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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

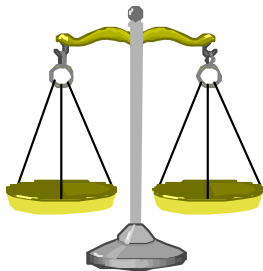
THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 211

3 APRIL 2014

PAGES 25999 TO 26140



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<p style="text-align: right;">Page 25999</p> <p>1 [PROCEEDINGS ON 3 APRIL 2014] 2 [09:30] CHAIRPERSON: The Commission resumes. 3 Sorry that we're starting later than scheduled, but we had 4 some housekeeping to attend to in chambers before we came 5 in, which is a partial reason for the late start. 6 Luitenant-kolonel, ek moet u daaraan herinner dat u nog 7 steeds gebonde is deur u plegtige bevestiging wat u gemaak 8 het. 9 SALMON JOHANNES VERMAAK: Dis korrek. 10 CHAIRPERSON: Ms le Roux. 11 MS LE ROUX: Thank you, Chair. 12 CHAIRPERSON: I believe you've got some 13 more questions for the witness. 14 CROSS-EXAMINATION BY MS LE ROUX (CONTD.): 15 Just a few, thank you, Chair. Chair, first of all on 16 housekeeping we have now provided the Commission as well as 17 the evidence leaders with hardcopies of what we marked as 18 OOO22, the interrogatories that we dealt with on Tuesday, 19 and then Lieutenant-Colonel, I'd like to start with CC21, 20 the Johannesburg water cannon video that we had some 21 trouble with on Tuesday. We've managed to sort that out 22 and would like to show you a clip. I've asked that we play 23 it first at normal speed and then that we slow it down a 24 little bit so that you can see the two gentlemen we'd like 25 your help identifying. You'll see them walk from right to</p>	<p style="text-align: right;">Page 26001</p> <p>1 it. 2 MS LE ROUX: And then we've reviewed your 3 answers on Tuesday and it seems fair to say that you agree 4 with Mr White's criticisms insofar as they relate to the 5 failure of intelligence gathering, the failures with 6 respect to planning of the operation at Marikana, failure 7 with respect to briefing for the operation, as well as in 8 recordkeeping, and in respect of those four issues 9 particularly, intelligence, planning, briefing and 10 recordkeeping, is there anything in Mr White's statement 11 that you disagree with, that you take issue with? 12 COLONEL VERMAAK: No, on that four points 13 I agree. 14 MS LE ROUX: And then the one point that 15 you disagreed with on Tuesday related to the conclusion set 16 out in paragraph 10.1.1(e), if we could put that up on 17 screen. It's at page 126 of Mr White's statement and this 18 was where you disagreed that the police response to the 19 incidents demonstrate a lack of accountability and an 20 unwillingness to take responsibility for the events, and in 21 relation to that your testimony was that you couldn't 22 totally agree because there were circumstances where some 23 of the officers, the seniors who were there did take some 24 responsibility for specific things, so you couldn't say 25 that at all they don't take any responsibility.</p>
<p style="text-align: right;">Page 26000</p> <p>1 left on the screen. For the record, this appears at video 2 time code 25:51. The time on screen is 15:56:26 and eTV 3 time, this occurs at 16:26:03. So again, Lieutenant- 4 Colonel Vermaak, if you could try to identify the two 5 gentlemen. If you can't and you'd like to look at it 6 again, we can do that in the adjournment as well. 7 COLONEL VERMAAK: Thank you. 8 MS LE ROUX: Lieutenant-Colonel, perhaps 9 if you look at the TV screen closest to you, it's a little 10 bit clearer than on the big screen. 11 COLONEL VERMAAK: No, unfortunately I 12 cannot – 13 CHAIRPERSON: It's a bold man who can 14 identify people simply by looking at their backs. If he 15 identifies them then people will say how do you know, how 16 does that person's back differ from anybody else's back. 17 MS LE ROUX: Chair, the fact – 18 CHAIRPERSON: It's not even practical 19 question, if I may say so. Sorry? 20 MS LE ROUX: Let me not respond. 21 Lieutenant-Colonel, we ended on Tuesday going through Gary 22 White's conclusions that appear page 125, paragraph 10.1.1 23 of his statement, and just to confirm again, you've read 24 his entire statement as well as the annexures, correct? 25 COLONEL VERMAAK: Yes, I did go through</p>	<p style="text-align: right;">Page 26002</p> <p>1 So we wanted to look at that a little further and 2 could I ask you to turn to page 38 of Mr White's statement? 3 And in particular we'll be looking at paragraph 4.2.23 and 4 on the next page 4.2.24, and this is where Mr White 5 highlights the six errors that the SAPS have identified as 6 contributing to the tragedy at Marikana. So if we look, 7 commencing in paragraph 4.2.23 he identifies six errors. 8 He states, "My understanding from the evidence along with 9 the written evidence of Mr de Rover," that's the SAPS 10 expert, "that the SAPS have currently identified six main 11 errors in the operation of 16 August 2012, namely 12 inadequate radios, insufficient camera technology, the use 13 of high-velocity 5.56 calibre ammunition rather than lower 14 velocity ammunition, the absence of teargas masks at scene 15 1, the need for more less-than-lethal options, and finally 16 ineffective command and control." 17 Are you aware of any other areas, any other 18 aspects of the Marikana operation that the SAPS have 19 identified as attributing to the result that occurred on 20 that day? Can you – 21 COLONEL VERMAAK: Not that I'm aware of, 22 but if I look at this point 1 to point 6 it is well 23 problems that's been identified, but there was no person 24 who took responsibility for that shortcomings. 25 CHAIRPERSON: Some of the points of</p>

<p style="text-align: right;">Page 26003</p> <p>1 course are points that you had referred to and had drawn to 2 the attention of the National Commissioner when you had 3 your interview with her. That's correct, isn't it? 4 COLONEL VERMAAK: That's correct, Sir. 5 CHAIRPERSON: Do you know, as a matter of 6 interest, whether R5s are still used by POP people? I 7 think you told us that normally there are, I think each 8 group of POP police have, there are about eight of them and 9 most of them use rubber bullets and shotguns with rubber 10 bullets, and so on, but there's one person with an R5. I 11 think that's what you said. Do I understand correctly? 12 COLONEL VERMAAK: That's correct. 13 CHAIRPERSON: Is that still the case as 14 far as you're aware? 15 COLONEL VERMAAK: Chairperson, it was 16 still the case until I've been called up for the 17 Commission. So there might be afterwards new – 18 CHAIRPERSON: When were you called up for 19 the Commission? 20 COLONEL VERMAAK: I started in the 21 beginning of March. 22 CHAIRPERSON: This year? 23 COLONEL VERMAAK: This year. 24 CHAIRPERSON: Ja, so right up to March 25 this year, as far as you know the police have not</p>	<p style="text-align: right;">Page 26005</p> <p>1 that it occurred primarily because of the incorrect 2 equipment that the police had on the day? 3 COLONEL VERMAAK: No, I agree with him 4 that there was poor planning and information during this 5 plannings. 6 MS LE ROUX: So you would agree that it's 7 poor planning, poor briefing, and poor decision-making, not 8 incorrect equipment? 9 COLONEL VERMAAK: No, I think the 10 equipment was available and it is only for the right people 11 to use the right equipment. 12 MS LE ROUX: Mr White then goes on to 13 deal with the specific problems relating to ineffective 14 command and control and he notes that, you know, that 15 Brigadier Mkhwanazi identified these as being clearly a 16 significant contributor to the events at scene 2 and notes 17 though that "Aside from a passing reference to the issue in 18 the oral evidence of Brigadier Mkhwanazi and a concession 19 in the cross-examination of Major-General Mpembe, I'm not 20 aware that the SAPS have addressed in any significant way 21 in either oral or written evidence the ineffective command 22 and control problem." 23 Other than Brigadier Mkhwanazi and Major-General 24 Mpembe in his evidence are you aware of any other SAPS 25 member that has acknowledge ineffective command and control</p>
<p style="text-align: right;">Page 26004</p> <p>1 implemented its own – 2 COLONEL VERMAAK: No, there was no – 3 CHAIRPERSON: - realisation – 4 COLONEL VERMAAK: No. 5 CHAIRPERSON: - that the use of high- 6 velocity 5.56 calibre ammunition rather than lower velocity 7 ammunition shouldn't be used? 8 COLONEL VERMAAK: Yes, up – 9 CHAIRPERSON: They haven't implemented 10 that yet? 11 COLONEL VERMAAK: Up to that stage there 12 was no instruction on that. 13 MS LE ROUX: Lieutenant-Colonel, you'll 14 see that Mr White when he reflects on these six errors 15 identified states that he doesn't dissent from any of them 16 but notes that five of the six relate to the equipment 17 available to the SAPS rather than the decisions made by 18 them, and he states, "I do not accept that the Marikana 19 tragedy occurred because the SAPS were not issued with the 20 correct equipment. Instead I believe that it occurred 21 because of poor planning, poor briefing, and most 22 importantly poor decision-making." 23 Do you agree with Mr White's conclusion that the 24 tragedy at Marikana occurred primarily because of poor 25 planning, briefing and decision-making, or do you believe</p>	<p style="text-align: right;">Page 26006</p> <p>1 of the operation? 2 COLONEL VERMAAK: No, I'm not aware of 3 anybody. 4 MS LE ROUX: And are you aware of any 5 SAPS member who has accepted any responsibility for that 6 lack of command and control? 7 COLONEL VERMAAK: No, I'm not aware. 8 MS LE ROUX: Could I ask you then to 9 return to paragraph 10.1.1(e) on page 126 and ask you 10 whether you still maintain your position that you had on 11 Tuesday, which is that the SAPS have shown a willingness to 12 accept responsibility for the tragedy? 13 COLONEL VERMAAK: Can you just repeat 14 that reference? 15 MS LE ROUX: Sure, page 126, paragraph 16 10.1.1(e). This is where Mr White concludes that the 17 police response demonstrates a lack of accountability and 18 an unwillingness to take responsibility for the events. Do 19 you still disagree with that conclusion? 20 COLONEL VERMAAK: If you take the whole 21 operation and the points that you have pointed out now, I 22 do agree with this statement. 23 MS LE ROUX: Now we don't need to turn 24 back, but on that page 39 where we were in paragraph 4.2.24 25 Mr White there referred to the undertaking that the SAPS</p>

<p style="text-align: right;">Page 26007</p> <p>1 made in May 2013 that they would provide a statement of 2 lessons learnt and we were informed subsequent to Mr 3 White's statement being finalised that it wouldn't in fact 4 be a statement of lessons learnt but that it was a document 5 that would be produced by Mr de Rover, the SAPS expert. 6 Have you been consulted by Mr de Rover about lessons learnt 7 by the police from Marikana? 8 COLONEL VERMAAK: No at all. 9 MS LE ROUX: Have you consulted with Mr 10 de Rover at all in his preparation – 11 COLONEL VERMAAK: No. 12 MS LE ROUX: - of his reports to the 13 Commission? 14 COLONEL VERMAAK: No. 15 CHAIRPERSON: This is a point I should 16 have asked you about a couple of minutes ago before Ms le 17 Roux moved on. There's one aspect I don't understand about 18 something you've agreed with that Mr White says and that's 19 the second sentence of paragraph (e). Let's read the whole 20 paragraph. "The police response to the incidents 21 demonstrate a lack of accountability and an unwillingness 22 to take responsibility for the events. The case presented 23 to the Commission of Inquiry continues to contain 24 significant evidential gaps which either indicate seriously 25 inadequate recordkeeping, or a police service that's not</p>	<p style="text-align: right;">Page 26009</p> <p>1 MS LE ROUX: So it's a conclusory wrap-up 2 section – 3 CHAIRPERSON: You're now misbehaving, Ms 4 le Roux. I asked the witness a question. I'm sure you're 5 not doing it deliberately, but please, good advocates don't 6 do that. Luitenant-kolonel, wat – sorry, you're giving 7 evidence in English from now. 8 COLONEL VERMAAK: Well, I try to – 9 CHAIRPERSON: What do you say about the 10 point that I put to you? 11 COLONEL VERMAAK: Chair yes, to – I think 12 my command, my comment on the unwillingness to take 13 responsibility for all the events, there are some 14 commanders who was deployed on the 16th who is willing to 15 take the responsibility and they state it in their 16 statements, as I understand. So I can't say there is no 17 willingness for in total of the events that take place, but 18 if you look at the whole incident then there is nobody at 19 this stage who want to say on a planning, people on the 20 planning phase or overall command, if any other senior 21 officer that will say listen, we take responsibility for 22 all this shortcomings that has been highlighted in this 23 documents and from our experience what happened there on 24 the 16th, but so just to clarify that specific question. 25 Thank you, Sir.</p>
<p style="text-align: right;">Page 26008</p> <p>1 acting in the spirit of full and frank disclosure." Now 2 never mind the second part. I understand the second part. 3 But if what are described as the significant evidential 4 gaps were caused by seriously inadequate recordkeeping, 5 that's something that relates to the past. They didn't 6 keep records in the past on the 16th and before. Then that 7 wouldn't demonstrate a lack of accountability and an 8 unwillingness to take responsibility for events. It might 9 give rise to other criticisms, but I'm afraid I don't 10 understand on what basis Mr White says, and you agree with 11 the contention, with the statement that if there was 12 seriously inadequate recordkeeping and that was the reason 13 for what are described as significant evidential gaps, that 14 can be said to demonstrate a lack of accountability and an 15 unwillingness to take responsibility for events. I have 16 difficulty in understanding that, but if you persist in 17 saying you agree with Mr White I'd be grateful if you'd 18 explain it to me. 19 MS LE ROUX: Chair, if I could just 20 clarify before Lieutenant-Colonel Vermaak responds, the 21 structure of Mr White's statement, that's obviously a 22 conclusion and the inadequate recordkeeping he's referring 23 back to the 4.2 paragraphs that we've already, that we've 24 just gone through – 25 CHAIRPERSON: No, I know that, but –</p>	<p style="text-align: right;">Page 26010</p> <p>1 MS LE ROUX: Lieutenant-Colonel, if I can 2 return to the fact that Mr de Rover hasn't consulted with 3 you, so the document that he's produced and provided to the 4 Commission don't have the benefit of any of your input. I 5 understand he may not have consulted in person with you. 6 Have you given him any input at all into his document? 7 COLONEL VERMAAK: No, he didn't ask for 8 any written input from my side and also did not consult 9 personally at any stage with me. 10 MS LE ROUX: Okay, and given that you had 11 been quite clear with the SAPS about your criticisms of the 12 operation at Marikana and POP policing in general before 13 that, do you know of any reason why you haven't been asked 14 to provide input to Mr de Rover? 15 COLONEL VERMAAK: No Chair, I'm not aware 16 what the reason was that he didn't ask me. 17 MS LE ROUX: We understand that Mr de 18 Rover went to particularly scene 2 with some members and 19 they consulted with him. You weren't present at that 20 either? 21 COLONEL VERMAAK: No, I wasn't. 22 COMMISSIONER HEMRAJ: Colonel, can I just 23 ask you when you were head of the POP, you were commander 24 at POPS, did you ensure adequate recordkeeping? 25 COLONEL VERMAAK: Chairperson, yes, we –</p>

<p style="text-align: right;">Page 26011</p> <p>1 COMMISSIONER HEMRAJ: And how would you 2 have ensured that? 3 COLONEL VERMAAK: We have actually the, 4 every section that is being deployed have a record-keeper 5 on a formal document where he have to keep all the record 6 of everything that his section is in and all those 7 information he always convey to the JOC, who's also keeping 8 then record of all the sitreps that they get from the 9 different sections and after the duties they will hand it 10 in, that document, and it will be put together in one 11 document, then, what is then available for the information 12 manager of the unit and also then for the commander of the 13 unit. 14 Maybe if I can just comment also on that; all 15 those sitreps then afterwards is put on computer on the 16 IRIS system. Now the IRIS system have everything, detail 17 of the incidents, the members involved, firearms involved, 18 equipment being involved. If there's other police from 19 other units also their particulars will be captured on the 20 IRIS system. So when people at national head office, they 21 can immediately go into IRIS system and they will can see 22 how this operation is going on. 23 COMMISSIONER HEMRAJ: But how do you 24 ensure adequate recordkeeping in the JOC when the incidents 25 are taking place at such a fast pace?</p>	<p style="text-align: right;">Page 26013</p> <p>1 COLONEL VERMAAK: That is possible. 2 CHAIRPERSON: And you didn't require 3 complicated equipment, you didn't require expensive 4 equipment, it was equipment that had been available in 2005 5 when you left the POP, is that right? 6 COLONEL VERMAAK: That's correct. 7 CHAIRPERSON: And of course we don't 8 know, perhaps someone will try to explain to us why that 9 didn't happen on this occasion. We wouldn't have to guess 10 what happened for eight minutes when we don't know what was 11 on the radio and only have the benefit of Captain Ryland's 12 cell phone to tell us what happened the other time. 13 COLONEL VERMAAK: Yes, that's correct. 14 CHAIRPERSON: That surely is not in 15 accordance with sound POP policing, is it? 16 COLONEL VERMAAK: No – 17 CHAIRPERSON: Not to have a recording – 18 COLONEL VERMAAK: They are supposed to 19 record everything. 20 CHAIRPERSON: Ja. 21 COLONEL VERMAAK: As I said, with video 22 cameras at all times at the – 23 CHAIRPERSON: Where would those 24 recordings have been done, in the JOC or – 25 COLONEL VERMAAK: We have a separate</p>
<p style="text-align: right;">Page 26012</p> <p>1 COLONEL VERMAAK: When there's big events 2 you will always see that you have your OPS commander and at 3 least two people who is assisting with recordkeeping in the 4 JOC, and if they can't keep up with the sitreps they will 5 tell the people hold on, I'll come back to you. So that is 6 the way that we operate when I was in the POP. 7 CHAIRPERSON: And of course did you at 8 that stage keep a recording of everything that was said 9 over the radio? You know, here we've got this eight-minute 10 gap that we talked about. 11 COLONEL VERMAAK: Ja. 12 CHAIRPERSON: And bits of the radio, we 13 only get through Captain Ryland's cell phone. Now in your 14 time was the radio, the audio track on the radio – 15 COLONEL VERMAAK: Chairperson, yes – 16 CHAIRPERSON: Was that recorded? 17 COLONEL VERMAAK: I did have that 18 facility at my unit where we recorded five channels. At 19 all time, 24-hour basis there was two members who was on 20 standby and they will go in, change the tapes, file it, and 21 if there's something that you want to go through. 22 [09:50] You can go back and you can listen to that 23 conversation. 24 CHAIRPERSON: So it was technically 25 possible to record the whole radio soundtrack, as it were –</p>	<p style="text-align: right;">Page 26014</p> <p>1 office where only me and the two people who was working 2 with the videos of the recording system have keys for it. 3 So we, if there was enquiries on that, the person will come 4 and we will play that back for him to listen to that 5 conversation that he is asking about. 6 CHAIRPERSON: Well, here what we have is 7 an occurrence book in which things have been recorded. 8 There are suggestions that some things were incorrectly 9 recorded, both as to who had sent in the report and seeing 10 the exact content of what was written down and the time, 11 things happened eventually so fast that the recorders 12 didn't even bother to put the times in anymore. They wrote 13 things on little bits of paper and there are suggestions 14 that some of the papers perhaps were, recording the 15 contents of what was written on the piece of paper were 16 recorded in the wrong order. There's a whole, there's one 17 big entry in the occurrence book about things that happened 18 over a quite significant period of time and no times at all 19 because it was said it was all happening so fast. I can 20 understand that the people who were trying to write down 21 had problems but of course they wouldn't have arisen if 22 there had been a recording. 23 COLONEL VERMAAK: That's correct. 24 CHAIRPERSON: And it seems, obviously 25 it's a prima facie view, I must be careful not to make up</p>

<p style="text-align: right;">Page 26015</p> <p>1 my mind on anything until the end but it does seem prima 2 facie as if that failure is difficult to explain or to 3 excuse. Would you agree with that? 4 COLONEL VERMAAK: Yes, I do agree with 5 that. 6 MS LE ROUX: Chair and Commissioner 7 Hemraj, just for record, for the record in due course, if I 8 can just link back. I misspoke earlier. Mr White's 9 statement deals with inadequate record-keeping at page 39 10 to 45, which is section 4.3. That's where he deals with 11 both the operational record-keeping as well as minutes 12 before, decision taking leading up to the operation, all of 13 that record of – the audit trail of all of the decisions up 14 to operation and then through the operation. Lieutenant- 15 Colonel, if I could ask you to now turn to page 19 of Mr 16 White's statement, I'd now like to start going through some 17 specific points in Mr White's statement that relate, in 18 part, to your role in the operation. Page 19 paragraph 19 2.3.6 and then 2.3.7. This is where Mr White sets out his 20 concerns around the SAPS rubber rounds that are currently 21 in use and he refers to a PowerPoint document that he's 22 seen. This is the document that has now been marked as 23 OOO21. So Mr White sets out in paragraph 2.3.6 that he's 24 seen the Brügge and Thomet presentation from May 2011 25 recommending that the SAPS acquire Brügge and Thomet</p>	<p style="text-align: right;">Page 26017</p> <p>1 to get that information for us without the necessarily for 2 oral evidence on the point. 3 MS LE ROUX: Yes. 4 CHAIRPERSON: He's been very co-operative 5 up to now and I'm sure he'll continue to be so. So of 6 course to be fair, I suppose if the presentation was made 7 to them in 2011 their systems are such that they can't buy 8 it and write out a cheque the next day, it does take some 9 time to pass through the budgeting process and so on but 10 that's something that can be investigated, if necessary, 11 later. 12 MS LE ROUX: Yes. 13 CHAIRPERSON: Your point, I take it, is 14 if they'd had these grenade launchers in August 2012 then 15 the story might be very different. 16 MS LE ROUX: Well – 17 CHAIRPERSON: Is that the point you're 18 working up to? 19 MS LE ROUX: Chair, the point is, if we 20 return to Mr White's statement 2.3.7 where he sets out that 21 "It appears SAPS haven't yet acquired the weaponry capable 22 of firing these safe impact rounds or at least that that 23 was not available at Marikana" and he sets out his own 24 experience concerning that "They are a more effective, less 25 lethal option which delivers an impact which is unlikely to</p>
<p style="text-align: right;">Page 26016</p> <p>1 grenade launchers with the ability to fire safe impact 2 rounds, SIRs. These appear to be similar to the 3 attenuating energy projectiles used in Northern Ireland 4 because the existing 12-bore rubber rounds were 5 problematic. That presentation, if we could pull it up, is 6 OOO21 and slide 2 of that presentation to the SAPS sets out 7 the reasons why SAPS need a large calibre grenade launcher 8 and it states, "Recent experience during service delivery 9 protests revealed the need for a weapon other than the 10 muzzle shotgun. 12-gauge rubber is not effective at long 11 range, it's notoriously inaccurate and can be easily 12 blocked with makeshift shields or thick clothing. Ketties 13 and slingshots shoot further than rubber. And then if we 14 continue to the next slide, if we can continue to the next 15 slide - 16 CHAIRPERSON: While we're looking at 17 these things, is this a presentation you say which was made 18 to the police at the head of the police, I take it, in 19 2011? 20 MS LE ROUX: Chair, that's our 21 understanding. It's on the SAPS hard drive. We don't have 22 too much more detail about context, we know the date – 23 CHAIRPERSON: Well, I'm sure – 24 MS LE ROUX: - the presentation. 25 CHAIRPERSON: - Mr Semenya will be able</p>	<p style="text-align: right;">Page 26018</p> <p>1 cause serious or life-threatening injury but is of 2 sufficient force to dissuade or prevent a violent or 3 potentially violent person from their intended course of 4 action and thereby neutralise the threat." That's 5 paragraph 2.3.7 of Mr White – 6 CHAIRPERSON: So let's just make sure we 7 understand this. Is it suggested that if, at scene 1, 8 there'd been some of these grenade launchers and they had 9 been used, we would not have had the deaths that we had at 10 scene 1? Is that the attack, if it was an attack – I know 11 there's an argument it wasn't an attack – if it was an 12 attack, it appeared to be perceived by the police to have 13 been an attack, if it was an attack or simply a perceived 14 attack, it could have been repelled without loss of life. 15 Is that your case? 16 MS LE ROUX: Chair, potentially. 17 Obviously Mr White would need more information in order to 18 make that connection. At the moment I just am identifying 19 Mr White has been able to see that the presentation was 20 made suggesting there were safer options available before 21 August 2012 and the only question I had was, to the 22 Lieutenant-Colonel, was whether he was aware whether the 23 safe impact rounds had been acquired and were in use by the 24 POP or what had happened to this presentation. As to what 25 could have happened at scene 1 we would obviously need</p>

