nails. Lieutenant Colonel Otto said the FSL were not allowed to interpret a partial profile; only a full profile with 10 markers would do. The sample in Exhibit “AAA13” was taken from a wooden bench on the top floor.

[497] Dr Olckers testified that it was critical that she, Dr Olckers, did not say that she found foreign alleles, only foreign peaks. State counsel questioned the purpose of mentioning the foreign peaks if it was not alleles. Dr Olckers responded that the foreign peaks present in the profiles were not mentioned in Lieutenant Colonel Otto’s report ie, the foreign peak at the position of the 22 allele at the FGA locus. Dr Olckers said there could be a low-level mixture present in the samples. She testified that she could not be sure what it was; the possibility was there of its being an allele. As to what the consequence of these foreign peaks were to this case, Dr Olckers merely reiterated that a peak could be a low-level allele but added that she could not say that it was indeed an allele. Adv Galloway put it to the witness that that was the very reason why Lieutenant Colonel Otto said she could not comment on the peaks. Dr Olckers testified that she agreed with Lieutenant Colonel Otto: a peak could be an allele only if it was high enough to be scored by the system. However, it was highly relevant that there was something that could not be explained. Any uncertainty attached to a result should be reported.

[498] Dr Olckers used low- resolution black-and-white copies of the EPGs and not coloured copies as had been requested. She used a ruler to check the results. The witness conceded that the resolution of colour copies was much better but said she could not get it. She also conceded that the resolution of the black-and-white copies was not so good and that it was very difficult to work from them. She had to put the copies over a light box and used a ruler to decide what it was. Adv Galloway confronted the witness, accusing her of manipulating unclear data. Dr Olckers denied the statement and said she stated the uncertainty of the measurements made by her. State counsel put it to Dr Olckers that the peak, with reference to the duvet belonging to the Accused, was not labelled by the gene mapper and that the system could not tell whether it was an allele but that the witness was willing to make a call with less assistance. Dr Olckers responded that it was definitely a foreign peak. The foreign peak could not be explained. Neither the witness nor Lieutenant Colonel Otto could state what it was.

[499] To summarise, Lieutenant Colonel Otto conceded that the foreign peaks pertaining to Exhibits “AAA11” – “AAA13” could have been a stutter or allele. A stutter is an acceptable artefact that they get during the process. It is an enzyme-related artefact. Dr Olckers agreed but said that an analyst could interfere with the gene mapper. In line with the literature, one had to be very careful before making a call or interpreting the peaks (see Exhibit “EEE6”). Dr Olckers agreed that one had to be as sure as one could. She confirmed that she was not saying that she read a full profile into the peak; she could not say that it was indeed a profile. She made an inconclusive and neutral statement. She brought it up because that was how the scientific processes worked. One had to report everything and the uncertainty of measurements should be addressed. Dr Olckers insisted that the interpretation had an alternative explanation that was not reported even though it was unsafe to do so.

[500] Even if foreign peaks were found at the crime scene, it is not necessarily surprising. The Van Breda family probably received guests from time to time and had domestic workers on the premises. The Accused testified that he did not hurt or wound the attacker. Lieutenant Colonel Otto also explained the Locard principle, namely that every touch leaves a trace. She testified that a person wearing full PPE (Personal Protective Equipment) like gloves and a balaclava would not leave a trace on the crime scene. The crime scene may leave a trace on the person, but the person would not leave a trace. Therefore, the presence of possible peaks is of no great significance.

[501] Laundry door swab “63” was tested as an additional sample, according to Lieutenant Colonel Otto. The sample tested positive for blood at the preliminary level, but no DNA could be found. The result could have been a false positive testing for blood; it could have been tomato sauce, for example, or it could have been blood from meat. Lieutenant Colonel Otto testified that if one can extract DNA is the blood must be human blood: one is able to pick up only human DNA through the FSL’s processes. Dr Olckers could not dispute that swab 63, the droplet on the laundry door, did not contain human DNA, but that it could be animal blood.

[502] Lieutenant Colonel Otto confirmed that hair DNA analysis was done as Lieutenant Colonel Stewart testified but that not enough DNA could be obtained from the hair.

[503] During cross-examination of Dr Olckers, Adv Galloway referred to an article published in 2013, with the witness as co-author, on the Evidential Value of DNA Evidence and Training. The witness conceded that the evidential value of DNA evidence is important. State counsel wanted to know why Lieutenant Colonel Otto was taken to task during cross-examination about which samples were made available for analysis. If the context or the evidential value was important, why was she taken to task for applying the

principle to decide which samples to analyse? Dr Olckers responded that she did say the evidential value was important during the preparation of the case. She testified that she did not make the strategy but only advised counsel.

[504] Defence counsel also challenged the functionality of the FSL by referring to the SOPs pertaining to Personal Protective Equipment (PPE) worn by personnel of the laboratory. The objective of PPE is to prevent contamination of exhibits. Exhibit “AAA8”, including a photograph of a duvet, Exhibit “138”, was used by Defence counsel to show that the process was in contravention of the SOPs. Adv Combrink pointed out that one of the personnel in one of the photographs was not wearing foot covers. Lieutenant Colonel Otto said evidence recovery (ER) personnel had to follow the SOPs but the SOPs did not make provision for the VIC section. It was not Warrant Officer Nel or Captain Joubert in the photograph. She did not know who the person was; it might be the person taking photographs. Only analysts and persons entering the laboratory had to wear PPE when handling the exhibits and evidence. The photographs did not give a complete picture of the circumstances under which the photographs were taken. Lieutenant Colonel Otto said there was no contamination, no DNA of the personnel could be picked up.

[505] During the Defence case Dr Olckers was questioned about the extent to which a person without proper footwear compromises the veracity of the result. She could not comment on the likelihood of such a person’s affecting the DNA result or the finding of the FSL. Defence counsel then made the concession that Exhibit “AAA8” was only a sideshow and indicated that the Defence was not relying on the photographs. Defence counsel is entitled to challenge the State case but has to do so within reasonable limits. Defence counsel should refrain from employing “sideshows” merely used to cloud the issues; it is not in the interest of justice to do so.

[506] In summary, Dr Olckers testified that if the SOPs were not followed the results were scientifically invalid in terms of both the FSL and the ISO guide standards. The results were wrong and cannot be relied upon.

[507] Dr Olckers identified the twenty-three (23) samples that she considered to be scientifically valid. Exhibit “EEE12” was handed in by Defence counsel as the list of 23 samples considered to be valid. The witness indicated the following samples as being scientifically valid:

(i) reference sample of TERESA;

(ii) reference sample of RUDI;

(iii) cigarette butts 45, 46 and 47 (Accused’s DNA);

(iv) the duvet cover - 139 belonging to RUDI; samples C1 and (2) – C2(1) – RUDI’s DNA; C2(2) – RUDI’s DNA; C3(1) and C3(2) – RUDI’s DNA; C4(1) – RUDI’s DNA; and C1(1) – RUDI and MARTIN’s DNA;

(The abovementioned samples were mentioned in Lieutenant Colonel Otto’s affidavits dated 15 April 2015 and 27 August 2015.)

(v) the axe swabs 6(a), 6(c), 6(d) and 6(g) – RUDI’s DNA; 6(h) – TERESA and RUDI’s DNA; and 6(f) – RUDI and MARTIN’s DNA;

(vi) shorts, Exhibit “120” – stains 85; 87 and 90 (the Accused’s DNA);

(The abovementioned samples were mentioned in Lieutenant Colonel Otto's affidavit dated 02 December 2015.)

(vii) swab WC12/0033/2015 – Fingernail swabbing Right hand of MARTIN: (PA00878447), sample ID C15020421CE (RUDI's DNA could be read into the sample); and

(The abovementioned sample was mentioned in Lieutenant Colonel Otto's affidavit dated 15 April 2015.)

(viii) shorts, Exhibit "120" – stain 48 (RUDI's DNA).

(The abovementioned sample was mentioned in Lieutenant Colonel Otto's affidavit dated 29 May 2015.)

[508] Dr Olckers conceded that she had never done a proficiency or efficiency test, internal, external or international. So, she was not tested in respect of aspects involved in the current case.

[509] Dr Olckers was not an impressive witness. She had to be asked continuously to answer questions more pertinently. She was reluctant to make concessions where it was appropriate to do so and insisted on a formalistic, academic approach. Dr Olckers tended to give vague answers without answering questions posed to her, properly and directly. At the end of the day the accuracy of results is all that matters. Dr Olckers conceded that she had no experience in a forensic laboratory. The witness had only an academic background in a laboratory and ran courses.

[510] Dr Olckers stated that she had been invited to testify in the forensic science field and to evaluate scientific forensic evidence or assist Defence counsel during cross-examination in a few criminal matters (see paragraphs 18.1 and 18.2, Exhibit "EEE, Annexure AO1"). In S v Orrie, the judgement delivered on 14 October 2004, similar to the current matter, she had requested "voluminous" files of documents regarding the entire paper trail, the results and the chain of evidence, which resulted in 11 laboratory personnel testifying with regard to the process over 10 court days. The criticism levelled by the witness was that the FSL culture was such that the Court could not rely on the results. Similar criticism against the process of the laboratory was levelled in the current case. It resulted in the witness's concluding only that the "culture of the laboratory could not be relied upon". In the Orrie matter the State expert conceded a few instances of non-compliance but stated that the accuracy of the results was not affected. No evidence to the contrary was presented. The Court declined to accept Dr Olckers's challenge in the Orrie matter. On page 16 of the judgement the Court said her criticism was formalistic in nature and did not touch on the accuracy of the results. Dr Olckers said the same issues regarding the process were applicable, eg samples that followed each other and forms that were not signed. The Court in the Orrie matter regarded the issues as mere administrative errors.

[511] It was put to Dr Olckers that the defence requested documents from the FSL in respect of the paper trail and SOPs against which the processes of the FSL were tested. The witness confirmed that the paper trail and SOPs allowed her to verify certain aspects of the DNA testing. Dr Olckers testified that she requested SOPs in previous cases, but Adv Galloway referred her to the judgment in a previous case, S v Rapagadie, Case 33/2010, an appeal judgement delivered on 24 February 2012, in which it was questioned that she only asked for paper trails and not the SOPs. It was only after the judgement that she had asked for SOPs. State counsel put it to the witness that she had questioned Lieutenant Colonel Otto's results in that case without establishing

the relevant SOPs. Dr Olckers conceded that she had possibly not received the SOPs in that matter. She explained that as time progressed more documents and discovery were requested because of the development of science. She has learnt that ISO 17025 was not enough and she had to look at the standards of the laboratory too. Dr Olckers was criticised by the Court in S v Rapagadie (2010 case). On page 8 of the judgement her lack of practical experience and of statistical knowledge was criticised. In the present matter Adv Galloway pointed out that Dr Olckers still has very little practical experience. Dr Olckers said she trained other scientists how to do the analysis but she once again conceded that she had no experience in a forensic laboratory.

[512] Upon a request for all the samples from Defence counsel in September 2016, approximately 3000 pages of forensic evidence including SOPs were handed to them by SAPS in the current matter. It was an umbrella request. Lieutenant Colonel Otto reported on the first two affidavits and furnished the Defence counsel with the affidavits, the paper trail, preliminary notes, tests, all the raw data (negative and positive controls) and records. The FSL received an additional request for the SOPs. Thereafter the FSL also received a third and fourth request as above in respect of the third and fourth affidavits. No request for the actual samples and DNA extractions were made. (The samples and extractions are still available.) It is an international guideline to keep the samples and DNA extractions.

[513] Dr Olckers compiled her final report, Exhibit “EEE”, only after Lieutenant Colonel Otto testified. Dr Olckers said a summary report regarding aspects not complying with SOPs was sent to Defence counsel prior to her report, Exhibit “EEE”, dated 06 October 2017, and before she heard the testimony of State witnesses. It was not intended for the court. The report handed in as evidence was compiled after that. She initially created a document to assist Defence counsel with their cross-examination and then Lieutenant Colonel Otto testified and explained certain aspects. These

aspects were not included in her initial report. Dr Olckers confirmed that the report referred to Lieutenant Colonel Otto's testimony but said that the opinion and findings contained in her initial report had not changed.

[514] The witness confirmed that she asked for a paper trail of samples Lieutenant Colonel Otto reported on in her four reports. She did not ask for the paper trail of the samples not reported on but that had been submitted for analysis. The witness was tasked to verify whether samples reported on were valid. The Defence asked for documentation in respect of 151 samples that the FSL wanted the Court to take notice of.

[515] Of great importance is the following: even though the Defence team had access to the DNA samples taken at the crime scene, they opted not to retest them. The witness advised counsel in this regard. She did not know why they did not request retesting. Dr Olckers said retesting the samples was not part of her mandate. Although the Defence does not have to prove anything, it would have been the simplest of exercises to retest a few random samples to test the validity of the results effectively.

[516] It is also true that Defence counsel is entitled to test the State's case but there should be a limit to fishing expeditions with sideshows. In this matter the accuracy of the results was not shown to be incorrect. Dr Olckers's role and evidence amounted to an administrative audit of the processes involved in the DNA analysis. Dr Olckers testified that the results of the samples mentioned above were scientifically invalid, in other words technically invalid, because SOPs were not followed strictly. She could not categorically state that the results were inaccurate. The Court is mindful of the distinction between the judicial and the scientific measure of proof. The scientific measure of proof would be the ascertainment of scientific certainty, whereas the judicial measure of proof would be the assessment of probability. Speculation and possibilities cannot distract from the evidential value of the results reported on in the absence of proof of the inaccuracy of those results.

[517] Defence counsel submitted that it is important to distinguish between evidence that merely places the Accused at the scene and evidence that identifies him as the attacker of his family. Defence counsel argued that it is equally important to have regard to what the State's forensic investigation did not yield. Furthermore, it was argued that Captain Joubert's evidence would be meaningless without the DNA results.

[518] In the Court's view, it cannot be argued that the bloodstain pattern analysis done by Captain Joubert would be meaningless without the DNA results. Defence counsel made the concession during cross-examination of Captain Joubert that the chance that the stains on the Accused's clothing are not blood where a DNA result was obtained is so slim that it can be disregarded. The presence or absence of blood or stains on the clothing and body of the Accused, irrespective of whom it emanated from, the casting off of bloodstains against the wall above the staircase, and the presence or absence of a drip trail are all important factors to consider.

The relevance of the bloodstain patterns and the DNA results

[519] Captain Joubert attended the crime scene for the detection and identification of possible blood and bloodstain patterns at 14h00 on 27 January 2015. During 27 – 30 January 2015 he marked the identified bloodstain patterns at the crime scene and documented the stains and patterns by means of photographs and sketches with measurements. He asked Warrant Officer Hitchcock to document the identified bloodstains and patterns and to collect samples of the identified bloodstains. Captain Joubert made certain assumptions when compiling his report, Exhibit "DDD1", including the following:

(i) all reddish/brown fluid and staining at the scene had the appearance, behaviour and context consistent with blood; and

(ii) all the bloodstains were deposited contemporaneously with (occurred at the same time as) the events surrounding the incident.

[520] Some of Captain Joubert's relevant interpretations regarding the stains identified include the following:

(1) Randomly distributed blood drops on the carpet in front of the staircase leading to the bedrooms were identified. They were probably created by blood dripping from the first floor onto the carpet.

(2) Spatter on the kitchen door, an elliptical stain – it was not possible to find the deposition mechanism responsible for the spatter. No DNA could be obtained from that sample.

(3) A random blood spatter stain on TERESA van Breda's right leg. Another blood spatter on the buttocks of TERESA, circular in shape, dripping from a moving object in this area.

(4) Spatter stain on the front aspect of the cabinet in the passage. It was classified as an impact spatter pattern, probably as a result of force applied to a blood source.

(5) Non-spatter on the front of the cabinet in the passage on the top landing. It could be described as irregular in shape and with no recognisable swipe pattern. It was probably created between a bloodstained object and the surface. MARLI was the donor.

(6) Spatter on the tile floor in front of the boys' room with an elliptical shape. It was classified as impact spatter. It was probably caused by force applied, of something travelling through the air and resulting in impact.

(7) Spatter was found on the first bedroom door.

(8) Headboard spatter suggests possible impact. It was created by force applied to a blood source which resulted in the spatter of small droplets.

(9) Spatter against the bedroom wall, probably caused by a bloody object, was present. Spatter on the bedroom wall was possibly caused by projection.

(10) Spatter was found on the wall next to RUDI with an elliptical shape. It was an impact spatter pattern. Force was probably applied to the blood source on the bed, creating an impact spatter pattern. The donor was RUDI.

(11) RUDI's bloodstain was found on the bedroom carpet between the boys' beds. It was a swipe stain indicating movement of an object over the carpet surface (the stain was marked as "B19").

(12) Non-spatter bloodstains were found on the floor of RUDI and the Accused's bedroom. It was complex spatter and blood clots were present in the bloodstains. RUDI was the donor.

(13) Spatter stains on the staircase wall were linear and probably caused by a blood-bearing object striking the staircase wall. RUDI was the donor of the stains. Only one sample was obtained from the top of the bloodstain pattern and not representative samples from the entire bloodstain pattern. RUDI and MARTIN were the donors of spatter bloodstains against the passageway wall next to the window. The bloodstains suggest projection or alternatively impact.

(14) Spatter stains on the wall adjacent to the door frame of the boys' bedroom were found. The witness could not define the mechanism responsible for the deposition. The stains suggest impact or projection. TERESA was the donor of the stains.

(15) Spatter bloodstain was observed on the boys' bedroom door. The bloodstain suggests projection or alternatively impact. RUDI was the donor of the bloodstain.

