Supreme Court

New South Wales

Case Name:	R v Stein
Medium Neutral Citation:	[2024] NSWSC 1080
Hearing Date(s):	23 August 2024
Date of Orders:	26 August 2024
Decision Date:	26 August 2024
Jurisdiction:	Common Law
Before:	Wilson J
Decision:	(1) The charge of interfering with a corpse is marked as having been withdrawn by the Crown. Insofar as it is necessary to order it, the charge is dismissed. (2) For the murder of Charlise Mutten, on or about 12 January 2022, Justin Laurens Stein is sentenced to imprisonment for life, commencing on 18 January 2022.
Catchwords:	SENTENCE – murder – offender found guilty by jury at trial – shooting of 9 year old girl to back and face – under care and authority – disposal of body in barrel in bushland – gravely serious offending – offender on parole at time of offence – no remorse – poor prospects of rehabilitation – question of whether a life sentence is mandated
Legislation Cited:	Children (Criminal Proceedings) Act 1987 (NSW) Crimes (Sentencing Procedure) Act 1999 (NSW) Crimes Act 1900 (NSW) Crimes Act 1914 (Cth) Criminal Code Act 1995 (Cth)
Cases Cited:	Cheung v The Queen (2001) 209 CLR 1; [2001] HCA 67

	R v Arthurell (Supreme Court of New South Wales, 3 October 1997, unrep) R v Garforth (Court of Criminal Appeal (NSW), 23 May 1994, unrep) R v Harris (2000) 50 NSWLR 409; [2000] NSWCCA 469 R v Holdom [2018] NSWSC 1677 R v Isaacs (1997) 41 NSWLR 374 R v Merritt (2004) 59 NSWLR 557; [2004] NSWCCA 19 R v Mostyn (2004) 145 A Crim R 304; [2004] NSWCCA 97 R v Twala (Court of Criminal Appeal (NSW), 4 November 1994, unrep) Rogerson v R; McNamara v R (2021) 290 A Crim R 239; [2021] NSWCCA 160 The Queen v Olbrich (1999) 199 CLR 270; [1999] HCA 54
Category:	Sentence
Parties:	Rex (Crown) Justin Laurens Stein (Offender)
Representation:	Counsel: K McKay SC and N Marney (Crown) C Davenport SC and T Kent (Offender) Solicitors: Solicitor for Public Prosecutions (NSW) Katsoolis + Co. Solicitors & Attorneys (Offender)
File Number(s):	2022/15443
Publication Restriction:	None. Note that the senior next of kin has given consent to the publication of the name of Charlise Mutten, pursuant to s 15E of the Children (Criminal Proceedings) Act 1987 (NSW).

JUDGMENT

1 **HER HONOUR:** There were two pieces of evidence given during the trial of the offender, Justin Stein, that say a great deal about the crime for which he is to be sentenced, that being murder contrary to s 18(1)(a) of the *Crimes Act 1900* (NSW), and about the offender, as the individual who committed the murder.

The first came during the evidence of Mr Clinton Mutten who, on 14 May 2024, told the jury about the little girl lost to him, his family, and the community when she was murdered by the offender on or about 12 January 2022. The second was during the evidence of the offender on 3 June 2024, when he gave his account of the death of Charlise Mutten,[1] an account that the jury must have rejected, correctly, in my view.

2 Charlise Mutten was nine years old when, full of excitement at seeing her mother and the man she hoped might be her new father, she travelled from Queensland to spend part of the school holidays in the Blue Mountains. Charlise lived permanently with her maternal grandparents; they had been her guardians and carers since she was four years of age. In his evidence, Mr Mutten told the Court about the little girl whose life was so violently cut short in the new year of 2022. Charlise loved books and was a keen reader of the Dog Man series, perhaps because of her great love of dogs and all animals. She liked school and was very good at spelling and arithmetic. She was a healthy, active child who enjoyed sports, and was involved in swimming and karate.

3 Charlise had a close and loving relationship with her grandparents, but also with her mother Kallista, even though they lived apart. The two communicated regularly by telephone video calls, and Charlise was always excited to speak to her mother. Charlise had never had contact with her father and, to some extent, she must have felt that absence. After the offender became romantically involved with Kallista Mutten and joined in with video calls to Charlise, Charlise told her grandfather that she liked Justin Stein and, heartbreakingly, in light of what followed, she asked Mr Mutten if the offender would be a "good dad" for her.[2] When Charlise was not able to go on a planned Easter visit to her mother in April 2021 she cried herself to sleep. When the visit was rescheduled for the Christmas and New Year of 2021-2022, she eagerly looked forward to it. It was ineffably sad listening to Mr Mutten describe Charlise's joy at the prospect of that holiday with her mother and the man she hoped would be her father, knowing what was to become of her.

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[1] Tcpt, 3 June 2024, p 843ff.
[2] Tcpt, 14 May 2024, p 49(37).

4 It must have been very difficult for Mr Mutten to give that evidence and yet he did so with a quiet dignity and calmness that made his obvious grief hard to see.

5 The second of the particularly revealing pieces of testimony from the trial came during the evidence in chief of the offender when he gave his wholly false account of the circumstances of Charlise's death. As the offender told the jury about supposedly witnessing Charlise's murder at the hands of her mother, his voice began to shake, and then to break. He reached for a tissue and dabbed at his eyes; he gave every appearance of crying from some deep place of sadness. An appearance was, however, all it was. From where I sat, only about a metre from the witness box, I could see very clearly that, despite the offender's presentation of distress, he was completely dry eyed and did not shed a single tear. The tissue with which he needlessly wiped his eyes was little more than a prop; at best, a means of hiding his dry eyes from the jury. The offender's evidence might have been called theatre if it wasn't so calculated and so utterly cynical, and if it had not concerned the horrific death of a 9-year-old child. Rather than demonstrating his anguish at the brutal slaying of a child he said he had been coming to regard as a daughter, it pointed to his complete lack of remorse for having murdered her.

6 What happened to Charlise after she embarked upon her visit to her mother and the offender was the subject of significant dispute when the offender stood trial for her murder; a murder that occurred on or about 12 January 2022 at Mount Wilson in this State. The trial commenced on 13 May 2024 and ended on 19 June 2024, when the jury returned a verdict of guilty to the charge, and the offender was convicted. As with the jury's rejection of the offender's evidence, the verdict was, in my opinion, entirely correct, and the only verdict reasonably open on the evidence. There was an overwhelming weight of evidence to establish the guilt of Justin Stein of the offence charged; a heavy weight that his transparently false account of the events of and around the shooting of Charlise Mutten could not call into doubt.

7 To sentence the offender for his crime, the Court must firstly determine the facts of it, with proof to the criminal standard required of conclusions adverse to

the offender, whilst any findings favourable to him require only proof on the balance of probabilities.[3]

The Facts of the Crime

8 Charlise Mutten arrived in Sydney on 21 December 2021 where she was met at the airport by her mother and the offender. They drove from the airport to Forest Lodge, where Ms Mutten and Charlise spent Christmas at the home of the offender's mother, Annemie Stein. After Christmas, the offender, Ms Mutten and Charlise spent time between a caravan park on the Hawksbury River at Lower Portland, where the offender had a caravan, and another property owned by Annemie Stein, located at Shadforth Road, Mount Wilson. During the first two weeks of January the offender was engaged in moving furniture and other items from Mount Wilson to Lower Portland, it being his intention to make something of a home there for himself and his fiancée, Ms Mutten. There were a number of trips between the two locations, using the offender's red Holden Colorado utility to transport the couple's belongings.