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1 further information from Mr White to
 2 CHAIRPERSON: No, but I'm not sure
 3 whether being in the air wing he'd be able to help us but
 4 maybe he can, but it might be interesting to hear, and
 5 valuable I think to hear from the police. Again they don't
 6 have to lead oral evidence on it, they can give us a
 7 document on it, what the result was of this demonstration
 8 which they received, whether they made any decisions and
 9 how long it took to implement it because obviously one has
 10 got to realise in a body like the police, as I say, they
 11 can't just order the things immediately and write out a
 12 cheque the next day and have them delivered the day after.
 13 There are processes which take time so one has got to be
 14 reasonable but if it was something which was required as a
 15 matter of high priority I would have thought it would have
 16 been possible to have got it by August 2012, but that's
 17 something which may not be correct and the police will
 18 presumably deal with that in due course.
 19 MS LE ROUX: And Chair, we will follow
 20 up. In response to a discovery request we were told that
 21 this type of ammunition was available to the SAPS but not
 22 used at Marikana but the detail of that has still not been
 23 forthcoming. We'll follow up again but simply, Lieutenant-
 24 Colonel Vermaak, do you have any knowledge of whether safe
 25 impact rounds have been made available to POP at any stage

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1 since May 2011?
 2 COLONEL VERMAAK: No, I'm not aware of
 3 any.
 4 MS LE ROUX: If I could then ask you to
 5 turn to page 118 of Mr White's statement, page 118.
 6 CHAIRPERSON: Do you know anything about
 7 these grenades that are fired, large – what did they, do
 8 you know anything about them? If you don't know anything
 9 about them then I –
 10 COLONEL VERMAAK: No, I don't know
 11 anything.
 12 CHAIRPERSON: - then I needn't question
 13 you, because I'm interested to know what they contain. Is
 14 it gas or is it –
 15 MS LE ROUX: Chair, if you page through
 16 the presentation they have cross-sections of the different
 17 ones. Some of them seem to have little rubber balls
 18 inside, some of them are just a projectile themselves –
 19 CHAIRPERSON: Anyway it sounds as if –
 20 MS LE ROUX: There seem to be a range of
 21 options that the launcher can accommodate.
 22 CHAIRPERSON: To be fair, it sounds as if
 23 the witness can't help us because he's been out of that
 24 side of things for some time but obviously something that
 25 can be followed up and as I say, presumably it shouldn't be

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1 necessary for us to have oral evidence on the point.
 2 Obviously I can't dictate to the police what they want to
 3 do but the information should be fairly uncontroversial
 4 that we're interested in and which I'm sure they can
 5 provide to us in affidavits or some other way.
 6 MS LE ROUX: And we will follow up.
 7 Lieutenant-Colonel, so page 118 of Mr White's statement and
 8 I'd like to deal with the issues canvassed in paragraph
 9 7.6.8 through to 7.6.10. This is a sixth criticism that Mr
 10 White sets out here and I relates to the lack of co-
 11 ordination of the various units in the operation,
 12 particularly at scene 2 and with respect to the use of the
 13 radios. And we'll go through some of these in detail but
 14 if you could just familiarise yourself now, we won't read
 15 it into the record but if you could just – I know you've
 16 read this whole statement but just to orientate yourself,
 17 paragraph 7.6.8 through to 10, if you could just
 18 reorientate yourself that these are the points we're
 19 dealing with. Now –
 20 CHAIRPERSON: Sorry, Ms Le Roux, I'm
 21 sorry I was being discourteous to you. We were discussing
 22 the implication of your cross-examination at the moment and
 23 where it's going to lead us, particularly in the light of
 24 the information I hope the police will be able to give us.
 25 Please forgive me and carry on, I promise to listen now.

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1 MS LE ROUX: Lieutenant-Colonel Vermaak,
 2 of course we know your evidence that you were not the
 3 aerial commander on the 16th of August and it wasn't your
 4 responsibility to command the operation but as we
 5 understand it, it was your responsibility to provide
 6 situational awareness to the JOC and I think we've talked
 7 about how you had to direct traffic at scene 2. That seems
 8 to be the method that the people have used. You accept
 9 that was your role, not aerial commander but responsible
 10 for providing situational awareness to the JOC and
 11 directing traffic?
 12 COLONEL VERMAAK: That's correct, my main
 13 purpose there was to convey what I saw on the ground to the
 14 JOC and to the operational commander.
 15 MS LE ROUX: So if we could start then in
 16 paragraph 7.6.9 where Mr White states that he has now
 17 listened to the audio on the Protea Coin chopper video and
 18 he's read the transcript and he is struck by the vague and
 19 confusing nature of the directions given. And then if you
 20 could turn over, we'll start with 7.6.9A on page 119. Here
 21 Mr White sets out, "There's a distinct lack of call signs
 22 used in the communication" and he gives examples such as
 23 references to the water cannon at the back or the Nyala on
 24 the corner and he notes that this could cause huge
 25 problems, firstly because those who are being spoken to

<p style="text-align: right;">Page 26023</p> <p>1 don't necessarily know that they are the target of the 2 communication, secondly that those who are spoken to do not 3 necessarily know who's speaking to them but, most 4 importantly, that none of the other participants listening 5 to that radio communication would have any idea of what's 6 going on and he says that if call signs are used, everyone 7 listening to the radio will know that for instance Pappa7 8 is moving alongside W2 and entering the koppie. So in 9 light of the comments in 7.6.9A do you agree that the use 10 of call signs helps all involved in the operation with 11 situational awareness? 12 COLONEL VERMAAK: What we have 13 experienced, and that is for a very long time and it was 14 also brought under the attention of the cluster commanders, 15 is that when there is an operation where the air wing is 16 assisted, the identifying of the vehicles on the ground is 17 very difficult. Normally when we are called to a station 18 to assist we will take shoeshine or black shoeshine and 19 write a letter on the top of the vehicle so that we can 20 identify them from above. That was also being done in this 21 operation but you must remember at 300 feet it is not 22 always very much visible and I think where the other 23 problem occurred is those people are coming from other 24 provinces, other units, and now all of a sudden he's using 25 his call sign at other places. It's been printed out on</p>	<p style="text-align: right;">Page 26025</p> <p>1 understand your explanation for that but you very rarely 2 were able to use call signs? 3 COLONEL VERMAAK: Ja, where I mainly 4 spoke to Brigadier Calitz in Pappa7 and the JOC, and also 5 there is stipulated on the water cannons, at that stage we 6 couldn't identify the call sign on the top of the water 7 cannons so that is why we tried to get their attention that 8 they know that we are talking to them specifically, but it 9 makes it very, very difficult from the air to control 10 vehicles on the ground if you cannot identify them 11 properly. 12 MS LE ROUX: And I understand your answer 13 with respect to the difficulty of identify the vehicle 14 necessarily, but you just said that you had to try to get 15 the vehicle's driver aware that you were speaking to them. 16 On the radio communication we have, we don't often hear the 17 driver responding immediately, you know, sort of chopper 1 18 received or something like that. How would you know that, 19 other than repeating it over and over again, the Nyala at 20 the back, water cannon on the left, how do you know that 21 they have managed to hear you? 22 COLONEL VERMAAK: Normally what you, what 23 gives some indication to you is, when you spoke to a 24 specific vehicle and you can see that you have indicated to 25 him he must turn right and that vehicle is responding and</p>
<p style="text-align: right;">Page 26024</p> <p>1 the side of his vehicle, that is his call sign and now he's 2 coming to this side and he must use a new call sign and as 3 we mark the Nyalas from Pappa1 to Pappa18, so it happens 4 that they don't think you are talking to them. They are 5 used to their own call sign and now all of a sudden 6 somebody is calling Pappa7. And what also happened is that 7 it seems to us from the air wing side that the drivers 8 didn't, when they got the Nyalas they are not driving every 9 time the same Nyala. They didn't make sure of the call 10 sign on top of the Nyala, so you are calling Pappa7 and 11 that driver in the vehicle is for instance November1 that 12 he's used to. So that for sure caused some problems. 13 MS LE ROUX: Thank you, Lieutenant- 14 Colonel Vermaak, that gives us some clarity on what 15 happened on the day but I do still need an answer to my 16 question which was whether you agree that the use of call 17 signs helped to provide situational awareness during any 18 operation, just that proposition. Do you agree that the 19 use of call signs – 20 COLONEL VERMAAK: Yes, that is – 21 MS LE ROUX: - helps the situational 22 awareness? 23 COLONEL VERMAAK: That is true. 24 MS LE ROUX: And then do you accept that 25 in this operation you very rarely used call signs? I</p>	<p style="text-align: right;">Page 26026</p> <p>1 it's turning right, then you are sure that he heard the 2 message from you. 3 MS LE ROUX: So the actions of the 4 vehicles that you could observe confirmed that you'd 5 managed to communicate. 6 COLONEL VERMAAK: That is correct. 7 [10:10] MS LE ROUX: If I could ask you to then 8 turn over to page 120, to the first paragraph on that page, 9 paragraph 7.6.9C where Mr White notes, "There is almost no 10 communication providing situational awareness as was 11 excepted of Lieutenant-Colonel Vermaak. The kinds of 12 communication that might have been expected" and then he 13 gives some examples, "all call signs be aware that C3 14 forces are approaching the koppie from the west," or they 15 are approaching from the south or "all call signs be aware 16 that C-sec's*10:10/00-06 members are entering the koppie on 17 foot from the east." Do you agree that there was also very 18 little information provided by you about the positioning of 19 various units and resources in relation to the koppie? So 20 people listening to the communication would know that 21 you're addressing a Nyala or a water cannon but they 22 wouldn't know where that vehicle is in relation to koppie 23 3? 24 COLONEL VERMAAK: In the first place we 25 didn't know which units are utilised on specific areas. As</p>

<p style="text-align: right;">Page 26027</p> <p>1 I explained, that in the afternoon briefing we were not 2 there. We are mostly concentrating on the Nyalas that is 3 visible and some of the sitreps is that we have said that 4 there are people or members close to the bush, we also at 5 one stage conveyed the message to Brigadier Calitz that the 6 people are, or the koppie is encircled. Yes, the way that 7 he is putting it here, that is the ideal situation but on 8 the 16th it was very, very difficult in that situation to 9 give feedback in this way. In a normal operation where the 10 people are approaching places you know who is coming from 11 which side and what they must be doing, then you can do it.</p> <p>12 MS LE ROUX: Lieutenant-Colonel Vermaak, 13 I understand your evidence that being able to use the 14 specific call sign may have been difficult on the 16th so we 15 may not end up with first prize as Mr White sets it out but 16 even when we see, we saw developments in the operation, 17 your radio communication as the eye in the sky still didn't 18 reflect that in a way that could've informed other units on 19 the ground. So to take an example, when the K9 unit starts 20 moving up from the south you would have seen those vehicles 21 approaching, that movement doesn't get reflected on the 22 radio that, you know, there's a unit moving up from the 23 south or you know, people are coming from the forward 24 holding areas towards the koppie. So there isn't 25 situational awareness on the radio, even without call</p>	<p style="text-align: right;">Page 26029</p> <p>1 COLONEL VERMAAK: That's correct. 2 CHAIRPERSON: The second problem was that 3 the plan itself which was explained to us by Lieutenant- 4 Colonel Scott, formed part of the briefing which you 5 weren't invited to either at 2:30, that plan was rather 6 incomplete I would say, although I don't think Colonel 7 Scott would agree with it but it took the situation up to 8 the dry riverbed in the vicinity of koppie 2 and then said, 9 well, you know, the operational commander must then do what 10 he considers appropriate. So there was no plan as to what 11 would happen after that. If the people moved to koppie 3, 12 for example, who was to go there, how it was to be dealt 13 with. So you were, you laboured under that disability as 14 well, I mean you didn't even know what the plan was but the 15 truth was, there wasn't a plan after the dry riverbed –</p> <p>16 COLONEL VERMAAK: That's correct. 17 CHAIRPERSON: - as far as koppie 3. So 18 if you'd known what people were supposed to be there and 19 what people were supposed to be doing, it would have been 20 much easier for you to do what Mr White expected you to do. 21 Is that fair? 22 COLONEL VERMAAK: That is correct, Chair. 23 The shortcoming on the plan was, when you draw up a plan, 24 an operational plan, you will also always have a plan B. 25 You will always have to, foreseen circumstances that might</p>
<p style="text-align: right;">Page 26028</p> <p>1 signs, as to the movements that you would have been able to 2 observe. Do you have a comment on that?</p> <p>3 COLONEL VERMAAK: Yes, the movements that 4 we observed we did give through. For example when the 5 people gathered again after, at the back of koppie 2, we 6 did give that feedback to the operational members on the 7 ground. We also indicated to them that they're moving to 8 koppie 3 at the back. Then thereafter Brigadier Calitz 9 lined up the Nyalas and he continued with his dispersion 10 actions but you must also remember we had a situation at 11 that stage where the Oryx helicopter didn't stick to the 12 altitude that he was supposed to stick to. So we had to 13 move further away for safety reasons and we also had to 14 give feedback on the informal settlement for groupings. So 15 there is a possibility, yes, that we missed it and we 16 acknowledge that we did not give anything through to this 17 reasons that I mentioned to you.</p> <p>18 CHAIRPERSON: Lieutenant-Colonel, I don't 19 know if what I'm going to put to you is correct but if it's 20 wrong, don't hesitate to tell me, but the impression I get 21 is that you were labouring under two disabilities here 22 which, in fairness, should be fed into this criticism. The 23 first is that no-one bothered to invite you to the JOCCOM 24 meeting at 1:30 so you weren't briefed as to what was 25 supposed to be happening.</p>	<p style="text-align: right;">Page 26030</p> <p>1 flow out of your main planning and to address those things 2 that you're not prepared in your main planning for. So 3 that is definitely a shortcoming on this plan. As you 4 said, it was going up to the riverbed and from there on 5 there was no plan B if –</p> <p>6 CHAIRPERSON: You didn't even know that. 7 COLONEL VERMAAK: Yes. 8 CHAIRPERSON: And of course the further 9 problem you had was, as far as I can make out, Major- 10 General Naidoo wasn't expected to be anywhere near koppie 11 3, is that right? In fact you didn't even see him, as I 12 understand it. 13 COLONEL VERMAAK: No. 14 CHAIRPERSON: And the people with him, 15 until fairly later in the proceedings, is that correct? 16 COLONEL VERMAAK: That's correct. 17 CHAIRPERSON: And he didn't bother to 18 tell you or anybody else that he was there. 19 COLONEL VERMAAK: No. 20 CHAIRPERSON: Ja. Thank you. 21 MS LE ROUX: Lieutenant-Colonel Vermaak, 22 just two follow-ups coming, arising out of your evidence. 23 With respect to the movement of the K9 forces from the 24 south, please could you just remind me when did you first 25 observe that they'd come to the koppie? When did you see</p>

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1 them on the move?

2 COLONEL VERMAAK: Are you referring to

3 the K9, was with General Naidoo?

4 MS LE ROUX: Yes.

5 COLONEL VERMAAK: I really first observed

6 them when I started to take photos and I saw the vehicles

7 standing on that side of the koppie and at one stage I also

8 see a group of people on the other side. I later was

9 informed it was the reaction group of Captain Kidd.

10 MS LE ROUX: So did you see the K9 forces

11 approaching?

12 COLONEL VERMAAK: No, I did not.

13 CHAIRPERSON: Remember there are two sets

14 of K9 forces, Ms Le Roux. There's Captain Kidd's K9 forces

15 –

16 MS LE ROUX: Yes.

17 CHAIRPERSON: - and there are General

18 Naidoo's K9 forces.

19 MS LE ROUX: General Naidoo, let's start

20 with General Naidoo's group. You only saw them when they

21 got to the koppie?

22 COLONEL VERMAAK: I saw them when they

23 are next to the koppie with the vehicles.

24 MS LE ROUX: Okay and then you see

25 Captain Kidd's group arriving?

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1 COLONEL VERMAAK: Yes, at the stage where

2 we saw that two people was lying –

3 COMMISSIONER HEMRAJ: Colonel, does that

4 mean you did not see the convoy?

5 COLONEL VERMAAK: I did not see the

6 convoy entering from General Naidoo to that specific point.

7 MS LE ROUX: Lieutenant-Colonel Vermaak,

8 I just want to be clear. You're saying you only saw them

9 when you were on the ground taking photos or –

10 COLONEL VERMAAK: No, in the air, in the

11 air.

12 MS LE ROUX: In the air, in the Protea

13 Coin chopper?

14 COLONEL VERMAAK: Yes, yes. There are

15 photos available that show it.

16 MS LE ROUX: Right. Correct, okay.

17 Lieutenant-Colonel Vermaak, can you help us with which

18 photos you can see them approaching in? Do you mean your –

19 COLONEL VERMAAK: It is photos –

20 MS LE ROUX: - do you think they're in

21 yours?

22 COLONEL VERMAAK: - that I have taken and

23 on that photos you will see there were also the task force

24 vehicles, the water cannon and the K9, the soft top

25 vehicles.

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1 MS LE ROUX: Right and that's of course,

2 in those photos it's before they get to the koppie but the

3 point of my question was, you never reflected in the radio

4 communications that these groups were moving up to the

5 koppie.

6 COLONEL VERMAAK: No, no.

7 MS LE ROUX: And then you also said that

8 one of the things that was handicapping you was the fact

9 that the Oryx was flying at the incorrect altitude, meaning

10 you had to increase yours?

11 COLONEL VERMAAK: That's correct.

12 MS LE ROUX: And that made it more

13 difficult for you to see the call signs.

14 COLONEL VERMAAK: That's correct, because

15 I have to move further way and that has an influence on

16 your sight on what is going on, on the ground.

17 MS LE ROUX: Right. Were you not able to

18 communicate with the Oryx helicopter and tell it to move?

19 COLONEL VERMAAK: They didn't have a

20 police radio on that stage that we have communicated with

21 them. It was only the aviation radio. You must also

22 remember that is not, they were not on a channel that is

23 just only for the helicopters that were operating there.

24 It is an o

25 9pen channel, people from Springs, everywhere,

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1 you can hear talking then on that radio. So there wasn't

2 really time, things happened too quick to get to them and

3 to get their attention. So we mainly rather move out, go

4 to a different altitude.

5 COMMISSIONER HEMRAJ: If you're at a

6 higher altitude in any other operation, do you require any

7 assistance? Do you use any other assistance to see what's

8 going on, on the ground?

9 COLONEL VERMAAK: Under normal

10 circumstances, Chair, we are utilising it on 300 feet and

11 it is – we can see the vehicles on the ground when we have

12 marked it with black on the top. If there's really big

13 operations, I remember after Marikana there was a memorial

14 service where we arranged with Johannesburg to assist us

15 with the FLIR camera on one of their helicopters but it was

16 very difficult because why, they have to use this unit's

17 chopper and they have to use the other unit's camera system

18 on its own and then the other chopper has, they must take

19 out the computer box. So from three different units they

20 put together one system for that specific day.