(16) Spatter bloodstains on the shelf in the passageway were classified as cessation cast-off. Projection was the possible deposition mechanism. The stains were probably created as a result of an object in motion. MARLI was the donor of the stains.

(17) Non-spatter bloodstains on the side of RUDI's bed, lateral movement visible, classified as swipe stains. It was created as result of contact between a bloodstained hand and the side of the bed. RUDI was the donor of the bloodstains.

(18) Spatter bloodstains were identified on the wall in the boys' bedroom. The stains suggest impact. RUDI was the donor of these bloodstains.

(19) A blood clot was observed on the knife under RUDI van Breda's bed and a blood clot was observed on the side of RUDI van Breda's bed.

(20) Two spatter bloodstains were observed against the adjacent house's wall near the security gate. The bloodstains suggested impact or alternatively drip. The donor of the one bloodstain was RUDI.

(21) A void was observed on the Accused's bed, an absence of spatter in an otherwise continuous bloodstained area. It was most probably created by the presence of an intervening object which was removed after the bloodshedding events.

[521] The Accused testified that he was dressed in his grey sleeping shorts with boxers underneath and a pair of socks.

[522] The grey shorts belonging to the Accused, Exhibit "120", had multiple spatter bloodstains on the front. On the frontal aspect of the grey shorts sixty-seven (67) spatter bloodstains were identified and documented. The spatter bloodstains suggest impact as the possible deposition mechanism and were probably created as a result of force applied to the blood source(s), like a wound(s). Thirty-two (32) of the spatter stains belonged to RUDI, nine (9) to the Accused and five (5) to MARTIN. Two (2) of the stains were mixed samples with respectively TERESA and RUDI and TERESA, RUDI and the

Accused as the possible donors (which should be only RUDI and the Accused). None of the stains originated from MARLI.

[523] The spatter bloodstains indicated full penetration of the fabric knit by the blood during deposition. Fourteen (14) transfer bloodstains were identified on the grey shorts, suggesting object(s) contaminated with blood came into contact with the grey shorts. A blood clot on the grey shorts was most likely created by contact between the blood source and grey shorts. No DNA could be extracted from the blood clot sample. Three (3) non-spatter contact stains emanating from RUDI were on the Accused's shorts and two (2) non-spatter stains from the Accused were on the frontal part of the shorts. There were also possible urine stains on the grey shorts, as can be seen in photographs 182 and 183, Annexure C, Exhibit "DDD1".

[524] Seventeen (17) spatter bloodstains were identified on the Accused's socks, Exhibit "119". Nine (9) stains originated from RUDI, one (1) from MARTIN, on the side of one of the socks, one (1) from TERESA, near the toe part of one of the socks, and two (2) from the Accused. The stains were on top, on the side and one at the rear part of the pair of socks. Four (4) stains were unidentified. The spatter bloodstains are indicative of impact as the possible deposition mechanism, resulting from force applied to the blood source(s), like a wound(s). The spatter bloodstains indicated full penetration of the fabric knit by the blood during deposition. There was also a transfer stain on the sock, suggesting the sock was in contact with the MARTIN's blood.

[525] Captain Joubert's conclusions and summary of the bloodstains with regards to the crime scene are contained in paragraph 37, Exhibit "DDD1". The following relevant aspects were *inter alia* his conclusions.

(1) There were a number of stains that were most likely made by EMS personnel.

(2) The bloodstain pattern suggests that RUDI was dragged or moved from his bed onto and over the carpet between the two beds towards the wooden floor. The bloodstain pattern suggests that RUDI was moved through the pool of blood, which resulted in the creation of swipe and wipe patterns.

(3) The duvet from the Accused's bed was removed after the bloodshedding events.

(4) RUDI's blood had time to clot before he was moved, time passed before his upper body on his bed was disturbed. The bloodstain pattern further suggests that RUDI was also stationary for a period of time on the bedroom floor, as a pool of blood was created.

(5) Spatter on the frontal aspect suggest the grey shorts were in close proximity to RUDI and MARTIN when force was applied to the blood source of those victims. The bloodstains further suggest that the grey short was facing the blood sources when force was applied to the blood sources of the victims RUDI and MARTIN. The bloodstain documented as Exhibit "120-87" contained a blood clot, which suggest an object contaminated with clotted blood made contact with the short, which resulted in the transfer of blood (see photograph 176, Annexure C, Exhibit "DDD1"). The grey short was exposed to multiple bloodshedding events during the incident, taking into consideration the different DNA profiles obtained from the bloodstained samples collected from the shorts, and the location of these bloodstains, including the transfer bloodstains.

(6) The spatter bloodstains on the white socks showed that the socks were in close proximity to blood sources originating from TERESA and RUDI. The spatter at the back of the white sock suggests that the wearer's foot was positioned in a manner which exposed the area to a bloodshedding event (see photograph 11, Annexure D, Exhibit "DDD1"). The pair of white socks were exposed to multiple bloodshedding events during the incident, taking into consideration the different DNA profiles obtained from the bloodstain samples collected from the socks, and the location of the spatter bloodstains.

(7) There was no disturbance of bloodstains on the handle part of the axe.

[526] The spatter bloodstains observed on the wall of the adjacent house was most probably created when force was applied to the blood source of RUDI on his bed. Blood drops were dispersed through the air, travelled through the blinds and open window, creating the spatter bloodstains against the wall of the adjacent house. The stains at points "B34" and "B35" could also have been created by an object contaminated with RUDI's blood, when the object was in close proximity of the wall and above the bloodstains, created during the movement of the object, which resulted in the blood being released from the object and impacting with the wall in the passageway.

[527] With reference to the relative positions of the victims and attacker during the incident, Captain Joubert documented and testified to the following.

(1) According to the Accused's statement he was standing in the slightly opened bathroom door at point "CS23" in photographs 103 – 110, Annexure P, Exhibit "DDD2", with a view of the

bedroom. During his testimony the Accused indicated that he was standing in the vicinity of the corner of the room near the bathroom in the square between the balcony and the bathroom. State counsel put it to the Accused that in his police statement he said that he remained in the bathroom and in his plea explanation he also created the impression that he remained in the bathroom. The Accused replied that it was not his intention. The Accused testified that he was sure that he stood in that corner in the bedroom. He said there was not enough space to stay in the bathroom and be able to see what was going on in the bedroom. He remembered remaining in that specific corner in the bedroom until the attacker left the room. Captain Joubert testified that some spatter on the shorts was less than a millimetre across. Smaller drops, because of their mass, do not travel as far as larger drops. Captain Joubert testified that nothing in the plea explanation, Exhibit "J", would have a significant effect on his view in respect of the bloodstain analysis.

(2) According to Captain Joubert the Accused was standing next to RUDI's bed when the victim was attacked on his bed at point "CS24" in photograph 103, Annexure P, Exhibit "DDD2". RUDI was attacked on his bed whilst lying on his stomach, with his head facing the adjacent wall, with reference to "CS25" in photographs 103 – 106, Annexure P, Exhibit "DDD2". The witness testified that his opinion was supported by the following:

(i) The impact spatter patterns at points "B16" and "B18" originated from an area on RUDI's bed;

(ii) The cast-off pattern, impact/projected bloodstains at point "B17", originated from an area in the vicinity of the bed;

(iii) Injuries, horizontal linear lacerations, sustained to the back of RUDI's head;

(iv) The injury sustained to the victim's left pinkie might be due to his reaction to the blows to his head;

(v) The injuries sustained by RUDI suggested that he was surprised, asleep or unaware.

(3) MARTIN was most probably attending to his son, RUDI, on the bed, when he was attacked by the attacker on RUDI's bed, with reference to point "CS26" in photographs 104 – 106, Annexure P, Exhibit "DDD2". The witness testified that his opinion was supported by the following:

(i) Injuries, horizontal linear lacerations, sustained to the back of MARTIN's head, neck and back;

(ii) Injuries sustained and the absence of defensive wounds to the hands, forearms, upper arms or frontal aspect of MARTIN's body indicate that MARTIN did not have time to react to the attack;

(iii) The final position of MARTIN suggested that the victim entered the bed area from the left, near the table area.

(4) The attacker was standing in the vicinity of RUDI's bed when MARTIN was attacked on RUDI's bed. Three (3) possible areas were identified next to RUDI's bed, with reference to "CS27", "CS28" and "CS29" in photographs 104 – 106, Annexure P, Exhibit "DDD2". The witness testified that his opinion was supported by the following:

(i) The impact spatter patterns at points “B16” and “B18” originated from an area on the bed;

(ii) The cast-off pattern, impact/projected bloodstains at point “B17”, originated from an area in the vicinity of the bed;

(iii) The spatter bloodstains on the grey duvet, Exhibit “139”;

(iv) Injuries, horizontal linear lacerations, sustained to the back of MARTIN’s head, neck and back.

(5) TERESA was most probably attacked in the doorway of the first bedroom (with reference to “CS30” in photographs 107 – 110, Annexure P, Exhibit “DDD2”, also with reference to “CS31” in photographs 109 and 110, Annexure P, Exhibit “DDD2”). Captain Joubert testified that his opinion was supported by the following:

(i) The impact/projected spatter at points “B15” and “B25” – “B27” were most probably created by an object (or by objects) in motion, or when an object (or objects) in motion came to an abrupt halt, which resulted in droplets being released/projected from the object(s). TERESA was the donor of the impact/projected spatter at point “B27”;

(ii) Injuries sustained by TERESA, vertical linear lacerations sustained to the right side of her head;

(iii) The injury, a defensive wound, suggested that the victim was most probably facing her attacker when the injuries were sustained;

(iv) The area where TERESA was found in the passageway on the first floor, in close proximity to the bedroom door, and the absence of any blood trail or bloodstain patterns in other areas belonging to TERESA within the crime scene.

[528] MARLI sustained her injuries during the confrontation with the attacker, most likely in the same area as TERESA. The only bloodstains documented at the crime scene associated with MARLI are at points “B12”, “B14” and “B30”, in close proximity to where MARLI was found by the police.

[529] MARLI sustained one laceration to her left lower arm, which might suggest a defensive position when sustaining the injury. The injury also might suggest that she had time to react to the assailant’s attack.

[530] Captain Joubert’s conclusions and a summary of the report are contained in paragraph 29, page 25/30, Exhibit “DDD2”:

(1) The bloodstains and bloodstain patterns observed do not support the sequence of events presented by the Accused in his statement;

(2) The events involving the knife, Exhibit “1”, presented by the Accused in his statement are inconsistent with the events identified through bloodstain pattern analysis and the law of superposition (see photograph 58, Annexure K, Exhibit “DDD2” and Image 1, Annexure K, Exhibit “DDD2”);

(3) Events pertaining to the grey duvet belonging to the Accused, marked Exhibit “138”, were identified, suggesting movement and interaction with the environment before the grey duvet was left in its final position (see Image 2, Annexure R, Exhibit “DDD2”);

(4) The victims were attacked in a short period of time after which a time lapse occurred and the victim RUDI was moved/dragged from the bed and handled in front of the two beds in the bedroom. Thereafter the grey duvet, marked Exhibit “138”, was placed/thrown adjacent RUDI;

(5) During the incident the knife, Exhibit “1” and the grey duvet, Exhibit “138”, were in contact, after the knife was in contact with RUDI’s blood (see Image 3, Annexure R, Exhibit “DDD2”);

(6) There is no indication or evidence identified suggesting that the victim RUDI was mobile after sustaining his injuries;

(7) The events surrounding the confrontation, pursuing the suspect, falling and fainting on the staircase, as presented by the Accused in his statement are inconsistent with the flow patterns identified on his chest and left arm. The flow patterns suggested minimal to no movement of the upper chest and left arm of the Accused, after he sustained his injuries;

(8) Bloodstains and bloodstain patterns were identified (“S33”, “S34” and the blood in the shower) in areas which were not entered by the Accused, which was inconsistent with the events/actions presented by the Accused in his statement.

(9) The position of the Accused during the events within his bedroom was inconsistent and not supported by the bloodstains (spatter bloodstains) observed and documented on the grey shorts, marked Exhibit “120”, and the pair of white socks, Exhibit “119”, which he had on during the incident. The spatter

bloodstains observed and documented placed the Accused in close proximity to blood sources of RUDI, MARTIN and TERESA when force was applied to those blood sources.

(10) The evidence did not support the actions/events described in the Accused's statement. Captain Joubert indicated that he could not rule out the possibility of staging. Captain Joubert explained that staging was the alteration or creation of evidence to direct the investigation away from the perpetrator.

[531] Captain Joubert stated in paragraph 27.1.2.2, page 22/30, Exhibit "DDD2" that TERESA's bloodstains were on the door frame of the first bedroom. TERESA was attacked in the entrance to the room or just outside the door. Captain Joubert testified that if the Accused was still in the bedroom and he could not see TERESA when she was attacked, the spatter on his socks and shorts did not support the version of the Accused. According to the Accused, he did not see TERESA when she was attacked. In paragraphs 10.11 and 37.4, Exhibit "DDD1", the witness stated that the impact spatter pattern observed at point B11 was most probably created when force was applied to a blood source of the victim TERESA near the floor in front of the cupboard in the passageway. By no means would spatter travel that far, around the bedroom wall and be deposited on him. Captain Joubert said TERESA van Breda's blood would not have been able to travel from the passage into the bedroom where the Accused claimed to have stood. Captain Joubert believed TERESA had been in the Accused's view. According to the Accused, neither MARLI nor TERESA obstructed the doorway and he apparently did not step into blood in pursuit of the attacker.

[532] TERESA's blood was found on top of the toe of the Accused's sock. It was a single-profile stain and not a mixture-profile stain. The Accused testified that he saw blood on the vertical side of the top landing, dripping down, which could possibly explain TERESA's blood on his sock. Mr Koegenberg testified

that blood came down like a waterfall, most likely onto the carpet at the bottom of the stairs, only when TERESA's body was moved. The Accused testified that he took care not to step into blood when he fetched his cigarettes from his shoes.

[533] A document indicating the absence of spatter in the bloodstain pattern analysis in the area of the bathroom in the first bedroom was handed in as Exhibit "DDD4" (1- 8). A document indicating the absence of spatter on the body of the Accused was handed in as Exhibit "DDD5" (1- 9). A document indicating the victims' blood distribution on the clothing of the Accused (Exhibits "119" and "120") was handed in as Exhibit "DDD6" (1- 6).

[534] Captain Joubert confirmed that there were nineteen (19) spots on the shorts, Exhibit "120", for which he did not have DNA result and that were not necessarily blood spots. Therefore it is unknown who the donor of the nineteen spots was. It is also unknown who the donor of seven (7) contact non-spatter stains on the Accused's shorts was. Lastly, it is unknown from whom six (6) non-spatter drip stains on the fontal part of the shorts emanated. The Accused testified that he never wounded the attacker, so no blood emanated from the attacker.

[535] Spatter on the Accused's shorts showed that the Accused was next to the bed, according to Captain Joubert. The witness testified that the position of the Accused on his version was not consistent with the spatter on his grey shorts and white socks. The blood of the victims was mixed and projected onto the shorts.

[536] Defence counsel argued that the Accused maintained from the outset that he was in close proximity to RUDI and MARTIN when the bloodshedding events occurred, hence the blood spatter on his shorts. Counsel argued that this evidence does not warrant an inference that the Accused was the attacker

as the only reasonable inference. This statement by Defence counsel is incorrect. The Accused said in his statement to the police that he remained in the bathroom during the attack. Since the start of the trial the Accused's version was that he was in the corner of the room, in the vicinity of the bathroom. However, there was no spatter on the bathroom door or on the wall either side of the bathroom door. Captain Joubert testified that one would have expected blood spatter in that area as blood was deposited on the Accused's shorts. During cross-examination the Accused conceded that one would expect blood spatter on the surrounding wall and door.

[537] Captain Joubert testified that there was blood spatter mainly on the shorts and socks of the Accused. If the Accused was in the vicinity of the spatter or in close proximity to the attacker, RUDI and MARTIN, one would have expected blood spatter on his body as well, not only on the shorts and socks, regardless of whether he was closer to the bathroom in the room or further away. Captain Joubert said it was a possibility that the Accused cleaned himself, given that the blood was limited to the Accused's shorts and socks.

[538] Defence counsel argued that the narrative of the Accused as to his whereabouts when the attack took place was later corroborated when the DNA test results were received. It was argued that it was unlikely that his fabrication fitted perfectly with the DNA results, received months later. The Accused's version did not fit in as submitted by counsel. His initial narrative as to his position when the attacks took place was different: his version in this regard was changed when the trial started and after the DNA results were known. Secondly, TERESA's DNA in a mixture result was also found on his shorts, not only the DNA of RUDI and MARTIN.

[539] Adv Botha referred to Exhibit "DDD1, Annexure D", photographs 8, 9 and 11, the bloodstains on the socks of the Accused. Bloodstain 13 in photograph 11, the left heel of the Accused' foot – in other words, the rear part

of the sock – was classified as an impact spatter stain. Captain Joubert conceded that if the Accused was not the attacker, it was possible that he was facing away from the attack in the light of the impact spatter stain at the back of his socks. Captain Joubert then testified, with regard to the blood spatter on the rear part of the Accused' sock, that it was possible that a right-handed person could have swung the axe, with his left toe touching the ground and with the rear part of his foot facing to the front, a similar action to that of a golfer. The attacker did not necessarily stand flat-footed in front of a victim when attacking the victims. Therefore it is not impossible for the impact spatter to have made contact with the left heel of the Accused's sock as submitted by Defence counsel. Captain Joubert testified that it was a scene with a lot of dynamics and, in the case of a single spatter on the rear part of the sock, a clear inference could not be made. It could be an impact spatter, a projection or the Accused could have been facing away from the victim. RUDI's blood on the axe could have dripped onto the heel of the sock when the Accused swung the axe to execute another blow or when he struggled with an unknown assailant. There were too many variables to exclude one scenario or another.