9 On Tuesday 11 January 2022, Charlise and Ms Mutten spent some time swimming before Charlise left Lower Portland to drive to the Blue Mountains with the offender and his dog Dozer. Charlise loved Dozer and spent as much time playing with him as she could. On learning that the offender was to return to Mount Wilson with Dozer, Charlise asked her mother, "Can I go with daddy, Mum?"[4] Her mother agreed, and Charlise left. When her mother last saw her, she was wearing black tracksuit pants, with a black skirt and salmon pink coloured t-shirt. A photograph of Charlise wearing the skirt was in evidence before the jury as part of Ex. F. On her feet, Charlise had her mother's slip-on pink slides. She had a black hoodie top against the evening chill expected at Mount Wilson.[5] Because it was intended that Charlise would spend the night at Mount Wilson with the offender, she had a small overnight bag with her favourite toy, a gift from her grandparents, and perhaps some clothes inside.[6]

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[3] The Queen v Olbrich (1999) 199 CLR 270; [1999] HCA 54; R v Isaacs (1997) 41 NSWLR 374; Cheung v The Queen (2001) 209 CLR 1; [2001] HCA 67.
[4] Tcpt, 27 May 2024, p 522(4).
[5] Tcpt, 27 May 2024, pp 523(22)-(45).
[6] Tcpt, 27 May 2024, p 524(5).

Ms Mutten was confident that Charlise was wearing underpants when she set off for Mount Wilson.[7] Charlise was well and in good spirits at the time.[8]

10 Later, at 8:20pm, Ms Mutten received a text message from the offender in which he said that he and Charlise had arrived safely at Mount Wilson [9] and, whilst he cooked a meal for them, Charlise was watching television and playing with some balloons.[10] Later forensic analysis of balloons found at the Mount Wilson house by police detected Charlise's DNA on them.[11]

11 Exactly what happened after this time, and why it happened, will probably never be known, unless the offender unburdens himself of the truth concerning his crime at some time in the future. What the evidence establishes is this.

12 On the morning of 12 January 2022, the offender communicated with Ms Mutten by telephone call (at 9:07am) and text message (at 10:06am)[12] to the effect that Charlise was ill and had been vomiting. Just before he left the property to return to Lower Portland at about 10:13am,[13] he told Ms Mutten that he was leaving Charlise asleep in bed at Mount Wilson, in the care of an "auction lady". In fact, Charlise was already dead, having been shot to death by the offender at some time between their arrival at Mount Wilson on the evening of 11 January 2022 at about 7:16pm, and around 10:13am on the morning of 12 January 2022, when the offender left the property without Charlise.

13 At some time during those fourteen or fifteen hours the offender shot Charlise twice, using a stolen rifle, probably somewhere in the grounds of his mother's Mount Wilson property.[14] Two penetrating gunshot wounds were observed by Dr Marna du Plessis when she conducted a postmortem examination of Charlise's body on 20 and 21 January 2022. One injury was to the left side of Charlise's lower back or pelvic area, broadly her left hip; the other was to the right side of her face. Both wounds were inflicted by the deliberate act of the offender.

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[7] Tcpt, 27 May 2024, pp 524(28)-(32).
[8] Tcpt, 27 May 2024, p 524(41).
[9] Ex. F, p 47.
[10] Tcpt, 27 May 2024, p 520(35); Ex. E; Ex. F, p 47.
[11] Tcpt, 27 May 2024, pp 501-502; Ex. E.
[12] Ex. F, pp 52-53.
[13] Ex. D, Map H.
[14] Tcpt, 22 May 2024, p 394(49).

14 The gunshot wound to the pelvis tracked from left to right, back to front, and downwards. It caused soft tissue injury and a fracture to the pelvis, with a fragment from the bullet recovered from the front surface of the hip bone and muscle, the bullet having travelled from the back and into the front of the pelvis.[15] Charlise had been wearing her black track pants and black skirt at the time she received the wound to her hip, as the projectile perforated those garments before entering Charlise's rear hip area. The entry point of the projectile and the track of the wound is consistent with Charlise having been turned away from the offender when the shot was discharged. Dr du Plessis could not give any estimate of the distance from the muzzle of the gun to the child's body, but there is no evidence that the shot was discharged at close range.

15 Bleeding into the wound established that Charlise was alive when struck by this bullet. Had it been the only shot discharged into her, she would have survived the injury if she had received medical attention. The same could not be said of the wound to Charlise's face, necessarily the second of the injuries.

16 The face wound tracked right to left, front to back, and upwards.[16] The projectile entered just below Charlise's right cheekbone[17] and tracked back and up, traversing the upper jawbone and travelling through to the base of the skull.[18] The shot caused extensive facial fractures, the displacement of the right upper second molar tooth, and a fracture to the clivus, or base of the skull. The bullet that the offender discharged into Charlise's face penetrated through to the intracranial cavity, that is, inside the skull where the brain sits, with fragments of the projectile recovered from the brain tissue.[19] The fragments recovered from the brain and from the pelvic bone were consistent with having been discharged from a weapon in the same class as the Birmingham Small Arms manufacture .22 calibre bolt action repeating long rifle that the offender had previously stolen, and which he had in his possession.[20] I am satisfied to

[15] Tcpt, 23 May 2024, pp 458-459.
[16] Tcpt, 23 May 2024, pp 451(35)-452(4).
[17] Tcpt, 23 May 2024, p 457.
[18] Tcpt, 23 May 2024, p 458.
[19] Tcpt, 23 May 2024, p 452(34); see also the evidence of Leading Senior Constable Kieran Scott (Tcpt, 22 May 2024, pp 400(34)-401(11)).
[20] Tcpt, 23 May 2024, p 467.

the criminal standard that the stolen weapon, which the offender later buried near a Mount Wilson fire trail, was the gun used to murder Charlise.

17 Ballistics evidence stablishes that the muzzle of the gun was held very close to Charlise's face, at almost point blank range when that shot was discharged, the distance being within 30 centimetres.[21] The bullet trajectory establishes that the offender was in front of Charlise, with Charlise facing towards him when he discharged the rifle into her face.

18 Dr du Plessis did not find gunshot residue on Charlise's skin, as might have been the case had there been no delay between death and examination. What she did find among the decompositional changes were multiple pinpoint defects consistent with gunpowder tattooing that were found to be polarisable, that is, metallic in appearance and able to be seen through a microscope with the aid of specific processes. The range, shape, size and distribution of the microscopic particles over a broad aspect of Charlise's right cheek that were seen by Dr Du Plessis around the entry wound on her face are consistent with the deposition of gun powder particles from a firearm discharged at close range.[22] In all of the circumstances, and noting Dr du Plessis' evidence as to other possible decompositional causes for her observations, I am satisfied beyond reasonable doubt that the offender shot Charlise in the face, from close range, as the two faced each other.

19 To fire two shots into Charlise's body the offender had to undertake methodical and deliberate actions to manipulate the firearm.[23] The offender had previously stolen this weapon during a break and enter offence he committed on 22 August 2021 at a neighbouring property at Mount Wilson, later fitting it with a scope that he purchased from an online site. Firing the rifle involved more than simply depressing its trigger twice. Rather, as the evidence of Leading Senior Constable Kieran Scott clearly demonstrated, on the basis that the rifle's magazine was loaded, firing a shot required the offender to disengage the safety mechanism, manoeuvre the bolt to cock the firing pin, and then depress the trigger. To fire a second shot, the bolt had to be lifted and pulled to the rear

[21] Tcpt, 23 May 2024, p 454.
[22] Tcpt, 23 May 2024, pp 453-458.
[23] Shown in Ex. A.20.

of the rifle to eject the fired cartridge case from the action. To load the next cartridge, the bolt was then pushed forward, again cocking the firing pin. On pulling the trigger, the second shot was discharged.[24] It was no accident that a second shot was fired; even if done quickly, it required deliberation and the ordered manipulation of the rifle's action.

20 It was suggested to Dr du Plessis in cross-examination that Charlise was shot first to the left hip and then to the face; she agreed that the suggested scenario was possible.[25] Indeed, the evidence allows the Court to draw the inference that the offender presented the gun to Charlise and shot her in the back, probably as she turned to run away from him and the weapon, thus exposing her back and left hip to him. That injury, fracturing her pelvis as it did and causing haemorrhaging, would almost certainly have knocked Charlise down or caused her to fall to the ground. The offender then moved towards Charlise and, at close range, discharged the rifle into her face. These were deliberate acts. This second shot in particular was, in effect and intent, an execution shot. The use by the offender of a lethal firearm, and the manner and sequence in which he discharged each shot into Charlise, leaves no other reasonable conclusion than that he undertook these actions intending to kill her.