21 MS LE ROUX: Lieutenant-Colonel, to round

22 up this point, would you accept that the type of

23 communication Mr White suggest with respect to call signs,

24 and I understand your explanation as to the use of call

25 signs on the day, but could I get your comment on Mr

<p style="text-align: right;">Page 26035</p> <p>1 White's suggestion that being able to have that kind of 2 communication would have avoided the creation of the 3 situation where there was the potential for dangerous 4 cross-fire at the koppie. So if – 5 COLONEL VERMAAK: Yes, I think if there 6 was better communication it could have been avoided. 7 MS LE ROUX: Mr White, I'd now like – not 8 Mr White, Lieutenant-Colonel Vermaak, I'd now like to move 9 on to the next point made by Mr White also on page 119. 10 This is paragraph 7.6.9D(1) and if we could - this deals 11 with the way the water cannons were used at koppie 3 and 12 how they were affecting the movement of the strikers, if we 13 could actually start by putting up JJJ10 and photograph 14 4547. Chair, if I could also ask for any assistance from 15 my learned friends the evidence leaders, if anyone has got 16 a laser pointer available it may assist in some of this. 17 So Lieutenant-Colonel – 18 CHAIRPERSON: I always like, when we see 19 these slides, to be told where north and south are and then 20 I get my bearings. Can someone please tell us where north 21 and south are? 22 MS LE ROUX: Chair, south is the top left 23 corner. 24 CHAIRPERSON: And the bottom right is – 25 north. Is that right?, is that right?</p>	<p style="text-align: right;">Page 26037</p> <p>1 and pause at that point, so if we could play through to 2 11:14 just after the Lieutenant-Colonel says, "Alright 3 guys, you've got them in the middle." 4 [VIDEO IS SHOWN] 5 MS LE ROUX: - that's why everybody 6 sounds a little strange. 7 CHAIRPERSON: Sorry, I didn't hear that. 8 The sound of what you said was a bit unclear to me. What 9 did you say? 10 MS LE ROUX: It wasn't being played at 11 normal speed, that's why the audio sounded different to 12 what we're used to hearing. 13 CHAIRPERSON: Okay, alright. 14 MS LE ROUX: If we could – 15 CHAIRPERSON: - what was wrong, thank you 16 for explaining it to me. 17 MS LE ROUX: If we could actually just 18 pause at 11:10, so if we could play from 10 through to 19 11:10 which would be just before Lieutenant-Colonel Vermaak 20 says, "Alright guys, you've got them in the middle." So if 21 we – 22 [VIDEO IS SHOWN] 23 MS LE ROUX: And if we could actually 24 zoom in on the koppie it'll assist actually. Mr Chair, we 25 can see the two, the two water cannons shooting into –</p>
<p style="text-align: right;">Page 26036</p> <p>1 MS LE ROUX: Now, this photograph is 2 taken of koppie at approximately 16:07:24 and we can see 3 the two water cannons on either side of the koppie, 4 spraying into the koppie. If we could then zoom into the 5 koppie and see the movements of the protesters. They 6 appear to be moving in a west-south-westerly direction, 7 sort of in the direction way from the spray of the water 8 cannon, the two water cannons. They seem to be, you know, 9 moving away from, towards the top of the photograph away 10 from where they're being sprayed from the two water 11 cannons. 12 COLONEL VERMAAK: That's correct. 13 MS LE ROUX: If we could now go to CC22, 14 the Protea Coin chopper video and if we could start at 10 15 minutes into that. Chair, for the record that's at 16 16:07:30 so it's six seconds after that photograph is 17 taken. If we could get – 10 minutes, and then I'd like us 18 to play it all the way through to 12, 12:12. Lieutenant- 19 Colonel Vermaak, just to orientate you, we'll see the two 20 water cannons on either side of the koppie moving east to 21 west, pushing the strikers to the west-south-west and we 22 hear you at 11:14 in the video saying, "Alright guys, 23 you've got them in the middle" and you testified in chief 24 that this is where you observed the strikers corralled at 25 the eastern edge of the dry dam. And I think let's play</p>	<p style="text-align: right;">Page 26038</p> <p>1 Chair, if you could turn your attention to the screen 2 behind you. 3 [10:29] We can mark the two, so that's one water cannon 4 spraying in, and the other, and driving – 5 CHAIRPERSON: Just to describe for the 6 record, if one, as one looks at the photograph one sees 7 kopies more or less in the centre of the photograph and 8 bottom left there's a white shape, which is a quadrilateral 9 of some kind and at the bottom right there's another one. 10 Those are the two water cannon. 11 MS LE ROUX: Chair, the next clip that, I 12 think if we just go through to 11:15, this is when 13 Lieutenant-Colonel Vermaak says, "Alright guys, you've got 14 them in the middle," and this is where the strikers are now 15 on the eastern edge of the dry dam. So that's where we're 16 marking now. So it's what appears at the bottom of the 17 koppie as it appears at this point in the video. 18 CHAIRPERSON: [Microphone off, inaudible] 19 koppie, the area below the two quadrilaterals that I'd 20 referred to earlier. That's the dry dam and that's what 21 you just indicated. 22 MS LE ROUX: Lieutenant-Colonel Vermaak, 23 that's correct, that's the dry dam you're referring to? 24 COLONEL VERMAAK: That is correct. 25 MS LE ROUX: So if we could just play</p>

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1 through now to 11:24.
 2 [VIDEO SHOWN]
 3 Again marking the dry dam where we are referring
 4 to.
 5 COLONEL VERMAAK: That is correct, that
 6 is more or less the area. You will see all over around
 7 here is policemen and police vehicles. At this corner here
 8 was no policemen visible for us.
 9 CHAIRPERSON: What you call "this corner
 10 here" is the dry dam –
 11 COLONEL VERMAAK: Excuse me, Chair, at
 12 the dry dam there was no vehicles or policemen visible for
 13 us from the air and that is where we noticed that the
 14 people is breaking through, still under the impression for
 15 the way that the vehicles was moving in, directed by myself
 16 and also repeated the instructions by Brigadier Calitz,
 17 that the plan was that they must be encircled. So that is
 18 why we said they're going to break through at the dry dam.
 19 MS LE ROUX: Now Lieutenant-Colonel
 20 Vermaak, you've just testified that there were no police
 21 vehicles visible there, but of course Captain Kidd's team,
 22 that's where they are. They're in that area of the koppie.
 23 They're at the dry dam –
 24 COLONEL VERMAAK: Yes, after –
 25 MS LE ROUX: - at this point in time.

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1 COLONEL VERMAAK: Afterwards we have
 2 heard that they approach that area from where they were and
 3 they were actually close to the dry dam when we give that
 4 information through that they're going to break through.
 5 COMMISSIONER HEMRAJ: You say at the time
 6 the strikers were leading to that area unhindered. Captain
 7 Kidd's people were not there at that stage?
 8 COLONEL VERMAAK: We couldn't see them,
 9 Chair. Afterwards we saw that there was policemen on that
 10 side, but at the moment that I give that report that the
 11 people is going to break through at that area there I
 12 didn't see Captain Kidd's members on the ground. That is
 13 why I reported they're going to break through on that side
 14 for on all the other sides there are policemen.
 15 COMMISSIONER HEMRAJ: Did you in fact
 16 observe them breaking through that area?
 17 COLONEL VERMAAK: That's correct. They
 18 were moving to that specific area, Chair.
 19 COMMISSIONER HEMRAJ: Did they break
 20 through and leave the area through there?
 21 COLONEL VERMAAK: They came through and
 22 then all of a sudden they ran back into the bushes.
 23 MS LE ROUX: Lieutenant-Colonel Vermaak,
 24 we can also see in the video where your helicopter is at
 25 this point in time and it's flying, you know, around the

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1 koppie. It's come past the western portion. So your view
 2 at this point was reasonably clear of the movement of the
 3 strikers. So –
 4 COLONEL VERMAAK: And I think that one
 5 that you pointed out is the Oryx, the white Oryx.
 6 CHAIRPERSON: Now for the benefit of
 7 those who are going to read the record later, which will
 8 include all of us, I take it, all the Commissioners and
 9 lawyers, the helicopter to which you are referring, would
 10 you please describe where it is, where the witness says is
 11 the Oryx?
 12 MS LE ROUX: Lieutenant-Colonel Vermaak,
 13 perhaps if you could help us if you think it's the Oryx.
 14 Maybe we should just watch this little clip again so it's,
 15 if we go back to 11:14 to 25.
 16 [VIDEO SHOWN]
 17 COLONEL VERMAAK: There is the Oryx.
 18 CHAIRPERSON: [Microphone off, inaudible]
 19 zoom picture. If one looks at the picture one sees the
 20 koppie, one sees what I think is the dry dam. Is that
 21 correct? And more or less in the middle of the dry dam, or
 22 above the middle of the dry dam is a white shape which the
 23 witness tells us is the Oryx. Do you see your helicopter
 24 anywhere on this picture?
 25 COLONEL VERMAAK: No, Chair. That is so

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1 small a helicopter, it's difficult to see from this height.
 2 MS LE ROUX: If we could just play it
 3 again through to 11:25.
 4 [VIDEO SHOWN]
 5 Pause there. Now Lieutenant-Colonel Vermaak,
 6 when you did that circuit of the koppie you didn't see any
 7 bodies on the west of the koppie at the edge of the dry dam
 8 at that point, did you?
 9 COLONEL VERMAAK: No, I didn't see any
 10 body there.
 11 MS LE ROUX: Okay, and what was it that
 12 you saw that made you say they're going to break through?
 13 COLONEL VERMAAK: The people were coming
 14 out of the bushes and they were moving in the direction of
 15 the dry dam. So that's why I said they are breaking
 16 through, under the impression it is supposed to be a cordon
 17 movement that the police had.
 18 MS LE ROUX: And they're moving in that
 19 direction because it's away from where the water cannons
 20 are?
 21 COLONEL VERMAAK: It's away from the
 22 water cannons and where the other vehicles were standing.
 23 MS LE ROUX: Lieutenant-Colonel Vermaak,
 24 the strikers you observed, they were being sprayed by the
 25 water cannons and were running away from that.

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1 COLONEL VERMAAK: Ja, that's positive.
 2 MS LE ROUX: Then if we play through now,
 3 we can actually play it through till about 12:12. 20
 4 seconds after this, so at about 11:47, which is 16:09:17
 5 eTV time, you'll hear yourself, you start to say "JOC
 6 chopper," you're interrupted. Brigadier Calitz announces
 7 arrest, counting them off, and then when you come back on
 8 the radio you complete your sentence and it's to record
 9 that you now see two bodies at the back of the koppie. So
 10 if we could just play through until approximately 12:12 and
 11 just listen out for that communication, "JOC chopper,"
 12 interrupted by Brigadier Calitz and then you report the two
 13 bodies at the back of the second koppie.
 14 [VIDEO SHOWN]
 15 Stop there. Lieutenant-Colonel Vermaak, I just
 16 want to understand one other –
 17 CHAIRPERSON: I'm sorry to interrupt.
 18 Can I just get something clear? Am I remembering correctly
 19 that you said "by the second koppie there," you didn't mean
 20 the koppie by the dry riverbed, you meant the second, what
 21 I can call sub-koppie which is part of koppie 3? Is that
 22 correct?
 23 COLONEL VERMAAK: That's correct.
 24 MS LE ROUX: If we could now go to
 25 KKK16.5136 –

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1 CHAIRPERSON: We're getting a new video
 2 now?
 3 MS LE ROUX: It's to show the two bodies,
 4 then I'll come back to the chopper video.
 5 CHAIRPERSON: I see. Alright, okay.
 6 Because I'd like to take the comfort break fairly soon, but
 7 I don't want to break the flow of your cross-examination,
 8 so when you've reached a suitable stage will you let me
 9 know, please?
 10 MS LE ROUX: Chair, given that we're
 11 going to switch between – let me see if I, I should be able
 12 to complete it in a few minutes. So this is KKK16.5136,
 13 which we time at approximately 16:16:39. So –
 14 CHAIRPERSON: Sorry to interrupt you. In
 15 that video we see a helicopter. Is that your helicopter?
 16 COLONEL VERMAAK: No, Chair, that is the
 17 Oryx.
 18 CHAIRPERSON: That's the Oryx, I see.
 19 Did you actually take this picture? Who took this picture?
 20 COLONEL VERMAAK: I, if I recall I think
 21 that was a photo of Colonel Botha.
 22 CHAIRPERSON: I see. So it's not your
 23 helicopter, it's got the Oryx, it's the one of Colonel
 24 Botha, was it?
 25 COLONEL VERMAAK: That's it.

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1 CHAIRPERSON: Thank you.
 2 MS LE ROUX: And then if we could zoom in
 3 to the dry dam where we will observe two bodies. Chair,
 4 I'm not sure if we need a warning. It's not close-up –
 5 CHAIRPERSON: No well, let's play it
 6 safe. I'm informed that when we zoom in to this picture
 7 we'll see two bodies. It may well be that those who are
 8 the relatives and loved ones of the people whose bodies
 9 will be seen may find that something that causes emotional
 10 distress to them. So do we know – could you mention the
 11 names of the people, please Ms le Roux? Ms le Roux, can
 12 you mention the names of the people whose bodies will be
 13 shown so that those who think that they will be caused
 14 unhappiness and emotional stress by looking at them will
 15 have an opportunity to leave? - they are, we'll take the
 16 comfort break now.
 17 MS LE ROUX: Chair, it's body N, and then
 18 somebody who did not die but was injured.
 19 CHAIRPERSON: May I suggest, let's take
 20 the comfort break now. Let's find out the name. It's
 21 never satisfactory to talk about body M and body N. We're
 22 talking about human beings who died and they're entitled to
 23 respect in death as they were entitled to respect in life.
 24 So we'll take the short adjournment, the comfort break now.
 25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [11:10] CHAIRPERSON: The Commission resumes. Ms
 2 le Roux, have you now got the names of the two deceased
 3 persons to whom you were referring?
 4 MS LE ROUX: Yes, Chair, just to clarify
 5 there is –
 6 CHAIRPERSON: Alright, well let me remind
 7 the witness, seeing that you're giving evidence in English
 8 I'll remind you in English, you're still bound by the
 9 affirmation you made.
 10 SALMON JOHANNES VERMAAK: That's correct.
 11 CHAIRPERSON: Ms le Roux.
 12 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):
 13 Thank you, Chair. Just to clarify, we'll see two people,
 14 two bodies in the photograph. One of those is known in the
 15 Commission, is identified as body N, Mr Mkhonjwa. The
 16 other, the man in the red-orange shirt, as far as we
 17 understand survived his injuries. We don't know his name
 18 though.
 19 CHAIRPERSON: Alright, thank you. We've
 20 been informed that we're going to see a photograph when
 21 it's enlarged of the late Mr Mkhonjwa and if there are
 22 people who feel – and there may well be – who feel that it
 23 will cause them distinct emotional distress if they see his
 24 dead body lying there, I would suggest that they leave the
 25 chamber and I will ask that the enlargement only be shown

<p style="text-align: right;">Page 26047</p> <p>1 after 30 seconds have expired from now. Alright, the 30 2 seconds is up; no-one has left. So we can proceed. 3 MS LE ROUX: So if we could zoom in to 4 the dry dam. So if we'll mark that first, if we mark the 5 man in the orange-red shirt, that's the unidentified man 6 who we believe survived his injuries. Body N, Mr Mkhonjwa, 7 is the body at the, towards the top of the zoomed portion, 8 and then, Chair, critically these are members of Captain 9 Kidd's group behind the rock. 10 CHAIRPERSON: Is this near the bottom of 11 the page, there's a rock and there are some people lying 12 down behind it? 13 MS LE ROUX: Yes, Chair. 14 CHAIRPERSON: I see, and that's Captain 15 Kidd's people. That's K9 people, is it? I don't see any 16 dogs in – 17 MS LE ROUX: Chair, they're TRT. 18 CHAIRPERSON: Oh, they're TRT. I see. 19 And you talk about the zoomed portion. If one looks 20 carefully at the photograph one sees, it's easy to see the 21 body with, it looks like an orange T-shirt of some kind, 22 and above that slightly to the left is the other body. 23 That's the one you referred to. 24 MS LE ROUX: Yes, Chair, the body of Mr 25 Mkhonjwa. Lieutenant-Colonel Vermaak, can you confirm that</p>	<p style="text-align: right;">Page 26049</p> <p>1 MS LE ROUX: But would you accept that 2 it's possible they were part of the group that we see 3 running away from the water cannons? 4 COLONEL VERMAAK: That is possible, but I 5 cannot confirm that they were part of that group. 6 MS LE ROUX: The group that you observed 7 running away from the water cannon, did they run to that 8 position where we see Mr Mkhonjwa and his colleague? 9 COLONEL VERMAAK: If we – 10 MS LE ROUX: They run in that direction, 11 to that point. 12 COLONEL VERMAAK: If we can get that 13 still photo back I can – 14 MS LE ROUX: If we could go back to 15 KKK16.5136, please, and if we could zoom in again to the 16 dry dam area, and we note of course they're at the edge of 17 the dry dam. Is that the direction – 18 COLONEL VERMAAK: If you can just go to 19 that side, on to the right side, please, and then to the 20 top. They were coming through this area through the bush 21 here, or on the bottom from that rocks, that is where we 22 saw them. 23 CHAIRPERSON: What is pointed out is if 24 one looks at the photograph the centre of the photograph 25 there's a helicopter and if one goes to the left of the</p>
<p style="text-align: right;">Page 26048</p> <p>1 the two bodies at the back of the second koppie that we 2 hear you announcing in the Protea Coin chopper video are 3 these two individuals? 4 COLONEL VERMAAK: That is correct, Chair. 5 MS LE ROUX: And we can actually zoom out 6 of the photograph, and if we can go back to the Protea Coin 7 video. And Chair, if we could play it from 11:00 through 8 to 12:20. 9 [VIDEO SHOWN] 10 So Lieutenant-Colonel Vermaak, can you confirm 11 for the Commission that the two bodies appear in the 12 position that we see in KKK16.5136 during the 20 seconds, 13 because that's all that there is between the time where you 14 say they're going to break through and then you start to 15 say "JOC chopper," and then report that you can see the two 16 bodies. Can you confirm that that's where you first see 17 them is appearing in that 20-second interval? 18 COLONEL VERMAAK: That's correct, Chair. 19 MS LE ROUX: So then would you agree with 20 me that it's likely that those two individuals, Mr Mkhonjwa 21 and the individual we can't identify, were part of the 22 group being driven to the west by the water cannon? They 23 would have been part of that group moving. 24 COLONEL VERMAAK: Chair, I cannot 25 definitely say that they were part of that group.</p>	<p style="text-align: right;">Page 26050</p> <p>1 helicopter, well there's more or less a straight line, one 2 sees the rocks and that's the point that you indicated. 3 COLONEL VERMAAK: That's correct, Chair. 4 CHAIRPERSON: And that photograph was 5 taken at what time? 6 MS LE ROUX: At approximately 16:16:39. 7 CHAIRPERSON: 16:16:39. Now do we have a 8 photograph of this area taken before that, before 16:16, 9 which indicates that the bodies aren't there? I'm trying 10 to find out when the bodies first appeared there and 11 whether there's any basis for suggesting – I don't know if 12 the witness will be able to help us, but that one of those 13 TRT people who was lying on the ground there behind the 14 rock may have been responsible for the shooting, but that's 15 a line of investigation, I don't know whether it's 16 something you've looked at, but do we have an earlier 17 photograph of this scene which, this dry dam area, which 18 doesn't show these people lying down, so the inference 19 being that they, something happened to them between the 20 photograph which doesn't show them there and this 21 photograph? 22 MS LE ROUX: Chair, I don't immediately 23 have available a photograph preceding this, showing the 24 clear area, but we can time the appearance of Mr Mkhonjwa 25 and his colleague with Lieutenant-Colonel Vermaak's</p>

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1 evidence as to when he's reporting that, the first time he
2 says that –

3 CHAIRPERSON: No, no, no, I understand –

4 MS LE ROUX: Because he just confirmed
5 this in the 20 seconds –

6 CHAIRPERSON: No, I understand –

7 MS LE ROUX: - on the Protea Coin
8 chopper.

9 CHAIRPERSON: No, I understand when he
10 first saw them, but I'm interested in the question when
11 they were first there, whether it's possible for us with
12 the wealth – if that's the right word – of photographs and
13 videos and so on to identify with some degree of precision
14 a point, an earlier point when they weren't yet there,
15 which will then help us to draw the inference that you're
16 seeking us to draw, which the witness says he can't. I
17 mean it's possible, anything is possible but that doesn't
18 help us, but to whether we can get more precision than
19 that, and it may well be capable of being done but I don't
20 know that the witness can necessarily help us. But maybe
21 that's something that Mr Fischer and those other people who
22 are good at this sort of thing can help us on by going back
23 to the video screen and the drawing board.

24 MS LE ROUX: But Chair, without the need
25 for a photograph Lieutenant-Colonel Vermaak has assisted us

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1 because, Lieutenant-Colonel, if you could just confirm the
2 evidence you've just given. As I understand it you
3 observed that area, did not see two bodies, did not see any
4 body in that area. You testified that you saw people
5 corralled at the edge of the dry dam, which as I understand
6 it is where we see some of the Nyalas positioned, so to the
7 left of the bushes that you've identified. As I understand
8 your evidence you saw people running to that point and
9 there were no bodies that you'd observed in the area and
10 then we can time 20 seconds later you report the two bodies
11 that we then see appearing. Is that your recollection?

12 CHAIRPERSON: Sorry, is that an accurate
13 summary of your evidence?

14 COLONEL VERMAAK: Chair –

15 CHAIRPERSON: I'm not asking it in an
16 unkind way. I'm just asking for information, is it an
17 accurate summary of your evidence?

18 COLONEL VERMAAK: More or less, but we
19 must remember the chopper is moving all the time. So there
20 is a possibility that I couldn't see it when I reported, so
21 explanation from Mrs le Roux, it's also true.

22 CHAIRPERSON: Ms.

23 COLONEL VERMAAK: Miss le Roux, ekskuus.

24 MS LE ROUX: We can do Ms, if you like.

25 CHAIRPERSON: [Microphone off,

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1 inaudible]. Sorry, I was interrupting you. You say the
2 explanation from Ms le Roux, what were you saying about
3 that?

4 COLONEL VERMAAK: That's a possibility.

5 CHAIRPERSON: It's a possibility, but
6 other things are possible too, I mean aren't they? Anyway,
7 but presumably some extra work can be done on that. You
8 can't necessarily help us on it, but what you can say is
9 you didn't see them earlier but they may have been there,
10 but what you possibly do say is you didn't see them.

11 COLONEL VERMAAK: No.

12 CHAIRPERSON: And that's a factor which
13 will be used –

14 COLONEL VERMAAK: That's correct.

15 CHAIRPERSON: - in argument later, I'm
16 sure.

17 MS LE ROUX: Lieutenant-Colonel, let me
18 see if we can clarify this even further. When you said,
19 and we hear it on the radio communication, "They're in the
20 middle, they're going to break through," could you mark on
21 the photograph where the group was that you were reporting
22 on?

23 COLONEL VERMAAK: At that stage there
24 were a lot of people –

25 MS LE ROUX: If we could zoom in it

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1 probably would be a little easier.

2 COLONEL VERMAAK: At that stage we saw
3 people there in that surrounding there and that is why I
4 report that they are surrounded and that they can move in
5 and make arrests.