[540] Stain 83 on the frontal part of the grey shorts, towards the elastic part of the shorts, as can be seen in photograph 171, Annexure C, Exhibit "DDD1", was a non-spatter stain which was classified as saturation with a flow pattern. The witness testified that it was consistent with the injury to the stomach of the Accused, the injury being the cutting referred to in paragraph 19.4.1, Exhibit "DDD1". The witness agreed that it was probably the Accused's own blood on Exhibit "120-83". The witness confirmed that bloodstain 83 could have caused the transfer stain on the stairs more or less where the Accused was allegedly lying as can be seen in Exhibit "NN5". The Accused said that he regained consciousness on the stairs where the transfer pattern was seen. Captain Joubert conceded that the blood on the shorts could have caused that.

[541] Captain Joubert testified that the test in the shower showed a poor reaction. He did not want to decrease the possibility of a DNA profile by continuing to spray the shower with Blue Star. The Accused said he did not touch anyone in the house after the incident. Captain Joubert testified that the Accused's version was inconsistent with the blood evidence. It was put to the witness that the number of profiles read into the sample collected from the shower could only be two DNA profiles instead of three. Captain Joubert said he accepted that the Accused and RUDI both utilised the shower but said, despite Lieutenant Colonel Otto's concession in this regard, the mixture profiles in the shower were blood most probably coming from an object – for example, an axe. The Accused testified that the blood could be from shaving in the shower. Precious Munqongani testified that she did not clean the boys' bathroom on Monday, 26 January 2015. The last time she cleaned it was on the previous Friday. Blood appears to be more resistant to cleaning products, according to Lieutenant Colonel Otto.

[542] The blood spatters found on the wall of the adjacent property on the outside, right across the window of the boys' bedroom, can be seen in Exhibit "A535". The blood splatters on the wall were found 2.9 meters away from the gate, as can be seen in Exhibit "A86 - 91". Captain Joubert said the wind might have played a role in the directionality of the stains on the outside wall near the security gate. He conceded that the flight path of two droplets from RUDI changed, given their eventual point of impact on the wall. That was the reason why he had made a note about the wind. Impact spatter would have allowed for enough energy for the droplets to go through the window and outside. The wind direction was from the front backwards to explain the angle of the droplets against the wall. It could also have been caused by someone walking past or towards the side gate and that the blood had dripped. As mentioned before, no corresponding drip trail was found inside or outside the house.

[543] Defence counsel argued that the Accused had maintained from the outset that there was more than one attacker in the house that particular morning, hence the absence of MARLI's blood on the axe and on his clothes. This statement is once again not correct. A second attacker was not mentioned from the outset, neither in his statement to the police nor to Captain Steyn at the scene. The possibility that a second axe had been used was proffered only during the trial, after the DNA results were known. The Accused mentioned in general terms to Ms Philander that three adults and a teenage girl had been attacked with an axe, during the emergency call. The Court makes no adverse finding with regard to the information of an axe being used in the attack on MARLI due to the general terms of the statement. The Court has already dealt with the submission regarding the absence of MARLI's blood/DNA earlier in this judgement.

[544] Whether the bloodstain pattern analysis and DNA results merely place the Accused at the scene or identify him as the attacker, it is significant that nothing in the forensic evidence categorically excludes the Accused as the attacker.

The relevance of the impact marks at the crime scene

[545] Captain Candice Heloise Brown has been stationed at the ballistics section of the Forensics Science Laboratory in Plattekloof since 2004. She received training in various components of ballistics. On 28 January 2015 at 09h30 she visited the crime scene to examine certain impact marks. The witness compiled a report dated 20 February 2015 which was handed in as Exhibit "YY". The scope of the forensic examination was crime scene examination, reconstruction and scene photography.

[546] She observed the following inside the house:

(i) one piece of painted cement lying on the floor at the front entrance doorway area, marked “A”;

(ii) one impact mark with damage, consistent with that caused by a controlled, sharp-edged tool movement, into the right-hand side wall edge, adjacent to the front entrance doorway area, marked “B”;

(iii) one piece of painted cement lying on the staircase (6th stair), marked “C”;

(iv) an impact mark with damage, consistent with that caused by a controlled, sharp-edged tool movement, into the eastern side wall, just above the staircase rail, marked “D”;

(v) powder particles, consistent with the appearance of cement powder particles from the impact and damage marked “D” on the staircase rail, underneath the impact and damage to the eastern wall mentioned above;

(vi) a piece of tile fragment lying on the staircase (12th stair), consistent with the appearance of the tiles on the staircase floor, marked “E”;

(vii) impact damage and powder particles, consistent with breakage damage, to a tile on the staircase (17th stair), marked “F”;

(viii) impact damage and powder particles consistent with that caused by a sharp-edged tool movement, into the tiled area, entering into the first bedroom from the staircase on the left, marked “G”;

(ix) one piece of tile fragment, consistent with the appearance of the tiles on the staircase floor and entrance tiles to the bedroom, lying in the debris mentioned in point (viii) above, marked “G”; and

(x) one impact mark and damage, consistent with that caused by a possible uncontrolled impact mark, to the left side wall of the entrance area into the first bedroom, marked “H”.

[547] Captain Brown physically matched the pieces of painted cement “A” and “B” and “C” and “D”. She found that the breakage patterns of “A” physically matched the breakage patterns of “B” and was once part of the wall edge structure. The witness also matched a piece of tile fragment “E” with the damage marked “F” and “G” as well as the piece of tile fragment into the damages marked “G”. She drafted her first report without the axe or the knife.

[548] On 26 and 27 February 2015 Captain Brown revisited the scene and took Exhibits “1” and “2” with her to do further examinations on impact marks “B”, “D”, “F”, “G” and “H”. She felt it was necessary to draft a second report because on the first occasion, she did not have the weapons with her to match or examine them physically. The second report was compiled by the witness and handed in as Exhibit “YY1”. The scope of the forensic examination comprised physical matching, crime scene examination, reconstruction, scene photography, and microscopic individualisation of tool marks.

[549] The Court will refer only to the most relevant findings of Captain Brown's examination:

(1) None of the marks was produced by the knife.

(2) She physically matched the axe to the impact marks with damage and found that the sharp-edged markings could possibly have been produced by the axe. ***

(3) Furthermore, she matched the axe to the impact mark damage to the left side wall of the entrance area into the first bedroom, marked "H", and found that the uncontrolled mark could possibly had been produced by the blunt back/rear part of the axe, or front part, but no sharp-edged characteristic markings had been produced, such as striation or indentation marks. If a blow is hard, the wall would have a spatter effect with dust but not fragments. It would indicate that more force had been used. She did not see any striation or indentation marks on "H". She also did not find any big pieces of cement. She testified that she identified the mark as uncontrolled because no direction could be established.

To determine whether it was an uncontrolled impact mark, she looked at it in its entirety – ie where the mark presented itself on the edge of two adjacent walls, there was no certainty of direction, it was characterised as a free mark with no restraint, there was no force applied and no proper course of the marks could be followed and lastly, as in ballistic terminology, no striation (a mark would be characterised by a sliding motion of a tool against an object) and no indented marks

were observed. Captain Brown testified that she could not say that the mark was definitely caused by the axe or not.

[550] The damage marked “F” was a chip or breakage damage to a tile on the 17th stair. During cross-examination Captain Brown conceded that the damage marked “F” was possibly caused by a gurney or scoop. The prime possibilities were the axe and the gurney. She also conceded that the sharp edges of a scoop could have caused the marks in the house entrance, marked “B”. A chip on the cement at the entrance to the first bedroom was marked “G”. A bit of cement debris was visible on the floor on Exhibit “YY6”. Defence counsel pointed out that in Exhibit “YY6(3)” rubble was lying on dry blood that preceded the rubble. Captain Brown testified that it was possible that the use of the axe could be excluded, but it was also possible that the damage predated the incident but that more damage was caused afterwards. She testified that any sharp-edged object could have caused the damage, including a scoop.

[551] Of particular relevance are her findings pertaining to the impact mark above the staircase rail, marked “D”. The sharp-edged markings of the impact mark with damage just above the staircase rail, marked “D”, could possibly have been produced by the axe in an upright, angled manner. No other cement pieces that had broken off from this area during the blow were observed on the stair case, rail or floor. The impact mark “D” referred to in paragraph 5 of Exhibit “YY” was caused by a sharp-edged tool. This impact mark had the characteristics of a sharp-edged tool.

[552] The witness also took photographs handed in as Exhibit “YY2”.

[553] Figure 1.1 was the impact mark, marked “B”, adjacent to the front entrance doorway and the right-hand area in the front entrance hall. Captain Brown testified that when she physically matched the axe to the impact

damage marked “B” she could not determine whether the axe was definitely the cause of such marks.

[554] Figures 12 – 16 showed impact damage, marked “D”, on the eastern side wall, of a sharp-edged tool movement above the staircase rail inside the house. Figures 17.1 – 20 of Exhibit “YY2” were close-up photographs with the top edge of the axe placed into the mark. She came to the conclusion of a sharp-edged tool movement after looking at the mark in its entirety, ie where the mark was on the eastern side wall above the staircase rail inside the house; the impact and its surrounding damage; the length, width and depth of the mark; where on the wall the impact mark was situated; the characteristics of the damage and the impact; the certainty of direction. The wall was painted and it had plaster. Captain Brown noted that the brick behind the plaster was exposed. She noticed that the impact mark had a beginning and an end; she looked at striated marks and indentations. Force had been applied and mark was characterised as sharp-edged tool impact and damage.

[555] Figures 22 – 25 in Exhibit “YY2” were photographs of the impact mark “H” on the wall when one comes into the first bedroom upstairs. Figures 26 – 28 reflected the same mark with the top part of the axe to the impact mark. Figures 29 – 31 were photographs of the same mark with the butt or the rear, blunt part of the axe to the impact mark.

[556] Pertaining to the crucial question whether the axe could have been thrown to make impact mark “D”, according to the Accused’s version (see paragraph 36, page 10, Exhibit “J”), Captain Brown testified as follows.

[557] Exhibit “1” was not a throwing axe. There was actually such a sport. The axe could land on four areas, namely the butt, the head, the sharp edge or the handle. If one were to throw the axe, you would have a one-quarter chance of the axe landing on the sharp edge or on any of the other areas. The

brick behind the plastered area was exposed inside the impact mark. The impact was deep and therefore the brick was exposed. So basically, the impact mark would have to move beyond the 10 mm to 15 mm layer of plaster required in terms of SANBS (SA building standards) to expose the brick. Any object flying through the air decelerates in velocity and speed. Taking into consideration Newton's laws of motion, one would definitely expect an object that has weight and is flying through the air to make such a mark were it to land on the sharp-edged side. So, the version contained in the plea explanation is possible but highly unlikely. The witness confirmed that variables play a role, ie the strength of the person, how far away the person was, etcetera.

[558] Captain Brown photographed the powder particles on the staircase rail at the bottom of the impact and damage mark. They were the only particles that could be found on the landing; no similar pieces of cement to fit into that impact mark could be found underneath the landing. The witness said that, when looking at the impact damage and observing the area lower down of the mark, and by characterising the impact and damage and referring to Newton's laws, this was what would happen when a greater impact force effect would cause an object to spatter in the particles as found – in other words, when a very hard blow was executed on a wall. The blow was of such a nature that it was of a greater force or impact where the particles spattered into minute objects or particles.

[559] Vaporised pieces could be seen on the lower and higher part of the railing in Figures 21 and 22, Exhibit "YY2", respectively. Captain Brown said the debris or piece of painted cement, marked "C", lying on the 6th step, could fit into the wall at the staircase. She tried to match "C" into the damage marked "D", but the piece was too small. The witness confirmed that she could see something lying in the photograph "A56", but she could not say what it was. In the photographs Exhibit "YY7 (2 – 3)", one could see a piece lying at the bottom left of the staircase, marked with a red dot. Captain Brown

said it looked like a bit of concrete with a bit of blood on it. She said she did not process that piece by fitting it into “D” but would have considered it had she known about it. Defence counsel suggested that, had the witness had all the missing damaged parts, it would have been easier to do a reconstruction. Captain Brown agreed but said that she looked at the area downstairs in the proximity of the damage marked “D” but could not find anything.

[560] Referring to Figure 20 of Exhibit “YY2”, Captain Brown conceded that she would have had a clearer picture if she had had the constituent parts to fit into the damage marked “D”. However, she said the markings in themselves were casted; there were not enough markings to individualise it with the axe as the tool used. Striation indicated movement or a dragged mark: in other words, one could see the start and the end of the mark. Striation marks gave one direction but did not show how the instrument was turned when used.

[561] Captain Brown pointed out that two damaged sides could be seen in Figure 17(1) of Exhibit “YY2” and that Figure 20 was a picture of the damage on the right-hand side of Figure 17(1). The left-hand side was exposed and the impact was on the right-hand side. The witness conceded that the damage was broader than the blade of the axe and said the blade could move in the space. She said that, taking into account that it was a plastered surface, the sides were not homogeneous and certain pieces would break out.

[562] Captain Brown explained that she based her conclusion that it was highly unlikely that the axe could have been thrown to cause the damage on the entirety of mark “D”, the substrate, where it was, what the component of the substrate was, and the length, width and depth of the mark, and the impact in its entirety, certainty of direction, the force applied, vaporised particles, the plaster which was cut through to expose the brick, the course of the marks as well as the beginning and the end of the markings that could be found. She referred to Newton’s laws and *inter alia* stated that for every action or force in nature there was an equal and opposite reaction.

[563] Captain Brown said she was not provided with the initial statement of the Accused; she heard about the statement when she testified. She conceded that she did not use any form of calculation but said her conclusion was not a “thumb suck”; it was based on laws. She also did not do any experiments. The witness conceded that she did not apply a formula and mathematics to make such an assertion; she knew only the weight of the axe and nothing else. The witness also conceded that one needed to hit against the wall and determine the breakage of the wall. If one knew the counteraction of the wall, one could do scientific calculations. She testified that one part of the wall could be harder than another.

[564] Regarding the issue of different types of brick, Captain Brown said that there were standard building regulations in South Africa. She confirmed that she did not take a sample of the wall. Defence counsel pointed out that the witness actually knew nothing about the wall and how it would have reacted and accordingly she could not arrive at a true assertion or opinion that the axe could not have been thrown. Defence counsel insisted that her conclusion was not scientifically calculated. Captain Brown said she took Newton’s laws and all the other aspects into consideration. Her conclusion was consistent with her experience. She had done ballistics for the past 13 – 14 years and, by looking at characteristics, she maintained that it was possible, but highly unlikely, that the axe had been thrown.

[565] Defence counsel also said the witness assumed velocity and breakage and challenged her opinion that a quarter chance of the axe hitting the wall with the sharp edge as highly unlikely. Captain Brown replied that it was not a throwing axe and the part she had matched into the wall was the blade part. Therefore the damage was caused by the blade part. She took into account all the characteristics of the mark and that the axe had a 25% chance of landing on its blade when it was thrown. Captain Brown conceded that if the axe landed on its blade, and it had the velocity, it could cause that damage.

[566] With reference to paragraph 37.18, Exhibit “DDD1”, and the bloodstain at point B24 above the staircase on the wall, Captain Joubert said he took measurements and the entire bloodstain was 622 mm in length. He testified that the bloodstain pattern at point B24 was most probably created by an object in motion and under the control of the handler, which resulted in the creation of the cast-off pattern observed. A cast-off pattern is a pattern of stains created when blood is flung or projected from an object that is in motion or suddenly stops moving. An object covered with blood struck the wall at point “B24”. The object came to an abrupt halt and cessation cast-off was created at the bottom of the bloodstain pattern at point “B24” (see paragraph 37.18, Exhibit “DDD1”). A cessation cast-off pattern is a bloodstain pattern resulting from blood drops released from an object by its rapid deceleration.

[567] Captain Joubert was asked to comment on the version of the Accused regarding the throwing of the axe (see also paragraph 27.1.4.1, page 24, Exhibit “DDD2”). The mechanism of a thrown axe is an instrument in motion and it would release spatter from the axe. One would have expected to find cast-off patterns with elliptical shapes higher on the wall than what the witness observed. The witness said that when an axe rotates one would expect blood drops with an elliptical shape.

[568] There was enough blood on the axe to create a blood spatter pattern, as can be seen in Exhibit “A120”, where the long trail of blood below the hole or damage in the wall is visible. Hair was even found in the trail of blood. The axe might have been thrown to stage the scene. The bloodstain pattern at point “B24”, cast-off pattern with cessation cast-off, did not support the Accused’s version of throwing the axe. The pattern identified was created by an object under the control of the handler. Captain Joubert also would have expected a longer and higher casting off of bloodstains against the wall in the case of an uncontrolled impact and throwing of the axe, as stated above, reaching as high as the ceiling. Defence counsel submitted that objective

evidence refutes the opinion of Captain Joubert completely. Thecast-off pattern that was created in the boys' room by controlled hits of the axe was substantially longer, going up to the ceiling. This argument does not take into account the difference in space and distance when a controlled action was performed in the boys' room in a confined space and the larger area above the staircase.