21 Why the offender would have acted in such an unspeakably vicious and murderous way towards a 9-year-old girl to whom he stood in the position of a parent or carer is unlikely ever to be known. The Crown argues that the discovery of quetiapine in Charlise's body, which was likely ingested within hours of her death, can be attributed to the offender, and must be connected to her murder. Even were that to be so, however, it does not establish a motive.

22 Samples of spleen fluid obtained during the post-mortem examination of Charlise's body that were sent for toxicological analysis detected the presence of quetiapine at 29 milligrams per litre, meaning that Charlise had ingested this substance prior to her death. Quetiapine is commonly prescribed as Seroquel, an antipsychotic medication.[26] The offender was prescribed and regularly used Seroquel and had the drug in his possession at the Mount Wilson property at

[24] Tcpt, 22 May 2024, p 411.
[25] Tcpt, 23 May 2024, p 462(48).
[26] Tcpt, 23 May 2024, p 460.

the time of Charlise's death.[27] Kallista Mutten did not use Seroquel[28] and there is no evidence to suggest that anyone else around Charlise at this time other than the offender used the drug. It must be at least probable that the offender administered the drug to Charlise, necessarily causing her to be drowsy and nauseous. That would certainly have been the result of the ingestion of what Dr Judith Perl told the jury was a toxic dose of quetiapine, likely administered to her within six hours of her murder.[29]

23 In my conclusion, however, the evidence is insufficient to establish that the offender in fact administered Seroquel to Charlise or, if he did, why he may have done so. Although it is not likely, I cannot rule out as a reasonable possibility that Charlise somehow took the drug by accident or mistake. That evidence, except insofar as it is relevant to Charlise's vulnerability, must be set aside.

24 There was evidence before the jury of another unexplained feature of the circumstances surrounding Charlise's murder, about which something should be said, and that is the evidence concerning Charlise's underpants. When her body was recovered on 18 January 2022, Charlise was dressed in the same clothes her mother had last seen her wearing, with the exception of her underpants, which were missing.[30] Like the evidence concerning the detection of quetiapine in Charlise's system, it is not possible to draw any conclusions about this aspect of the evidence. How and why Charlise came to ingest Seroquel, and how and why she was without her underpants when her body was found, must remain undetermined. Blame for either cannot be attributed to the offender to the very high criminal standard of proof beyond reasonable doubt.

25 There is very little that is undetermined about what occurred after Charlise was shot and murdered by the offender. The offender left her body at Mount Wilson on 12 January 2022 and drove to Lower Portland, where he picked up Ms Mutten. The two drove on to Sydney where they indulged in drug use and sex. Throughout the day, Ms Mutten accepted the offender's account of having left

[27] Ex. P.
[28] Tcpt, 27 May 2024, p 517.
[29] Tcpt, 23 May 2024, p 474.
[30] Tcpt, 23 May 2024, p 451.

Charlise, sick but alive, in the care of an “auction lady”; a woman the offender told Ms Mutten had children of her own, was almost as good as a nurse, and had offered to care for Charlise, even to the extent of an overnight stay.

26 On returning to Mount Wilson at around 8:44pm that evening,[31] it was impossible for the offender to maintain the pretence that Charlise was at the property in the care of someone else, and his elaborate lies to conceal his crime began to alter and develop. Initially searching the property in a show of looking for Charlise, he next suggested to Ms Mutten that the auction lady may have taken Charlise to her own home. He staged a telephone call to his mother, ostensibly to obtain the contact details for the auctioneer. Mrs Stein, not a party to the deception, told the offender that the auctioneer she had engaged to look at some furniture that she wished to sell had not been due to attend the property until some later stage. Ms Mutten, now very anxious about her daughter, began to telephone local hospitals to inquire if Charlise had been admitted as a patient.[32]

27 Overnight on 12 to 13 January 2022, there were arguments between the offender and Ms Mutten about the state of their relationship and, at one point, Ms Mutten took the offender’s car and drove off.

28 On Ms Mutten’s return early on 13 January 2022, and consistent with the threatening nature of voice messages the offender later left for her,[33] the offender approached her, clearly enraged because she had taken his car. Frightened of his aggressive demeanour, Ms Mutten again drove off in the utility.

29 Extraordinarily, given what he had done, and having regard to the presence of the body of a murdered child likely somewhere on or near the property, the offender called the police to report the theft of his car, giving the officer he spoke to a comprehensive description of Ms Mutten as the supposed thief, but lying about any knowledge of or relationship with her. He also made a number of calls to Ms Mutten, leaving the voicemails to which I have referred on her telephone service, in which he threatened to hurt and kill her and others. The

[31] Ex. D, Map M.
[32] Tcpt, 27 May 2024, pp 538(39)-539(12).
[33] Ex. H.

messages were played to the jury at trial,[34] and the savagery with which some of those messages were delivered was alarming, even at a distance in time and space.

30 Ms Mutten told the jury that, when she returned, the offender smashed her telephone and assaulted her.[35] Afterwards, she escaped into the bush and waited until such time as he had calmed down.

31 With his first lie about the kindly auctioneer having been necessarily abandoned by the offender, he invented a new explanation for Charlise's absence, telling Ms Mutten that some of his former associates from the world of illicit drug supply may have kidnapped Charlise. He used that possibility to both dissuade Ms Mutten from calling the police to report Charlise as missing,[36] and to portray himself as a warrior "going to war" with dangerous criminals to recover Charlise from them.[37] In reality, this new story gave the offender the opportunity he required to move and conceal Charlise's body. The offender told Ms Mutten that he would drive to Sydney and look for Charlise among his criminal associates. It was necessary for him to take his boat, he said, so that, if anything happened and "people g[o]t hurt" he could use the boat to "get rid of [the] evidence".[38] Because it is the only reasonable inference on all the evidence, I am satisfied to the criminal standard that the use the offender intended for the boat was the disposal of Charlise's body, by taking her remains out to sea or to some other large body of water and dumping them.

32 The casualness with which the offender went about this gruesome task is demonstrated by Ex. D, evidence which tracked his mobile phone and his car as he left Mount Wilson in the Colorado ute, towing his boat, with a large barrel in the tray of the utility, at 4:13pm on 13 January 2022. The 220-litre plastic barrel was a makeshift coffin for Charlise.[39] The offender had wrapped Charlise's body in a white coloured woven plastic material or bag, a black garbage bag, and two blue tarpaulins, the whole being roughly secured with packing tape. These wrappings were bloodstained, suggesting that the

[34] Ex. H.
[35] Tcpt, 27 May 2024, p 553.
[36] Tcpt, 27 May 2024, p 555(42).
[37] Tcpt, 27 May 2024, p 556(1).
[38] Tcpt, 27 May 2024, p 557(39).
[39] Tcpt, 22 May 2024, p 393.

offender had wrapped the child's body in them soon after he shot her. Charlise was deposited headfirst in the barrel, and she was later found head down in a foetal position. Also secreted in the barrel – similarly, to dispose of it – was a black plastic bag containing a quantity of bloodied soil and vegetation[40] which was likely dug or scraped from the ground where Charlise fell mortally wounded. When the barrel was recovered by police, Charlise was surrounded by about 99.9 kilograms of sand that the offender had purchased from a hardware store, using a gift card he had received as a Christmas present to pay for the purchase of five bags of sand.[41] The bags each contained 20 kilograms of sand; two of them, chillingly, were labelled as child-friendly play sand.[42]

33 By reference to Ex. D, the offender left Mount Wilson with Charlise in the barrel on the back of his utility and drove via Mount Tomah and Kurrajong to Marsden Park. At 5:22pm, he was at a hardware store where he purchased the five bags of sand, he would use to entomb Charlise in the barrel. At 5:49pm he went to a nearby petrol station and filled the tank of his boat with enough fuel for a voyage with a 100-kilometre range. He did something on his phone and bought some refreshments for himself.[43] On the closed-circuit surveillance footage depicting the offender as he went about these tasks, he appeared much as any motorist and shopper would. He exhibited no sign of anxiety, emotion or stress; everything about his presentation was casual.