6 CHAIRPERSON: Alright, if one looks at
7 this photograph, in the middle of the photograph there are
8 what I think are four vehicles. One I think is a Canter
9 and the other three are Nyalas. Is that right? And – oh
10 sorry, which is which? The one on the extreme left is a
11 water cannon, that's in the centre. Then in front of it
12 diagonally to the right, to its right are two vehicles,
13 which I take it are Nyalas. Is that right? And then if
14 one moves, one draws a line from those two vehicles in the
15 direction towards the right top of the photograph one sees
16 another vehicle which is partly obscured by bushes. Is
17 that another Nyala?

18 COLONEL VERMAAK: That's correct.

19 CHAIRPERSON: Alright, and below that
20 vehicle there are bushes.

21 COLONEL VERMAAK: That's correct.

22 CHAIRPERSON: And there are also bushes
23 of course going towards the right. Now is that the area
24 where you saw them?

25 COLONEL VERMAAK: That is the area where

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1 we saw them.

2 CHAIRPERSON: Alright, okay.

3 MS LE ROUX: Lieutenant-Colonel Vermaak,

4 I don't have the precise page reference - I can get that,

5 but in your evidence-in-chief you said that the strikers

6 were corralled at the eastern edge of the dry dam, which we

7 understood was a reference to the area which on this

8 photograph would be where we see the two vehicles parked

9 below the water cannon. So more towards the bottom of the

10 photograph over the bushes that you have now referred to,

11 being marked now. We'd understood your evidence-in-chief

12 when you said the eastern edge of the dry dam to mean that

13 location.

14 COLONEL VERMAAK: That's correct. That

15 is, that where I'm indicating now -

16 MS LE ROUX: But on which side of the

17 bushes that we see in the middle of the area that you've

18 marked?

19 COLONEL VERMAAK: About in that circle we

20 saw the people.

21 MS LE ROUX: So you saw some people

22 towards the bottom of the photograph with the bushes behind

23 them towards the top of the photograph?

24 COLONEL VERMAAK: That's correct -

25 CHAIRPERSON: The circle which the

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1 witness is indicating is around the bushes which are

2 immediately below the third Nyala to which I referred, the

3 one which is more or less dead centre on the photograph,

4 which is also, which is to the left, diagonally forward of

5 the water cannon to which reference has been made. I think

6 anyone who looks at the photograph will understand what I'm

7 talking about.

8 COLONEL VERMAAK: Chair, if they might go

9 to photo 4552 we can maybe give a better indication.

10 CHAIRPERSON: This photograph, is this

11 another one of Colonel Botha's photographs?

12 COLONEL VERMAAK: No, that is one of

13 mine.

14 CHAIRPERSON: Is this one of your

15 photographs?

16 COLONEL VERMAAK: That's correct.

17 CHAIRPERSON: Was this your BlackBerry

18 photograph, one of your BlackBerry photographs?

19 COLONEL VERMAAK: No, that is of the

20 Pentax.

21 CHAIRPERSON: This is your Pentax

22 photograph. I see, thank you.

23 COLONEL VERMAAK: If I can indicate, if

24 they can zoom in for us to the middle of the photo. The

25 people were, when we spotted them they were mainly in this

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1 open area, there where we could see them, the people who

2 were not in the bushes, and then there were people in this

3 area as well. That where they are lying now is where after

4 the people have moved in and arrested them.

5 MS LE ROUX: And if we could zoom out a

6 little bit -

7 CHAIRPERSON: I was facing the wrong way

8 at the time. Would you be kind enough to put on record

9 what the witness just showed us?

10 MS LE ROUX: Certainly, Chair. In the

11 centre of the photograph, slightly to the left is a large

12 bold rocks without the bushes. We zoomed in to that

13 portion from there and then below to a ring of five

14 vehicles that we see, and in this photograph we see people

15 lying on the ground and being arrested. Lieutenant-Colonel

16 Vermaak indicated that he saw people in that rocky outcrop

17 before the bushes which appear to the top of the

18 photograph, as well as in that flat area where in this

19 photograph we see people being arrested. Lieutenant-

20 Colonel, is that accurate?

21 COLONEL VERMAAK: That is accurate.

22 MS LE ROUX: Now in your evidence-in-

23 chief -

24 CHAIRPERSON: I'm sorry, can I interrupt

25 you? What we also see on this photograph to the right,

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1 more or less in the middle towards the right we see - am I

2 correct? - the person with the orange T-shirt and -

3 [11:30] Or orange upper garment of some kind, is that

4 correct?

5 COLONEL VERMAAK: If they can zoom in

6 there for us please, Chair?

7 CHAIRPERSON: Further to the right, it's

8 further to the right. No, no, it's further down I think.

9 Further, it's further to the right. That's strange, I saw

10 it when we saw the main photograph, now we've zoomed in I

11 can't see it.

12 COLONEL VERMAAK: Go down.

13 CHAIRPERSON: There we are, there we are,

14 there it is.

15 COLONEL VERMAAK: Next to the Canter,

16 yes, there they are -

17 CHAIRPERSON: One can see, in fact, both

18 parties.

19 COLONEL VERMAAK: That's correct, Chair.

20 CHAIRPERSON: Thank you.

21 MS LE ROUX: Chair, we've managed to find

22 the reference. It's page 25419 on day 206. Actually if we

23 start at line 22 on 2541 -

24 CHAIRPERSON: 25419, you say?

25 MS LE ROUX: If we go to 25418, that's

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1 where the question comes from my learned friend Ms Pillay.
 2 CHAIRPERSON: Oh, I see. There's 25418.
 3 The question was?
 4 MS LE ROUX: If we go down to 22?
 5 CHAIRPERSON: No, it's near the foot of
 6 that page, yes. It's Ms Pillay at line 22 saying, "And
 7 when you say on the next page of that transcript, 'They're
 8 going to break through, they're going to break through,'
 9 can you just describe to us what you were seeing in
 10 relation to this?" And then the answer is 25419, the
 11 witness, "Dit was waar 'n
 12 groepie, u sal sien dit lyk soos, amper soos 'n
 13 droë dam wat daar is aan die linkerkant – of nee, meer in
 14 die middel van die foto, so dit lyk soos 'n droë pan of 'n
 15 dam wat daar is. In daardie rigting het mense toe begin
 16 beweeg en ons het toe vir hulle in kennis gestel." So
 17 translating that is, that was where a small group, you will
 18 see it looks as if, almost like a dry dam which is there on
 19 the left side – or no, more in the middle of the photo, it
 20 looks like a dry pan or a dam which is there. In that
 21 direction the people began to move and we then informed
 22 them – and then that's the answer. Is that the passage to
 23 which you're referring?
 24 MS LE ROUX: Yes, Chair. If we return to
 25 the photograph 4552, Chair, the confusion seems to be

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1 arising because from your clarification to Lieutenant-
 2 Colonel Vermaak, the dry dam is not the dark area with the
 3 paths on it where the vehicles are parked –
 4 CHAIRPERSON: No, the dry dam is where
 5 the red, where the gentleman with the red garment, where
 6 the two bodies are.
 7 MS LE ROUX: Correct. So the –
 8 CHAIRPERSON: And there's a Canter,
 9 there's a Canter close to the person, I think you said we
 10 don't know who he is. He appears to be an anonymous
 11 survivor. He was obviously injured, it must be one of Mr
 12 Mpfu's injured clients lying there with the red, an orange
 13 garment. That appears to be the dry dam, is that correct?
 14 Have I got that right?
 15 MS LE ROUX: Yes, Chair.
 16 CHAIRPERSON: Alright. Now Ms Keetse,
 17 can she tell us who the gentleman is with the orange upper
 18 garment? Or perhaps she can find out from her clients. Ms
 19 Keetse, can you help us?
 20 MS KEETSE: I think I know the person.
 21 It should be Happy Matageni. We did some investigation
 22 with Mr Wesley sometime ago and I checked with the client,
 23 it is indeed Happy Matageni, a survivor. Thank you.
 24 CHAIRPERSON: Yes, thank you. How do you
 25 spell his surname?

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1 MS KEETSE: Matageni, M-A-T-A-G-E-N-I.
 2 CHAIRPERSON: Thank you very much.
 3 MS LE ROUX: Lieutenant-Colonel Vermaak,
 4 just to make sure that I'm understanding what may be an
 5 inconsistency between your answers in chief and today, the
 6 people you saw in that dark area where, in photograph 4552
 7 we see vehicles parked, they were heading in the direction
 8 of the dry dam where we eventually see Mr Mkhonjwa and Mr
 9 Matageni lying?
 10 COLONEL VERMAAK: Ma'am, not exactly
 11 those people. I said there were people coming out of the
 12 bushes in the direction of the dry dam. So I'm not saying
 13 those people were moving to that side. I said there were
 14 people breaking through and they were moving, as I
 15 testified, in the direction of the dry dam and if you can
 16 see it's a quite big area and I didn't say the middle or
 17 the side or so on.
 18 MS LE ROUX: Right and can you just
 19 indicate –
 20 CHAIRPERSON: Sorry, can you help me?
 21 What is the time lapse between the photograph we saw with
 22 just these two people lying there and the photograph we now
 23 see?
 24 COLONEL VERMAAK: It's a very –
 25 MS LE ROUX: Chair, I think it's

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1 approximately 40 minutes.
 2 CHAIRPERSON: 40, 4-0?
 3 MS LE ROUX: 4-0.
 4 CHAIRPERSON: So that explains where all
 5 the vehicles came from.
 6 MS LE ROUX: Correct.
 7 CHAIRPERSON: I see. And perhaps the
 8 witness can help us. Lieutenant-Colonel Vermaak, can you,
 9 can we see on this photograph where the rock behind which,
 10 it appeared to be a number of TRT people were lying? You
 11 remember on the earlier photograph?
 12 COLONEL VERMAAK: That's correct.
 13 CHAIRPERSON: Is that rock visible on
 14 this photograph?
 15 COLONEL VERMAAK: I just want to look
 16 quickly. It's difficult to identify it from the air here,
 17 Chair.
 18 CHAIRPERSON: Alright, okay. If you
 19 can't, you can't. I just was hopeful you could help us but
 20 – Ms Hemraj, who of course wasn't there either in a
 21 helicopter or on the ground, she thinks it's the rock on
 22 the right-hand side right near the edge above that shadow
 23 but if you can't tell us then she can't tell us either, but
 24 perhaps Ms Le Roux can help us. Ms Le Roux, can you help
 25 us or can't you?

<p style="text-align: right;">Page 26063</p> <p>1 MS LE ROUX: Chair, I think we can. We 2 believe – we're marking the rock now. Chair, it may be 3 easier for you to go back to 5136 and then come back to 4 this and if we zoom in on the rock where the TRT members 5 are. So there seem to be sort of four groupings of rocks 6 and they, and the TRT are lying behind the second from the 7 top of the photograph. 8 COLONEL VERMAAK: Ja. 9 MS LE ROUX: And then if we return to 10 4552 – 11 COLONEL VERMAAK: That may – 12 MS LE ROUX: And zoom, those appears to 13 be one, two, three, four, so we see them pointing almost in 14 an 11 o'clock direction at the vehicle that we now see at 15 Mr Mkhonjwa and the TRT would've been behind the second 16 rock from the top of that series. 17 CHAIRPERSON: Alright. If one looks at 18 the photograph there are, proceeding down from the centre 19 of the page down to the right-hand bottom corner there are 20 actually essentially, I suppose, four or five rocks, I 21 suppose there are five rocks and the one you were point to 22 was, I think the third, more or less the one in the middle 23 of that series, is that right? 24 MS LE ROUX: Yes, Chair. 25 CHAIRPERSON: Anyway the witness who was</p>	<p style="text-align: right;">Page 26065</p> <p>1 and at one point, the best way to describe it to those who 2 are going to look at the video later is, it was the vehicle 3 close to which the helicopter flew at one stage. There's 4 the helicopter moving across the scene and at one point it 5 came very close to a point immediately above the vehicle 6 and that's the vehicle you're referring to. Anyway, 7 proceed with your cross-examination. I'm still not quite 8 sure what point you're making but I take it that it will 9 become clear to me in due course. 10 MS LE ROUX: Lieutenant-Colonel Vermaak, 11 if we could pick up one other aspect of your evidence about 12 this, you testified this morning that you observed the 13 people running away from the direction in which the water 14 cannons were spraying them and you saw them moving in the 15 direction of the dry dam and then you testified that you 16 saw them move through and then turn back. That stopping 17 and turning back, does that occur in the 20 seconds between 18 when you report them being in the middle and when you 19 report the two bodies? 20 COLONEL VERMAAK: That's correct. 21 MS LE ROUX: Did you also observe Pappa9 22 drive to that spot where the shooting, that shooting took 23 place in that period of time? Did you observe Pappa9's 24 movement? 25 COLONEL VERMAAK: No, I was not</p>
<p style="text-align: right;">Page 26064</p> <p>1 in a better position than any of us because he was in a 2 helicopter, he can't help us but that's – or can you 3 perhaps comment on that now, Lieutenant-Colonel? 4 COLONEL VERMAAK: If I look at the two 5 photos, Chair, I think that is – 6 CHAIRPERSON: You think Ms Le Roux is 7 right? 8 COLONEL VERMAAK: I think she's right. 9 CHAIRPERSON: Alright, well, that's 10 something that she will derive some satisfaction from. Ms 11 Le Roux, would you like to carry on? 12 MS LE ROUX: Chair, if we go back to CC22 13 and if we play it from 11 to 11:47, Chair, that clip on 14 Protea Coin we'll see Pappa9 come to that position at 15 exactly the time, the 20 second gap that we've been dealing 16 with from, "Guys they're in the middle, they're going to 17 break through" through to the communication about the two 18 bodies. So you'll see it drive to that position and then 19 stop. 20 [VIDEO IS SHOWN] 21 MS LE ROUX: Chair, we're marking it on 22 the screen behind you, if that's of assistance to you and 23 your fellow Commissioners. 24 [VIDEO IS SHOWN] 25 CHAIRPERSON: You indicated the vehicle</p>	<p style="text-align: right;">Page 26066</p> <p>1 concentrating on them. Where I said to the vehicles that 2 they are going to break through, is that specific point 3 behind the Pappa9 vehicle that has been pointed out now. 4 MS LE ROUX: Lieutenant-Colonel Vermaak, 5 have you had an opportunity to review any of the statements 6 by the TRT members that record that shooting, because those 7 statements will – we can put them together and provide them 8 to the Commission. I wasn't going to do that today, 9 because they report this movement forwards and then a 10 shooting and then a movement back. Have you seen those 11 statements? 12 COLONEL VERMAAK: No, I haven't got – 13 MS LE ROUX: Lieutenant-Colonel Vermaak, 14 I'm onto my penultimate topic in your cross-examination and 15 that relates to scene 1 striker movement, so the movement 16 of the strikers at scene 1. Now I hope not to spend too 17 long on this because we, there's a lot of objective 18 evidence that's available and that's been provided to the 19 Commission. I should also just note that the footage, the 20 video footage that has come to light after the presentation 21 that has been made by the Human Rights Commission team, 22 that is being updated and a consolidated presentation will 23 be provided to the Commission shortly, that takes account 24 of the video footage that came to light after that GW6 25 series was completed. But there are three aspects of your</p>

<p style="text-align: right;">Page 26067</p> <p>1 evidence on the movement of the strikers at scene 1 that 2 I'd like to deal with today. As I understand it and you 3 set this out in the exhibit that's been marked as OOO17, 4 there are three aspects of what you testified about and how 5 you marked it in exhibit OOO17 that we'd like to deal with 6 because it doesn't accord with our analysis of the 7 objective evidence, of the video and photograph evidence 8 that we have. And we will submit to the Commission that 9 what is set out in GW6A, the annexure to Gary White's 10 statement, depicts the route taken, save for the one 11 amendment that we must make in light of video footage that 12 came before the Commission after that document was 13 prepared, with respect to the suggested attempt by some 14 protesters to pass between the kraal and Pappa5, that 15 attempt being blocked by Nyala 4 dragging its barbed wire 16 across. So we need to amend in that respect but even if we 17 compare, with that amendment in mind, on the GW6A document 18 – for the record it would be page 60 – there are some 19 significant differences that we now want to deal with and 20 we'll do the comparison. So it relates to the movement of 21 the strikers in two respects as well as the use of teargas, 22 stun grenades and water cannon.</p> <p>23 Chair, perhaps just for the record to clarify 24 what we're comparing, it's exhibit OOO17 where Lieutenant- 25 Colonel Vermaak has marked the route of protesters and then</p>	<p style="text-align: right;">Page 26069</p> <p>1 depiction on OOO17 is that the strikers do not go nearly as 2 far to the north as you suggest when they leave the koppie. 3 So if we can start in this GW6A and go to page 25, here we 4 see – again it's not able to definitively attach a time to 5 this, it seems to be around 15:51 when we correlate it to 6 the Rowland headgear footage. 7 [11:49] But here the point is we see the lead striker 8 group walking immediately adjacent to Nyala 5 and then if 9 we go to the next slide, page 26, this plots that on the 10 plan. So we have the group shown in the grey oval in 11 relation to Nyala 4 and Nyala 5. So it's closer to Nyala 12 5.</p> <p>13 If we then go to the video clip JJJ194.13 we will 14 submit that this confirms that the whole of the lead group 15 passes very closely to the north of Nyala 5, not nearly as 16 far to the north as Lieutenant-Colonel Vermaak indicates on 17 OOO17, if we could just watch that clip, 194.13. So Chair, 18 that's Nyala 5 that we see and this is the strikers very 19 close to it.</p> <p>20 If we then go back into GW6A and to slide 29 and 21 then 30 we see there the objective evidence showing the 22 lead strikers continuing to be very close to Nyala 5 even 23 when it's driven past them. That's Nyala 4. Nyala 5 is 24 the vehicle we see to the left out of frame, and if we go 25 to the next slide again that is plotted and the grey oval</p>
<p style="text-align: right;">Page 26068</p> <p>1 if we put up page 60 of GW6A, that's part of JJJ178, Gary 2 White's statement. It's an annexure to the statement, not 3 in the statement.</p> <p>4 MS PILLAY: Chair, JJJ178.1. 5 CHAIRPERSON: Thank you. 6 MS LE ROUX: If we can find JJJ178.1 and 7 if we can go to slide 60, the final slide, the final slide, 8 60. And Chair and Commissioners, if I could ask you to 9 turn around so that we can mark the one amendment we need 10 to make on this after viewing the video footage, is that 11 the third arrow needs to extend towards the gap between the 12 kraal and Pappa5 and then loop back to the fourth arrow and 13 continue around the kraal. So that third arrow needs to 14 come closer to the kraal and then the yellow arrows 15 continue around the kraal. That's the one amendment that 16 needs to be made in light of the video footage we've 17 obtained but just to show that this is, this is the 18 *11:30/18-46 document we have in front of you, with that 19 one minor amendment, it's the Human Rights Commission's 20 analysis of what the objective evidence shows, striker 21 movement at scene 1. And I'd now like to do the three 22 major discrepancies between that analysis and what OOO17 23 shows.</p> <p>24 Lieutenant-Colonel Vermaak, the first discrepancy 25 between the analysis of the objective evidence and your</p>	<p style="text-align: right;">Page 26070</p> <p>1 indicates the protester group in relation to Nyalas 4 and 2 5.</p> <p>3 So if we can now go back to OOO17, Chair if I 4 could ask you and the fellow Commissioners to turn, we'll 5 mark Nyala 5 where we see it on the path. So on this the 6 arrows that Lieutenant-Colonel Vermaak places as the 7 movement of the group, we see from the objective evidence 8 they are too far to the north, that that gap between the 9 path where Nyala 5 was and the striker group is much closer 10 as we see in the objective evidence.</p> <p>11 In light of what I've just pointed out to you, 12 Lieutenant-Colonel Vermaak, do you accept that the lead 13 group didn't go as far north as you suggest but instead 14 walked directly past Nyala 5 towards the kraal?</p> <p>15 COLONEL VERMAAK: No, I do not accept it. 16 I stay with what I've shown there. That is a picture that 17 I've taken there and if you look at this picture you will 18 not see any people near this area here. When we saw them, 19 and that is the picture that is in front of us, most of – 20 you will see most of the people gathering in this side, 21 that group was moving in front of them. So there were 22 nobody moving according to us and the observation that we 23 have that was moving closing to that side.</p> <p>24 CHAIRPERSON: Alright, let me try and put 25 that on record. There's a path which one sees which runs</p>