[569] During cross-examination Caption Joubert was asked whether he was saying the throwing scenario was impossible. He responded that in his experience and in the light of experiments done during courses, where different types of weapons were used, the axe was definitely not thrown, looking at the characteristics. It was put to him that according to a Defence expert, Mr Steyl, too little was known to come to that conclusion. Captain Joubert disagreed and said that in experiments different forces and volumes of blood were used. He said temperature also affects blood results. Captain Joubert conceded that he did not do any experiments in this regard.

[570] Captain Brown dealt with the damage that was found on the axe indicating that it was used on the scene.

[571] She based her opinion on her years of experience in the ballistics field and she fitted the axe into the damage marked "D". She did not do other practical experiments with the axe and the wall which might affect the weight of her evidence. The Court notes that the mark in the wall is rather straight and not at an angle of some sort. A controlled action with an axe will probably create more straight or linear marks than would throwing an axe. The victims' wounds, inflicted with controlled blows with the axe, present with similar straight lines.

[572] Captain Brown's opinion is also supported by the evidence of Captain Joubert. It is regrettable that none of the experts did any experiments to

determine whether the axe had been thrown. However, Captain Joubert testified that he asked about the position of the Accused after the attacker had fled, but he was informed that the representative of the Accused did not provide co-operation. He did similar thowing experiments with different weapons in the past. The Accused was also not sure where he stood when he allegedly threw the axe, which makes an accurate scientific assessment more complicated.

[573] No expert evidence to the contrary was presented by the Defence with regard to the axe being thrown although it was put to the witness that the Defence ballistics expert simulated the axe-throwing. It was submitted on behalf of the Accused that the quality of the expert evidence on behalf of the State was so poor given the absence of a scientific process or scientific experiments, that it was not necessary to present any countervailing evidence other than the Accused's own direct evidence.

Hair analysis

[574] Lieutenant Colonel Henry Stewart is employed at the Forensic Science Laboratory as a forensic analyst and hair comparison analyst. He has attended a few courses pertaining to hair analysis. The results of Lieutenant Colonel Stewart's analysis are contained in paragraph 4 of his affidavit in terms of section 212 of the CPA, handed in as Exhibit "HH". The witness indicated that his affidavit in respect of paragraph 4.4 was incorrect: it should read paragraphs 3.5 – 3.9 instead of 3.1 – 3.10.

[575] Lieutenant Colonel Stewart received sealed hair samples of the case file (Van Breda crime scene/matter) in envelopes pertaining to LAB 44081/15 from the Administration component of the Forensic Science Laboratory. He testified that the samples had not been tampered with when he received them. He initially testified that he attempted not to establish the identity of the donors

of the hair with his original examination. It was only when he had been subpoenaed to testify in court that he established the identity of the donors. Defence counsel challenged this, referring to internal police email instructions. Lieutenant Colonel Stewart eventually conceded that he knew who the suspect was.

[576] He made use of a macroscopic and microscopic process, as can be seen in a "Hair Comparison Checklist", handed in and marked Exhibit "HH1". The witness testified that he made use of a table that was used worldwide for comparison, to compare the reference samples with the other samples. The reference hair samples of the Van Breda family were in sealed envelopes marked 14DAA47. He did not have samples from other persons to compare them to the crime scene samples.

[577] Sample 4793 (taken from the Accused) showed a resemblance to the hair found on MARLI's T-shirt and in MARLI's hand (ie, the samples mentioned in paragraph 3.5, marked as Exhibit "J-1", and paragraph 3.7, marked as Exhibit "I").

[578] The hair found in MARLI's hand, showing a resemblance to that of the Accused, was intertwined with MARLI's fingers, as can be seen in Exhibit "J4 and J7". It fitted in with the Locard principle, in that the hair had to be removed forcibly in a closed hand. To put it in a different way, the hair could not be transferred into a clutched hand without being forcibly removed. However, the witnesss could not exclude the possibility that the hair was transferred from clutching an object, such as a pillow, prior to sedation. If a person was moving his/her hands around prior to sedation, the hair could have been picked up and could have become entangled if there was contact between the person's hand and the object. There are lots of ways to transfer hair.

[579] Lieutenant Colonel Stewart testified that he conducted microscopic examinations of the hair. He confirmed that the hair of the Accused (D21) was light hair and that the hair on MARLI's underwear (panties) and T-shirt was also characterised as light in colour. Lieutenant Colonel Stewart found that the Accused's hair sample showed a resemblance to the hair found on MARLI's T-shirt. The witness found medium hair on MARLI's T-shirt. The Accused's hair was classified as fine. Lieutenant Colonel Stewart conceded that the hair found on the T-shirt was unknown.

[580] The most relevant part of the testimony of Lieutenant Colonel Stewart can be summarised as follows.

[581] He conceded that the hair found on MARLI's hand could have ended up in her palm in various ways, not only through force.

[582] The hair found in Exhibit "I" (being longer than 200 mm") is much longer than the hair of the Accused in the photographs Exhibit "C". The Accused is therefore excluded as the donor of the hair. Given *inter alia* the objective evidence in photographs of the Accused on the morning of the incident – he had short hair at the time – the chances are nil that the hairs in MARLI's hand and on her T-shirt and panties originated from the Accused that particular morning.

[583] In hair comparisons it was not prescribed how many points of similarities were needed for the conclusion to be reliable. On the question of how the accuracy of the hair findings was confirmed objectively, Lieutenant Colonel Stewart responded that his findings were peer-reviewed. Hair analysis on its own is regarded as associative evidence to give a final picture, according to Lieutenant Colonel Stewart. Some of the reference hair samples in paragraph 4 of Exhibit "HH" only showed a resemblance to hair samples on

the crime scene, nothing more. Hair analysis is used to exclude, not to identify, somebody. It works in a negative way: the first goal is to exclude hair from a known donor.

[584] No evidence exists on which the Court can satisfy itself of the reliability of Lieutenant Colonel Stewart's disputed findings. In the present case the Court finds that the inferences made by Lieutenant Colonel Stewart cannot be relied upon, given the problems pointed out and concessions made by him during his testimony. Just by looking at the photographs taken that morning of the Accused and MARLI's hand, it is clear that it could not be the Accused's hair that is visible in MARLI's hand, unless the Accused had cut his hair between the murders and the arrival of the police (see Exhibit "HH3"). No such evidence of a hair cut was presented. The hair might have come from a pillow or other object, previously used by the Accused, when the paramedics attended to MARLI.

[585] State counsel conceded that the evidence with regard to the analysis of hair found on the scene and in MARLI's hand ought not to be accepted by the Court, as the analysis of hair samples is an uncertain science and subjective. A number of problems are evident from the expert evidence of the witness. It is not necessary to deal with them in the light of the State's concession.

Shoe prints at the crime scene

[586] Warrant Officer Hitchcock identified certain relevant bloody shoe prints from several prints inside and outside the house. Captain Danie van der Westhuizen, a forensic fieldworker and shoe print analyst stationed at the Provincial Crime Scene Investigation Unit, guided and advised Warrant Officer Hitchcock and other officials on how to document the shoe prints and on what would be relevant. He also identified the different patterns of shoe prints when he walked through the crime scene. Captain Van der Westhuizen looked at

the class and characteristics of the shoes of persons attending and prints found at the crime scene. He matched the patterns and sizes of the shoes. Thereafter he sought to identify any damage on the sole of a shoe. When a shoe comes into contact with the surface it leaves certain characteristics.

[587] Thirty-eight (38) bloody shoe prints were collected from the crime scene, of which thirty-six (36) prints from six (6) different pairs were confirmed as belonging to officials who had responded to the murders that day. Captain Van der Westhuizen received nine (9) pairs of shoes from the investigating officer. Seven (7) statements in terms of section 213 of the CPA, dealing with the footwear of the officers at the scene that were handed to the Forensic Unit of Worcester, were handed in by the State (see Exhibits “BBB4” – “BBB10”). No statement from Captain Mattheus in this regard was handed in. It is common cause that Constable Matho was deceased. The conclusions drawn by the witness after the comparison between the scene marks and the soles of the shoes are contained in Exhibit “XX”.

[588] Captain Van der Westhuizen could not say in respect of all the corresponding prints that it absolutely belonged to the same shoe. When there were three or four shoes with the same pattern, he would rather be careful and say the comparison was inconclusive. The terminology “inconclusive” means that the class characteristics did not always correspond with the size. There could be an explanation for this. He then described comparison as inconclusive. Eight (8) shoe prints were found to be inconclusive. During cross-examination the witness conceded that some of the prints that were found to be inconclusive by him were possibly made by the shoe belonging to Constable Matho.

[589] Captain Van der Westhuizen testified that the remaining two (2) prints, found in the en-suite bathroom of the first bedroom, where MARTIN and RUDI van Breda’s bodies were found, were not considered by him to be shoe prints.

This is of significance in that RUDI's single DNA profile could be read into the bloody prints not identified as shoe prints, namely prints "S33" and "S34" (see Exhibit "A339 - 344"). If either of the prints was not a shoe print, the version of the Accused about what transpired that particular night would be cast into doubt. The two marks were documented as shoe prints by Warrant Officer Hitchcock and Warrant Officer Hanekom, as can be seen in Exhibits "A339" and "A341", but it was not significant in the opinion of Captain Van der Westhuizen. The shoe prints looked markedly different.

[590] The witness conceded that one of the two prints could possibly be labelled as a shoe print, namely the print marked "S34" that was found in the entrance of the en-suite bathroom of the first bedroom. It was put to Captain Van der Westhuizen that Mr Steyl, the Defence expert, agreed that print "S33" did not contain enough information to confirm that it was a shoe print. However, it was put to the witness that print "S33" was possibly made by a shoe belonging to Constable Matho. Captain Van der Westhuizen disagreed and said one could not determine that it was a shoe print because the pattern was not clear. There was no significant pattern on print "S33". He conceded that it was so because of the uneven surface. The Court concludes that the Accused must enjoy the benefit of doubt in this regard and makes no adverse finding against him in the light of the position of the prints in relation to each other.

[591] No prints with different patterns to the ones marked out by the police, were found. No prints matching a fashionable brand were found at the scene. There were two (2) bloody shoe prints of what one would wear as a casual shoe or a jean shoe, belonging to Constable Matho. Of significance is that no unexplained or foreign shoe prints were found at the bloody scene, and certainly not en route to the back kitchen door from upstairs.

[592] The uncontested testimony of Sergeant Kleynhans was that there were no bloody footprints on the stairs upon his arrival, as can be seen in photographs 124 and 125, Exhibit “A”.

[593] Christiaan Koegenberg confirmed that the prints on the scene had to be the bloody footsteps of the emergency personnel, as can be seen in the photograph album, Exhibit “A”, when they were assisting the injured MARLI.

[594] The Accused testified that he did not go to the first floor again, after going downstairs in pursuit of the fleeing attacker. He lost consciousness on the stairs after passing the first landing of the stairs. According to the Accused he had socks on during and after the commission of the crimes. A pair of shoes with presumably bloodstains can be seen at the bottom of the staircase. During cross-examination it was put to Sergeant Kleynhans that the shoes belonged to the Accused and that the Accused hid a packet of cigarettes in one of the shoes behind the staircase. Furthermore, it was put to Sergeant Kleynhans that the Accused put the shoes at the bottom of the stairs before the arrival of the police. Sergeant Kleynhans agreed that the blood on the carpet fell on to the carpet from above. However, he could not say whether there was blood on the carpet upon his arrival.

[595] The Accused testified that only one packet of cigarettes was hidden in his shoe that particular night. He said he kept both shoes at the bottom of the stairs to go for a walk with Sasha. The Accused testified that the shoes had been standing at the bottom of the stairs for a few days which testimony appears to be in conflict with his instructions to his counsel. He said the bloody spots on his shoes were presumably from the blood dripping from upstairs, as could be seen on the carpet next to the shoes (see Exhibits “A20”, “A23” – “A26”). The Accused said there was a pool of blood at the bottom of the stairs. When asked by State counsel whether he had stepped into the blood, the Accused said he deliberately tried to avoid the blood pool when he

grabbed his cigarettes. He said he stepped around the pool of blood and never stepped into the blood. The soles of the Accused's shoes and the bottom of his socks were not tested for blood or DNA.

[596] Captain Joubert said he did not examine the bottom of the Accused's socks because there would have been blood on the floor and the Accused would have stepped on it. The witness said he just observed dark stains that could be dirt or blood. During cross-examination Captain Joubert agreed that the loafers would have covered the top part of the foot of the socks, so it could be excluded that the Accused had worn the shoes during the commission of the crimes. The soles of the shoes were never examined by any witness, so no inference can be made about the possibility of the Accused's wearing the shoes after the commission of the crimes. It certainly seems odd that no shoe prints or footprints other than the officials' shoe prints, a bloody trail or Sasha's paw prints could be found on the stairs and especially on the ground floor of the house given the bloodiness of the crime scene. However, the Court will not speculate in this regard.

Fingerprints at the crime scene

[597] Sergeant Jonathan Oliphant, stationed at the Local Criminal Record Centre (LCRC) in Beaufort West, has had experience with fingerprint identification since 2006. Defence counsel admitted that Sergeant Oliphant was an expert in his field. During 27 – 31 January 2015, he was at [...] G. Street, [...] Estate, to investigate the crime scene for fingerprints.

[598] Irrespective of formal admissions, the evidential value of the fingerprints must be considered by the Court. It is highly desirable that the expert explain, at least in an affidavit in terms of section 212(4)(a) of the CPA, the nature of the similarities between the prints and state on what the opinion

is based. The State should take care that ample evidence is presented for the Court to satisfy itself that the expert's opinion is reliable.

[599] In the present case the nature of the similarities, the quality and the age of the fingerprints were not explained in an affidavit or during Sergeant Oliphant's *viva voce* testimony. No formal admissions in terms of section 220 of the CPA were made in this regard. Defence counsel merely indicated that the findings of the witness could be admitted. The Court will evaluate the evidential value of the fingerprints and assess the reliability of the expert evidence.

[600] Sergeant Oliphant found fifty-three (53) fingerprints in total. He distinguished between usable, unusable and negative fingerprints. In the case of unusable prints all seven points required by the Court to identify a print were not available. One could still identify a person, though. He compared the usable prints with the known prints furnished to him. He had the prints of the Accused and the rest of the family as well as from the domestic workers and the gardener, Tulani Gurya. A copy of the correspondence between the Investigation team and the LCRC containing an Elimination Report was handed in as Exhibit "MM". On page 2 of the report the names of fifteen persons who had been arrested for crimes committed at [...] Estate appeared. None of the fifteen persons could be linked to the prints on the crime scene. Prints of James Reade-Jahn were found on the boot of one of the motor vehicles. No prints or hits of a possible suspect were found.

[601] The inside and outside of the house as well as the boundary wall were checked for prints, with the naked eye and a special light. Sergeant Oliphant also sprayed a chemical which would give a brown/purple colour if there was a fingerprint. No prints or proof of activity were found on the wall. He searched for prints in the morning and afternoon and twice the following day. If a person touched the walls, it would have left a mark because of sweat left behind. The

possibility that a gloved person climbed over wall could not be excluded. No prints were found on the black side-gate next to the house.

[602] Two unidentified prints were found on the patio door of the first bedroom. Another two unidentified prints were found on the outside of the door frame of the bathroom inside the room where the deceased males had been found (the first bedroom). The Accused never alleged that the attacker was near the patio door in the room or en-suite bathroom. Other prints were also found which were not identified, including on the table in the kitchen. In the kitchen, an unidentified palm print was found. Sergeant Oliphant conceded that it could be considered a fresh print, as the domestic worker had presumably cleaned the Monday before the murders. Precious Munqongani testified that she had not found the time to clean the en-suite bathroom of the first bedroom that particular Monday. It is difficult to conclude that the entire house was cleaned properly the day before the incident and therefore that all prints found were left after she had cleaned. Prints were also find on bottles inside the cabinet which prints did not belong to the family. A number of unidentified prints were found on the motor vehicle. The fingerprints of the domestic worker and the responding police officer were not found by Sergeant Oliphant at the scene.

[603] Of significance is the fact that the unidentified prints originated from several persons and not just one person, which possibly could explain the number of unidentified prints. In this matter the alleged intruder wore gloves, so one would not expect to find his fingerprints at the scene. If the intruder had indeed been accompanied by a second person the latter probably would have worn gloves as well, taking into consideration the dress code modus operandi of the perpetrators.

[604] Sergeant Oliphant collected the axe and the knife from the scene and examined them for fingerprints. No fingerprints could be found on the axe. It is possible to get fingerprints on wood, depending on the surface, but it is not

unusual not to find any. The tests performed to identify fingerprints had no effect on other further forensic tests.

[605] Defence counsel confronted Sergeant Oliphant with the version of the State, namely that the Accused had touched the axe and attacked people with it for a period of time. If the Accused had handled it, one would have expected to find a print. The witness furnished an explanation pertaining to protective gear that could have been worn. The witness also testified that if fingerprints were wiped off they would not be found even if the person handled the axe over a long period of time. The bottom line is that the Accused himself admitted handling the axe without protective gear during the altercation with the alleged intruder and when he threw the axe at the alleged intruder. Despite this admission, no fingerprints of the Accused were found on the axe.

[606] Sergeant Oliphant testified that three prints were found on the knife, Exhibit “2”, of which two were unidentifiable. The right thumbprint of the Accused was found on the blade, 5 – 6 cm from the tip of the knife. The print pointed towards the handle of the knife; if the knife point points down, the thumbprint point up. An enlargement of the blade of the knife was handed in as Exhibit “MM1”. Two smeared unidentified prints were found. The identifiable print on the tip of the blade belonging to the Accused was actually a double print and it was indicated with circles by the witness.