34 Having now obtained everything he needed to dispose of the barrel, the offender drove to three places with wharves or docks. I am satisfied that his intention in so doing was to launch his boat into the sea and, taking the barrel on the boat, drop it into the ocean. The total weight of the barrel – Charlise's 33.5 kilograms, the 9 kilograms that the barrel weighed, and the almost 100 kilograms of sand – would have likely ensured that the barrel went to the bottom of the ocean, probably concealing Charlise's remains permanently and leaving her fate unknown to those who loved her.

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[40] Tcpt, 22 May 2024, pp 394-395.
[41] Ex. D, Map N, marker C.
[42] Ex. T.
[43] Ex. D, Map N, marker C (BP Service Station, Marsden Park).

35 That plan was foiled by the presence of others at Rose Bay wharf, which CCTV footage showed to be very busy at 6:51pm when the offender arrived there,[44] and at Taplin Park boat ramp in Drummoyne, where he arrived at 7:37pm.[45] The offender went to both locations during the night of 13 to 14 January 2022, spending some hours waiting at Drummoyne, inferentially for the area to be less populated – but he was not able to launch his boat. Prevented from depositing Charlise in an ocean grave he set off from the Five Dock area at 10:44pm[46] for a third point of access to a body of water, arriving at Windsor Boat ramp at 1:26am on 14 January 2022.[47] En route, he again stopped for fuel and food. Throughout this time, he maintained his pretence to Ms Mutten that he was searching for her daughter with the intention of bringing her home safely.

36 Having remained in the area of the boat ramp from 1:26am, the offender left at 1:42am, without having been able to launch his boat. He then changed his plan for the disposal of Charlise's body, switching to a much less populated area in which to dump the barrel into a river. He drove to a remote location along the Colo River and came to a stop along Lower Colo Road at Colo.[48] His journey and his stopping point were tracked digitally, and the police officers who later searched for Charlise, who it was still hoped would be found alive, located the barrel on 18 January 2022.

37 There, a small spillage of sand[49] establishes that the offender brought the barrel down from his utility, emptied almost all the contents of the five bags of sand into the barrel on top of Charlise, and replaced the lid. Plainly intending that the barrel would roll down the embankment and into the river, the offender sent the barrel down the steep drop to the water's edge. Unluckily for him, it became wedged between a tree and a rock just short of the water's edge, and it was later found.[50]

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[44] Ex. D, Map O.
[45] Ex. D, Map P.
[46] Ex. D, Map P.
[47] Ex. D, Map Q, marker C.
[48] Ex. A.13-15; Ex. D, Map R, marker B.
[49] Ex. A.16.
[50] Ex. A.15.

38 Having sent the weighted barrel down the embankment the offender left the area by turning his vehicle around at 2:45am and driving back along Lower Colo Road. Closed circuit surveillance footage captured the vehicle en route, including at a petrol station at Bilpin at 3:27am.[51] The tray of the utility was empty. No doubt because he could not, given the incontrovertible proof of it, the offender did not dispute at trial that he had dumped the barrel at Lower Colo; instead, he falsely claimed that he did so at Ms Mutten's instigation, again seeking to blame her for his own indecent conduct.

39 The offender arrived at Mount Wilson at 4:26am. Having failed to bring Charlise home with him, as he had told Ms Mutten he would, he thereafter told her that she could report Charlise as missing. By lying to Ms Mutten about what had happened to Charlise, and undertaking the purported journey to find her, all the while telling Ms Mutten that if she telephoned police, Charlise would be killed, the offender had bought himself the time he needed to dispose of Charlise's body.

40 Ms Mutten made a report to Emergency Services at 8:12am on 14 January 2022. The offender did not stay at Mount Wilson to support his fiancée in what was an extremely distressing time for her, instead driving to the outskirts of western Sydney intending to obtain his prescribed opiate replacement injection.

41 As might be expected with a report of a young child missing, a substantial police and rescue operation immediately commenced to search for Charlise. With almost equal speed the offender's many lies about what may have become of her were exposed. Despite the numerous false claims he made when interviewed by detectives at Penrith Police Station on 14 January 2022, his displays of purported distress at Charlise's fate, and his attempts to divert the attention of the police to Charlise's mother, the offender quickly became the subject of the suspicions of investigators. Once the barrel was found on 18 January 2022, at the very location to which he had been tracked, his arrest for Charlise's murder, that same day, was inevitable.

42 The offender has been in custody since his arrest on 18 January 2022.

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[51] Ex. D, Map S.

Other Evidence in the Crown Case

43 The offender's criminal history shows that he was born in November 1990. He is now 33 years old.

44 He first came under the notice of the criminal courts when he was convicted in August 2009 of an offence of breaking, entering and stealing. He was placed on a bond pursuant to the now repealed s 9 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) for a period of 3 years, with a condition requiring him to accept supervision from the Probation and Parole Service, particularly with respect to counselling, and drug and alcohol rehabilitation.

45 During the currency of that bond, the offender breached it, being charged with and later convicted of stealing from a dwelling and disposing of stolen property, receiving for the former a sentence of 9 months imprisonment, suspended pursuant to the repealed s 12 of the *Crimes (Sentencing Procedure) Act*, which required him to enter detoxification and thereafter long-term rehabilitation programmes with Odyssey House.

46 In June 2015 a conviction for possession of a prohibited drug was recorded and a fine imposed. Just a few months later, in October 2015, the offender was again convicted and fined for having possession of a prohibited drug. In November of that same year, he was placed on a s 9 bond for larceny. He breached the bond by the commission, in March 2016, of an offence contrary to the *Criminal Code Act 1995* (Cth) of attempting to possess a marketable quantity of an unlawfully imported border-controlled drug ("the *Code* offence"). The offender was sentenced for the *Code* offence on 8 September 2017 to a term of 6 years and 6 months imprisonment, with a non-parole period of 3 years and 9 months fixed. A concurrent term of 4 months imprisonment was imposed on the same date for the breach of the s 9 bond.

47 The offender was released to parole on 7 December 2019 and was subject to that parole when he murdered Charlise Mutten. His parole was revoked on 19 January 2022, with a warrant later issuing pursuant to s 19AW(1) of the *Crimes Act 1914* (Cth) after a further grant of parole was refused.[52] He served the

[52] Ex. SA.13.

balance of his Commonwealth parole from 19 January 2022 to 2 November 2022.[53]

48 His criminal record overall denies him the prospect of leniency.

49 Since entering custody on the date of his arrest, 18 January 2022, NSW Corrective Services history establishes that the offender has been penalised for one institutional offence of refusing or failing a drug sample, with penalty imposed on 7 July 2023.

50 The Court has been given documents relevant to the commission by the offender of the *Code* offence, and his eventual admission to parole, which are Exs. SA.8 – SA.12. Ex. SA.9 is a pre-sentence report ordered by the District Court for the sentence proceedings for the *Code* offence. The author reported that the offender had maintained "borderline" engagement with Community Corrections when subject to a s 12 bond, during which period he entered but did not complete the Odyssey House programme on three occasions. The history recorded included an account of the offender's expulsion from school in Year 9 following an abusive outburst directed to the Headmaster, after which the offender was mainly unemployed. He told the author of the report that he had begun to use drugs at age 11 as heroin made "the 'voices' go away". He reported having been diagnosed with schizophrenia when he was 15 years old.

51 The report author concluded that the offender had engaged in the *Code* offence for personal gain, and that he had limited insight into his crime. That he had continued to use illicit drugs despite having engaged with several drug intervention programmes was noted to be a matter of concern.[54]

52 After sentencing for that offence, the offender was initially refused parole, not least because of his repeated refusal to provide a sample for drug testing and admitted use of illicit drugs when in custody.[55]

53 When facing sentence for the *Code* offence the offender was assessed by a psychiatrist, Dr Olav Neilssen, who prepared a report for tender in evidence in

[53] Ex. SA.13.
[54] Ex. SA.9, p 3.
[55] Ex. SA.11.

the offender's case on sentence. A copy of that report has been tendered to this Court in the Crown case.