<p style="text-align: right;">Page 26071</p> <p>1 from where the word "front" appears towards the second TSW. 2 There are two TSWs to the photograph, that stands for 3 teargas, stun grenades, and water cannon. As one moves 4 into the photograph from the left-hand side there's one TSW 5 and then there's another one slightly above the kraal. Now 6 between that TSW, the second, what I call the second TSW 7 and the front there's a path and you say that you didn't 8 see protesters, or strikers as I prefer to call them, in 9 that area. You then refer to the position close to the 10 word "second," which is further on, on the photograph and I 11 understood you to say that it's more or less in that 12 vicinity that you saw the strikers. 13 COLONEL VERMAAK: That's correct. 14 CHAIRPERSON: Am I summarising correctly? 15 COLONEL VERMAAK: That's correct. 16 MS LE ROUX: Now Lieutenant-Colonel, 17 obviously the objective evidence speaks for itself, but 18 there do seem to be two groups. There's the lead group and 19 obviously in this photograph that you've plotted on they'd 20 already moved past that position with Nyala 5. So the lead 21 group that we see in the objective evidence going very 22 close to Nyala 5 and not nearly as far north as the group 23 that you're describing on this document, you accept that 24 the distinction between the two groups may explain this? 25 COLONEL VERMAAK: No, I cannot say that</p>	<p style="text-align: right;">Page 26073</p> <p>1 concentrating on the point that's under discussion. We 2 were puzzling about where it's taking us, but that's 3 something that will become clear to us in due course, I 4 trust. 5 MS LE ROUX: Lieutenant-Colonel, if I can 6 start with the water cannon, how sure are you that the 7 water cannon was used to deter strikers from the attempt to 8 pass between the kraal and Papa5 and Nyala 4? 9 COLONEL VERMAAK: We saw the water cannon 10 spraying in that area. I can't exactly point out the 11 direction that they was concentrating on, but I can assure 12 you that we were able to see that the water cannon was 13 activated. 14 MS LE ROUX: And Lieutenant-Colonel 15 Vermaak, let me be clear; we don't dispute that the water 16 cannon was used. The dispute is as to when it was used. 17 You can't pinpoint – 18 COLONEL VERMAAK: No, I can't- 19 MS LE ROUX: - timing-wise when you saw 20 the water cannon spraying? 21 COLONEL VERMAAK: I cannot give that 22 information. 23 MS LE ROUX: Because on 00017, your 24 BlackBerry photograph, that's JJJ11.1515, that's taken at 25 15:51:47 eTV time and we can see Nyala 4 in this image</p>
<p style="text-align: right;">Page 26072</p> <p>1 because why what we saw there was one group. The rest of 2 the people join the group in the front. So I'm not a 3 expert on photographs but what we have experienced, if you 4 take a photo for, from here to this chair, on the photo it 5 will be appears that the people at the back are much 6 closer. So maybe somebody else can who have that expertise 7 try to explain it to the Commission, but what we saw from 8 the air is that is being pointed out on that photo there. 9 MS LE ROUX: Lieutenant-Colonel Vermaak, 10 I think I should move off the point because we'll, you know 11 the document that we have submitted plots the photograph 12 and takes account of the foreshortening effect that you 13 refer to by plotting it to objective landmarks that we see, 14 and that's how we plotted the movements and we'll provide 15 that to the Commission in an updated consolidated form. 16 Let me move on then to the second discrepancy 17 that we have between your description of the events leading 18 up to scene 1 and what we see from the objective evidence 19 and that relates to the use of teargas, stun grenade, and 20 water cannon between the kraal and Papa5. 21 COLONEL VERMAAK: What is the question 22 about it? 23 MS LE ROUX: I'm just waiting for our 24 Commissioners to return their attention to your answers. 25 CHAIRPERSON: We were very much</p>	<p style="text-align: right;">Page 26074</p> <p>1 halfway between its starting position and the kraal and so 2 presumably the use of the teargas, stun grenade, and water 3 cannon happened some time around the time that Nyala 4 4 arrived at the kraal. You'll accept that? 5 COLONEL VERMAAK: Yes, it's possible. 6 CHAIRPERSON: Sorry, can I just ask a 7 question on that? Presumably by the time Nyala 4 got to 8 the kraal it was no longer possible for the strikers to go 9 past there because their way would have been blocked by the 10 wire – 11 COLONEL VERMAAK: That's correct. 12 CHAIRPERSON: - and Nyala 4. So I would 13 have thought, just as a matter of probability, but I could 14 be wrong, that the need for the teargas and the stun 15 grenades and the water cannon would have fallen away once 16 the way was blocked. So I would have expected the teargas, 17 stun grenade, and water cannon to have been used before the 18 Nyala 4 got to the kraal and blocked the strikers' route. 19 But if I'm on the wrong track please put me on the right – 20 COLONEL VERMAAK: No, I think you are 21 quite correct, Chair. 22 MS LE ROUX: Right, so Lieutenant-Colonel 23 Vermaak, as I'd understood your evidence it was that you 24 thought it happened at that time. The objective evidence 25 obviously doesn't support that and now you accept that it</p>

<p style="text-align: right;">Page 26075</p> <p>1 would have to be, as the Chair has put to you, prior to 2 that.</p> <p>3 COLONEL VERMAAK: No, what the Chair put 4 to me, it is more possibility that – as I said to you, I 5 can't give you exact time when they activate the water 6 cannon.</p> <p>7 MS LE ROUX: Right.</p> <p>8 COLONEL VERMAAK: You must still 9 remember, as I said in the beginning, we are in a chopper 10 which is flying against about 120 kilometres an hour. 11 There are some instances that you don't have everything 12 visual that you have, wish to have.</p> <p>13 MS LE ROUX: Lieutenant-Colonel, we know 14 that Nyala 4 reaches the kraal at 15:52:03. We know that 15 from the Rowland Headgear and GW6A slide 47 records that 16 development, JJJ178.1, slide 47. So there we see Nyala 4 17 just reaching the kraal and being stationary. That's 18 15:52:03.</p> <p>19 If I could then ask that we show GW6D, which is 20 the analysis of water cannons more closely. If we go to 21 GW6D, which I assume is JJJ178.4. Perhaps Ms - is that 22 correct?</p> <p>23 MS PILLAY: That's correct, Chair.</p> <p>24 MS LE ROUX: 178.4. I'm indebted to my 25 learned friend for her assistance. Thank you, and if we go</p>	<p style="text-align: right;">Page 26077</p> <p>1 photograph.</p> <p>2 CHAIRPERSON: Yes, one sees a path in 3 fact first and they're to the left of the path.</p> <p>4 MS LE ROUX: Yes. These are the two 5 water cannons still only driving towards the kraal, but 6 they're obviously about 30 to 40 metres away. We also 7 observe in the photograph they're not shooting any water. 8 So Lieutenant-Colonel Vermaak, to give you the timings 9 again; Nyala 4 reaches the kraal at 15:52:03. We see in 10 GW6D, page 35, one second after that is when the water 11 cannons only start moving. 30 seconds before the TRT 12 shooting we see them in this photograph 30 to 40 metres 13 away still and not shooting any water. In light of this 14 objective evidence do you accept that it would be 15 impossible for the water cannon to have been used at the 16 time that you claimed when you were explaining your OOO17?</p> <p>17 COLONEL VERMAAK: No, I will not say it's 18 impossible. The water cannon can spray a long distance and 19 what I saw is what I've testified, but unfortunately 20 there's no aerial footage of that. I think there is, I did 21 see somewhere photos on that two scenes where the water 22 cannons was activated, but I'll have to go through all the 23 photos to give you that specific one.</p> <p>24 MS LE ROUX: But Lieutenant-Colonel 25 Vermaak, the water cannons can't shoot 180 metres, can</p>
<p style="text-align: right;">Page 26076</p> <p>1 to slide 33 of this, this is where we see from 15:43:56 2 North West and Jo'burg water cannons posted approximately 3 180 metres from the kraal. They're marked in this slide, 4 and then if we go through to slide 35 we see that they 5 don't even start to move until 15:52:04. Slide 35 6 indicates it's from the North West water cannon camera, it 7 shows them both still stationary and the North West water 8 cannon about to set off towards the kraal. The Jo'burg 9 water cannon is visible still stationary beside it in this 10 screenshot. So the two water cannons don't even start to 11 move from their position about 180 metres away from the 12 kraal until 15:52:04, which is one second after Nyala 4 has 13 arrived at the kraal. You'll recall that's at 15:52:03.</p> <p>14 If I could then ask that we look at JJJ11.1516. 15 JJJ11, photograph 1516, this photograph is taken at 16 15:53:21. So that is less than 30 seconds before the TRT 17 shooting starts and we can see both water cannons in the 18 top right-hand corner of the photograph still driving 19 towards the kraal. Chair and Commissioners, if you turn, 20 we're marking them with the laser pointer, and to describe 21 them for the record, they're in the top right-hand corner 22 of the photograph. From the immediate right there's a 23 small collection of vehicles, then moving to the left one 24 vehicle in isolation, and then moving again to the left we 25 see two larger vehicles heading towards the left of the</p>	<p style="text-align: right;">Page 26078</p> <p>1 they?</p> <p>2 COLONEL VERMAAK: I'm not sure of what is 3 the total distance that they can shoot at.</p> <p>4 MS LE ROUX: Let me move on then. We 5 won't do the same exercise with respect to teargas and stun 6 grenade, but you've seen GW6E which, with respect to 7 teargas and stun grenade GW6E –</p> <p>8 CHAIRPERSON: I'm sorry, are you moving 9 on to a slightly new point?</p> <p>10 MS LE ROUX: Yes.</p> <p>11 CHAIRPERSON: Because I was requested to 12 take the tea adjournment now.</p> <p>13 MS LE ROUX: That's fine, Chair.</p> <p>14 CHAIRPERSON: So we have to bear in mind 15 the strain on people attending here, particularly those who 16 are involved in the proceedings. So we'll take the tea 17 adjournment now.</p> <p>18 [COMMISSION ADJOURNS COMMISSION RESUMES] 19 [12:32] CHAIRPERSON: The Commission resumes. 20 Lieutenant-Colonel, you're still bound by your affirmation. 21 Ms Le Roux?</p> <p>22 SALMON JOHANNES VERMAAK: (affirms 23 further)</p> <p>24 CROSS-EXAMINATION BY MS LE ROUX (CONTD.): 25 Thank you, Chair. Lieutenant-Colonel, just to round out</p>

<p style="text-align: right;">Page 26079</p> <p>1 the objective evidence on the water cannon, the objective 2 evidence shows it shooting nine seconds before the TRT 3 shooting starts, that's when we see a recording of, or any 4 footage of the water cannon firing. So we, that's what the 5 objective evidence shows. Do you accept that it's possible 6 that that's what you observed, the water cannon deploying 7 water nine seconds before the TRT shooting? 8 COLONEL VERMAAK: I will not say that is 9 what I observed but I cannot dispute it as I was not on the 10 ground at that stage. 11 MS LE ROUX: Then with respect to the use 12 of teargas and stun grenades, you've seen GW6E and there 13 it's set out how the objective evidence demonstrates that 14 there's no teargas or stun grenades being used more than 20 15 seconds before the TRT fire. Do you accept that 16 possibility, that there's no teargas or stun grenades until 17 20 seconds before the TRT volley starts? 18 COLONEL VERMAAK: If there's evidence to 19 that, I can also not say it's not true. 20 MS LE ROUX: Lieutenant-Colonel, if we 21 now move on to the third and final discrepancy that we have 22 between our analysis of the objective evidence and your 23 account set out in OOO17 and that's the large loop – if we 24 can go back to OOO17? It's the large loop that we see 25 between the first and second TSW marks, teargas, stun</p>	<p style="text-align: right;">Page 26081</p> <p>1 could play it? 2 [VIDEO IS SHOWN] 3 MS LE ROUX: If we go a little bit 4 further forward. 5 CHAIRPERSON: 07. 6 MS LE ROUX: We've paused it at seven 7 seconds into the clip0. 8 CHAIRPERSON: Yes. 9 MS LE ROUX: And you can see the strikers 10 in this clip beyond the vehicles. That's Nyala 4 that we 11 see and we see the – so Nyala 4 at this point has already 12 touched the kraal and we see the strikers moving from left 13 to right. 14 COLONEL VERMAAK: That's correct. 15 MS LE ROUX: If we could now move to 16 JJJ194.16 and on this clip if we could just, if we could 17 pause this clip at 16 seconds, that's eTV time 15:52:29. 18 Chair, we're looking in this clip and we'll see a large 19 group of the strikers in the background some distance away. 20 This is, as we understand it, not the lead group that we 21 see in this. We see the large group through the mouth of 22 the kraal. 23 [VIDEO IS SHOWN] 24 MS LE ROUX: Pause. If we go back a 25 little bit, there. Chair, this is paused at 15 seconds,</p>
<p style="text-align: right;">Page 26080</p> <p>1 grenade, water cannon use on your document. And if we 2 could start in JJJ197, these are the Channel 4 clips that 3 show the movement of the lead group. 4 [VIDEO IS SHOWN] 5 MS LE ROUX: Chair, the – 6 CHAIRPERSON: It doesn't look as if this 7 is the clip you want. This is – 8 MS LE ROUX: No, no, it is the clip, it 9 is the clip we want because – 10 CHAIRPERSON: - Lieutenant-General 11 Mbombo, isn't it? 12 MS LE ROUX: No, Chair, the clip follows 13 – this is the press report and then they cut to the footage 14 we're referring to. We don't have an exact time on it but 15 it seems to be 15:52:08, the clip that we – we look at it, 16 it comes about four seconds into this clip, if we can play 17 the clip? 18 [VIDEO IS SHOWN] 19 MS LE ROUX: Go – if we could go in slow 20 motion? 21 CHAIRPERSON: Where you've paused, you've 22 paused it at 06. Well, anyway, when you pause please put 23 on record where you've paused, for the benefit of those who 24 are following our footsteps later. 25 MS LE ROUX: I will do, Chair. So if we</p>	<p style="text-align: right;">Page 26082</p> <p>1 that's the group of strikers that we see – Chair, if you 2 look at the screen behind you we're marking it with the 3 laser pointer. Between the two vehicles you see the group 4 of strikers through the kraal, through the mouth of the 5 kraal. You see them moving left to right. 6 CHAIRPERSON: What we see really in the 7 bottom left-hand corner of the photograph is the mouth of 8 the kraal and then we see into the kraal and it looks as if 9 the strikers are on the other side of the kraal. We see 10 them through the twigs and the branches and whatever it was 11 that the kraal was made up of, is that right? 12 MS LE ROUX: Yes, Chair, and of course 13 what we're noting is that group is some distance back. If 14 we could then play the video, if we could play it slowly 15 and then pause in two seconds' time at 18. There we see a 16 group much closer to the kraal, they seem to be passing 17 much closer to the kraal, so if we could play it at slow 18 motion and pause – 19 CHAIRPERSON: Passing it on the other 20 side, on the far side? 21 MS LE ROUX: Yes, Chair. 22 CHAIRPERSON: Mm, okay. 23 [VIDEO IS SHOWN] 24 MS LE ROUX: Pause there. We can see the 25 group – again we're marking it on the big screen behind</p>

<p style="text-align: right;">Page 26083</p> <p>1 you, Chair. Between the Nyala and its barbed wire trailer 2 we see a group of people much closer. And we've zoomed in 3 on that portion and you can actually see in darker 4 silhouette the group closer to the kraal and behind them in 5 a lighter grey silhouette is the group that we saw earlier 6 which was further away, passing, all walking left to right 7 at the kraal. If we then go forward in this to one minute 8 one second, this is where we see the group, they've now 9 come around the kraal. This is 15:53:14 on eTV time and 10 here we see the group walking very slowly forward. And if 11 we start at one minute and if we play it in slow motion, 12 between one minute one second and one minute eight seconds 13 which correlates to 15:53:21. If you watch, if we zoom in 14 on, between the vehicles – Chair, again we're marking the 15 far left-hand side of the screen. The camera will then 16 focus on that group. In this period between one minute one 17 second and one minute eight seconds, if we do it in slow 18 motion you'll be able to see they take seven steps in that 19 period as they come around the kraal. 20 [VIDEO IS SHOWN] 21 MS LE ROUX: And if we could zoom in to 22 the group we see on the left of the screen? 23 [VIDEO IS SHOWN] 24 MS LE ROUX: And if we pause there, if we 25 go to JJJ11.1516 it correlates with this one minute 08 here</p>	<p style="text-align: right;">Page 26085</p> <p>1 see there's no indication that people is – where I'm 2 pointing now, any people. It is clear that they come with 3 that loop back. They came back, they came back here and 4 then they followed this route. You can see the point of 5 the people, the sharp end there at the corner of the kraal. 6 So according to me, what I saw from the air is what I more 7 or less indicate on the previous picture. 8 CHAIRPERSON: What you didn't show – I'm 9 not criticising you because I take it you didn't see, but 10 what you didn't show was those people we appear to have 11 seen on that, on the photograph who were walking behind the 12 kraal. They appeared to be quite close to the fence, as it 13 were, of the kraal. Now I take it what's been put to you 14 is that – if I'm wrong I'll be corrected – what they call 15 the front group or the core group, they didn't take that 16 wide arc, they walked along close to the outside wall of 17 the kraal. That's why one can see them in that photograph 18 going quite close. The others appear, as we can see from 19 your photographs, the rest of them, to have taken a wider 20 arc or to have been quite far away from the kraal when they 21 went past it. But the thrust of the cross-examination, as 22 I understand it – if I'm wrong I hope I'll be corrected – 23 is that the front group, what she calls the core group, 24 they appear if that photograph is correct that we saw and 25 we're correctly interpreting it, they appear to have walked</p>
<p style="text-align: right;">Page 26084</p> <p>1 where the group is now around the kraal, proceeding slowly 2 forward, if we go to JJJ11.1516. That correlates time-wise 3 with the movement of the group. So Lieutenant-Colonel 4 Vermaak, what JJJ197 and 194.16 correlated to JJJ11.1516 5 show us is that there's a 43 second gap on the video 6 footage where we can't see the lead group. So at 15:52:31 7 we see them immediately behind the kraal, close to it, 8 walking around it. That's where I showed you there's the 9 group further away and the group close at the kraal. 43 10 seconds later we pick them up again, 15:53:14, still in 11 line with the kraal and walking around it, adjacent to the 12 kraal, but on your account if we go back to OOO17, this is 13 where they make a rather enormous loop that we've estimated 14 on Google Earth to be approximately 300 metres, retreating 15 away from the kraal – so we would have expected to see the 16 back of them – and then returning to the kraal. And in 17 light of what we've shown you on the two video clips where 18 we see them very close to the kraal at all times, do you 19 accept that it's possible that you're mistaken that the 20 lead group took this big loop that you described? 21 COLONEL VERMAAK: Chair, I have testified 22 that it was not the whole group that was moving around in 23 that big loop. I said the majority of the people were 24 going back and then they came forward. If you look at the 25 other picture, if they can just show it for us, you will</p>	<p style="text-align: right;">Page 26086</p> <p>1 past the other side of the kraal, fairly close to the 2 kraal. Would you agree with that from the photograph that 3 we've looked at? 4 COLONEL VERMAAK: Chair, what a 5 possibility can be is after they tried to go through at 6 Nyala 4, remember they are a little bit scattered after the 7 police acted against them, then they moved back. So I 8 don't know at what stage exactly that photos was taken, was 9 it taken just after that the police act or how long after 10 that the police act, but what we saw is that the whole 11 group of people moved back and then they turned back, as it 12 is on the photo there. So I cannot say that photos is 13 wrong that is in front of us but I just name the 14 possibility – 15 CHAIRPERSON: I understand. I mean you 16 can only tell us what you saw. 17 COLONEL VERMAAK: Yes, I can only – 18 CHAIRPERSON: You can't say what you 19 didn't see. 20 COLONEL VERMAAK: I can only testify what 21 I saw. 22 CHAIRPERSON: The question is whether 23 people came close, some people came – 24 COLONEL VERMAAK: Close to – 25 CHAIRPERSON: - because we know the time</p>

<p style="text-align: right;">Page 26087</p> <p>1 when the photograph was taken. Some people came close to 2 the kraal on the other side but they were people whom you 3 didn't see, that's really the possibility that is being put 4 to you and I take it you agree with that. 5 COLONEL VERMAAK: That's correct. 6 CHAIRPERSON: Ja. 7 MS LE ROUX: Lieutenant-Colonel Vermaak, 8 when you say the police acted, do you mean for example when 9 Pappa5 starts shooting rubber bullets which would cause the 10 people to scatter away from that area? That's what, when 11 you're saying the police acted – 12 COLONEL VERMAAK: I cannot say they shoot 13 rubber. What we did observe was teargas and stun grenades 14 that went off. We can't see from the air which rifles that 15 they were using. 16 MS LE ROUX: Lieutenant-Colonel Vermaak, 17 I'm moving on to my final topic of cross-examination which 18 is a very narrow point relating to the use of stun grenades 19 on the 13th of August. You've been given a copy of what has 20 been marked as exhibit triple zero, OOO20 which is the CALS 21 analysis, exhibit Z2 and Z3, the use of stun grenades and 22 teargas on 13 August 2013. You've had an opportunity to go 23 through this presentation. 24 COLONEL VERMAAK: That is correct. 25 MS LE ROUX: Chair, what I'd like to do</p>	<p style="text-align: right;">Page 26089</p> <p>1 little more so we can see the text at the bottom of the 2 slides it'll assist the witness. So here we have 14:27:35, 3 we see the first teargas canisters hit the ground and two 4 plumes of smoke, of gas that we've circled in red on the 5 right of this still from the video. We then, on the next 6 slide which is at 14:27:50, this is 15 seconds later, the 7 two plumes from the teargas canisters have spread, their 8 source is still circled in red. At this time we see a new 9 visible explosion, it's the one circled in yellow to the 10 right. Now we can't determine from this alone whether this 11 was teargas or stun grenades but as we'll see in the 12 following imagery, it appears more consistent with the 13 double bang of the stun grenade. This is the explosion 14 that has not been accounted for in the SAPS case. 15 [12:52] We turn to the next slide which is within the 16 same second, 14:27:50. Within a second of the first 17 explosion we see a second, that's circled in yellow. This 18 is not only consistent with the double bang of the stun 19 grenade but it also has a reddy-orange colour suggesting 20 it's not teargas and this likely stun grenade explosion is 21 the one that has not yet been accounted for. Lieutenant- 22 Colonel, do you agree with our analysis that that red- 23 orange colouring is more consistent with a stun grenade 24 than teargas? 25 COLONEL VERMAAK: That is correct.</p>
<p style="text-align: right;">Page 26088</p> <p>1 is go through this presentation, we can do it fairly 2 swiftly. What we see here if we start on slide 2, this 3 records on day 124 where the Chair summarised the SAPS case 4 with respect to the throwing of teargas and stun grenades 5 and my learned friend Mr Ngalwana, counsel for SAPS, 6 confirmed that. And the features that were summarised and 7 confirmed are, first Warrant Officer Kuhn fired the teargas 8 grenade canister from the left-hand side of the police line 9 while following the strikers, Lieutenant Baloyi then fired 10 the stun grenade towards the strikers, the strikers then 11 attacked the police and Lieutenant-Colonel Vermaak then 12 threw stun grenades from the helicopter. If we go to the 13 next slide it sets out the purpose of this analysis, which 14 is using two different sources of objective evidence to 15 demonstrate two things, firstly that it's likely that there 16 were two stun grenades thrown by the police prior to the 17 attack by the strikers on 13 August and that the first of 18 those has not been accounted for or explained by the SAPS. 19 And secondly, to demonstrate that the second stun grenade 20 exploded very close to the faces of the lead strikers and 21 it was the spark for the attack on police. If we then turn 22 to the third slide, this is where we start with the 23 analysis from exhibit Z2. The time stamp is revealed at 24 the top, we start at 14:27:35. If we could zoom out a 25 little bit so we see the captions and if we can zoom out a</p>	<p style="text-align: right;">Page 26090</p> <p>1 MS LE ROUX: If we then go to the next 2 slide 7, this is 14:27:56, so six seconds later but 21 3 seconds after the teargas is released, we still see the 4 plume of teargas rising from the source, still circled in 5 red. Six seconds after the apparent stun grenade explosion 6 there's no smoke rising from its source, that's the yellow 7 circle, but we do see the remnants of the stun grenade 8 smoke. Despite both teargas and stun grenade being used, we 9 see the strikers still proceeding in the same direction. 10 They don't appear to have commenced any attack n the police 11 and the front of the striker group is marked with the 12 arrow. To the right of the image circled in green we have 13 11 SAPS members. The next slide, slide 8, is in the same, 14 within the same second. Still 14:27:56, so less than one 15 second later we see the first explosion of a second stun 16 grenade some distance in front of the striker group and 17 that's been circled in what we call pink in the caption but 18 I know the Chair sometimes refers to it as purple. We 19 still have the front of the striker group marked with the 20 arrow in the image. 21 Turning to the next slide which is within one 22 second of that, we see a further explosion, the second 23 explosion of the second stun grenade. That's circled in 24 blue. This is the second explosion that explodes very 25 close to the faces of the lead strikers. If you look at</p>

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1 this image and then those that follow in the presentation,
 2 you'll see that the distance between the explosion and the
 3 heads of the lead striker is minimal. In this image we see
 4 the smoke from that explosion at head height in relation to
 5 the leading members of the striker group that are marked
 6 with the arrow and here we see the head of that lead
 7 striker visible between the camera and the smoke from the
 8 explosion, meaning his head is silhouetted against the
 9 smoke.