[607] In this matter the Accused admitted from the outset that he had handled the knife after an altercation with an alleged intruder. The findings of the expert pertaining to the prints on the knife are uncontested. Therefore the issue of the reliability of the prints, even in the absence of an explanation or clarification by the expert, can be accepted. The evidential value of the evidence needs to be approached with caution because of the lack of an explanation of the age of the identifiable and unidentifiable prints.

[608] Defence counsel demonstrated a person holding the axe and knife simultaneously, the blade of the axe facing towards him and the knife held at the blade, also pointing towards him. Asked whether this demonstration fit the print on the blade of the knife, Sergeant Oliphant responded that he could not speculate. Nowhere in his plea explanation or testimony had the Accused said that he touched the blade of the knife during the altercation with the alleged assailant. The Accused testified that, after being stabbed, he pulled the knife out of his side immediately and dropped it somewhere on the floor, he did not know exactly where. He said the knife was stuck in his body for less than a second. The Accused said he removed the knife from his side with his right hand, which was holding the axe. During the testimony of Captain Joubert it was put to him that the Accused pulled the knife from his side with his thumb towards the handle and dropped it. Captain Joubert testified that this was possible.

[609] The Accused was asked to explain how the knife ended up partially under RUDI's bed. The Accused offered two explanations, namely that the knife could have bounced there when he dropped it or that it could have been pushed there by RUDI when he was moving around. In the light of the probabilities the explanation given by the Accused does seem to be possible but not necessarily plausible.

[610] Prof Dempers and Dr Tiemensma were of the opinion that it was unlikely that the knife would have been stuck in the Accused's body if the Accused was moving around.

[611] The position of the Accused and the attackers had to be taken into account, ie they were struggling allegedly in the vicinity of the bottom of the beds, with the Accused facing towards the wall near the door (see the position of the beds in Exhibit "A190 - 191"). The Accused was stabbed in his left side, in other words the other side of his body further away from than the side

where the knife ended up. If he had dropped the knife immediately on his left side, it is virtually impossible for the knife to have bounced from there onto a thick carpet and underneath the bed (see the position of the knife in Exhibit "A205 - 208"). If the Accused dropped the knife on the right side of his body, it probably would have fallen onto the thick carpet, which makes it unlikely that the knife would have bounced from the thick carpet to underneath the bed, with only the blade sticking out. The Accused agreed that there was not a big gap between the base of the bed and the floor.

[612] The other scenario is that RUDI pushed the knife under the bed in the process of moving around. RUDI's DNA, possibly blood, was found on the blade of the knife and a mixture result with his Touch DNA was found on the handle of the knife. RUDI's Touch DNA could have been transferred onto the knife in an innocent manner before the incident. No evidence was presented to canvass this scenario and the effect of a gloved hand handling the knife after the Touch DNA had been transferred onto the knife in an innocent manner. There may be many explanations for the presence of RUDI's DNA on the knife and the Court cannot speculate on them.

[613] Captain Joubert was of the opinion that RUDI could have been dragged from the bed. He said he could not say that the scene was staged, but he did not have any explanation for the movement of RUDI and the duvet (Exhibit 138). Dr Anthony testified that RUDI might still have been able to move, depending on his level of consciousness, or could have been moved by someone else from the bed to a different location. The Accused suggested that RUDI probably moved from the bed on his own volition, or, less likely, that the attacker came back and moved him off the bed without leaving a trace. The latter is a far-fetched scenario, on the Accused's own admission.

[614] Captain Joubert testified that an imprint left on the duvet, from the Accused's bed, is similar to the size and shape of the blade of the knife. The same duvet ended up on the floor, almost rolled up against the wall, on top of

blood. The Accused offered the suggestion that the knife could have ended up on the duvet and then been flung onto the ground, when the duvet was pulled off the bed, and pushed by RUDI underneath the bed. The Accused never testified that the knife was at any stage on his bed, and the suggestion cannot be regarded as a plausible explanation. Other possibilities for the imprint on the duvet were proffered by Mr Steyl, the Defence ballistics expert. Mr Steyl was not called by the Defence to explain a different alternative for the imprint on the duvet cover.

[615] Dr Du Trevou testified that RUDI would have had limited movement. He presumed that the blow to the head with the axe would have rendered RUDI unconscious, and then he could have recovered a level of consciousness and it was possible that he was able to move. RUDI would have been able to make purposeful movement, but the witness did not know to what extent. The witness confirmed that he saw the crime scene photographs of the bed on which RUDI had been attacked. Dr Du Trevou said that, taking into account the amount of blood on RUDI's bed, RUDI would have become weaker, as the brain was dependent on blood. There was a lot of blood on RUDI's bed and RUDI lay on the bed for quite some time. The head wounds bled profusely and RUDI would have been in a state of concussion.

[616] The witness was confronted by State counsel with Dr Perumal's opinion to the effect that RUDI would have been able to make significant movements, whilst the witness spoke of limited movement. Dr Perumal did not testify, and his opinion is therefore of no evidential value unless it is confirmed by a credible witness. Dr Du Trevou testified that RUDI would have been able to crawl but not to stand or walk. He was asked whether RUDI would have been able, with limited movement, to move from the bed, between the two beds, and to the bottom end of the other bed, on the floor (see Exhibits "A188" – "A191"). Dr Du Trevou agreed that moving the duvet from the Accused's bed to the floor next to the wall, on top of the blood, would have been a goal-directed movement. He confirmed that, depending on RUDI's dizziness and

state of consciousness, of which the witness had no evidence, it was only a theoretical possibility that RUDI could have moved the duvet.

[617] Dr Anthony was cautious about RUDI's movements. She indicated that she was not a blood spatter expert and that she could not comment on paragraph 6.5 of Dr Perumal's report, Exhibit "QQ", dealing with RUDI's movement in the light of the multiple smear patterns. She merely confirmed that there had to be movement by RUDI after the injuries, if the DNA analysis was correct, and that therefore she could not disagree with the contents of paragraph 6.5 of the report.

[618] Lots of movement and activity are attributed to RUDI after he had been injured, which cannot be verified with any certainty or likelihood. It is possible that he did not even move by himself to the floor, to the position where he was found.

[619] Holding onto the axe and removing the knife with the same hand involves an awkward manoeuvre. It is more natural and possibly easier to pull out the knife by the handle rather than by the blade.

[620] Another scenario could be that the Accused pushed the knife underneath the bed himself. That would explain his fingerprints where they were found on the blade.

[621] There are far too many possibilities and insufficient evidence for the Court to make an inference regarding the fingerprints and the position of the knife.

[622] The bottom line is that it is unlikely that the intruder would have left fingerprints with gloved hands. Only the Accused's thumbprint and RUDI's

DNA were found on the knife . If there was no intruder, the knife could possibly have been used in a fight by members of the Van Breda family amongst themselves at some stage during the course of the evening or night, or simply by the Accused, *inter alia*, to stage his wounds and the scene. Prof Dempers testified that, save for the wounds on THERESA's right thumb and on the fingers of RUDI's left hand (which could all be consistent with defensive wounds), all the defects or wounds appeared to be large in length and to have penetrated quite deeply into the tissue. Defensive wounds made with an axe would look different. Prof Dempers said that RUDI sustained a small incised defensive wound to his finger, with reference to the post-mortem report Exhibit "L". The witness was not sure what object caused it. In the case of an axe he would expect a gaping wound. With reference to the post-mortem report Exhibit "N", Theresa had a small 2 cm incised wound. The witness would not expect it to be so small if it had been caused by an axe but said that the wound was not impossible.

The number of intruders

[623] It is the Accused's version that more than one intruder entered the Van Breda residence that particular night. The number of intruders, the description of the intruder(s) and the motive of a possible intruder need to be scrutinised.

[624] Janine Philander testified that the Accused mentioned one attacker to her but that he did say that "they" (with reference to the perpetrators) ran away after the attack. The role of any other possible perpetrator was not described during the call, which seems reasonable to the Court in the circumstances. It could be that he indeed meant that more than one perpetrator invaded their family home, or he could have been making a general reference to the perpetrators responsible for the crimes when he said "they" ran away.

[625] The Accused alleged in his plea explanation that he heard the angry voices of more than one person somewhere else in the house after the attacker had fled out of the bedroom on the first floor. It sounded as though the persons were speaking Afrikaans (see paragraph 34, Exhibit “J”). He said that he did not know how many persons had been in the house, but there must have been at least two intruders. Surprisingly, this very important piece of information about the number of intruders was not contained in his statement to the police, Exhibit “SS”. The Accused only mentioned one attacker or intruder in his statement to the police. It can be accepted that the police would have questioned the Accused about the number and identifying features of the perpetrators responsible for the crimes.

[626] The Accused stated in his plea explanation that the statement to the police contained some inaccuracies and did not contain all the detailed information that he had conveyed to the officers. The circumstances under which the statement had been taken could not be described as ideal. However, as to the contents of the statement, the Accused did not allege in his plea explanation that he had been told what to say by any police officer. He merely complained about being pressed for specifics about certain aspects that he was not confident about (see paragraph 58 – 61, Exhibit “J”).

[627] The Accused testified in his evidence-in-chief that he did mention to Colonel Beneke that there was more than one intruder. When asked by his counsel why he did not tell Sergeant Malan to rectify his statement before signing it, the Accused explained that he did not feel like it after having retold the story of a very traumatic experience several times by that point. The police were still gathering information to catch the perpetrators at that point. The Accused seems to be an intelligent person and must have realised the importance of information about the offenders. During cross-examination the Accused advanced another reason for the absence of this information in his statement. He said he specifically mentioned the second attacker or intruder

but did not notice the omission of reference to the second intruder when he read and signed the statement. He spoke at length about the two intruders and said he did not know why the police left it out. The Accused said he was surprised it was not in his statement. He did tell the police about the second attacker or intruder, so he accepted that they knew about the second attacker.

[628] While it is true that differences between his plea explanation and statement could be expected and explained due to the traumatic circumstances, the issue of the intruder(s) goes to the crux of the matter. It is inconceivable that the police would have left out the allegation of a second intruder in the statement if the Accused had told them about it. It certainly cannot be described as a minor discrepancy. The Accused also contradicted himself about the reason for the omission.

[629] Captain Nicholas Steyn was informed about only one suspect who was wearing a balaclava and gloves. The Accused did not mention a second intruder to him during the interview at the crime scene.

Description of the attacker(s)

[630] According to his plea explanation the Accused thought that the attacker was a Black person (see paragraph 52, Exhibit “J”). The Accused further alleged that the attacker was dressed in dark clothes and wore gloves and a balaclava-type mask (see paragraph 25, Exhibit “J”). In his statement to the police the Accused described the attacker as a strong, well-built person 1.86 meters tall. The Accused stated that the attacker wore dark jeans, a black jumbo jersey, black gloves and a homemade dark grey mask. He said he would recognise the eyes and voice of the attacker (see paragraph 11, Exhibit “SS”). He gave a similar description of the attacker’s clothing during his testimony, except for the jeans.

[631] The Accused testified that the police asked whether he knew the race of the intruders when they took him from the scene to the District Surgeon. According to the Accused he said he could see only one intruder. He thought it was a Black guy, but he could not be sure. The Accused testified that he saw only the attacker's eyes.

[632] During cross-examination the Accused testified that he thought it was a Black man because he noticed a very deep contrast between the whites of the attacker's eyes and the skin around his eyes. In other words, he based his assumption on the skin colouring around the attacker's eyes. The Accused testified that Black could mean Coloured as well, as opposed to White, because the word Coloured is not used overseas. When it was pointed out by State counsel that some White people are also rather dark-skinned, the Accused agreed. When asked why he did not tell the police that he had seen too little of the attacker's face or features to determine his race, the Accused responded that he actually did. He said he was told to choose a race despite being unsure because Colonel Beneke was unhappy with his description. Later he said it was not strictly true that he could identify solely on the basis of his eyes and voice. However, he told the police that those are the only two things that he possibly could use to identify the intruder.

[633] The Accused testified that he heard two angry voices after the attacker had left the room. He inferred that they were Afrikaans-speaking because of the harsh tones but said he could not be sure because he did not hear the words they used. During cross-examination he testified that he would say that the words of the two intruders were most likely Afrikaans but that a person speaking angrily in English or other language could create the same harsh tones. He said the two voices he heard were of a similar type but had distinct intonations. The Accused did not see two intruders in the house.

[634] At some point during cross- examination the Accused surprisingly testified that he saw one person at a time in the bedroom and that it was the same person, as far as he could recall. In his statement the Accused said that the same person came back into the room and started to attack him. He never created the impression that there was more than one or a different attacker in the bedroom before cross-examination took place. State counsel confronted the Accused and asked him why he tried to create the impression that it might have been two different attackers in the bedroom. The Accused responded that he heard the voice of someone else in the house later on. However, the Accused confirmed that he saw one attacker only. He also confirmed that it was the same attacker who executed blows to the head area of his family members with the same weapon.

[635] During cross-examination the Accused conceded that he gave a very stereotyped description of the attacker who executed the attack and that it boiled down to an unknown Black man wearing a balaclava and gloves. The Accused agreed with the statement of his own counsel that no one would be able to trace the attacker based on his description. The Accused explained that he did not have a lot to go on.

[636] The description of the attacker furnished by the Accused did not contain outstanding or distinctive facial or other features except for the build of the assailant. Sergeant Appollis confirmed that the Accused described the body build and height of the alleged suspect to the police. He said one would be surprised at how a suspect could be found with minimal information, even a suspect dressed in a balaclava and gloves, especially in the Jamestown area where people talk to one another. The alleged suspect was a tall person. The police attempted to trace the perpetrator by exploring various avenues – for example, through Crime Intelligence, the newspapers, informants and other sources – but received no information. This aspect supports the notion

that the Accused was not considered a suspect at the time of his deposing to a statement to the police.

The Accused as a witness and his version

The Accused's version at the scene

[637] Captain Nicholas Steyn from the Detective branch in Stellenbosch was tasked with establishing the Accused's version of the events. The Accused was not a suspect at the time and was treated as a victim, according to Sergeant Kleynhans, Dr Albertse and Sergeant Malan. The Accused told his version of the events whilst he was sitting in the ambulance at the crime scene and without Captain Steyn questioning him. The Accused communicated with the witness in English. He told the witness that he had been in the toilet in the early hours of the morning when he heard noises. He looked through a gap in the toilet door and saw someone attacking his brother RUDI. The Accused said that he shouted and then his father came into the room and the assailant attacked his father. His mother and sister came in and the suspect attacked them too.

[638] During cross-examination Captain Steyn testified that it was possible that he had misunderstood the Accused that the Accused's mother and sister were attacked inside the bedroom instead of outside the bedroom. The Accused then confronted the suspect and took the axe from him. The suspect stabbed the Accused in his side with a knife. He chased the suspect from the room and down the stairs. He threw the axe at the suspect but missed and hit the wall. The suspect ran out the back door and the Accused returned to the stairs, where he saw his mother and sister lying on the landing and then fainted. When he regained consciousness he googled the police emergency number because he did not have the number on him. He contacted the police. Captain Steyn conceded that it was possible that the Accused had said he

googled an emergency number and not a police number. The Accused said he could not remember how long he was unconscious.

[639] The photographs of the Accused in Exhibit "C" shows how Captain Steyn observed the Accused in the ambulance. The Accused was quiet and calm and told the witness what had happened. Captain Steyn agreed that the Accused was severely traumatised.

Statement by the Accused to the police and the trial-within-a-trial

[640] After the visit to the District Surgeon, the Accused was taken to the detective offices in Stellenbosch for a further interview. He deposed to a statement pertaining to the events, Exhibit "SS", at approximately 15h52. Thereafter the Accused left the detective offices with friends or family. The statement, taken by Detective Sergeant (at the time, Constable) Clinton Malan, was allowed after a trial-within-a-trial to determine the admissibility of the contents of the statement. The Court indicated that the reasons would be given at the end of the trial.

Trial within a trial

[641] The trial within a trial relates to the admissibility of a statement made by the Accused prior to his arrest. It was made to Sergeant Clinton Malan (Malan). The admissibility of the said statement was contested on the basis that the Accused's constitutional rights were violated in that he was a suspect and, as such, enjoyed the protection of section 35 of the Constitution or, at the very least, of the Judges' Rules.

[642] Counsel for the Accused suggested that the manner in which the Accused was treated prior to the taking of the statement supports the notion

that he was a suspect at the time the statement was made. The State argues that the Accused was not a suspect at the time.

[643] The evidence at the trial within a trial was restricted to that of Malan and the only defence witness, a Mr Andre du Toit (Du Toit). It was further agreed between the parties that the evidence of Dr Van Zyl and Dr Albertse would be incorporated in the trial within a trial.

[644] The onus is on the State to prove the admissibility of the statement which the Defence later handed up in evidence as Exhibit “SS”.

[645] The content of the statement is essentially the same as the Accused’s version in his plea explanation. It is not a confession and does not contain any admissions. It is a witness statement which describes the sequence of events at the time of the commission of the crimes.

[646] At the material time the Accused was one of the two surviving members of the family but the only person in a position to assist the police to identify the assailant who had attacked him and his family that night.

[647] At the time there was no incriminating evidence against the Accused and, quite patently, when making the statement he was not an arrested, a detained or an accused person.

[648] The contents of the statement are not, in effect, disputed. The Accused does not suggest the statement was taken under duress or made involuntarily. It seems that he fully co-operated with the police. The statement itself, Exhibit “SS”, was ostensibly handed up in evidence for the purpose of attacking Malan’s credibility. The principal attack levelled against him was that he did not record the statement using the words of the Accused. The Accused was

unhappy with the spelling mistakes and grammatical errors. Malan's mother tongue is Afrikaans and it seems that he typed what he understood the Accused, an English-speaking person, to be saying.