54 When the offender saw Dr Nielssen via an audio-visual link on 18 July 2017, he told him that he had a long standing, very heavy heroin addiction, and had committed the *Code* offence for an expected payment of $10,000. He gave an account of having been addicted to heroin since the age of 13, which he attributed to discord with his father and (previously undisclosed) sexual abuse by a female friend of his mother that commenced at age six. He said that his mother had become aware of the sexual abuse only shortly before his consultation with Dr Nielssen.

55 The offender stated that he had been educated at Cranbrook and The Kings School, but (in contrast to what was noted in the 2017 pre-sentence report) had left school of his own accord in Year 9 because of his heroin addiction. He reported a drug overdose at around 16 years of age, which he said had left him with an hypoxic brain injury and slurred speech, although Dr Nielssen observed that any slurring or neurological effect appeared to have resolved. No further symptoms of any neurological disorder were reported or observed, and Dr Neilssen noted that the offender had given a seemingly coherent account to police when interviewed about the *Code* offence.

56 The offender gave an account of having been admitted to St Vincent's Hospital after an ecstasy overdose in May 2007 and, in January 2009 of another admission, to the Sydney Private Clinic after a suicide attempt. Records from the time noted a history of longstanding opioid dependence; no reference was made to any hallucinations. In October 2011, the offender was admitted to drug detoxification and rehabilitation programmes at Odyssey House although, by the following July, he was again hospitalised after an overdose. A diagnosis was then made of opioid dependence and other substance abuse. Further admissions to the Sydney Private Clinic occurred in July and November 2015. The offender acknowledged having abused drugs other than heroin, including methamphetamine, sedative medication, cannabis, and ecstasy, and having undertaken rehabilitation programmes from early adolescence with

counsellors, and at the South Pacific Private Hospital as well as the Sydney Private Clinic and Odyssey House.

57 To Dr Neilssen, the offender claimed that he had experienced the signs of psychotic illness for as long as he could remember, referring to several episodes of acute psychosis which had been "dealt with outside hospital". He said he had been prescribed quetiapine in the past because of his reports of hearing voices and wished to get his "mental health under control".[56] Dr Neilssen noted that documents from the Sydney Private Clinic recorded in 2015 that there was "a reported history of schizophrenia". A Dr Walker was said to have "confirmed the history of sexual abuse in childhood and hallucinations beginning in early adolescence". It is not clear from Dr Neilssen's report when Dr Walker began treating the offender or how these features were "confirmed".

58 Dr Nielssen diagnosed a substance use disorder. He additionally referred to an unspecified psychotic illness as "possible".

59 The Crown also tendered two victim impact statements, which were given to the Court orally by their authors. Kallista Mutten spoke with pride of her "smart and wise" daughter, who loved books and dogs, and whose loss has inspired the creation of an award at her school to recognise excellence in reading.[57] Ms Mutten told the Court about her devastating grief for Charlise's death, her guilt and self-hatred for trusting her beloved daughter with the offender and, as she said, putting her in harms way, and her inability to move past her despair at Charlise's absence. She mourns her daughter deeply and feels that her life has been forever changed. Ms Mutten's pain was visible to everyone in the courtroom. Hers is a loss that no words could console, but I express my sympathy and that of the Court to her.

60 Clinton Mutten, with the same dignity that characterised his evidence at trial, told the Court of the overwhelming grief that he and his wife, Deborah Mutten, had experienced since receiving the terrible news of Charlise's murder.[58] Having raised Charlise since she was four years old, there are reminders all

[56] Ex. SA.7, p 5.
[57] Ex. SA.14.
[58] Ex. SA.15.

around Mr and Mrs Mutten of the absence of their greatly loved granddaughter. Even the sound, audible from their home, of the bell ringing each morning at Charlise's school to summon the children to class, brings grief. They torment themselves with thoughts of Charlise's last moments and feel deep sorrow and guilt for having allowed her to go to Sydney to spend time with her mother. Family relationships have fractured because of what occurred, and Mr and Mrs Mutten have been left sometimes feeling that their lives are not worth living.

61 Mr Mutten read a letter he had received from people unknown to him who had met Charlise in Mount Wilson, and who wanted to say how impressed by her they had been. They described her as a "very special young girl" who was a credit to her grandparents. Mr Mutten also described Charlise as a "special little girl", telling the Court about her aspirations to be a vet because of her love of animals and her desire to help others. It is clear that, with Charlise's death, her family and the community are much the poorer. I extend my sympathies to Mr and Mrs Mutten and, respectfully, the observation that responsibility and blame for Charlise's death rests with only one individual, the offender.

62 The Crown asks the Court to take the statements so movingly given by Mr Mutten and Ms Mutten into account in connection with the determination of the punishment to be imposed upon the offender pursuant to s 30E(3) of the *Crimes (Sentencing Procedure) Act*. I will return to that aspect of the matter shortly.

The Subjective Case

63 The offender's case is minimal. He did not give evidence. Instead, he tendered a report from Dr Olav Nielssen dated 18 August 2024, admitted into evidence as Ex. S1, with one excision. Dr Nielssen saw the offender via audio-visual link on two occasions, 29 July 2024 and what I take to be 11 August 2024, although the report records this date as 11 August 2022.

64 The offender said nothing to Dr Nielssen about his crime, other than giving the partially inaccurate report that "he and Ms Mutten accused each other of the offence".[59] The offender gave an account of commencing his relationship with Ms Mutten, blaming her for his "occasional" use of cannabis and "brief lapses"

[59] Ex. S1, p 2.

into heroin and methylamphetamine use (contradicting his evidence at trial, where he claimed only to have used cannabis). The offender asserted that he had been regularly subjected to urinalysis to detect drug use when on parole, with all tests returning a negative result. There is no independent evidence of that.

65 Although the report is confusing in parts, Dr Neilssen records the offender's assertion that, at about the time of Charlise's murder, he had not been taking his prescribed medication, as he had run out of it in 2021. (It is noted that the latter claim is disproved by the photographic evidence at trial of Seroquel in the offender's possession in January 2022, by the evidence of Mrs Stein and, for what it is worth, the offender's evidence, which was that he took his medication as prescribed.) The offender told Dr Neilssen that his mental state declined, and he was not looking after himself. He said:

> "I have schizophrenia and started hearing voices again and it got worse and worse until I started to snap".[60]

66 The offender said that he was establishing a business at about this time, which he promoted through "word of mouth" as "he did not know how to set up social media accounts"[61] (the latter claim being contradicted by Ex. F, which shows his use of Facebook).

67 The doctor recorded a personal history together with a history of drug use and psychiatric illness that was very similar to that recorded in the 2017 report. Since going into custody in January 2022, the offender said he had been prescribed olanzapine and mirtazapine, although he claimed to still experience aural hallucinations. He said his physical health had improved.

68 The offender said that his time in prison had been very difficult, and he claimed to have been assaulted by both prison staff and inmates. As to the offender's substance use, Dr Neilssen recorded the offender asserting, in precisely the same words as in the 2017 report, that "the biggest problem" was that those treating him did not look at "underlying causes", and it was only "in the last few years" that he had been properly medicated.

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[60] Ex. S1, p 3.
[61] Ex. S1, p 3.

69 The document review was substantially the same as that recorded by Dr Neilssen in his 2017 report, although there are additional references to a reported bipolar disorder it seems in 2013, [62] and for presentations to doctors following the offender's release to parole. In that context Dr Neilssen recorded the offender's assertion that he had experienced "a schizophrenic episode" on the evening of 14 January 2022, with records confirming a brief presentation to Nepean Hospital from about 8pm on 14 January to about 1am on 15 January 2022, and the observations of ambulance officers that the offender had "been speaking to individuals who were obviously not present in his cell". Although Dr Nielssen does not refer to it, as the reference to a cell suggests, the evidence given at trial is that the offender was at Penrith Police Station prior to this supposed "schizophrenic episode", where he had been closely questioned by police about what had become of Charlise Mutten.

70 A Justice Health note referred to by Dr Nielssen recorded the offender as "normal" and "logical" and displaying no symptoms of psychosis on entry to custody. Despite the lack of observable symptoms, he was prescribed an anti-psychotic on the basis of his self-report.

