

Judge homes in on criminal capacity in Novella murder case

The state has argued there is no evidence to suggest Guatemalan murder accused Diego Novella did not have criminal capacity when he allegedly murdered his American marketing executive girlfriend Gabriela Kabrins Alban in July 2015. According to a report on the [IoL](#) site, final arguments were being heard in the Western Cape High Court last week, but before they could get under way, Judge Vincent Saldanha insisted that Novella's lawyer William Booth clarify the defence's position on the issue of criminal capacity. He said Novella's plea explanation argued that the accused had diminished responsibility because of substances he had ingested which had psychotic-like effects, whereas Booth's heads of argument suggested it was 'simply intoxication' that caused his behaviour. Booth was **adamant that the substances his client took had indeed affected the accused's criminal capacity**. 'The accused's intake of cannabis, cannabis oil and scelletium caused him to be in a psychotic-like state and disinhibited. He said he observed a demon (the deceased) and the intake of those substances caused this effect on him. This, in a nutshell, this is his defence.' Saldanha pointed out that psychiatrist Professor Sean Kaliski from Valkenberg mental hospital where Novella was initially sent for observation, was 'of the view that the whole incident arose out of anger. He was motivated by anger and Kaliski doesn't buy for half a minute your defence's version that it was psychotic-like. He said the accused was motivated by anger alone, influenced by the intoxication'. Prosecutor Mornay Julius argued that both Kaliski and defence expert Dr Toviah Zabow believed the accused had criminal capacity at the time of the incident. 'We submit that the quantity and level of intoxication is very exaggerated by the accused, to make it worse,' he said.