[649] It was not suggested by Defence counsel that Malan did not record the version given by the Accused. The language and grammatical errors do not in any way affect Malan's credibility adversely or at all. When signing the statement the Accused did not object to the details or content of the statement. In other words, it was not alleged that the content of the statement does not emanate from the Accused.

[650] It was put to Malan, that the Accused was told by Colonel Beneke that he (Colonel Beneke) did not believe this "bullshit" story. If that is true, Colonel Beneke at best started the interview with a high degree of insensitivity. It is unlikely that Colonel Beneke could have come to this conclusion so soon after attending the crime scene. In any event, the allegation is not supported by any evidence and, of course, the Accused did not testify to this effect.

[651] With regard to determining whether the Accused was a suspect, the only really relevant evidence is that of Malan.

[652] Du Toit, the sole witness for the Accused, could not be of any assistance to the Court in deciding this issue. Du Toit, in fact, does not take the matter any further other than confirming by inference that the Accused was allowed contact with his family and friends, received items from them, and was freely allowed to leave. Nothing said to him by the police officials implied that the Accused was detained or a suspect.

[653] Malan was criticised by Defence counsel for apparently inconsequential matters such as inaccurate or vague entries in his pocket book, details of time and other related matters. Malan was not involved in the investigation of this

matter, save for accompanying the Accused to the District Surgeon and taking his statement. He would not have had an undue interest in the matter and, in my view, was a good and reliable witness in respect of the material aspects to which he testified.

[654] Malan's testimony is referred to in the following paragraphs.

[655] The Accused was a victim who had survived an attack on his family, was treated in an ambulance and then taken to Dr Albertse to record his injuries as a victim of crime. The latter is in fact standard police practice.

[656] The police were eager to take his statement as he was at that stage the only source of information regarding possible suspects in what was quite obviously a very serious violent crime.

[657] The questioning of the Accused, and his statement, were to determine what precisely had happened, in order for the police to trace the suspects. The Accused did not indicate that he was unwilling to talk to the police and there was no evidence incriminating the Accused in the commission of the crimes or placing him in a position to provide an explanation.

[658] The Accused was calm and able to give a coherent account of how the family was attacked.

[659] The Accused read the electronic version and was satisfied with what had been recorded.

[660] The Accused was thereafter free to leave with his family.

[661] The Accused failed to testify or lead any evidence to gainsay what Malan had stated during his testimony.

[662] It was reasonable for the police to seek to finalise the formalities and obtain information about the events, at the earliest possible opportunity, from the only available eyewitness.

[663] There was no onus on the Accused to testify or prove anything. However, his failure to testify is a factor to be taken into account, as there is no evidence to rebut the material aspects of the State's case. There is no evidence before Court to find that the Accused was viewed as a suspect at the time when he was initially interviewed and the statement recorded.

[664] In the circumstances the Court finds that the statement made by the Accused was made by him as a witness and not as a suspect.

[665] In any event, the degree of prejudice, if any, against the Accused in admitting the evidence is negligible in that most of the evidence is already before the Court either in the plea explanation or in the verbal statement given by the Accused at the scene to Captain Steyn. Moreover, it does not contain admissions or a confession.

[666] In the light of the peculiar circumstances of this case, public interest would dictate the admission of the evidence, as the police were faced with a serious violent crime and the Accused was the only source of information which could lead to the culprits being traced. The statement marked "SS" was accordingly admitted into evidence.

[667] State counsel submitted that the Court's ruling on the admissibility of the statement, Exhibit "SS", can be confirmed, as no evidence giving cause to revisit the interlocutory decision after the trial-within-a-trial was presented. Defence counsel did not argue to the contrary. Sergeant Malan was merely described as a poor witness who did not want to make obvious concessions regarding the manner in which the statement was taken down.

The discrepancies between the plea explanation of the Accused, his statement to the police and his testimony in Court

[668] It was argued that the Accused's version remains in essence the same, but there seem to be differences on some aspects. Defence counsel argued that the Accused was in a post-ictal state when he deposed to his statement. This possibility is not based on reliable evidence but on an uncertain backdated diagnosis by Dr Butler, who did not examine the Accused at the time or perform tests to confirm his diagnosis. Furthermore, it was submitted that the few discrepancies between the Accused's police statement and his later versions in his plea explanation and evidence in Court can be explained and accounted for by his physical and mental state, which was compounded by the method and manner in which his statement was taken down by the police. Therefore the statement cannot be used as a reliable comparative device for the purpose of incriminating the Accused.

[669] State counsel submitted that at the time of his deposing to Exhibit "SS" the Accused had no insight into the forensic evidence (ie, the forensic pathology reports, the DNA results, the bloodstain analysis and the crime scene investigations). The State submitted that it is quite apparent that the Accused amended his version as an afterthought to explain the incriminating evidence obtained during the investigation.

[670] The nature, number and importance of the discrepancies need to be scrutinised by the Court to determine what weight can be attached to them and to the arguments of counsel.

[671] The Accused testified that Colonel Beneke instructed Sergeant Malan to write down the Accused's version and type it out. Colonel Beneke said that the Accused could leave the police station once it was typed. Sergeant Malan did not ask the Accused questions when he typed the statement. Sergeant Malan offered the Accused the opportunity to read through the statement to see if he was satisfied with the contents. The Accused scanned through the statement on the computer and said that it could be printed. There were grammatical and spelling errors in the statement and it was not a verbatim version. He signed it because he wanted to leave and retelling the story was very traumatising. During the interview at the police station the Accused asked whether he should have a lawyer present. He said he did not know that the statement was going to be used against him. It can be argued that if the Accused was under the impression that he was regarded as a suspect he could have refused to depose to an affidavit without a lawyer's being present.

[672] The Accused said the police did not deprive him of food intentionally and he was not starving at the time. He did eat a sandwich and flavoured yoghurt when he was brought food. The police also did not intentionally deprive him of sleep. He said he was willing to work with the police and gave them as much information as possible to catch the killer. He absolutely wanted to work with the police. The Accused testified that at the time he did not think that the police actions were irregular. He testified that certain aspects in Exhibit "SS" were incorrect but said that he signed it because he could go home. The Accused said he was not thinking clearly at the time.

[673] If he had had legal advice, he would have understood the situation he was in better. He said he would not have changed anything of what he had

said to the police. The document would just have been more accurate. The Accused said the statement is not his version given to the police; the wording in Exhibit “SS” is inaccurate. The Accused said he was not suggesting that the police made up lies but the version is the statement was not the words he used. He said the wording was wrong and, from that, unfair conclusions could be drawn. If his Attorney had been there she could have worded the statement correctly. He said his complaint was about the wording, not the content, of the statement. The Accused conceded that the information contained in the statement did emanate from him in one way or another.

[674] During his testimony the Accused conceded that there were discrepancies between his plea explanation (Exhibit “J”) and his statement to the police, dated 27 January 2015 at 15h52 (Exhibit “SS”).

[675] The Accused indicated in his plea explanation that the gist of what was written down in Exhibit “SS” is correct but stated that the statement does contain some inaccuracies and does not contain all the detailed information he conveyed to the police officers. The Accused explained that, although his statement was not correct in all aspects, he did not want to sit around correcting the police officers and reliving the trauma of the night before with another retelling of what had happened. The Accused claimed that he is severely prejudiced by the fact that he is held to each and every word in his statement, under the circumstances.

[676] During cross-examination the Accused conceded that he had signed an incorrect statement but said that if he had known it was going to be used in court he would not have signed it. There should be no distinction in the mind of the deponent between a statement to the police and court proceedings, as far as telling the truth is concerned. In effect the Accused conceded that he was prepared to compromise the truth under oath for reasons of his own. Furthermore, the Accused said that he would not have changed anything of what he had said to the police, only that the document would have been more

accurate. He said he was not suggesting that the police put words in his mouth or that they made up lies, he was merely suggesting that he did not use the words in the statement and cannot be held accountable for the exact wording of the statement. It is true that police statements are not perfect. All depends on the essence of the statement. Apart from spelling and grammar mistakes, the police had to be aware of the importance of the accuracy of the contents of the statement of probably the only eyewitness. It is not a matter of holding the Accused accountable for the exact wording but for important factual inconsistencies in the sequence of events.

[677] State counsel canvassed the statement with the Accused.

[678] The Accused stated in his police statement that he had no major arguments with his family members. The Accused testified that there was no argument amongst the family members on 26 January 2015. During his testimony the Accused also denied having any serious arguments with his family. In his plea explanation it is merely stated that there was nothing out of the ordinary the evening before the attack. According to his plea explanation they were a fairly close-knit family. They enjoyed doing things together. The Accused's version in this regard has remained the same since the attack.

[679] Before dinner, at about 18h30, according to the statement, the Accused and MARTIN enjoyed a bottle of red wine in the living room. In his statement the Accused mentioned that he also had a whisky and a rum and coke during the course of the evening.

[680] The Accused testified that the reference to the whisky was incorrect in paragraph 2 of Exhibit "SS". He could not recall having whisky. The Accused testified that he made it clear to the police that he could not be sure. When the police suggested to him that he had some whisky, he said he probably had a whisky. He denied drinking rum and coke and said it was not true. Then again

the Accused said he could not remember whether he had the rum and coke, but Colonel Beneke pushed him and he agreed, although he knew he was wrong. He said he was overwhelmed by the authorities. Later, during cross-examination, the Accused said that when the officers put this consumption of alcohol to him, he could not deny it.

[681] Two wine glasses and a glass normally used to drink whisky with can be seen on the dining-room table in Exhibit “A382 - 386”.

[682] In his plea explanation the Accused said that MARTIN, RUDI and he watched television while TERESA prepared dinner. According to his statement MARTIN and the Accused drank two glasses of red wine each and RUDI went for a run outside.

[683] When confronted with the contradiction regarding RUDI’s presence in his statement, the Accused said it was simply not his words; he was never sure whether RUDI went for a run. However, during his evidence-in-chief the Accused testified that RUDI went for a run on the estate while denying during cross-examination having said so to the police. Thus not only is there a contradiction between his statement and plea explanation but the Accused also contradicted himself during his testimony.

[684] In his statement the Accused said the family had dinner at 19h15 in the dining room and finished dinner at about 20h00. The Accused did not mention times in his plea explanation.

[685] He testified that he could not be sure of the time they had dinner, specified as being 19h15 to 20h00. He said the times were not given by him as definite times: it was approximate times. The Accused could not recall what time they finished dinner. They usually enjoyed dinner at about 19h30 and it would last about thirty (30) to forty-five (45) minutes.

[686] After dinner MARTIN, RUDI, MARLI and the Accused watched television, according to his statement. In his plea explanation the Accused said that MARTIN, RUDI and himself watched *Star Trek 2* after dinner. During his testimony the Accused denied having included MARLI. He told the police which family members watched television on a typical evening. The State submitted that the failure to mention in his statement that he specifically watched the movie *Star Trek 2* that evening was done to explain the argument that Ms Op't Hoff overheard.

[687] The Accused testified that his father did some work at the dining-room table after dinner and that RUDI and himself watched television on the evening of 26 January 2017. The Accused testified that he later watched *Star Trek 2* on their new hi-fi system together with MARTIN and RUDI. He could not recall what time they started watching and said MARTIN first did some work before they watched the film. Adv Galloway confronted the Accused with the fact that he did not mention in his statement or plea explanation that his father worked on a laptop at the dining-room table after dinner.

[688] State counsel suggested that his father working on a laptop after dinner, was mentioned in his testimony to fit in with the timeline between dinner and watching television. Furthermore, it was submitted that this was done to accord with the time frame in Ms Op't Hoff's evidence. The Accused said his father's working on his laptop was not important at the time of the drawing up of the plea explanation. He found it relevant to mention this new piece of evidence only during his testimony. The Accused said he was never sure exactly what time they started watching the movie. During cross-examination of Ms Op't Hoff it was suggested by Defence Counsel that the movie was two hours long and was what Ms Op't Hoff had heard between 22h00 and midnight on the night of the murders. The Accused conceded that if they watched a movie after dinner at about 20h00 his version would not

make sense without the newly introduced evidence to the effect that Ms Op't Hoff could have heard the movie soundtrack only at 22h00 and not at 20h00.

[689] A closed laptop and open documents could be seen on the dining-room table in the photographs in "A51" and "A52". In the photograph in Exhibit "A53" an open book with only a few notes at the top of the page and a piece of paper can be seen. In the study in Exhibits "A97" and "A99" an open laptop, documents with glasses on top of them, a used cup and a glass of water can be seen. It appears that somebody worked in the study, possibly at some stage before the attack, during the night of the murders.

[690] The cupboard doors and drawers in the study were open in the photographs in Exhibits "A397 - 399 and A401 - 402". They could have been opened by an intruder or by the Accused himself or somebody who had worked in the study the previous night and left the doors open, before or after dinner. No Touch DNA could be found on the cupboard doors in the study. MARTIN or another family member possibly left the cupboard doors open and retired to bed without closing them, seemingly contrary to the general tidy appearance of the ground floor and of the contents of the cupboard and drawers in the study. An intruder could have looked for valuables or something, but the contents of the cupboard were not in disarray and no obvious valuables were removed from the study. The same applies to the drawers, with the documents neatly put away. The third possibility is that the Accused opened the cupboards himself after the murders, possibly in an attempt to stage the scene.

[691] The Accused could not recall whether his father did some work before dinner or only after dinner.

[692] In the Accused's plea explanation the impression was created that MARTIN, RUDI and the Accused went to bed after the movie, at the same time, which would have been approximately midnight. In his statement the Accused said MARLI and his father went to bed at about 21h00, then RUDI and he went to bed two hours later at 23h00.

[693] The Accused testified that he did say to Colonel Beneke that not everyone went to sleep at the same time. The Accused told Colonel Beneke about how the times generally occurred; the times were not a specific recollection of that particular evening. During cross-examination the Accused explained that MARLI and TERESA would have gone to bed at about 21h00, his father would usually work a bit later and RUDI and the Accused would be watching television and be the last two awake. It does not explain why the Accused said in his statement that his father also went to bed at 21h00, given that he usually worked later than that. When confronted with the times given regarding that specific evening, the Accused said the time were based on normal evenings. However, in court he was sure about what happened that evening before the attack. It is difficult to understand how the Accused could have forgotten that the males in the family watched a DVD and went to bed at the same time, rather late.

[694] In his plea explanation the Accused said he watched an animated show called *One Piece* later, went to the bathroom at some point to move his bowels and played games on his cell phone whilst in the bathroom. In his statement the Accused stated that he watched *One Piece* on his laptop until 03h00 and then listened to music on his cell phone. He then went to the bathroom with his phone in his pocket.

[695] The Accused testified that he watched an animated show called *One Piece* on his laptop for a couple of hours. At some point the Accused listened

to music on his phone in his bed, using his earphones. The Accused took his phone with him to the bathroom to play games whilst sitting on the toilet.

[696] The Court accepts that his plea explanation was not necessarily a comprehensive account of minor details of the events, although it was very detailed. The fact that the Accused did not mention, for example, listening to music in his plea explanation is of no significance.

[697] The Accused said in his statement that he closed the bathroom door behind him while he was inside the bathroom. He opened the door slightly after he had heard the noise from their room. In his plea explanation he said that the bathroom door was only partially closed. He testified that the bathroom door was slightly ajar. He opened the bathroom door to investigate the sounds that he heard.

[698] The Accused testified that he could not recall where he was physically when he shouted for help or making a noise after he had exited the bathroom and whilst RUDI was being attacked. The Accused said he was inferring that he was between the bottom end of his bed and the bathroom door. He also could not recall whether he remained stationary. Adv Galloway put it to the Accused that in his police statement he said that he opened the bathroom door slightly and remained in the bathroom, too afraid to go out. In his statement the Accused said that he went out of the bathroom after he had heard his mother and the attacker had left the room. In his plea explanation the Accused created the same impression. In paragraph 24 of his plea explanation the Accused said he stood frozen and could not recall whether he remained in the same position but that he did open the bathroom door. He never said that he went out of the bathroom before the attacker left the room for the first time. The Accused responded that he did exit the bathroom and that it was not his intention to create the impression that he remained in the bathroom until the attacker left the room. The Accused explained that it was

not his words in the police statement. He denied having said to the police specifically that he was scared to leave the bathroom. He did not know where the police were getting their words from and that the words written down in the statement was probably a mistranslation. He added that he was not saying that they did it intentionally.

[699] It was also put to Captain Joubert that the Accused did leave the bathroom with regard to the issue of blood spatter or the lack thereof on the walls near the bathroom door. State counsel asked whether the Accused was sure that he had stood in that corner in the bedroom. The Accused answered in the affirmative and explained that he would not otherwise have been able to see what was going on in the bedroom.

[700] It is a significant issue whether the Accused remained in the bathroom, as stated in his statement, or actually entered into the boys' room, as he testified. The State submitted that the Accused's version was tailored to explain the blood spatter on his clothing.

[701] The Accused mentioned one intruder only in his statement to the police. In his plea explanation the Accused stated that he recalled hearing what sounded like the angry voices of more than one person, somewhere else in the house, after the attacker had fled from the bedroom.

[702] The Accused testified that he definitely mentioned to Colonel Beneke that there was more than one attacker. The Court finds it is unlikely that the police would not have mentioned the second intruder in the statement if the Accused had alerted them to that intruder at the time. The Accused agreed that the police gathered information from him to apprehend the perpetrator(s). Captain Steyn also never mentioned a second intruder when he testified about the Accused's version given at the scene. It was not put to Captain Steyn by Defence counsel that the Accused said a second intruder was in the

Van Breda house, although other mistakes of fact were pointed out. This aspect is a major discrepancy that was not satisfactorily explained by the Accused.