71 Dr Nielssen's own assessment was that the offender presented without any signs of neurological disorder, and with "no odd usages or beliefs suggesting the presence of an active psychotic illness, including any apparently delusional explanation for the presence of hallucinated voices".[63] His cognition and intelligence appeared normal. Despite the complete absence of any objective features of psychosis, Dr Neilssen diagnosed a "substance related psychotic illness" because of the offender's self-report. On the same basis, a substance use disorder was diagnosed.

72 Ex. S2 in the offender's case is a recording of a telephone call between the offender and his mother on 10 February 2022. An edited version was in evidence at trial as call 2 of Ex. X. The recording was tendered as evidence of the difficult custodial conditions it is submitted the offender faces and will face because of the nature of his crime. The recording opens with some discussion between the offender and his mother, with the sounds of another inmate

[62] Ex. S1, p 8.
[63] Ex. S1, p 9.

shouting in the background. Although the shouts do not appear to have been directed at the offender, they disturbed his conversation with his mother, causing the offender to shout to the other inmate to "shut the fuck up". There followed a loud exchange of abuse between the offender and the inmate, with much bad language and aggression. The inmate repeatedly called the offender a "dirty dog" and threatened to "fuck [him] up". The offender returned the insults in similar vein. The inmate made no reference to the offender's crime.

73 Senior Counsel for the offender also provided some statistical material, MFIS 3, to which I shall return.

The Determination of Sentence

74 The Court's task is to consider all of the evidence in this matter, much of which I have just set out in summary form and, bearing in mind the maximum penalty and standard non-parole period ("SNPP") fixed by Parliament for the offence of murder, and noting the purposes of sentencing, determine the just and proper sentence to be imposed upon the offender. The offender's crime carries a maximum penalty of life imprisonment and, since his victim was a child under the age of 18 years, a SNPP of 25 years imprisonment applies.[64] Section 3A of the *Crimes (Sentencing Procedure) Act* gives the purposes of sentence as being to ensure the offender's adequate punishment, to prevent crime by deterring the offender and others from similar offending, the protection of the community, the promotion of the offender's rehabilitation, to make him accountable for what he has done and to denounce his crime, and to recognise the harm done to Charlise and to the community.

75 In this matter, the Court must also have regard to the operation of s 61 of the *Crimes (Sentencing Procedure) Act*.

76 As noted, the offence of murder carries a maximum sentence of life imprisonment. Section 21(1) of the *Crimes (Sentencing Procedure) Act* provides, nevertheless, for a court to impose a specified term of imprisonment which is less than life imprisonment. Subject to s 21, s 61 of the Act provides for the mandatory imposition of a life penalty in certain circumstances. The section is in these terms:

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[64] Crimes (Sentencing Procedure) Act 1999 (NSW), Table to div 1A of Part 4, Item 1B.

> **61 Mandatory life sentences for certain offences**
>
> (1) A court is to impose a sentence of imprisonment for life on a person who is convicted of murder if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence.

77 The Crown submits that the offender's level of culpability is so extreme as to require the Court to sentence the offender to the maximum available penalty. The burden of establishing that proposition is on the Crown: *R v Merritt* (2004) 59 NSWLR 557; [2004] NSWCCA 19 at [35]. Where the question of a mandatory life sentence arises, the Court must proceed by examining the objective gravity of the offence, thereafter, considering the capacity of other features including from the offender's subjective case to mitigate the seriousness of the crime.

78 The first step in the determination of sentence, and in assessing whether s 61 applies, is to consider the gravity of the crime.

Gravity

79 Charlise's young age is a significant feature of the gravity of the crime. She was not just a child as contemplated by the regime of SNPPs provided by the Table to Division 1A of Part 4 of the *Crimes (Sentencing Procedure) Act,* she was a very young child in the context of Item 1B of that Table. A SNPP of 25 years applies to the murder of a child under the age of 18 years; Charlise, at nine years and five months of age at the time of her death, was significantly below the upper age limit of under 18.

80 Because of her young age, she necessarily looked to the adults around her for her care and maintenance. At the time of her death, Charlise had been committed to the care of the offender, who stood in the position of a parent or carer to her. He had been trusted by Ms Mutten to look after Charlise whilst travelling to and staying at a relatively unpopulated place, where the offender was the only adult, or person of any age, present. Charlise had come to refer to the offender as "daddy" and she was entitled to his care and protection. This crime represents an egregious breach of Charlise's and Ms Mutten's trust.

81 Because of the quetiapine in her system, however it got there, Charlise was even more vulnerable than a child of nine years would ordinarily be. Dr Judith

Perl told the jury that quetiapine is not a drug prescribed to children under 10 years of age because its safety in young children is not known. The amount of the drug that Charlise had in her system, perhaps ingested within six hours of her death, was a toxic dose, and would have caused "significant sedation and vomiting".[65] She would have been in a state of "pronounced drowsiness"[66] or profound sedation[67] which it is reasonable to conclude the offender must have observed and been aware of. Because of this, Charlise had even less capacity than would otherwise have been the case to defend herself or flee from danger. Her age and the profound sedation caused by the quetiapine made her entirely vulnerable to the violence meted out to her by the offender.

82 In the circumstances that prevailed on the night of 11 to 12 January 2022, Charlise was also without the possibility of help from any other quarter. Charlise was taken by the offender to Mount Wilson, where she was isolated from the view, and assistance, of others. Not only was the Shadforth Road property secluded, but Charlise had no means independent of her adult carer of summoning help. She did not have a mobile telephone, and she could not drive away. As a young girl, she could not have hoped to oppose the offender, and nor could she have defended herself against him. The differences in the size and strength of a nine-year-old girl and a man in his thirties made it impossible that Charlise could have taken any meaningful step in her own defence. That prospect was even more impossible given that the offender used a lethal weapon against her – she had no hope at all of opposing a man wielding a firearm.

83 The weapon was stolen, and, beyond that, the offender had no legal right to possess any kind of firearm or ammunition, having no licence to do so.

84 He discharged not one, but two shots into Charlise's body, in a way that is plainly demonstrative of deliberation, and of his intention to kill her. I am satisfied to the criminal standard that the first shot was to Charlise's back and hip, as she was still alive to bleed into and from the wound. It is reasonable to infer that, having seen the offender with the gun, she turned to flee, and,

[65] Tcpt, 23 May 2024, p 474(45).
[66] Tcpt, 23 May 2024, p 475 (46).
[67] Tcpt, 23 May 2024, p 476(2).

hampered by the sedation caused by the quetiapine, she was shot from behind before she could escape. The force of the impact and the severe damage done to her pelvis must have brought her to the ground. The second shot was directed into her face at close range, at a time when the injury already inflicted to her pelvis would have made escape impossible. The offender approached Charlise and discharged the second shot from close range. At least the second shot was intended and carried out with full deliberation. It was not survivable and was not intended to be. Charlise must have been very frightened, despite the sedation.

85 There is no evidence of planning or premeditation, but neither is there evidence to establish on balance that the crime was spontaneously committed.

86 There is no evidence capable of establishing the offender's motivation in killing Charlise. The offender submitted through senior counsel that something must have occurred to make him lose control, but it is impossible to conclude that anything that a young child might do could be such as to prompt her adult carer to reach for a gun and use it against a 9-year-old girl. The absence of evidence of motive does not diminish the gravity of the crime.

87 After shooting Charlise, the offender treated her broken body with an inhumanity and a casual disregard that is shocking. She was wrapped up in a garbage bag, tarpaulins, and other plastic cloth, and hidden away until such time as the offender could take steps to dispose of her body. Probably soon after the shooting, but at some time before he left Mount Wilson with the orange barrel on the back of his utility, the offender dumped Charlise into the 220 litre barrel with the soil onto which she had shed her blood, later covering her with sand, at least some of which was purchased as children's play sand, the use of the play sand being a stunning act of grotesque cynicism, even accepting that the offender did not deliberately purchase sand of that description. Charlise was thereafter dumped in a place the offender hoped no one would ever find her.