10 The next image which we'll get to is less than a
 11 quarter of a second later where we see the same man's head,
 12 the head of the same striker obscured by the expanding
 13 smoke, indicating that this explosion has taken place very
 14 close to his head.

15 If we can move to slide 10 in the presentation,
 16 here we see the head of the lead striker obscured by the
 17 smoke although we can see his right leg and torso
 18 protruding from the front of and beneath the cloud of smoke
 19 but his head is obscured by the smoke from the stun grenade
 20 explosion. Behind him we see a second striker, this man is
 21 again silhouetted between the stun grenade smoke and the
 22 camera so his head and body are silhouetted against the
 23 smoke we see.

24 The next two images on slides 11 and 12 are taken
 25 within one second of this explosion and here we see the

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1 group split on either side of the stun grenade smoke. We
 2 see some silhouetted against the smoke, some obscured by
 3 the smoke. So if we can turn to slide 11, this is
 4 15:27:57, within the same second. We see the striker group
 5 now split on either side of the smoke, some are camera
 6 side, some are obscured. Note that we still can't see the
 7 lead striker because the smoke has now fully engulfed him.
 8 The difficulty with the screen shot is that we can't see
 9 that the other strikers are also obscured by the smoke.
 10 You see that in the video from which these screen shots are
 11 taken. If we then turn to slide 12, this is at 15:27:58,
 12 again we see the striker group split, some obscured by the
 13 smoke, some silhouetted against it. This was the first
 14 basis for our conclusion that the stun grenade explodes at
 15 the head height of this lead group of the strikers.

16 And if we now turn to slide 13, this is an image
 17 from a different, from a different angle, a different
 18 camera. This is marked as exhibit Z3. So if there was any
 19 concern around foreshortening, this camera should assist
 20 us. What we see here is that, despite the different angle,
 21 it also shows the further stun grenade explosion being in
 22 immediate proximity to the head of the lead striker.
 23 That's the man circled in the blue circle on the right of
 24 the image. So if Z2 had been deceptive as to depth, this
 25 would have corrected that but what we see from the footage,

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1 the two pieces of footage taken together, is that it seems
 2 highly likely that this second stun grenade exploded at
 3 head height directly in front of the lead members of the
 4 striker group.

5 If we then go to the final slide, slide 14, that
 6 sets out the Human Rights Commission's conclusions based on
 7 this analysis, the first being with respect to the
 8 unexplained stun grenade, that again to recap, the SAPS
 9 case is that before the attack on police by the strikers on
 10 the 13th there was a single teargas canister thrown by
 11 Warrant Officer Kuhn and a single stun grenade thrown by
 12 Lieutenant Baloyi and thereafter, Lieutenant-Colonel
 13 Vermaak, you threw stun grenades from the helicopter after
 14 the attack had commenced by protesters, but this analysis
 15 demonstrates that there were very likely two stun grenades
 16 thrown at the strikers at 14:27:50 and 14:27:57 and the
 17 SAPS obviously must account for both of these bit are yet
 18 to account for one of them. And on this evidence that we
 19 currently have we must therefore assume that at least one
 20 of the two is either thrown by you, Lieutenant-Colonel
 21 Vermaak, from the helicopter before the attack commences,
 22 alternatively that another stun grenade was thrown from a
 23 SAPS member on the ground that we haven't yet heard from.
 24 The second conclusion sets out that the stun grenade
 25 explosion was within a metre of the strikers' faces.

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1 So Lieutenant-Colonel Vermaak, having seen this
 2 analysis and the presentation, we know from HHH23, which is
 3 the discharge list of 13 August, that you're the only
 4 person recorded on that document as having thrown any stun
 5 grenades. Lieutenant Baloyi is not even reflected on that
 6 document. So the logical conclusion is that you must have
 7 thrown one of the two stun grenades from the helicopter
 8 into the crowd and if you disagree with that, can you
 9 otherwise account for that second stun grenade that we
 10 haven't yet had an explanation for?

11 COLONEL VERMAAK: Chair, I cannot account
 12 for what has been thrown on the ground, what ammunition
 13 were used, but I can assure the Chair that I only throw the
 14 stun grenade after the policemen have been attacked. On
 15 some of the photos I can maybe point out to you more or
 16 less where the chopper was hovering because why, of the
 17 tear smoke is being drawn up by the chopper's downdraft and
 18 there you can see very clearly all the teargas is in a
 19 specific area and that is where we're hovering, that is
 20 where I've thrown the teargas and the stun grenades where
 21 the policemen were more or less attacked.

22 MS LE ROUX: Lieutenant-Colonel Vermaak,
 23 I suspect the Human Rights Commission team would agree with
 24 you on that. If we can just deal with HHH23, though, if we
 25 could perhaps put that up on the screen. This is the

<p style="text-align: right;">Page 26095</p> <p>1 discharge list from 13 August.</p> <p>2 COMMISSIONER HEMRAJ: Before you go there</p> <p>3 can I just ask you, Colonel, on page 4 of OOO20 if you look</p> <p>4 at that slide, the two trails of gas on the extreme right-</p> <p>5 hand side, does that suggest two gas canisters?</p> <p>6 COLONEL VERMAAK: Chair, no. That is the</p> <p>7 teargas that's been shot with the shotgun so it'll have two</p> <p>8 small teargas – how did you call it – but they discharge at</p> <p>9 the same time and they are burning together but they are</p> <p>10 not every effective for a big distance. That is why in my</p> <p>11 letters I criticised this specific thing that we cannot –</p> <p>12 you remember the letter in May, that the equipment that has</p> <p>13 been used, there's a lack on that to use it for a distance</p> <p>14 against protesters. So that specific one was shot by a</p> <p>15 shotgun.</p> <p>16 COMMISSIONER HEMRAJ: But it's one</p> <p>17 canister?</p> <p>18 COLONEL VERMAAK: One canister, yes.</p> <p>19 MS LE ROUX: Lieutenant-Colonel, just so</p> <p>20 that we're clear, when we talk about canisters I think</p> <p>21 we're congruent with you that it's one shot but there are</p> <p>22 two canisters that then start deploying?</p> <p>23 COLONEL VERMAAK: Ja, it's not - actually</p> <p>24 it's one canister that has been shot but it's got inside</p> <p>25 two small pellets. It's like –</p>	<p style="text-align: right;">Page 26097</p> <p>1 CHAIRPERSON: Sorry, before you move on,</p> <p>2 Ms Le Roux, my attention has been drawn to the fact that</p> <p>3 it's five past one.</p> <p>4 MS LE ROUX: Chair, I –</p> <p>5 CHAIRPERSON: You know when one is</p> <p>6 having, when one is enjoying oneself time passes, one</p> <p>7 doesn't notice but do you –</p> <p>8 MS LE ROUX: Chair, I have three</p> <p>9 questions –</p> <p>10 CHAIRPERSON: If you can finish in a very</p> <p>11 short time we'll do it, otherwise we'll take the lunch</p> <p>12 adjournment but I'm in your hands.</p> <p>13 MS LE ROUX: Chair, I have three</p> <p>14 questions so I'd rather complete before we take the lunch</p> <p>15 adjournment, if I could.</p> <p>16 CHAIRPERSON: Alright, okay. Let's try</p> <p>17 anyway.</p> <p>18 MS LE ROUX: Lieutenant-Colonel Vermaak,</p> <p>19 with respect to the second conclusion about the second stun</p> <p>20 grenade exploding very closely to the lead striker's head,</p> <p>21 was that your perception from the helicopter?</p> <p>22 COLONEL VERMAAK: The second stun</p> <p>23 grenade?</p> <p>24 MS LE ROUX: The stun grenade that we see</p> <p>25 in the presentation exploding very close to the head –</p>
<p style="text-align: right;">Page 26096</p> <p>1 MS LE ROUX: Sort of cartridges –</p> <p>2 COLONEL VERMAAK: - two cartridges of</p> <p>3 teargas that ignite at the same time.</p> <p>4 MS LE ROUX: Right, but we're in</p> <p>5 agreement there's only one shot of teargas.</p> <p>6 COLONEL VERMAAK: That's correct.</p> <p>7 MS LE ROUX: Right. So if we can go to</p> <p>8 HHH23, the discharge list for 13 August, here only you are</p> <p>9 recorded in the top line as having used stun grenades. Do</p> <p>10 you know Lieutenant Baloyi is not on this list?</p> <p>11 COLONEL VERMAAK: No, I cannot say why he</p> <p>12 isn't on this list.</p> <p>13 CHAIRPERSON: You didn't compile the</p> <p>14 list.</p> <p>15 COLONEL VERMAAK: I didn't compile this</p> <p>16 list.</p> <p>17 MS LE ROUX: Is it possible that there</p> <p>18 are other members missing other than Lieutenant Baloyi?</p> <p>19 CHAIRPERSON: I imagine the answer to</p> <p>20 that question must be yes.</p> <p>21 COLONEL VERMAAK: Ja, there is a</p> <p>22 possibility. If they missed one, they can miss two.</p> <p>23 MS LE ROUX: Lieutenant-Colonel Vermaak,</p> <p>24 then moving on with respect to the second conclusion set</p> <p>25 out in that analysis document –</p>	<p style="text-align: right;">Page 26098</p> <p>1 COLONEL VERMAAK: If we can go back to</p> <p>2 that photo?</p> <p>3 MS LE ROUX: The series commences at</p> <p>4 slide 9 and then proceeds through. If we stop there we'll</p> <p>5 see the lead striker silhouetted against the smoke.</p> <p>6 COLONEL VERMAAK: Are you –</p> <p>7 MS LE ROUX: From your vantage point in</p> <p>8 the helicopter could you see the proximity of that, this</p> <p>9 second explosion relative to the strikers –</p> <p>10 COLONEL VERMAAK: I didn't observe it</p> <p>11 from the helicopter but I can give an opinion, what I saw</p> <p>12 on the picture. If you look at the smoke, the direction</p> <p>13 that the smoke is going on the big area on the left of the</p> <p>14 photo, it is moving to the left side. If you look at the</p> <p>15 green circle you will see at the most right-hand side of</p> <p>16 the circle is a little bit of smoke and then the biggest is</p> <p>17 moving to the left-hand side. So I will not say it was in</p> <p>18 front of his face. The next one is more or less the same.</p> <p>19 If you can see the head on the top of the purple circle,</p> <p>20 you will also see that it is, if you really go and analyse</p> <p>21 that photo you will see it's a distance from him and it was</p> <p>22 not above him or close to his face. That grenade or stun</p> <p>23 grenade was definitely on the ground when it was activated.</p> <p>24 MS LE ROUX: If we could go to slide 13</p> <p>25 which is the image from a different, from the other angle,</p>

<p style="text-align: right;">Page 26099</p> <p>1 from exhibit Z3, I'm not sure if it will assist but if we 2 can zoom in on the turquoise circle? 3 COLONEL VERMAAK: Chair, you will also 4 see on the bottom or the middle of the person's body, it is 5 on the ground where the smoke is starting to rise from the 6 ground, yes. 7 MS LE ROUX: But Lieutenant-Colonel, this 8 is – this is the moment of explosion, so the light imagery 9 you see is not the smoke coming from the ground. That's 10 the moment of explosion of this grenade mid-air. 11 COLONEL VERMAAK: You must remember the 12 moment that it explodes it is not making a big ball of 13 smoke. It takes a few seconds to ignite the CS gas inside 14 that grenade. So it will land on the ground, take a second 15 or two to explode and then the teargas will be set free. 16 MS LE ROUX: But this is a stun grenade, 17 not a CS gas. 18 COLONEL VERMAAK: No, that is not a stun 19 grenade. The stun grenade is not making so much smoke. 20 MS LE ROUX: Chair, we'll make 21 submissions on this second explosion but Lieutenant-Colonel 22 Vermaak, you didn't see this one from the helicopter? 23 COLONEL VERMAAK: No, it was not observed 24 from the air, it's only what I saw now on the pictures 25 here.</p>	<p style="text-align: right;">Page 26101</p> <p>1 documents – 2 COLONEL VERMAAK: I've got a bundle of 3 documents here, Chair. 4 MR NTSEBEZA SC: And I take it that 5 bundle would include a PowerPoint presentation which has 6 got 14 items. I don't know whether you've got the same 7 bundle where you have the PowerPoint presentation and then 8 it ends with the statement of Constable Mgyue. 9 COLONEL VERMAAK: I haven't got the – 10 CHAIRPERSON: Are you referring to the 11 document headed "The death of Mr Sokanyile"? 12 MR NTSEBEZA SC: That's just the 13 PowerPoint presentation. 14 CHAIRPERSON: You have the PowerPoint, 15 right. Now do you want to go through the exhibits in the 16 order in which you're going to present them so that we can 17 mark them as exhibits so that we don't have to mark them as 18 we go along, or do you want to mark them as you go along? 19 I'm in your hands. It's your cross-examination. 20 MR NTSEBEZA SC: Well, perhaps let's mark 21 them as we go along, Mr Chairman. 22 CHAIRPERSON: Alright, what's the first 23 one going to be? 24 MR NTSEBEZA SC: Well, I wanted us to 25 paginate the PowerPoint presentation entitled "The death of</p>
<p style="text-align: right;">Page 26100</p> <p>1 MS LE ROUX: Chair, that concludes my 2 cross-examination. 3 CHAIRPERSON: Thank you – 4 MS LE ROUX: Lieutenant-Colonel Vermaak, 5 thank you very much for your assistance. 6 COLONEL VERMAAK: Thank you, Miss. 7 CHAIRPERSON: We will take the lunch 8 adjournment now. We'll try to resume at 2 o'clock. 9 [COMMISSION ADJOURNS COMMISSION RESUMES] 10 [14:07] CHAIRPERSON: The Commission resumes. 11 Lieutenant-Colonel, you're still bound by your affirmation. 12 SALMON JOHANNES VERMAAK: Affirms. 13 CHAIRPERSON: Mr Ntsebeza, you're going 14 to cross-examine now on behalf of the families? 15 MR NTSEBEZA SC: Yes, Mr Chair 16 [Microphone off, inaudible]. 17 CHAIRPERSON: [Microphone off, inaudible] 18 MR NTSEBEZA SC: Thank you, Mr Chairman. 19 CHAIRPERSON: I suppose what I'd said 20 wasn't recorded. The Commission resumes. You're still 21 bound by your affirmation. Mr Ntsebeza. 22 CROSS-EXAMINATION BY MR NTSEBEZA SC: 23 Yes, Mr Chair, let's deal with some housekeeping matters. 24 I just want to check whether the witness does have a bundle 25 of documents which, do you have a bundle, Colonel, of</p>	<p style="text-align: right;">Page 26102</p> <p>1 Mr Sokanyile" – 2 CHAIRPERSON: That will be the first 3 topic you're going to cover in cross-examination? 4 MR NTSEBEZA SC: Yes. 5 CHAIRPERSON: Alright, so we will make 6 that then, we'll make that OOO23. 7 MR NTSEBEZA SC: OOO23. 8 CHAIRPERSON: PowerPoint presentation, 9 "The death of Mr Sokanyile." 10 MR NTSEBEZA SC: Yes. Mr Chairman, could 11 we paginate that entire presentation with that page where 12 you have "The death of Mr Sokanyile" as number 1. 13 CHAIRPERSON: Alright, the front page as 14 always is number 1. It's got 1 at the bottom – they are 15 paginated. Look at the bottom right-hand corner, there are 16 numbers on my copy. 17 MR NTSEBEZA SC: Well, mine didn't have – 18 well – 19 CHAIRPERSON: Well, I'm afraid there's 20 being discrimination against you. 21 MR NTSEBEZA SC: I suspect – 22 CHAIRPERSON: My copy has got, seriously, 23 it's got in the bottom right-hand corner – 24 MR NTSEBEZA SC: Yes. 25 CHAIRPERSON: - it's got page numbers all</p>

<p style="text-align: right;">Page 26103</p> <p>1 the way through to 13.</p> <p>2 MR NTSEBEZA SC: It should actually be</p> <p>3 going up to 25 and 25 would have a heading, "Who shot Mr</p> <p>4 Sokanyile?"</p> <p>5 CHAIRPERSON: "Who shot Mr Sokanyile?" is</p> <p>6 the one that's got 13 in the bottom right-hand corner. Ah,</p> <p>7 Adv Hemraj suggests the answer is there are two slides per</p> <p>8 page and you've got one slide per page, we've got two</p> <p>9 slides per page. That's probably the answer.</p> <p>10 MR NTSEBEZA SC: Okay. Then it's going</p> <p>11 to be – I don't know, I don't know what the witness has.</p> <p>12 CHAIRPERSON: Let's ask him. Have you</p> <p>13 got one slide per page or two slides per page on the</p> <p>14 PowerPoint presentation called "The death of Mr Sokanyile"?</p> <p>15 COLONEL VERMAAK: I've got it. I've got</p> <p>16 it –</p> <p>17 CHAIRPERSON: No, you've got it. Now</p> <p>18 what we want to know from you is have you got one slide per</p> <p>19 page or two?</p> <p>20 COLONEL VERMAAK: One, one slide.</p> <p>21 CHAIRPERSON: No, hang on.</p> <p>22 COLONEL VERMAAK: Ja –</p> <p>23 CHAIRPERSON: Let's take it slowly. "The</p> <p>24 death of Mr Sokanyile" is page 1. It's got that in a</p> <p>25 quadrilateral, as it were, and then below that there's a</p>	<p style="text-align: right;">Page 26105</p> <p>1 Anyway, it's Mr Ntsebeza's cross-examination. He must</p> <p>2 elect how he wants to do it.</p> <p>3 MR NTSEBEZA SC: As long as we'll be</p> <p>4 together every time I –</p> <p>5 CHAIRPERSON: Either we can start with</p> <p>6 that, or we can start with something else in the meanwhile</p> <p>7 and that could be sorted out at teatime. I'm in your</p> <p>8 hands, Mr Ntsebeza.</p> <p>9 MR NTSEBEZA SC: No, Mr Chairman, we'll</p> <p>10 do the presentation. I just wanted also to make sure that</p> <p>11 the Colonel has got statements which I will refer to</p> <p>12 towards the end of the cross-examination, statements which</p> <p>13 he made, and I believe they are all exhibits from what I've</p> <p>14 been told. Yes. Now Colonel –</p> <p>15 CHAIRPERSON: Some of them as far as I</p> <p>16 could see when I read them last night will be new exhibits.</p> <p>17 Some of them are old exhibits, some are new.</p> <p>18 MR NTSEBEZA SC: Some will be new</p> <p>19 exhibits, Mr Chairman. I'm with you there. Now if we</p> <p>20 could just put up just for us to identify what we are</p> <p>21 talking about, if we could just put up exhibit GGG7,</p> <p>22 exhibit GGG7. Oh, it's 17, I'm told. Oh, GGG17.</p> <p>23 CHAIRPERSON: Mr Ntsebeza, I've got news</p> <p>24 for you. We've now been handed fresh copies of the</p> <p>25 documents that we were given yesterday. Now it's one slide</p>
<p style="text-align: right;">Page 26104</p> <p>1 slide, it's a photograph –</p> <p>2 COLONEL VERMAAK: Yes.</p> <p>3 CHAIRPERSON: - and it says, "Mr</p> <p>4 Sokanyile's body was found across the stream," and then at</p> <p>5 the bottom it says "The place of the initial attack."</p> <p>6 COLONEL VERMAAK: That's correct. That</p> <p>7 is what I have.</p> <p>8 CHAIRPERSON: That's also on your page 1?</p> <p>9 COLONEL VERMAAK: That's correct.</p> <p>10 CHAIRPERSON: Alright, and then the</p> <p>11 second page you've got a slide with the heading "Vermaak's</p> <p>12 version," and below that another quadrilateral that says</p> <p>13 "Vermaak's testimony in relation to exhibit 0006."</p> <p>14 COLONEL VERMAAK: That's correct, Chair.</p> <p>15 CHAIRPERSON: Right, so that's on your</p> <p>16 page 2.</p> <p>17 COLONEL VERMAAK: That's correct.</p> <p>18 CHAIRPERSON: That's the way it works –</p> <p>19 MS PILLAY: Chair, if we could just</p> <p>20 indicate, this is a PowerPoint presentation which would</p> <p>21 mean all of us working off the electronic document, each</p> <p>22 slide would be a separate slide. So –</p> <p>23 CHAIRPERSON: Yes, yes. No, I know, but</p> <p>24 we can call them – but seeing the pages are paginated and</p> <p>25 we've got copies, we could call them 2A and 2B and so on.</p>	<p style="text-align: right;">Page 26106</p> <p>1 per page and as you correctly said, these pages aren't</p> <p>2 numbered.</p> <p>3 MR NTSEBEZA SC: Yes.</p> <p>4 CHAIRPERSON: So we will number them as</p> <p>5 we go along, I think.</p> <p>6 MR NTSEBEZA SC: Indeed. We –</p> <p>7 CHAIRPERSON: 1 to 25.</p> <p>8 MR NTSEBEZA SC: We could, yes –</p> <p>9 CHAIRPERSON: But at the moment we've got</p> <p>10 before us, on the screen GGG17 which is this witness's, one</p> <p>11 of his statements.</p> <p>12 MR NTSEBEZA SC: Now Colonel –</p> <p>13 CHAIRPERSON: I just want to check if</p> <p>14 he's got it so I – let's just check. Have you got all the</p> <p>15 statements that have been referred to?</p> <p>16 COLONEL VERMAAK: Ja, I believe so,</p> <p>17 Chair.</p> <p>18 CHAIRPERSON: Alright, so let's start the</p> <p>19 engine and let the car start moving now.</p> <p>20 MR NTSEBEZA SC: Thank you, Mr Chairman.</p> <p>21 Now Colonel, just to confirm GGG17 is a statement which you</p> <p>22 made and signed on the 30th of August 2012. Do you confirm</p> <p>23 that?</p> <p>24 COLONEL VERMAAK: I confirm, Sir.</p> <p>25 MR NTSEBEZA SC: In fact on the, it's a</p>