[703] In his police statement the Accused said his father jumped on the attacker, whereafter the attacker assaulted his father with the axe. His father collapsed in the room where he had been attacked. In his plea explanation the Accused said that upon entering the room his father moved onto the bed, over RUDI, towards the attacker, who was on the opposite side of the bed. As his father was lunging towards the attacker, his father was struck with the axe and went limp on the bed. He did not see his father move again.

[704] The Accused struggled to explain his father's position during his testimony. Initially he testified that his father was on his way over the bed. He testified that his father came onto RUDI's bed as if he was going to make a rugby tackle on the attacker. The Accused said his father was trying to attack the assailant and probably trying to protect RUDI. He denied using the words in the police statement but said the version written down was the gist of what happened. Later, during cross-examination, the Accused testified that his father actually never moved over RUDI; he was struck before he was able to carry out that motion. MARTIN was not lying on top of RUDI; they were next to each other. A different impression was created in the Accused's police statement and plea explanation in this regard.

[705] The State submitted that the rugby-tackle version was to explain the findings of Dr Anthony and Captain Joubert who were of the view that MARTIN was attacked from behind and unlikely to have been aware of the attack. It would have made more sense for MARTIN to have gone straight to the attacker in an attempt to disarm him, rather than to put himself and the rest of his family at risk by falling over RUDI on the bed, with the axe-wielding attacker next to the bed.

[706] According to the Accused's plea explanation, the attacker was laughing whilst he attacked MARTIN. The attacker was laughing when he came at the Accused and was almost unconcerned about his presence. The statement is silent in this regard.

[707] The Accused testified that he distinctly remembered hearing that the attacker laughed during the attack on his father. Before the scuffle with the attacker, the attacker walked slowly towards the Accused and laughed again. He testified that the attacker was also laughing when attacking RUDI after he had attacked his father. The Accused described it as a high-pitched giggle. The attacker struck RUDI again and giggled and the Accused got the impression that the attacker had fun murdering people.

[708] The Accused said in his statement that he could hear that the attacker was busy assaulting his mother in the passage. In his plea explanation the Accused said he could not recall whether he heard any sounds of an attack on his mother outside his room.

[709] The Accused testified that he did not hear sounds of an attack outside the boys' room. He testified that it did not really make sense to him. The Accused testified that he could not see what happened to his mother outside the bedroom and he could not recall hearing anything. During cross-examination State counsel pointed out that according to paragraph 6 of his police statement he said he could hear his mother's voice and the attack on his mother and he then ventured out of the bathroom. The Accused merely replied that the statement was not his own words. Adv Galloway said that in his plea explanation the Accused said he did not hear anything. The Accused testified that it was an unanswered question, he asked himself why he could not recall the sounds; it must have been similar sounds as the attack on the male persons. He conceded that there had to be sounds with reference to the attack on his mother.

[710] The Accused testified that either he did not say to the police that he heard the attack on his mother or he remembered it at that point and could not recall it at the time of his testimony. He conceded that it was not that the police added it out of their own accord. The same was possibly true about other aspects he said to the police He was not of the opinion that the police added it out of their own initiative. The Accused said it made sense that he did remember it at some point.

[711] The State submitted his later version that he did not hear the assault on his mother, explains his failure to assist his mother and set the scene for his later loss of consciousness when he observed her and MARLI on the top floor.

[712] According to his plea explanation, the attacker came at the Accused again after disarming him and grabbing the right forearm of the hand in which the Accused was holding the axe. At the same time, the attacker lifted his right hand and then for the first time the Accused saw he had a knife in his right hand. According to the Accused he did not know where the attacker got the knife from.

[713] In his statement the sequence of events seemed to be different regarding the time that the Accused observed the knife. When the Accused managed to take the axe from the attacker, he actually saw the attacker pulling out a knife, and then the Accused grabbed the attacker's right arm with his left hand. When confronted with the discrepancy, the Accused testified that he did not say at the police station from where the attacker got the knife.

[714] During his testimony a third version was given by the Accused. The Accused said the attacker recovered fairly quickly after being disarmed, he stood up and came back at the Accused with a knife in his right hand. He did not see where the knife came from. The Accused demonstrated how with his

palm towards him in a fist, with the blade coming out the bottom of his fisted palm and his hand raised across his torso. As they came together again, the Accused raised the axe in his right hand and the attacker raised his right hand with the knife. The Accused therefore did not see the knife for the first time when the attacker lifted his right hand as being portrayed in his plea explanation.

[715] It was put to the Accused by State counsel that in paragraph 7, Exhibit "SS", he said that he observed the attacker pulling out a knife and that the Accused then stepped back. The Accused responded it was not what he said. He just said that the attacker was about a step away from him, he did not say that he stepped back.

[716] In his plea explanation the Accused described the fight between the attacker and him, and *inter alia* alleged that the attacker cut, slashed and stabbed at his chest and left arm; no mention was made of his throat. The Accused struck the right shoulder of the attacker with the axe in an attempt to make the attacker let go of the knife. The attacker stabbed the Accused with the knife on his left side, almost at the same time that the Accused struck the attacker with the axe.

[717] In his statement the Accused said the attacker attacked him again, the Accused pulled the attacker to the side of his body and the attacker stabbed the Accused on the left side of his body. Then he hit the attacker with the axe. In the statement no mention was made of the cutting, slashing and stabbing at the chest and arm of the Accused, or his throat.

[718] The Accused testified that the attacker slashed at him with the knife constantly and was trying to cut the Accused's throat. The knife went downwards and the Accused was cut or scratched on his chest during the

struggle with the attacker. It happened several times and the knife moved between them several times.

[719] State counsel submitted that it was rather unusual that the Accused could choreograph the exact details in respect of the fight between him and the attacker. However, the Accused was unable to give any information on the movement of feet during the altercation. The Court was referred to Dr Tiemensma's quotation from the textbook, Knights Forensic Pathology, page 154 regarding the tendency to visualise a fight as a static confrontation and in an attempt to reconstruct events, the assailant merely moved his arms as if the two participants were standing still. This is an unrealistic interpretation as all fights are dynamic with constant movement of the bodies and limbs of both parties. The State argued that the detailed demonstration was to fit in with the evidence of Dr Tiemensma and Dr Dempers regarding the self-inflicted injuries.

[720] State counsel argued that the Accused version in his plea explanation and his subsequent testimony in Court of TERESA and MARLI's position when he followed the attacker from the boys' room, was to explain why he did not stumble over their bodies at that point in time.

[721] The Accused did not mention in his statement seeing MARLI and his mother when exiting the boys' room in pursuit of the attacker. In his plea explanation the Accused said he recalled having a glimpse of MARLI and his mother lying immediately outside the bedroom door on the top landing of the stairs. Although he could not say what their exact position was, he could definitely say that MARLI's feet was not in the same place as on the photographs taken by Sergeant Kleynhans.

[722] During cross-examination the Accused testified that it was something that he would have told Colonel Beneke. He said he was sure MARLI's feet was not in the doorway based on the fact that it was not obstructed.

[723] The Accused did not mention in Exhibit "SS" that he heard RUDI making gurgling sounds and saw him moving on his bed after the attacker left the room, as he testified. In paragraph 34, 39 and 40 of his plea explanation the Accused stated that he saw RUDI moving around on his bed rather violently before he followed the attacker and heard RUDI making gurgling sounds even after regaining consciousness on the stairs. The Accused also makes no mention of this during the emergency call. State counsel argued that this was an afterthought to explain RUDI's position and movement. The Accused denied adding this information in his plea explanation to explain Captain Joubert's opinion that RUDI was handled on the scene.

[724] The Accused unsuccessfully called the emergency number twice from his mobile phone and then successfully from the landline. The first successful call to EMS was from the landline at 07h12 on 27 January 2015 and before he tried to phone Bianca on his mobile phone at 07h20. He went on Google maps at 07h36 (see Exhibit "UU").

[725] According to his plea explanation he tried to call Bianca again while being on the phone with the emergency operator. In his statement he said that he waited twenty (20) minutes on the phone in the kitchen when he called the ambulance. Then he tried to contact Bianca again (for the second time after the first unsuccessful attempt at 04h24), and he got through to the emergency operator only thereafter.

[726] In his plea explanation, paragraph 48, Exhibit “J”, the Accused stated that he requested a person that he noticed outside the house to get help as far as he could recall. He phoned the emergency services and approached a person while waiting for the ambulance. His statement is silent on this important issue. The Accused testified that it was a female person and he was under the impression that it was a domestic worker of a neighbour. It might have been Ms Opt’ Hoff’s domestic worker (babysitter). He said he was on the phone and did not ascertain what happened to the person.

[727] When confronted with the fact that it was not mentioned in Exhibit “SS”, the Accused initially said the process of the trial had jogged a lot of his memory. Adv Galloway said the Accused gave rather a lot of detail in his statement but he did not mention approaching a lady for help. Then the Accused testified that he was fairly sure that he did mention it to the police but that they did not put it in his police statement. The Accused also gave another different explanation that he did not deem it necessary to say to the police that the person was on the Estate so that they could go and look for her.

[728] During cross-examination the Accused testified that he was willing to work with the police and gave them as much as possible information to catch the killer. It is highly unlikely that the police would not have followed up this information if the Accused did in fact tell them about the lady in the street. It is unknown under what circumstances a statement from a lady, presumably Ms Op’t Hoff’s domestic worker, was obtained and what information was given to the police. The witness was not called on behalf of the Accused.

[729] The Accused said in his statement that he had smoked cigarettes in the kitchen after the emergency call whilst waiting for the emergency services. In his plea explanation and his testimony the Accused said that he smoked the cigarettes at the kitchen counter in an attempt to remain calm whilst he was dialling the emergency number on the cordless landline, and then got through

to the operator. The State submitted the strange behaviour to smoke instead of assisting his dying family, needed to be explained.

[730] In his plea explanation and testimony the Accused said that he looked at the emergency numbers on the fridge door in the kitchen, but the numbers did not appear to him to be of any assistance. The statement to the police is silent in this regard.

[731] The Accused testified that he considered the numbers on the fridge and decided that he could do more by other means. Calling the security would have resulted in just doing more explaining. He did not call the 24 hour emergency number because he thought he would be better off speaking directly to the people that were going to help. The Accused confirmed that there was a hospital number and medical doctor or general practitioner with a 24 hour emergency number on the list. The Accused testified that the headings on the list were even in different colours so that one could scan quickly through it. When being confronted with the fact that there were two 24 hour emergency numbers on the list, the Accused said he thought that he could get an ambulance quicker. The Accused agreed that the security could have rushed to his assistance whilst the ambulance had to come from a distance, in other words there were people closer that could have actually helped.

The Accused's testimony regarding his behaviour and other aspects during the events the night of the murders

[732] The family dog, Sasha, allegedly made no noise to warn the members of the household when the intruders entered the house. The Accused gave a comprehensive plea explanation but never mentioned the dog barking prior to the attack during that particular night. No statements were made on behalf of the Accused that the dog barked and woke up some of the family members

when the alleged intruders had entered the house prior to the attack. The Accused testified that he did not know where Sasha was during the incident. Christiaan Koegenberg testified that upon arrival he saw the Accused sitting outside the house together with a small dog. The Accused testified that the police brought the dog to him. No evidence was presented by the State where the dog was found by the police.

[733] The Accused testified that he could not recall hearing Sasha barking before losing consciousness. According to the Accused it would be probable for her not to bark when there were strangers in the house in the middle of the night. She would bark at sounds that she identified as something exciting for her.

[734] Precious Munqongani testified that Sasha slept where the Accused had slept. Her bed can be seen between the two beds in the boys' room in Exhibit "A205". In his evidence-in-chief the Accused testified that Sasha normally would either sleep upstairs in the boys' room or downstairs on a little mat in the lounge (see Exhibit "A47"). The kitchen door had a doggy door installed for Sasha to relieve herself. There were also beds for her in the study and MARLI's room (see Exhibit "A95 and 165"). On the photographs in Exhibit "A" it appears that one of her beds was at the bottom of the stairs and in line with the entrance to the study near the open cupboards. The Accused said Sasha was a house dog that lived inside the house.

[735] The Accused testified that Sasha was sickly at the time. She was on medication for one week out of a month and was disabled whilst on medication. The Accused testified that Sasha would not really bark during that time. According to the Accused Sasha was not able to go up and down the stairs by herself so they had to carry her up and down the stairs. He then testified that she was not that immobile that she could not get around and get up the stairs; she just struggled. The Accused said he could not recall carrying Sasha upstairs to the room the evening before the murders, so he presumed

she slept downstairs. Surprisingly the Accused was not sure whether Sasha was on medication that particular night. The incident happened in the beginning of the week so Sasha's behaviour would probably have been notably different if she had received her medication that particular Monday.

[736] The Accused testified that Sasha was completely deaf as well; it is not clear whether it was in general or during the time that she took her medication. It does not make sense that she would hear the doorbell, the phone ringing and the metal from the side gate and bark at that if she was completely deaf in general.

[737] The Accused testified that the first thing he registered after he regained consciousness, was seeing his mother and MARLI at the top landing. Thereafter the Accused testified that the first thing that he recalled from the morning after the murders, was hearing Sasha barking at the phone that was ringing. The Accused testified that he did not know which phone was ringing because the only recorded incoming call on his mobile phone and the land line was at 07h39 (see Exhibit "UU"). If Sasha was deaf only during the time that she was on medication, she could not have been on medication that particular night because the Accused could hear her barking when the phone was ringing after he regained consciousness that morning. Even if she was, she had to be aware of the intruders given the position of her beds near the bottom of the stairs and in the study.

[738] Ms Munqongani testified that the dog would bark for a short time upon her arrival but it did not make a lot of noise. The dog roamed the house freely. According to the Accused Sasha would have barked at Precious, whom she knew, and not at strange people being in the house in the middle of the night. She also would not have barked at strange noises outside but she got very excited when the phone and the doorbell rang. She used to run around at the front door when the doorbell rang. In one instance the Accused testified that the dog did not bark at Precious because she was scared of Precious. In

another instance he testified that Sasha would bark at Precious because Precious played with her as soon as she got there.

[739] It seems to be unlikely that Sasha would not have barked at intruders in the middle of the night as she barked upon Precious' arrival and at the metal sound from the side gate, if the intruder/s came via that route. It is also unlikely that she would not have barked during the attack upstairs as it could not have been a quiet event in which her owners were involved.

[740] The Court dealt with the concession by the Accused that it would be strange that the persons who planned to enter the house and attack the family, came unarmed or armed inadequately that night. The Accused found it strange that the one person who went upstairs was also incidentally the same person who was armed with both the knife and the axe that came from the house.

[741] According to the Accused, the attacker appeared to be unconcerned about his presence in the room. The Accused testified that the attacker had to be aware of his presence. Not only did the attacker remain with his back turned to the Accused whilst brutally assaulting the other two male members of the family, he also went out of the room to attend to a female person outside the room first. The Accused is a tall, well-built person with an appearance of being physically strong. By leaving the Accused unattended like that and open himself to the risk of being overpowered, the attacker's behaviour seems to be peculiar. It is also peculiar that the attacker did not shout for assistance to the other intruder(s) when he struggled with the Accused or when he was disarmed of the axe. Furthermore it is peculiar that the attacker would approach the Accused with a knife after being disarmed of the axe, whilst the Accused was armed with an axe.

[742] The Accused was too scared to help any member of his family and only had an altercation with the intruder when he was approached by the intruder. Even when his father entered the room and before MARTIN was incapacitated, the Accused did nothing to help his father overpowering the attacker in a relatively small room. Despite his fear that prevented him from helping his family, he was brave enough to follow the intruder(s), even outside of the house.

[743] The position of the attacker is significant; he was standing more or less between the two beds in the room when he lodged the attack on RUDI and MARTIN. The attacker placed himself in a vulnerable position by cutting himself off from the entrance to the room and standing with his back towards the other bed and bathroom whilst it was clear that another person slept in the other bed. It would have been much more logical to approach RUDI from the other side of the bed.

[744] RUDI's father had to have a clear view of the attacker from the entrance of the room (see Exhibit "A187"). The Accused agreed that his father could have gone around the bed to possibly disarm the attacker and save his entire family. The Accused admitted that it might have also given him the courage and opportunity to help his father overpowering the attacker. Instead MARTIN opted to fall over RUDI to protect him and put himself at risk to be killed as an easy target and leave the rest of his family behind with an armed intruder in the house. If follows logically that MARTIN's actions would be understandable if the attacker was known to him and he did not expect to be attacked too. If the attacker was unknown to him it follows logically that a person would rather attempt to disarm such an attacker to stop an ongoing attack and prevent further attacks on the other occupants in the house.

[745] Not knowing how many people were in the house, made the Accused hesitate before going after the attacker. The Accused allegedly followed the

intruder down the staircase, lost his footing and fell down the stairs. The Accused got up and went out the open back kitchen door only far enough to look down the side wall of the house and went back inside the house.

[746] The Accused stated in his plea explanation that he heard angry voices somewhere else in the house after the attacker fled from the room (see paragraph 34, Exhibit "J"). In his evidence-in-chief he testified that he heard the voices immediately after the attacker fled from the room. It seems strange that the same scared person would at that stage, just after realising there were actually more intruders in the house, bravely chase after the intruder(s), even if he was armed with the axe. At that stage he was uncertain as to the number of other intruders inside the house and whether and how they were armed. Furthermore, the Accused disarmed himself by throwing the axe after the attacker. He said hearing the voices made him very unsure as to what was going on. The Accused testified that he did not know what his intention or motivation was when he followed the attacker. He witnessed what at least one of the intruders was capable of, but still, he testified, he followed the attacker as it was "pretty much of an effort to flush them (the intruders) out of the house or something".