88 This example of the crime of murder is as grave as it is possible for an offence encompassed by s 18(1)(a) of the *Crimes Act* to be. That it is possible to find other instances of murder that may be attended by more shocking or worse

features does not diminish that conclusion. The offender's crime falls at the top of any notional range of objective gravity for the crime of murder.

Are there features that might ameliorate the offender's crime?

89 There is nothing in the evidence that can reduce the offender's moral turpitude or mitigate the gravity of this crime.

90 There is some evidence that might suggest that the offender has a mental illness, but it is highly unsatisfactory, and, on balance, the Court can conclude no more than that the offender has reported symptoms of mental illness over a number of years and been prescribed medications typically used to treat psychosis. On the evidence before the Court, it cannot be concluded, even on balance, that his claims of having been diagnosed with schizophrenia are true. The only psychiatric evidence before the Court are the two reports of Dr Nielssen. Those reports are themselves somewhat unsatisfactory, since the second report was evidently produced in part by copying the earlier report, including as to the history given by the offender, without acknowledging the quoted content. Even setting that aside, Dr Nielssen did not himself diagnose a schizophrenic illness when he assessed the offender earlier this month; the most that he could say, on the basis of the offender's self-report, was that he had a substance related psychotic illness. Psychosis brought on by self-induced drug intoxication cannot mitigate sentence.

91 The document review undertaken by Dr Nielssen did not record any past diagnosis of schizophrenia having been made by any doctor at any time but, rather, the offender's reports of such a diagnosis having been made. The offender has been treated with anti-psychotic medications, but seemingly the basis of prescriptions of that nature being given to him have been his own claims of hearing voices. The only independent record of any health professional having observed behaviour consistent with psychosis comes from an ambulance officer who attended the offender on 14 January 2022 at Penrith Police Station and took him to Nepean Hospital. A note records the offender as appearing to speak to people in his cell when no other person was present.

92 The Court is very suspicious of any ostensibly psychotic presentation by the offender at that time given that nothing similar has been previously observed

by a health professional, and it manifested at a time when the offender, who had by then been questioned about Charlise's whereabouts for some hours by police, must have realised that he was suspected of having done her some harm. There is every possibility that the offender feigned psychosis, for such benefit as he perceived there to be in that pretence. It is not reliable as evidence of mental illness.

93 The only thing that can be comfortably concluded about the offender's mental health is that he has a substance use disorder. An individual's decision to use illicit drugs does not mitigate his offence or call for a reduction in sentence.

94 The offender claimed to Dr Neilssen that he began using drugs to alleviate the symptoms of mental illness and to help him deal with trauma. There is no evidence beyond his hearsay report of the abuse he claims to have suffered. The offender first made an assertion of having been sexually abused as a child when he was facing sentence for a serious Federal offence; he has repeated it now when he faces sentence for a very serious State offence. There is no independent evidence to support his claims. The offender has not nominated his purported abuser, and nor has he made a complaint to police. He did not give evidence of it and submit to cross-examination. Bearing in mind the offender's proven capacity to lie and lie extravagantly if he perceives it to be in his interests – to his mother, to his fiancée, to police,[68] to Corrective Services,[69] and to a jury and this Court – I do not accept his self-reports of childhood trauma or mental illness as mitigating his offence.

95 The offender himself accepts through his counsel that his moral culpability is undiminished by these features.

96 Ex. S2 and the offender's assertions as to the conditions of his custody are relied upon to demonstrate that the offender faces a custodial environment that is harsher than for most prisoners and which will remain so. The offender is presently held on protection and ordinary experience suggests that he is likely to have lesser access to facilities currently than mainstream prisoners, and is at a disadvantage. Beyond that, I am not able to reach any conclusions about the offender's custodial conditions, and it would be no more than speculation to

[68] Exs. K and L.
[69] Evidence of Stacey Sweeney and Ryan Taylor, 21 May 2024.

consider what they might be in the future. In *R v Mostyn* (2004) 145 A Crim R 304; [2004] NSWCCA 97, the Court of Criminal Appeal observed, at [179] per Howie J, that:

> "It can no longer be assumed that a prisoner, by reason of the fact that he will serve his sentence on protection, will find prison life more difficult or onerous than other prisoners in the general prison population or that the prisoner will be deprived of amenities or opportunities for self improvement courses and education". [footnotes omitted]

97 The offender's own hearsay assertions about his conditions cannot be accepted in the absence of objective proof, because of his profound unreliability. He told Dr Nielssen that he has been assaulted, but no report to the authorities of any assault is in evidence, and I do not accept the offender's unsworn assertion. The recording of the gaol telephone call does not establish that he is any worse off than any other prisoner. The sort of unpleasant abuse it captured is representative of what is unfortunately a relatively standard communication between prisoners. Notably, the inmate who shouted abuse at the offender did so only after the offender directed an angry comment to him and did not refer to him as a child killer or say anything that might be a reference to his crime. Although it is regrettable, the language was very much everyday prison parlance. Further, the offender did not sound frightened or intimidated, and he responded with the same sort of abusive language as was directed at him. Ex. S2 proves no more than that prisons are unpleasant places inhabited by some people who may use bad language.

Other features relevant to the Determination of Sentence

Remorse

98 There is no evidence that the offender has ever repented what he did to Charlise, or even spent as much as a moment feeling remorseful for his crime. Having murdered a 9-year-old girl, all of the offender's energies were spent on covering his tracks and deflecting blame elsewhere, upon Kallista Mutten. When his many lies to the police began to unravel, he suggested that, whatever had happened to Charlise, Ms Mutten was responsible. At his trial, he went even further, advancing a positive case in which he claimed to have witnessed Ms Mutten shooting her daughter, attributing to her acts he must have carried out himself, such as digging up the bloodied earth, and collecting

and concealing the discharged cartridges. His case was put to Kallista Mutten, something that must have been extraordinarily painful for her. To my observation the offender sat in the dock smirking and shaking his head during Ms Mutten's evidence as if to emphasise to the jury the falsity of it, until warned about his conduct. He clearly had no regard for the distress of a woman he had once intended to marry, or for other members of Charlise's family, despite his responsibility for their pain.

99 An accused person is entitled to plead not guilty and put the Crown to proof and there can be no adverse conclusions drawn from that approach, even for the guilty. It is not, however, permissible for an accused to make false accusations against other innocent persons, or to commit perjury. The offender did both, all to protect himself from the consequences of his crime. He is not to be punished for that, but it demonstrates that he is without any shred of remorse. That is a consideration relevant to his future prospects; the absence of remorse making rehabilitation less likely.

Prospects of Rehabilitation

100 The offender's future prospects in the Court's assessment are very bleak indeed.

101 By his own account, supported to some extent by evidence of admissions to rehabilitation programmes over many years, the offender has a long-standing drug addiction which he has never managed to conquer. Unlike most addicts, the offender has had the benefit of a materially advantaged upbringing, and his family has financially supported him for decades both in his living expenses, and in gaining access to numerous rehabilitation programmes. The offender had the advantage of multiple admissions between two private hospitals or clinics for assistance with drug rehabilitation. What is likely to have been the significant sum expended on his behalf to that end has been wasted. He has made no better use of publicly available programmes, such as those provided by the well-regarded Odyssey House, having continued to use illicit drugs despite the intensive treatment given to him.

102 The criminal courts have extended opportunities to him for rehabilitation, but the offender has historically breached most of the community-based

sentencing orders allowed to him, including the parole he was granted with respect to the *Code* offence by committing the offence of murder.

103 A 2013 supervision report observed the following of his commitment to rehabilitation:

> "Mr Stein's response to supervision has been borderline. During his period of supervision he has entered Odyssey House on three occasions for detoxification and he self-discharged from the facility twice. He also entered South Pacific Private Hospital but was made to leave when they found a used syringe in his bag. He finally did complete the two week programme at the Sydney Clinic. He agreed to continue with out-patient relapse prevention groups, but this didn't eventuate."[70]

104 The offender claimed to the author of that note, 11 years ago, that he wanted to set up a wood and metal working business. He was making broadly the same claim to Dr Nielssen when the doctor saw him earlier this month, without any evidence that he has ever established a business at any time, or derived any income from it. His source of income appears to have been a Disability Benefit or other government welfare payment,[71] and support from his mother.