<p style="text-align: right;">Page 26107</p> <p>1 two-page statement in Afrikaans. On the second page one 2 can see that you purported to be signing the statement at 3 the bottom, "Ek sertifiseer dat die bostaande verklaring 4 deur my afgeneem is." That was deposed to before Mr Botha 5 and at Potchefstroom at 11:40 on the 30th of August 2012. 6 You see that?</p> <p>7 COLONEL VERMAAK: I see that. 8 MR NTSEBEZA SC: Now from my reading of 9 that statement it seems to be exclusively dealing with 10 events that took place on the 16th of August 2012. It 11 starts by saying, "Op Donderdag 16de Augustus 2012." You 12 see that?</p> <p>13 COLONEL VERMAAK: I think then there's 14 the wrong one on the board. That one is from the 13th. 15 MR NTSEBEZA SC: No, that one on the 16 board is clearly not GGG, 1-7. GGG, 1-7 is what I've 17 referred you to. 18 MS PILLAY: Chair, the one being shown is 19 GGG, 1-7. 20 MR NTSEBEZA SC: Yes. Is that right? Is 21 that GGG, 1-7? 22 CHAIRPERSON: Exhibit GGG17 starts off, 23 "Op 2012-8-13," in other words the 13th of August 2012, "was 24 ek aan diens en ontplooi na Lonmin Myn, Marikana, waar daar 25 sedert Vrydag 10 Augustus 2012 onluste was." "On the 13th</p>	<p style="text-align: right;">Page 26109</p> <p>1 the screen; it's not the screen anymore, the events of the 2 13th of August. 3 Then the next statement, which is number 16 in Ms 4 Pillay's bundle, is another statement made on the same day, 5 which starts, "Op Donderdag 16 Augustus was ek aan diens 6 gewees." "On Thursday the 16th of August 2012 I was on 7 duty," and that is the statement which is currently before 8 us on the screen, and that's HHH4. 9 The next one is number 17 in Ms Pillay's bundle. 10 That's the short statement which is HHH5. That was a 11 statement made on the, or certainly attested on the 5th of 12 November 2012 and that deals with the helicopters and the, 13 some were operational and some weren't and dealing with the 14 complaints about the fact that the B105 helicopter wasn't 15 working, and so on. That's HHH5. 16 Then the next one is number 18, which is a 17 handwritten statement, which is exhibit HHH6, and that 18 appears to have been attested, or made actually and 19 attested on the 4th of February 2013. It's intended to be 20 an amplification of the statement he made on the 30th of 21 August, amplifies paragraph 5. It's a short manuscript 22 statement. 23 Then the next one is the final statement I think 24 which she put in, which is number 19 in Ms Pillay's bundle. 25 That's LLL8 and that's the statement effectively I think</p>
<p style="text-align: right;">Page 26108</p> <p>1 of August 2012 I was on duty and deployed to the Lonmin 2 Mine, Marikana, where there had been unrest since Friday 3 the 10th of August." 4 MR NTSEBEZA SC: What I have – 5 CHAIRPERSON: That's what, that's how 6 exhibit GGG17 begins. 7 MR NTSEBEZA SC: Well, I'm sure then 8 there's been a mistake, Mr Chairman, because what I have as 9 GGG, 1-7, 17, is a statement that refers to events on the 10 16th, which I would believe is now HHH4, if Ms Pillay could 11 confirm? There you are, GGG17. 12 MS PILLAY: This exhibit is HHH4, Chair. 13 MR NTSEBEZA SC: No, no, no, this thing 14 is confusing us. If you scroll down you will see up 15 there – 16 CHAIRPERSON: I'm sorry, Mr Ntsebeza, I'm 17 sorry to interrupt you. We were given a bundle of 18 documents by Ms Pillay who led his evidence-in-chief and 19 these documents are numbered and indexed at the front, the 20 table of contents in front, and the exhibit numbers are 21 given. The GGG17 is the document which is number 15 in Ms 22 Pillay's bundle and that's the statement made on the 1st of 23 August 2012 – no, I'm sorry, on the 30th, 30th, I beg your 24 pardon - the 30th of August 2012, and that's the one that 25 begins dealing with, which is on the screen, which was on</p>	<p style="text-align: right;">Page 26110</p> <p>1 from which he was led by Ms Pillay, and that statement was 2 affirmed on the 21st of January this year. 3 MS PILLAY: Chair, there's one further 4 statement, that's OOO8, which was the handwritten statement 5 of the 16th of August. 6 CHAIRPERSON: What number was that in 7 your – oh, I beg your pardon, yes. I missed that. 8 Exhibit, so number 12 in Ms Pillay's bundle was a 9 manuscript statement dated the 16th of August for case 10 docket CAS119/08/2012 and that you say was exhibit? 11 MS PILLAY: OOO8, Chair. 12 CHAIRPERSON: [Microphone off, inaudible] 13 Sorry, I don't think that was on record, but when my 14 microphone was of I went through the statements in the 15 bundle Ms Pillay gave us before she led the witness and 16 there were six statements. One of them is a new statement, 17 OOO8, which is the manuscript statement dated the 16th of 18 August, which was for docket CAS119/08/2012. 19 MR NTSEBEZA SC: Thank you, Mr Chairman. 20 It's just as well that – 21 CHAIRPERSON: Which is the one that you 22 want to cross-examine on? 23 MR NTSEBEZA SC: It will be, it will 24 actually be now, now that we have corrected everything it 25 will GGG, 1-7, the one that starts "Op," that's the one.</p>

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1 Am I right, that statement is GGG, 1-7?
 2 CHAIRPERSON: That's the typewritten
 3 statement of the 30th of August –
 4 MR NTSEBEZA SC: Yes.
 5 CHAIRPERSON: - 2012.
 6 MR NTSEBEZA SC: And I will just mention,
 7 which is what I was indicating to the General, that now
 8 that we have ascertained that the statement that deals with
 9 the events on the 16th of August in the main is HHH4, I just
 10 want to confirm with the Colonel that HHH4 is the statement
 11 which we now have shown up, and that is a statement which
 12 you purported to sign on the 30th of August 2012 in
 13 Potchefstroom at 11:40. Do you confirm that, Colonel?
 14 COLONEL VERMAAK: That's correct, Chair.
 15 [14:27] MR NTSEBEZA SC: And then again, once
 16 again five minutes later on the same day at 11:45 you
 17 appended your signature to what we now know as GGG17, same
 18 day, same place, at 11:45, and that's the statement that
 19 deals largely with the events on the 13th of August 2012.
 20 Do you agree with that, Colonel?
 21 COLONEL VERMAAK: I agree, Chair.
 22 MR NTSEBEZA SC: And then the last
 23 statement in relation to which we will be looking at how
 24 you recall the events, particularly the 13th, will be the
 25 statement that the Chairman has referred to already,

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1 exhibit LLL8, which as the Chairman indicated you signed on
 2 the 21st of January this year and the English translation of
 3 that statement is what you were led on. The English
 4 translation, as I understand it, was done by Mr Mahlangu
 5 and – you see that, Colonel? You haven't seen the
 6 statement?
 7 COLONEL VERMAAK: I haven't seen it
 8 before in the translation format, but in the Afrikaans one,
 9 yes.
 10 MR NTSEBEZA SC: So you haven't – I
 11 believe it is in your bundle, however.
 12 COLONEL VERMAAK: I've got it now, yes,
 13 Sir.
 14 MR NTSEBEZA SC: Yes, when did you get
 15 the bundle?
 16 COLONEL VERMAAK: I think it was on
 17 Tuesday.
 18 MR NTSEBEZA SC: On Tuesday.
 19 COLONEL VERMAAK: Afternoon.
 20 MR NTSEBEZA SC: And did you have the –
 21 are you saying you didn't have this statement in that
 22 bundle? When did you get this English version –
 23 COLONEL VERMAAK: Well, it seems to me
 24 that I missed this statement, Chair. All the documents was
 25 only give me in a parcel.

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1 MR NTSEBEZA SC: So are you saying since
 2 Tuesday you have not really had an opportunity to acquaint
 3 yourself with the contents of the bundle?
 4 COLONEL VERMAAK: I did go through the
 5 statements. I explained that that one I missed.
 6 MR NTSEBEZA SC: Oh, it's only your
 7 statement which you made at the beginning of the year?
 8 COLONEL VERMAAK: Only one, yes. Only
 9 one.
 10 MR NTSEBEZA SC: Ja, that's the only one
 11 that –
 12 COLONEL VERMAAK: That's the only – the
 13 other I did go through.
 14 MR NTSEBEZA SC: And when you said you
 15 missed it, when did you get your sight on it? Right now?
 16 COLONEL VERMAAK: When I sort out the
 17 documents now I saw that statement was with the documents
 18 that I received on Tuesday.
 19 MR NTSEBEZA SC: Oh, I see.
 20 COLONEL VERMAAK: It wasn't in a file and
 21 I put it in the –
 22 MR NTSEBEZA SC: Okay, I think now that
 23 we have identified the statements, I think we may just as
 24 well concentrate, and we will come back to the topic; we'll
 25 just concentrate on the statement which covers the events

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1 of the 13th, which we now know to be what? GGG, 1-7, and
 2 the statement which you made this year, the beginning of
 3 this year in January, which is LLL8. Are we together?
 4 COLONEL VERMAAK: Yes.
 5 MR NTSEBEZA SC: Now you will know from
 6 your bundle, I'm sure you have seen that in the bundle, in
 7 the presentation in the main, which I will ask you to go to
 8 in a while, the presentation deals with several topics.
 9 The first one is about the death of Mr Sokanyile, a person
 10 who – and you'll correct me if I'm wrong – you have
 11 identified in your evidence as the protester in the white
 12 overalls whose body was found across the stream.
 13 COLONEL VERMAAK: That is correct.
 14 MR NTSEBEZA SC: That's correct. Now
 15 let's give him a name now, the protester across – and we
 16 know now who we are talking about; we're talking about Mr
 17 Sokanyile. Now I suppose let's go straight to the Power
 18 presentation, because we would like to take you through the
 19 evidence which you gave in chief relevant to the death of
 20 Mr Sokanyile. Now if we could go to page 2, slide 2 of
 21 exhibit, what's the exhibit number of this?
 22 MR NTSEBEZA SC: Exhibit triple –
 23 CHAIRPERSON: OOO23.
 24 MR NTSEBEZA SC: OOO23.
 25 CHAIRPERSON: And I've paginated my pages

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1 and I take it everybody else has had opportunity to do so.
 2 MR NTSEBEZA SC: Thank you, Mr Chairman.
 3 CHAIRPERSON: Page 2 was [Microphone off,
 4 inaudible] on the screen.
 5 MR NTSEBEZA SC: Yes.
 6 CHAIRPERSON: Which would be a photograph
 7 of – page 2 is what, I paginated my copy of this document.
 8 Page 2 is the one we now see on the screen, which is an
 9 aerial photograph of the area where the main events of the
 10 13th of August took place and at the top of it we see the
 11 words “Mr Sokanyile’s body was found across the stream,”
 12 and at the bottom we see the words, “The place of the
 13 initial attack relative to where Mr Sokanyile’s body was
 14 ultimately found.” So that’s the document you’re busy
 15 with. That’s page 2 of this exhibit.
 16 MR NTSEBEZA SC: Yes, so you see that as
 17 the Chairman has said, the big red circle represents where
 18 the main incident occurred on this day. Do you agree with
 19 that, Colonel?
 20 COLONEL VERMAAK: That’s correct.
 21 MR NTSEBEZA SC: And the other red circle
 22 which is furthest away on the screen, and you will see that
 23 there is a CAS-number, C-A-S, 115/08/2012. That is the
 24 circle where, which is in the approximate area where Mr
 25 Sokanyile’s body was found across the stream. Is that

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1 correct?
 2 COLONEL VERMAAK: That is correct.
 3 MR NTSEBEZA SC: Now your version of
 4 events regarding what happened after your members went in
 5 pursuit of the persons whom you say you saw carrying an R5
 6 rifle and the protester whom you saw in white overalls, now
 7 I just want to clarify one thing before we go to examine
 8 your version. Do I understand you to be saying that there
 9 was one group of SAPS members that pursued these protesters
 10 in the direction of and at the stream, and who shot at
 11 protesters there?
 12 COLONEL VERMAAK: Chair, as I testified
 13 that I saw a person being carried with a white overall in
 14 the direction of the stream. After I visited Warrant-
 15 Officer Monene I get people together and we follow up for
 16 the main purpose to secure a crime scene as I realised that
 17 that person must be either killed or injured during the
 18 clash with the police. During the follow-up there was
 19 being shot at us. As far as my knowledge is we were the
 20 only group of people that was following the person who’s
 21 being carried with the white overall.
 22 MR NTSEBEZA SC: Yes, I would have
 23 thought so. After all, if there were another group that
 24 did so you would have been aware of it. Isn’t that so?
 25 COLONEL VERMAAK: I was not aware of it,

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1 Chair –
 2 MR NTSEBEZA SC: I say you would have
 3 been aware if there was another group.
 4 COLONEL VERMAAK: Ja, if there was –
 5 MR NTSEBEZA SC: Yes.
 6 COLONEL VERMAAK: Not necessarily because
 7 why we land there, I spent some time with Warrant-Officer
 8 Monene. The police were spread over a area, I can say 50
 9 to a hundred metres. There might be a possibility that
 10 people were also following some of the protesters, but I
 11 wasn’t aware of them.
 12 MR NTSEBEZA SC: But since you
 13 participated - which is where you made these statements
 14 from – at Roots, that would have come to your attention and
 15 it also would have been mentioned in exhibit L if there was
 16 another group that pursued those people in the manner in
 17 which your group did.
 18 COLONEL VERMAAK: Chair, not necessarily.
 19 I don’t think all the information was got at Roots.
 20 MR NTSEBEZA SC: You’re not seriously
 21 suggesting that there is another group other than your
 22 group that pursued the protesters on the 13th, about which
 23 nobody has said anything? Are you?
 24 COLONEL VERMAAK: There’s a possibility,
 25 yes.

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1 MR NTSEBEZA SC: Yes, everything is
 2 possible under the sun. I’m simply putting to you that you
 3 are not seriously suggesting to the Commission that if
 4 there was another group that was pursuing these people in
 5 the manner in which you had taken command of the group that
 6 followed them, that would never have been mentioned. There
 7 would have been mention of it either at Roots or in exhibit
 8 L, which was, as you know, a reflection of days and days
 9 and weeks of consultation about what happened, about what
 10 must go into the SAPS presentation. Isn’t that right,
 11 Colonel?
 12 COLONEL VERMAAK: Chair, I can only say
 13 what I know.
 14 MR NTSEBEZA SC: Yes.
 15 COLONEL VERMAAK: And what I know is that
 16 I was the only group according to me and I reported what my
 17 group done. If other people withheld information I cannot
 18 stand in for them.
 19 MR NTSEBEZA SC: Yes, I don’t disagree
 20 with you, Colonel. I actually support your view that there
 21 was only one group, the group that you commanded, and that
 22 it is highly unlikely that if there was another group that
 23 pursued those protesters would not have surfaced by now.
 24 Certainly it would have come out at Roots where all of you
 25 met in Potchefstroom. It would have come up in the

<p style="text-align: right;">Page 26119</p> <p>1 compilation of exhibit L, and nowhere else is there any 2 account of anybody who pursued the group of protesters on 3 that day other than your group. Can we settle on that 4 basis? 5 COLONEL VERMAAK: Yes, Chair, as the same 6 as nobody else reported the second stun grenade that was 7 thrown, that I was also not aware of until today. So I'm, 8 if there was another group it is possible that I wasn't 9 aware of them. 10 MR NTSEBEZA SC: Yes. Now we have put 11 what we wanted to put and we'll argue in the end that all 12 things taken to account, your group was the only group that 13 pursued this group of protesters. Now if you went to slide 14 3, now slide 3 is a photograph that my colleague, my 15 learned friend Adv Pillay admitted as exhibit OOO6 during 16 your evidence-in-chief. You recall that? 17 COLONEL VERMAAK: That's correct, Chair. 18 MR NTSEBEZA SC: Yes, and if we see those 19 arrows, but if you went to, if we all go to page 4, let's 20 just clear what you testified about relevant to OOO6. Now 21 this was your testimony. On day 25 – if you could put that 22 up – T25248, starting from line 21 I think, I want the 23 section, line 9 where you say, "The striker was shooting," 24 in the range from line T25248 to line 21, 25249, what comes 25 out in that evidence is that the striker who was shooting</p>	<p style="text-align: right;">Page 26121</p> <p>1 MR NTSEBEZA SC: And your further 2 evidence was that after the SAPS members shot they went 3 through the stream and saw the body with the white overalls 4 where it is marked on exhibit OOO6. 5 COLONEL VERMAAK: That is correct. 6 [14:47] MR NTSEBEZA SC: Now I would like to 7 engage you in some analysis of the evidence, what has now 8 come to be known as objective evidence where we deal with 9 the body of Mr Sokanyile, where it was found. Now if you 10 went to slide 6, now the small screen is clearer but I'm 11 sure you have become aware that the middle screen sometimes 12 blurs. Now you see the source of those photographs? 13 COLONEL VERMAAK: That's correct, Chair. 14 MR NTSEBEZA SC: It has got nothing to do 15 with Mr Bizos, it's LCRC. 16 COLONEL VERMAAK: That's correct. 17 MR NTSEBEZA SC: Yes. Mr Bizos's 18 organisation is the LRC. Now you will see that that 19 photograph depicts what was found by the LCRC photographer. 20 COLONEL VERMAAK: I did see. 21 MR NTSEBEZA SC: Ja, relative to where 22 the photographer was standing, him or herself, and was 23 taking the photos, you see that? 24 COLONEL VERMAAK: That is correct. 25 MR NTSEBEZA SC: That's where they say</p>
<p style="text-align: right;">Page 26120</p> <p>1 at the SAPS members who were under your command was where 2 the end point of the arrow is, that is now in exhibit, on 3 page 3, slide 3. 4 If we went to slide 3, you talked about arrows 5 and you testified that the striker who was shooting at your 6 members was where the end point of the arrow is. Can we 7 have a clearer vision the – ja. You confirm that? 8 COLONEL VERMAAK: Chairperson, if you 9 refer to "the striker," are you meaning the person in the 10 white overall, or a striker, anybody who was part of the 11 group? 12 MR NTSEBEZA SC: I don't know if you are 13 answering the question. Your evidence was that the striker 14 who was shooting at the SAPS members who were under your 15 command – we'll come to your statement, but we're just 16 dealing with the evidence so far – was where the end point 17 of the arrow is. You were being led by my learned friend 18 Adv Pillay and that was your testimony. Do you confirm 19 your testimony? 20 COLONEL VERMAAK: There was a striker 21 that was shooting from that direction, Chair. 22 MR NTSEBEZA SC: Yes, and your testimony 23 was that the members under your command shot in the 24 direction of the arrow. 25 COLONEL VERMAAK: That is correct, Chair.</p>	<p style="text-align: right;">Page 26122</p> <p>1 point C, position of photographer. Now there are certain 2 landmarks which, on our argument, landmarks in relation to 3 which the position of Mr Sokanyile's body must be 4 determined and I'll come to where you had put his body but 5 let's just look at the landmarks first. If you look to the 6 left of his body – let's start with where the body is. Do 7 you see where it says the body of, the small red circle 8 second from the top of the picture where there is a bigger 9 red circle, the one below the big circle. Do you see it, 10 do you see that? 11 COLONEL VERMAAK: I did. 12 MR NTSEBEZA SC: That's where the 13 photographer, the LCRC photographer locates the body of Mr 14 Sokanyile. Do you see the tree which is indicated on the 15 photographer's photo as a tree, point B a tree? Do you see 16 that? 17 COLONEL VERMAAK: I saw it. 18 MR NTSEBEZA SC: In relation to that tree 19 do you see that the body is to the left of the tree? 20 COLONEL VERMAAK: That's correct. 21 MR NTSEBEZA SC: Now the photographer 22 also picks up another landmark which he or she labels point 23 A. Do you see point A? 24 COLONEL VERMAAK: Yes. 25 MR NTSEBEZA SC: Now those are tree</p>