[747] He said he thought he was under the impression that the other intruders had also run out because the attacker was fleeing. However, he never actually saw anybody exiting the house via the back door. The Accused conceded that the intruders could still have been in the study, he did not check the study or the rest of the house when he came back into the house. The Accused testified that there were numerous other places in the house where the intruders could have been. He said he was not thinking clearly as he was recovering from the trauma. The Court accepts that a person would not always be thinking clearly when being exposed to such trauma. However, a basic human instinct is to secure your environment, to protect yourself and other possibly surviving family members.

[748] During his evidence-in-chief the Accused said he was not sure why he checked the back door. He went out the back door to look down the side of the house and did not see anyone and went inside again. He did not call for help at that stage. There was no reason for not doing so, in hindsight he should have done that. During cross-examination the Accused offered an explanation for going straight to the back door. The Accused testified that he approached the kitchen door instinctively. He explained they always kept the back door open and said he did not give it a lot of thought. Later he said that he could see through a window that the back door was standing wide open, that was why he went straight to the back door. He explained that one could see through the window when you were descending the stairs and came to the end of the stairs.

[749] In his statement, Exhibit "SS", the Accused stated that he "assumed" that the person went out the back door because they always left the back door open every night, for the domestic worker to come inside the house. Once again the Accused denied that he put it that way and said he did not say that he made that assumption; he "saw" the back door was wide open. When State counsel confronted him with the next sentence in his statement, Exhibit "SS", to the effect that he went to the back door and "discovered" that it was standing open, the Accused indicated that it was true. Both scenario's proffered whether he saw the back door open or discovered it to be open, cannot be true.

[750] The Accused left the kitchen door open without locking it when he went back inside the house. Sergeant Kleynhans found the back door open upon his arrival, whether it was wide open or slightly open. It is strange that the Accused did not secure the house as far as possible by at least locking the back door as the criminals were at large, with at least one of them being a ruthless killer. The Accused in fact said in his statement to the police that he went back inside the house because he was afraid to follow the assailant, and

did not know what the assailant had on him (see paragraph 8, Exhibit "SS"). Furthermore, it is odd that such a ruthless killer ran away together with at least one other perpetrator. Despite the fact that he had been disarmed, there were lots of other knives in the kitchen drawer. It probably would have been easy for at least two perpetrators to overpower the Accused and kill him too. It seems odd that the killer would wipe out an entire family and leave one person.

[751] The Accused could not explain why he headed back upstairs when he returned from the back door. He said he never touched any of his family members or disturbed the scene. He had his phone with him downstairs as he was already busy googling when he entered the house again. He also attempted to phone Bianca. Therefore there was no need to go upstairs unless he wanted to check on his family. However, he was unsure whether that was the reason for heading upstairs. He was aware of the fact that at least one or two of the family members were still alive. Later after he regained consciousness, the Accused turned back and went downstairs without checking on his family upstairs.

[752] He *inter alia* phoned the emergency services from the cordless landline phone. The Accused did not check on his family during that time as he felt he did the most he could. He thought that he did not have the physical capacity to help his family at that point. The duration of the emergency call was exceptionally long. It is strange that the Accused did not attempt to stop the blood flow from, for instance MARLI's wounds. Instead he appeared to be content to have this long conversation whilst every second could be important to save the lives of his family. The Accused testified that he did not help or console his family members because he had been taught a bystander could do more damage than good. He also did not think one of the neighbours could help because they were not medical professionals. He conceded that he could have simply sat with his family members to console them or made them more comfortable even if they were in their dying moments. The Accused displayed

a peculiar lack of empathy towards the victims during the incident. Instead he opted to phone his girlfriend several times, albeit unsuccessfully.

[753] The Court is cautious and does not adopt an armchair approach with regard to the Accused's actions amidst severe traumatic circumstances. It is understandable that his actions would probably fall short of the expected norm in some respects. However, his actions (or the lack thereof) could probably not all be justified by the traumatic circumstances. The Accused seems to be an intelligent person, he took action in a very controlled and unusual manner. This illustrates that he certainly was capable of functioning under the circumstances. If a person is able to function, whether he was in a post-ictal state or not, such a person should also be able to instinctively display emotion and empathy.

Conclusion

[754] The Court finds that no credible convincing evidence exists to the effect that an intruder entered the estate and the Van Breda residence the night of the murders. Taking into account the type of weapon, the number and nature of the injuries, the perpetrator had to have the intention to kill the victims in the form of *dolus directus.* The Court has no reason to reject the evidence of the State witnesses, after weighing the merits and demerits of their evidence unless otherwise indicated. Their versions corroborated each other in material aspects and are, in my view, reliable.

[755] The Accused was singularly unimpressive as a witness. Initially he appeared confident during his, quite apparently, well-rehearsed evidence-in-chief but was more uncomfortable during cross-examination. His answers were vague on difficult issues whereas he gave a detailed version on other aspects. He tended to adjust his answers very subtly and contradicted himself in the process. His standard answer to difficult questions implicating him as

the perpetrator, amounted often to uninformative answers like “I should have” without explaining the issue at hand, sensibly and adequately.

[756] Even if the Accused experienced a possible generalised tonic-clonic epileptic seizure or other type of seizure when losing consciousness on the stairs, he was fully conscious and responsible for his actions the period before the possible seizure happened and therefore he would have known what he was doing. It was in any event not the Defence case that the Accused lacked criminal capacity to commit the crimes or failed to appreciate the wrongfulness of his actions.

[757] In conclusion, State Counsel argued that all the possibilities advanced by the Defence, ought not to be elevated to facts. Anything is possible in the realm of ordinary human experience. The following objective facts, however, establish that the Accused was the perpetrator as the only reasonable inference:

(1) The victims lived in a security Estate with no evidence of any unlawful entry to the Estate at the time of the incident;

(2) Though not impenetrable, a reasonably high degree of skill, knowledge of the layout of the Estate and its security system and, of course, some expertise and planning was required to unlawfully enter the premises;

(3) Fortuitous unlawful entry was most unlikely;

(4) No evidence typical of a house robbery or break in, showing any intruder(s) having been inside the house, is evident;

(5) Four of the five members of a family were found brutally attacked in a similar fashion and left (for) dead;

(6) The family members were all in very close proximity in the sleeping quarters of the house;

(7) The Accused was left standing, having lived through the events;

(8) The Accused presented with injuries supposedly inflicted by the same attacker during the same incident and in execution of the same intent, yet markedly different in nature and extent to that of the rest of the family;

(9) The evidence establishes conclusively that some, if not all of his injuries, were self-inflicted;

(10) The version the Accused provided of how the incident occurred, is inconsistent with the objective evidence found on the scene;

(11) The Accused amended material aspects of his version upon becoming aware of the irreconcilability of his version with material aspects of the evidence.

[758] Each piece of evidence on its own might not be enough to establish the guilt of the Accused but the cumulative effect of all the pieces concludes the puzzle. This leads to only one reasonable inference. This is true even if the Court is to ignore the DNA evidence or the statement the Accused made to the police.

[759] The following dictum in R v De Villiers 1944 (A) 493 on pp. 508 – 509 is applicable and best illustrates the evaluation of the circumstantial evidence in this matter best:

> *"As stated by Best, Evidence, 5th edition, sec 298; -*
>
> *'Not to speak of greater numbers; even two articles of circumstantial evidence - though each taken by itself weighs but as a feather - join them together, you will find them pressing on the delinquent with the weight of a milestone … It is of the utmost importance to bear in mind that, where a number of independent circumstances point to the same conclusion the probability of the justness of that conclusion is not the sum of the simple probabilities of those circumstances, but is the compound result of them.'*
>
> See also *Evans' Pothier on Obligations (2.242), and Wills, Circumstantial Evidence (7th ed., p 46). The Court must not take each circumstance separately and give the Accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the Accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way; the Crown must satisfy the Court, not that each separate fact is inconsistent with the innocence of the Accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence.*

[760] With regard to Count 5, Defeating or Obstructing the administration of justice, and the alleged staging of the scene by the Accused by inflicting injuries to his person and hitting the axe into the wall above the staircase, the Court finds that the Accused had ample time during the 02h48 min period to tamper with the scene portraying him to be a victim and to be consistent with his innocence.

[761] The Accused was the only person surviving a brutal encounter with minor injuries with intimate knowledge of the events. The Court has no doubt that the injuries to the arm and chest of the Accused, were self-inflicted injuries for the compelling reasons advanced by Dr Tiemensma and Prof Dempers. Except for the Accused's unconvincing testimony, no evidence to the contrary by an expert witness, or other, was presented on behalf of the Accused to gainsay the evidence regarding the self-inflicted injuries. The Court has no reason to reject or not to accept the evidence of the expert witnesses. It is not necessary for the Court to embark on speculation as to whether the larger stab wound to the Accused's abdomen was self-inflicted or not. The Court also does not have to speculate how these other wounds were inflicted, especially if the Accused opted not to take the Court into his confidence about the true facts.

[762] It is not necessary for the Court to make a finding with regard to the evidence of Captain Brown and Captain Joubert that the damage to the wall above the staircase was caused by the axe with a controlled action and that the axe was not thrown as alleged by the Accused. The Accused admitted that he handled the axe at that stage and it was admitted by both Counsel for the State and the Defence that the mark was caused by the axe. The Accused admitted that he caused the mark with the axe. No evidence exists that any of the victims was attacked on the first landing. In the absence of an intruder, the only reasonable inference is that he wanted to mislead the police and Court by fabricating the version that he threw the axe at a fleeing intruder, whether

the Accused threw the axe at the wall because he wanted to stage the scene, or whether he staged the scene with a controlled action.

[763] The Court makes no finding with regard to the presumed blood in the corner of the shower floor, the knife under RUDI's bed, the duvet cover on top of blood on the floor, or the possibility of RUDI being dragged from the bed. Despite the suspicious nature of the evidence, staging and cleaning are not the only reasonable inferences that can be made from the available evidence. There could be other explanations for it too.

[764] Subsequent to the commission of the crimes, the Accused intentionally inflicted injuries upon himself and told the police that the victims and he were attacked by an intruder in order to mislead the police as to the true identity of the perpetrator. Furthermore the Accused intentionally wanted to mislead the police and Court for the very same purpose as the reason for the axe being thrown or hit against the wall. The Accused deliberately committed positive acts of obstruction and supplied the police with false information that the police acted upon by launching a search for the alleged intruder. He must have known that the allegations were false, and must have been aware of the fact that it might interfere with judicial proceedings which were to take place in the future or would at least hamper or forestall the investigation of the crimes.

[765] After carefully considering all the evidence, the result is inescapable. It is the only possible inference.

[766] In the premises:

> **COUNT ONE – the MURDER of RUDI VAN BREDA** – the Accused is found **GUILTY**;

COUNT TWO – the MURDER of MARTIN VAN BREDA – the Accused is found **GUILTY**;

COUNT THREE – the MURDER of TERESA VAN BREDA – the Accused is found **GUILTY**;

COUNT FOUR – the ATTEMPTED MURDER of MARLI VAN BREDA – the Accused is found **GUILTY**;

COUNT FIVE – DEFEATING OR OBSTRUCTING THE ADMINISTRATION OF JUSTICE - the Accused is found **GUILTY**.

This judgment is the unanimous decision of the Court.

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DESAI, ADJP

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: SS17/2016

DATE: 7 JUNE 2018

In the matter between:

THE STATE

and

HENRI CHRISTO VAN BREDA

S E N T E N C E

DESAI, J

[1] Despite the horrific events underpinning your convictions Mr van Breda the sentences I intend imposing must be, and are, the product of sober, unemotional and considered deliberation.

[2] You have axed to death three persons and endeavoured to do so in respect of a fourth. They were your immediate family. You have not told the Court what led to the commission of these crimes. Any attempt to ascribe a motive for your conduct would simply amount to speculation.

[3] Mr P Botha, appearing on your behalf, has simply and somewhat bluntly raised two mitigating factors in your favour.

These are the only two he could raise; namely your young age and the fact that you have no previous convictions. Both are indeed weighty factors which militate in your favour.

[4] You were 20 years old when these offences were committed, that was three years ago. After matriculating you enrolled at the University of Melbourne in Australia to study physics and on 27 January 2015, the date these crimes were committed, you were considering your options in life. Your future was not bleak. In fact it was bright. You had a supportive family and, more importantly, they had the means to assist you in your future endeavours and it seems to me that they would have done so. I accept the fact that as a 20 year old you did not have the maturity, understanding and life experience of an older person. You in fact were on the cusp of entering adulthood. I am acutely aware that a long term of imprisonment will deny you the opportunity and, I should say, the privilege of growing old in an open society.

[5] You have no previous convictions. That means that you have not committed any known crimes in the past. Put differently, you have a clean record. There is no indication of a predisposition to commit acts of violence. That counts in your favour. It must count in your favour. There are other factors in your favour which Mr Botha referred to fleetingly. They are

contained in the pre-sentence report of Ms Irena Smit. It appears that you have been diagnosed with juvenile onset myoclonic epilepsy. You are on medication for this. A general practitioner, a doctor I suppose, has also prescribed medication for depression and anxiety. Regrettably the information with regard to these illnesses are not set out in any detail and we are not told what the impact of incarceration will be on your health.

[6] Although you have been convicted of serious offences the murders and the attempted murder were committed at more or less the same time or within a short period. The same set of factors probably led to the commission of these crimes. You have not told the Court what precipitated these events that night. We know from an independent witness that there was an argument, a loud one, which persisted in your house for several hours. At best for you we can assume that the crimes were not committed in a vacuum but are the product of some disgruntlement in the family.

[7] The brutality of the attacks upon your parents and siblings is graphically portrayed in the post-mortem and other reports. They were attacks involving a high degree of uncontrolled violence. The victims were unarmed. There is no suggestion to the contrary. They faced an axe-wielding son or brother,

probably not expecting the worst. The father, Martin van Breda, was probably heroic. He sustained sharp and blunt trauma to the head and the central upper back regions of his body. There was no evidence whatsoever indicating defensive wounds on his body. It means that he endeavoured to defend his son, Rudi, your brother, with his body. He did not defend himself or perhaps he did not expect that you would strike him.

[8] Rudi van Breda also sustained sharp and blunt trauma on his head and left lateral upper neck region. The only indication of defensive injuries was on his left little finger or in that region. Small attempts to defend himself.

[9] Teresa van Breda, your mother, received similar injuries. An incised wound on her distal right dorsal thumb was suggestive of a defensive wound, in other words she used her hand to defend herself against an axe-wielding assailant.

[10] Marli van Breda was the victim of a similar type of attack, but fortunately in her case, though life-threatening it was not fatal.

[11] The victims who sustained deathly injuries defended themselves, if at all, with their hands. The assailant, the Court has found that it was you, launched with an axe a savage and

continuous attack upon your victims. You survived with inconsequential injuries. These attacks display a high level of innate cruelty and an almost unprecedented degree of disregard for the welfare of one's own family – one's parents and siblings. Each murderous attack upon a family member constitutes a very serious crime, warranting the severest penalty possible.

[12] Viewing all these acts cumulatively they must rank extremely high on the ladder of serious crime. These are or were premeditated murders and an attempted murder involving serious consequences and no argument has been advanced, perhaps nothing could be advanced or anything said to mitigate its impact. Society expects violent crimes to be evaluated with sufficient seriousness and stringent penalties imposed. In this instance you have committed crimes with a high degree of unbridled violence, the violence directed against your own family, killing three and causing serious harm to the fourth. The weapon used against the deceased and the injured was an axe, the victims unarmed and defenceless. It was a cold-blooded murder. The violence was excessive and gratuitous, it was intended to cause maximum harm. The three victims died with the wounds caused by the axe you wielded against them. The fourth survived, albeit with serious injuries. The clear intent was to kill her as well.

[13] We have no explanation for what you did, you have displayed no remorse, we have heard extensive evidence of the consequences of your conduct, the cruel consequences, yet we have no explanation from you. No substantial and compelling circumstances have been placed before us, there appear to be none. Whatever the statutory minimum sentence regime the same severe sentences would in any event follow, and I say this with some regret, as you are relatively young and with no previous convictions. Your conduct warrants the severest possible penalty. Society expects no less. The crimes warrant such a result and your circumstances, are not sufficiently compelling to come to any different conclusions.

[14] In the result:

On COUNT 1, the murder of Rudi van Breda YOU ARE SENTENCED TO LIFE IMPRISONMENT;

On COUNT 2, the murder of Martin van Breda YOU ARE SENTENCED TO LIFE IMPRISONMENT;

On COUNT 3, the murder of Teresa van Breda YOU ARE SENTENCED TO LIFE IMPRISONMENT;

On COUNT 4, the attempted murder of Marli van Breda

YOU ARE SENTENCED TO 15 (FIFTEEN) YEARS IMPRISONMENT;

On COUNT 5, obstructing the course of justice or the administration of justice as set out in the charge sheet YOU ARE SENTENCED TO 12 (TWELVE) MONTHS IMPRISONMENT.

[15] In terms of Section 103(1) of Act 60 of 2000 a person is *ex lege* that is in operation of law automatically declared unfit to possess a firearm. The Court declines to determine otherwise, in other words you are declared unfit to possess a firearm.

DESAI, ADJP