105 The breach of prison discipline noted in Ex. SA.6 supports the conclusion that the offender has continued to use illicit drugs in custody, at least until July 2023, when he was penalised for refusing or failing a drug sample.

106 The complete lack of remorse, coupled with the offender's singular failure to achieve any degree of rehabilitation from drug use, despite the extensive support given to him, suggests that he has limited to no prospects of improving himself in the future. Other aspects of the case relevant to the question of penalty also have a bearing on his prospects for the future, including the question of his future dangerousness.

Protection of the Community

107 The Crown argues that the offender will continue to present a danger to others into the future, and the community must be protected from him. The offender points to the absence of any prior convictions for offences of violence, and the length of any non-parole period likely to be imposed upon him, to submit that he is unlikely to pose a threat to others on his eventual release from custody.

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[70] Ex. SA.10.
[71] Ex. M.

108 In the Court's assessment, the evidence establishes that there is a risk that the offender will be an ongoing danger to others.

109 It is true that the offender's record does not contain convictions for offences of violence, but there is evidence that he has engaged in violent acts apart from Charlise's murder. Kallista Mutten told the jury on her oath that the offender assaulted her and smashed her mobile phone when she returned to the Mount Wilson property on 13 January 2022. Although the offender disputed that he had assaulted Ms Mutten when she returned with his car, relying upon the absence of contemporaneous complaint or observations of injury by others to impugn Ms Mutten's claim, having listened to the aggressive rage with which the offender shouted threats to her voicemail and, bearing in mind the crime he had committed only a day or so before, I have no doubt that he assaulted her as she deposed.

110 It is not at all unusual for a victim of domestic violence to conceal injuries inflicted by a partner, and to keep acts of violence to herself and even to deny an assault occurred. When Ms Mutten spoke to police on 14 January 2022 and when she was taken later that day to hospital, she did not know that the offender had murdered her child. She loved him and still regarded him as her fiancée. That she did not complain to the police about the assault upon her, or of the damage to her phone, and that she kept the bruising that had been caused covered by clothes so that hospital staff did not see them and denied any assault, is unsurprising in those circumstances. It is behaviour consistent with the dynamics of domestic violence, well known to the criminal courts.

111 I do not regard Ms Mutten's failure to complain or display bruises to others as undermining the truthfulness of her evidence, particularly, as I have said, in the context of the explosive rage of the voicemail threats recorded in Ex. H made only a very short time before Ms Mutten said she was assaulted by the offender.

112 The viciousness of the offender's crime is itself evidence of the grave danger the offender presents to others and may well go on presenting. The Court can only conclude that the offender must be an individual without the humanity,

morality or self-control that restrains others from acts of criminal violence. This must mean that he poses a risk into the future.

113 Further, there is nothing to suggest that the offender is capable of any true empathy for others such that his dangerousness might be restrained. His lack of empathy can be readily discerned in his disturbingly callous disposal of Charlise's body, from his intention that her body would not be found such that her grandparents and mother would be left in ignorance of her fate, from his cowardly strategy of blaming Ms Mutten for his crime, and from his lack of any insight into or contrition for his crime.

114 The fact that the offender was at conditional liberty at the time of the commission of this offence, and his earlier failures to observe community-based sentencing orders, suggests that the offender may be incapable of observing the criminal law, and the community likely remains at risk from him. Whilst it is impossible to make a prediction of the offender's future conduct many years into that future, what can be said is that there is a risk of offending.

Deterrence

115 Having regard to the breaches of sentencing orders, including Commonwealth parole, specific deterrence has a significant role to play in the sentence to be imposed upon the offender. Although the murder of children is fortunately relatively unusual, it is such a grave crime that general deterrence must also play a significant role in the determination of the penalty.

Recognition of Harm

116 The victim impact statements give some hint of the terrible damage done by this crime. The harm done by the murder of Charlise is in the violent death of a child, but also in the very great damage caused to others. I accept that the harm done to Mr and Mrs Mutten and to Kallista Mutten is an aspect of the harm done to the community by this crime and it will be taken into account when determining sentence. Murder is an offence that encompasses the violent destruction of a human life, but also extends to the irreversible damage done to that person's family, loved ones, and community. In Charlise's case, her community includes her school and schoolmates, with children who knew her also touched by her death.

The Applicability of s 61 of the Crimes (Sentencing Procedure) Act

117 In determining whether s 61 applies, it is the combined effect of the Court's findings concerning the four indicia referred to in the section, being the community interest in retribution, punishment, community protection and deterrence, that must be considered. The Crown submits that the unmitigated gravity of the crime is such that a sentence of life imprisonment is mandated. The offender counters that his younger age means that a life sentence amounts to "cruel and unusual punishment". I do not accept that submission. Life is the maximum penalty specified for murder and to impose that which Parliament has provided for cannot be to impose a cruel and unusual punishment. Some instances of murder are so grave that the maximum penalty is the only appropriate penalty. Where the features referred to in s 61 are established, it is the mandatory penalty.

118 The Court was referred to one instance involving the killing of a child where life imprisonment was imposed, *R v Holdom* [2018] NSWSC 1677, although it was argued that the case could be distinguished because two murders were committed by that offender, of a child and her mother. That offender also pleaded guilty and had a dysfunctional background, features which also distinguish it from the offender's case, although not in a way favourable to him. There are others, including R v Garforth (Court of Criminal Appeal (NSW), 23 May 1994, unrep), where the deceased was a 9-year-old child. That matter proceeded after a plea of guilty was entered. These decisions are of interest, as are the statistics that show the imposition of a life term is uncommon, but it is necessary to make an assessment of the circumstances surrounding or causally connected to the offence in deciding whether s 61 applies: R v Harris (2000) 50 NSWLR 409; [2000] NSWCCA 469; *Rogerson v R; McNamara v R* (2021) 290 A Crim R 239; [2021] NSWCCA 160 at [616]-[637].

119 I have already set out my conclusion that the murder of Charlise Mutten was a gravely serious crime, falling at the top of the range of objective gravity for offences comprehended by s 18(1)(a) of the *Crimes Act*. This was a shockingly callous crime of very great heinousness; it was gravely reprehensible and extremely wicked. There are no facts which can mitigate its seriousness: *R v Twala* (Court of Criminal Appeal (NSW), 4 November 1994, unrep); *R v*

Arthurell (Supreme Court of New South Wales, 3 October 1997, unrep). The offender's culpability is correspondingly high and the community's interest in retribution and punishment is very significant indeed.

120 I have also recorded my conclusion that the offender's moral culpability for the offence is undiminished. There is nothing in the offender's subjective case that can detract from that conclusion. He bears the full weight of responsibility for what he did. These conclusions also point to the strong community interest in heavy punishment and retribution being visited on the offender.

121 Although it is not possible to make a firm prediction, I have earlier observed that the evidence establishes that there is a risk of future offending, and thus community protection is a relevant consideration.

122 The nature of the offence, the absence of any remorse for it, and the offender's failure to take advantage of the opportunities for rehabilitation that have been repeatedly extended to him in the past, all point to the need for the sentence to function as a significant deterrent to the offender. General deterrence has a role to play in preventing others from committing such grave crimes.

123 Having considered the evidence and the competing submissions, I accept the Crown's submission that this is a matter where s 61 is enlivened. The evidence establishes that the community interest in retribution, punishment, deterrence, and its future protection can only be met through the imposition of the maximum penalty, which is thus mandated. Given that conclusion, there is no real utility in accumulating the penalty upon any part of the time spent by the offender serving the balance of his parole for the *Code* offence.

ORDERS

124 The orders of the Court are as follows:

(1) The charge of interfering with a corpse is marked as having been withdrawn by the Crown. Insofar as it is necessary to order it, the charge is dismissed.

(2) For the murder of Charlise Mutten, on or about 12 January 2022, Justin Laurens Stein is sentenced to imprisonment for life, commencing on 18 January 2022.

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