<p style="text-align: right;">Page 26123</p> <p>1 stumps and a ridge, would you agree? I don't know if this 2 thing can be blown up such that we – 3 COLONEL VERMAAK: On the photo, yes. 4 MR NTSEBEZA SC: Well, you are more 5 acquainted with photos of time scenes than I am, Colonel, 6 so but if you agree with me that's okay. That at A we have 7 got tree stumps and the ridge. Now if you looked in front 8 of his body and towards the centre of the photograph you 9 will see the pathway that crosses the stream. 10 COLONEL VERMAAK: I agree. 11 MR NTSEBEZA SC: And it curves to the 12 right, can you see that? 13 COLONEL VERMAAK: That's correct. 14 MR NTSEBEZA SC: Now slide 7, it becomes, 15 in our submission – we say slide 7 now gives you another 16 view, firstly of the stumps and the ridge, do you see that? 17 COLONEL VERMAAK: Yes. 18 MR NTSEBEZA SC: On the left-hand side 19 where it says point A. 20 COLONEL VERMAAK: That's correct. 21 MR NTSEBEZA SC: And slide 7 also says at 22 point B – you see that tree that I indicated in the 23 previous slide, the tree to the right, point B. Do you 24 confirm that? 25 COLONEL VERMAAK: Yes.</p>	<p style="text-align: right;">Page 26125</p> <p>1 any GPS readings of everything where we found the body. As 2 I remembered, I pointed it out on the photo. So yes, if 3 this is the photo of LCRC where they take the photos of, I 4 take it as the correct ones. 5 MR NTSEBEZA SC: So you were mistaken? 6 I'm not saying you were deliberate, I just want you to say 7 this so that I can persuade the Chairman – 8 COLONEL VERMAAK: Chairperson, to the 9 best of my knowledge after the 18 months, that is where I 10 have marked the body and I make it clear, it might differ 11 but that is how I can remember it. As you show now on the 12 pictures of LCRC, I take it as the correct one. 13 MR NTSEBEZA SC: That's fair enough for 14 me, except that you confirmed what you may have had a view 15 to be the position 18 months ago, you confirmed it last 16 week when you were being led by my learned friend. Now I 17 would like us to look at the weapons that were found on Mr 18 Sokanyile's body. You remember you testified about the 19 panga and whatever else. Now we deal with this on slide 20 10. Now it's common cause and I would hope you would agree 21 with that, that from that photo it does appear that when it 22 was taken, Mr Sokanyile was face down when he was found. 23 COLONEL VERMAAK: That is correct. 24 MR NTSEBEZA SC: If you could turn to 25 slide 11, please? Mr Chairman, I understand that my</p>
<p style="text-align: right;">Page 26124</p> <p>1 MR NTSEBEZA SC: And you can see the 2 pathway that crosses the stream and curves to the right, 3 the same pathway that we referred to with regard to slide 4 6, you see that? 5 COLONEL VERMAAK: I see that. 6 MR NTSEBEZA SC: And as we indicated to 7 you with regard to slide 6, the body where – in other words 8 where Mr Sokanyile was found as we indicated relevant to 9 slide 6 is between the tree which is point B and the stumps 10 and the ridge which is point B, point A. Do you see where 11 we point the position of Mr Sokanyile's body? 12 COLONEL VERMAAK: That is correct. 13 MR NTSEBEZA SC: Now on – we see also 14 where you, in evidence on being led by my learned 15 colleague, my learned friend, had put the body. Do you see 16 where your body is? 17 COLONEL VERMAAK: That is correct. 18 MR NTSEBEZA SC: Yes. Now we hope to be 19 able to get your confirmation when we make the submission 20 that you were mistaken in your evidence-in-chief when you 21 said the body was found where you said it was found. Would 22 you concede that? 23 COLONEL VERMAAK: Chair, I was asked 24 almost 18 months after the incident to point out more or 25 less as I can remember where the body was. I didn't make</p>	<p style="text-align: right;">Page 26126</p> <p>1 clients were alerted that we would be doing this 2 presentation. 3 CHAIRPERSON: I've been asked to adjourn 4 strictly at 3 o'clock for the tea adjournment, so I think 5 we'll take the adjournment now but before we take it let me 6 say that we're seeing photographs of Mr Sokanyile, those 7 members of his family and those loved ones of his who feel 8 that they will be occasioned emotional distress by seeing 9 his picture, his dead body here on the screen, I would 10 advise them not to come back after the adjournment. 11 Perhaps when these pictures are not being shown, someone 12 can go out and tell them that we've finished but we're 13 going to adjourn now but I suggest when we come back, if 14 anyone thinks that he or she will be emotionally upset by 15 these pictures, don't come back until someone comes out and 16 tells you that it's safe to do so. We'll now take the tea 17 adjournment. 18 [COMMISSION ADJOURNS COMMISSION RESUMES] 19 [15:24] CHAIRPERSON: The Commission resumes. 20 Lieutenant-Colonel, you're still bound by your affirmation. 21 SALMON JOHANNES VERMAAK: Affirms. 22 CHAIRPERSON: Mr Ntsebeza. 23 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.): 24 Thank you, Mr Chairman. Now Colonel, we were still dealing 25 with slide number 11 and you agreed with us when we said</p>

<p style="text-align: right;">Page 26127</p> <p>1 that from this photograph it seems clear that Mr Sokanyile 2 was face-down when he was found and the photo was taken. 3 COLONEL VERMAAK: That is correct. 4 MR NTSEBEZA SC: Now I don't know whether 5 it's possible to zoom in to the picture but you will see 6 that there is a stick and a panga underneath Mr Sokanyile's 7 body. You know you can see – 8 COLONEL VERMAAK: I'm familiar with – 9 MR NTSEBEZA SC: Ja, the handle of this 10 thing. Okay, that's the stick and then somewhere there, 11 there is, on the smaller one it's very clear that there is 12 a handle of a panga, that there. 13 COLONEL VERMAAK: That is correct. 14 MR NTSEBEZA SC: Yes. Now it appears 15 also that his left hand is holding the handle of the panga. 16 It needs to be blown up. Maybe let's go to slide 12. 17 There you are. The left hand, you know he's lying face- 18 down, ja left. Left, ja. In fact in this blown-up you can 19 see in the handle that there are two fingers here, four 20 fingers. On the main screen, do you see, Colonel, there 21 are – 22 COLONEL VERMAAK: Yes, no I know. It is 23 clear. 24 MR NTSEBEZA SC: Yes. 25 CHAIRPERSON: [Microphone off, inaudible]</p>	<p style="text-align: right;">Page 26129</p> <p>1 MS PILLAY: Chair, just an objection; 2 that was never the witness's testimony that the weapons 3 were planted in Mr Sokanyile's hand. 4 MR NTSEBEZA SC: My recollection, it's 5 just that I don't have the reference – 6 CHAIRPERSON: Perhaps you can give us the 7 reference to the transcript where that is said by the 8 witness? I don't remember him saying it, I must confess, 9 but neither do Adv Tokota or Adv Hemraj, but if you are 10 correct you'll be borne out by the transcript, so if you 11 can give us the reference we can then – 12 MR NTSEBEZA SC: Chair, yes indeed, can 13 we flag this for now? I would like us to return to it 14 because I – 15 Now the next issue I would like to deal with is, 16 are his wounds. Now Mr Sokanyile was shot once. Are you 17 aware of that? He was shot in the head in his left cheek. 18 COLONEL VERMAAK: That's correct. 19 MR NTSEBEZA SC: And the exit wound was 20 at the right side of the nape of his neck and his spinal 21 cord was injured. You're aware of that? 22 COLONEL VERMAAK: I'm aware. 23 MR NTSEBEZA SC: In fact Dr Perumal, the 24 expert pathologist from the Legal Resources Centre, who is 25 prepared to make available a written report - in fact we</p>
<p style="text-align: right;">Page 26128</p> <p>1 clear on the main screen [inaudible]. 2 MR NTSEBEZA SC: Yes, and the blade of 3 the panga – next slide, slide 13, you confirm that? Can 4 you see that the blade of the panga is protruding to the 5 left of his body? 6 COLONEL VERMAAK: That is correct. 7 MR NTSEBEZA SC: His left arm is under 8 his body. Can you see that? 9 COLONEL VERMAAK: Yes. 10 MR NTSEBEZA SC: Next slide, please. Now 11 we see him in a position that suggests that he was turned 12 over. I would like to assume that that would have been 13 done by the members of the LCRC. You can see that – 14 COLONEL VERMAAK: I notice. 15 MR NTSEBEZA SC: - in this position his 16 left hand can be seen holding the handle of the panga. Can 17 you see that? 18 COLONEL VERMAAK: I can see, ja. 19 MR NTSEBEZA SC: Now I'll come back to 20 this, to the significance of this because I want to deal 21 with the conclusions that we arrived at when we have put 22 all of the evidence in the slides. I would like us to 23 consider his wounds. Now I understood your evidence to 24 have been that your view was that the panga was planted in 25 Mr Sokanyile's hand. Did I hear –</p>	<p style="text-align: right;">Page 26130</p> <p>1 wanted him to make that available today and it turned out 2 that he was still in a trial – he makes three conclusions 3 from these wounds. He says, 1, the bullet would have 4 paralysed Mr Sokanyile immediately. Now assuming as a 5 doctor that is so, you yourself wouldn't disagree with 6 that? 7 COLONEL VERMAAK: Yes, I was informed by 8 the SAPS legal team when I still consult with them. 9 MR NTSEBEZA SC: Yes, but that's what Dr 10 Perumal would say if it came to him producing a report to 11 that effect. He will say that kind of injury which is 12 sustained, spinal cord injured in the manner in which it 13 was by that single bullet, would have paralysed Mr 14 Sokanyile. 15 COLONEL VERMAAK: I accept his word as a 16 special. 17 MR NTSEBEZA SC: Yes, the second point 18 made relative thereto is that Mr Sokanyile would not have 19 lived for longer than three minutes thereafter with that 20 kind of bullet, I mean bullet wound. 21 COLONEL VERMAAK: I accept it. 22 MR NTSEBEZA SC: You accept that? 23 COLONEL VERMAAK: I accept it. 24 MR NTSEBEZA SC: Yes. Now we want to put 25 for your consideration and probable comment that from</p>

<p style="text-align: right;">Page 26131</p> <p>1 everything that we have been told Mr Sokanyile was possibly 2 looking over his left shoulder as he was running away from 3 the pursuing police members when he was shot, if we look at 4 just the evidence of the trajectory of the wounds. It 5 seems to me he was looking backward and he was shot from, 6 people who were shooting at him from behind. Entrance 7 wound is on the cheek and the exit wound to the right and 8 the nape of his neck.</p> <p>9 COLONEL VERMAAK: I cannot really comment 10 on that precisely.</p> <p>11 MR NTSEBEZA SC: You wouldn't deny it. 12 You wouldn't deny it if it was put to you as evidence by an 13 expert. Now what I want to suggest is that having looked 14 at these photos and the evidence being that, from your 15 evidence that when you saw – and we'll come to your 16 statements and your evidence relevant to this – you saw 17 somebody being carried by protesters while fleeing from the 18 police. This is what we want to suggest in connection 19 therewith; that it's highly improbable that these 20 protesters would have carried someone who on the available 21 objective evidence might have been a dead person, for about 22 600 metres whilst fleeing from the police. What would your 23 comment be thereto?</p> <p>24 COLONEL VERMAAK: I agree, if you look at 25 all the circumstances, the way that the body was lying and</p>	<p style="text-align: right;">Page 26133</p> <p>1 showed you slide 7, if we could go back to slide 7 again, 2 we went through several places - and we indicated where it 3 can be found - in your evidence where you testified that 4 you members were at the base of the arrow, at the base of 5 the arrow when they shot in the direction of the arrow. 6 Remember that was your evidence?</p> <p>7 COLONEL VERMAAK: That is correct. 8 MR NTSEBEZA SC: I was here that day. 9 Now we want to explore with reference to slide 20 where we 10 believe – can we get slide 20? 11 [15:44] Now this is a sketch plan by Captain Moshwana. 12 You know Captain Moshwana?</p> <p>13 COLONEL VERMAAK: Yes, I know him. 14 MR NTSEBEZA SC: Captain Moshwana 15 processed the scene. Now you will see that these roundish 16 things are cartridges. Now I never know whether you should 17 say cartridge or cartridge cases, but I'm sure you 18 understand the language that I'm indicating.</p> <p>19 COLONEL VERMAAK: I do. 20 CHAIRPERSON: These must be cartridge 21 cases, as far as I understand. Very few of the cartridges 22 were found. Those that hit people were disintegrated in 23 the body of the person hit.</p> <p>24 MR NTSEBEZA SC: Yes. 25 CHAIRPERSON: I think we can accept that</p>
<p style="text-align: right;">Page 26132</p> <p>1 what was underneath him. I agree that that person could 2 not be the one that we saw that was carrying away what we 3 have identified from the chopper.</p> <p>4 MR NTSEBEZA SC: In fact to agree with 5 you agreeing with me in my suggestion, if as the medical 6 evidence indicates Mr Sokanyile was immediately 7 incapacitated, it seems to us, and we suggest that to you 8 for your comment, it would have been impossible for his 9 left hand to have been tied around the handle of the panga 10 in the manner in which it is indicated, after being carried 11 for a distance of about 620 metres.</p> <p>12 COLONEL VERMAAK: I agreed. 13 MR NTSEBEZA SC: And so to say we would 14 like to get your comment when we do then submit that the 15 only reasonable inference from what we have been saying 16 about this evidence is that Mr Sokanyile was shot and 17 killed at the position where his body was found.</p> <p>18 COLONEL VERMAAK: With the evidence 19 before us I believe it is true.</p> <p>20 MR NTSEBEZA SC: Now we want to explore 21 with you what the objective evidence will tell the 22 Commission as to where Mr Sokanyile in all probability was 23 shot from. Do you follow that? We are going to show where 24 we believe on the strength of the objective evidence, where 25 we believe he was shot from. Now you remember that when I</p>	<p style="text-align: right;">Page 26134</p> <p>1 these are cartridge cases. 2 MR NTSEBEZA SC: Cartridge cases, yes. 3 Now do you see that the majority of these cartridge cases 4 were found – and I don't know, the slide 21 perhaps would 5 show this – you will see that the majority of these 6 cartridge cases were found before the stream, but what is 7 important, it is directly in line with Mr Sokanyile's body.</p> <p>8 CHAIRPERSON: According from what I can 9 see they were all found on the west side of the stream. 10 MR NTSEBEZA SC: Yes. 11 CHAIRPERSON: Whereas Mr Sokanyile's body 12 was found on the eastern side of the stream. 13 MR NTSEBEZA SC: You see where the body 14 is, A? Colonel? You see that, you see where A is? 15 Colonel?</p> <p>16 CHAIRPERSON: Colonel, you're looking at 17 the document – 18 KOLONEL VERMAAK: Ekskuus, sorry. 19 CHAIRPERSON: What Mr Ntsebeza is doing 20 is he's indicating on the screen with the laser where A is. 21 So he just wants to make sure – 22 COLONEL VERMAAK: That is correct. 23 CHAIRPERSON: - you can see it. So you 24 have to say yes so he can carry on to the next question. 25 COLONEL VERMAAK: I apologise for that,</p>

<p style="text-align: right;">Page 26135</p> <p>1 Chair.</p> <p>2 MR NTSEBEZA SC: The body seems to be</p> <p>3 there still. Now what I was putting to you, that it seems</p> <p>4 to us that the majority of the cartridges are found before</p> <p>5 the stream, if we hold that to be the stream. You see</p> <p>6 where I indicate the stream to be?</p> <p>7 COLONEL VERMAAK: I accept that is</p> <p>8 pointed out on the photo.</p> <p>9 MR NTSEBEZA SC: Yes. If you went to the</p> <p>10 next slide it seems clearer – no, no. Ja, it seems clearer</p> <p>11 because that's a photograph that plots where some of the</p> <p>12 cartridges were found and what we are saying is you will</p> <p>13 see that they were before the stream directly in line with</p> <p>14 Mr Sokanyile's body. You see that?</p> <p>15 COLONEL VERMAAK: I see.</p> <p>16 MR NTSEBEZA SC: In other words Mr</p> <p>17 Sokanyile is that other side of – in fact if we went to the</p> <p>18 previous photo, or slide, the body is on that other side,</p> <p>19 there's the stream, here are cartridges. C, D, N, F, E, B.</p> <p>20 COLONEL VERMAAK: I saw that.</p> <p>21 MR NTSEBEZA SC: Yes. Now the slide with</p> <p>22 the red circles, you see Mr Sokanyile's body in the red</p> <p>23 circle, that's the –</p> <p>24 COLONEL VERMAAK: Yes.</p> <p>25 MR NTSEBEZA SC: Now behind his body in a</p>	<p style="text-align: right;">Page 26137</p> <p>1 what day it was. That's the simple answer, isn't it?</p> <p>2 MR NTSEBEZA SC: Lines 9 to 11.</p> <p>3 CHAIRPERSON: [Microphone off, inaudible]</p> <p>4 looking for page 645. Am I right, Mr Ntsebeza, you're</p> <p>5 looking for page 645?</p> <p>6 MR NTSEBEZA SC: Yes. Yes, yes.</p> <p>7 CHAIRPERSON: Not 745, 645.</p> <p>8 MR NTSEBEZA SC: I'm looking for the</p> <p>9 evidence where Captain Moshwana testifies that the</p> <p>10 cartridges were about 74,4 metres away from Mr Sokanyile's</p> <p>11 body.</p> <p>12 CHAIRPERSON: What day –</p> <p>13 MR NTSEBEZA SC: Here we are.</p> <p>14 CHAIRPERSON: Now the next question; what</p> <p>15 day is that?</p> <p>16 MR NTSEBEZA SC: I believe it's day 6.</p> <p>17 CHAIRPERSON: Do we have to spend time on</p> <p>18 what day it was? Can't we discover it subsequently? As</p> <p>19 long as it's page 645, lines 9 to 12, then everyone should</p> <p>20 be happy, and whether it's day 6 or day 7 is a matter of no</p> <p>21 importance to anybody and I don't propose dealing with it</p> <p>22 in the report, not covered by the terms of reference.</p> <p>23 MR NTSEBEZA SC: I'm in your hands, Mr</p> <p>24 Chairman. As long as we have located – do you see where</p> <p>25 Captain Moshwana testifies that the cartridges were 74, -</p>
<p style="text-align: right;">Page 26136</p> <p>1 line you'll see the bigger circle, daai een.</p> <p>2 COLONEL VERMAAK: Dis korrek.</p> <p>3 MR NTSEBEZA SC: Now that is in an</p> <p>4 approximate area the place where these cartridges were</p> <p>5 found, if you compare that with the previous picture.</p> <p>6 COLONEL VERMAAK: I agree with that.</p> <p>7 MR NTSEBEZA SC: Now we know from</p> <p>8 evidence –</p> <p>9 MS PILLAY: Chair, if I could just</p> <p>10 indicate, I think in fairness to the witness Mr Ntsebeza</p> <p>11 should put to the witness all of the cartridges which</p> <p>12 Captain Moshwana found and which is depicted on the diagram</p> <p>13 which is attached to his affidavit.</p> <p>14 MR NTSEBEZA SC: We'll take it step by</p> <p>15 step, Mr Chairman. I can assure the Commissioner and my</p> <p>16 learned colleague that all will be revealed.</p> <p>17 CHAIRPERSON: That's something to look</p> <p>18 forward to.</p> <p>19 MR NTSEBEZA SC: Now let's just in fact</p> <p>20 in keeping with my learned friend's request, set the scene</p> <p>21 by firstly referring to the testimony of Captain Moshwana</p> <p>22 who drew these sketches. On day 6, T645, can we have this</p> <p>23 evidence shown now so that we can settle this thing once</p> <p>24 and for all, where it's day 6 or day 7. Day 6, T645 –</p> <p>25 CHAIRPERSON: Look at page 645 and see</p>	<p style="text-align: right;">Page 26138</p> <p>1 there it is. First of all he says, he doesn't say Mr</p> <p>2 Sokanyile but we know from several indications, he says</p> <p>3 "the body across the stream, CAS115/8/2012." Now we have</p> <p>4 established that that is the CAS-number that deals with Mr</p> <p>5 Sokanyile, isn't it? The person who was shot across the</p> <p>6 river.</p> <p>7 COLONEL VERMAAK: I accept.</p> <p>8 MR NTSEBEZA SC: Yes. Now I want to</p> <p>9 suggest that if you went to slide 20 we will – let's go to</p> <p>10 slide 23 in fact. Now your testimony which I was testing</p> <p>11 you on relative to slide 7, remember when we did slide 7 we</p> <p>12 showed where you had testified your SAPS members to have</p> <p>13 been at and the direction in which you were shooting and</p> <p>14 all of that. Now I want to put this to you; firstly there</p> <p>15 were no cartridges that were – or cartridge cases that were</p> <p>16 found at the point where you said your members were</p> <p>17 shooting from.</p> <p>18 MS PILLAY: Chair, if I may just</p> <p>19 indicate, if I understand the basis of this question and if</p> <p>20 the basis is this picture that's being shown now, may I</p> <p>21 record that that doesn't completely depict what Captain</p> <p>22 Moshwana sets out in the annexure to his affidavit in</p> <p>23 relation to the placement of the cartridges?</p> <p>24 COMMISSIONER HEMRAJ: Yes, because</p> <p>25 there's a second area of cartridges that was found</p>

1 according to his affidavit.

2 MS PILLAY: That's correct, Commissioner

3 Hemraj.

4 COMMISSIONER HEMRAJ: It's in that second

5 area that one rifle cartridge case was found.

6 MS PILLAY: That's correct.

7 COMMISSIONER HEMRAJ: These as I

8 understand are all 9mm cartridges.

9 MS PILLAY: They're 9mm cartridges,

10 that's correct.

11 MR NTSEBEZA SC: I don't know if –

12 CHAIRPERSON: Sorry, Mr Ntsebeza. It

13 doesn't appear clear from the post mortem report whether

14 the gunshot injury that was described as having caused the

15 death was one that could have been caused by a 9mm

16 projectile or by a projectile fired from a rifle.

17 MR NTSEBEZA SC: Mr Chair, I would hope

18 that my learned friend can trust me. I'm very much aware

19 of the evidence that she believes is being excluded. We

20 know that Mr Moshwana came for a second time and he found

21 three cartridge cases. He doesn't say where it was found.

22 We are going to try and indicate that those cartridge cases

23 would have been found in the area where the remainder of

24 the cartridge cases – and we'll show by reference to the

25 kind of evidence that she is indicating that these

1 cartridge cases came from the same firearms, or more or

2 less the same firearms as were involved.

3 CHAIRPERSON: Mr Ntsebeza, the forensic

4 statements that were actually handed to us, which we'll

5 have to give an exhibit number to tomorrow, which is made

6 by Captain Moshwana says in paragraph 4 that on the 13th of

7 August at about 16:31 he went to donker bush Marikana for

8 photographic and forensic investigation and he collected a

9 number of exhibits. There are six 9mm cartridge cases

10 which he describes as exhibits B to G. There are another

11 seven 9mm cartridge cases which he describes as exhibits I

12 to O, and there's one rifle cartridge case which he

13 describes as exhibit H, and all those - and there were

14 other things as well – all those were collected, he says,

15 during his visit which commenced at 16:31 on the 13th of

16 August. So I think that what you put isn't entirely

17 correct, but let's resume that debate on the morrow. It's

18 now 4 o'clock and we will adjourn now until tomorrow

19 morning at 9 o'clock or as soon thereafter as we can get

20 everybody together.

21 MR NTSEBEZA SC: Thank you, Mr Chairman.

22 [COMMISSION ADJOURNED]

23 .

24 .

25 .

A	ADJOURNED			
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