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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

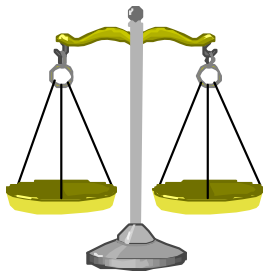
THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 212

4 APRIL 2014

PAGES 26141 TO 26211



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| <p style="text-align: right;">Page 26141</p> <p>1 [PROCEEDINGS ON 4 APRIL 2014] 2 [09:45] CHAIRPERSON: The Commission resumes. We 3 were informed that Mr Ntsebeza and his team were doing 4 extra work so that they could shorten the cross-examination 5 and finish by 1 o'clock today – half past 12? Half past 6 12. We're losing half an hour just at the blink of an 7 eyelid. And so that's why we have come in late, and I 8 trust the time was usefully employed by Mr Ntsebeza and his 9 team and we will be able to see the benefits of it quite 10 soon. Lieutenant-Colonel, you're still bound by the 11 affirmation that you made. 12 SALMON JOHANNES VERMAAK: Thank you, 13 Chair. 14 CHAIRPERSON: Mr Ntsebeza. 15 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.): 16 Thank you, Mr Chairman. Thanks for the indulgence, Mr 17 Chairman. I would hope that we will shorten the 18 proceedings today and I will start, Colonel, where we ended 19 yesterday, just so that in order for us to speed up to the 20 end we don't get objections on the basis that we are 21 putting things to you that have not been put either in 22 chief or during the course of your evidence. 23 I want to deal with two things in that context. 24 The first one is the evidence-in-chief that you gave 25 relevant to the panga which my learned colleague and my</p> | <p style="text-align: right;">Page 26143</p> <p>1 the person who took the photograph, but either the person 2 who took the photograph or someone else put the panga into 3 his hand before the photograph was taken?" You see that? 4 COLONEL VERMAAK: That's correct, 5 Chairperson. 6 MR NTSEBEZA SC: Ja, "Voorsitter ja, ek 7 sien – ek moet aanneem dit is moontlik, of dit kan so wees 8 want die foto wat ek geneem het –" 9 CHAIRPERSON: That says, "Chairman yes, I 10 see – I must accept it is possible, or it can be so because 11 the photo which I took," and then I interrupted but I 12 didn't turn my microphone on, as I often fail to do, and 13 then the witness then said, "It can't be anything else. 14 The picture which I" – I think I must have asked can it 15 anything else. He said, "It can't be anything else. The 16 picture which I," and then I said, "I understand you say 17 that when you took your photograph," and the witness then 18 said, "It's correct." 19 MR NTSEBEZA SC: Yes, thank you, Mr 20 Chairman. So that was the evidence – 21 CHAIRPERSON: It's a bit incoherent but I 22 think it's quite clear really what he meant. 23 MR NTSEBEZA SC: Yes. So that was the 24 evidence-in-chief and we said to you relevant to what we 25 demonstrated by slides 14 to 15, if we could put those up,</p> |
| <p style="text-align: right;">Page 26142</p> <p>1 learned friend Ms Pillay contested yesterday as to whether 2 it was your evidence. 3 The second issue that I want to deal with is all 4 the cartridges that were found and which we are saying were 5 found in more or less the same area, and that would include 6 those found by the same captain on a later visit, the 7 second visit, during which he also invoked the aid of metal 8 detectors. 9 So let's then look at what your evidence was in 10 chief relevant to the panga, and that evidence will be 11 found in lines 3 to 23 on pages 25264 to 25265, if we could 12 have that evidence up on the screen, please, to the extent 13 that the Chair will not object to me saying day 205, but – 14 CHAIRPERSON: I'm not in an objectionable 15 mood this morning, Mr Ntsebeza. 16 MR NTSEBEZA SC: Thank you, Mr Chairman. 17 But the lines really are 25264, line 3 and 25265, line 3. 18 25264, day 205, line 3. 19 CHAIRPERSON: We've got the page now 20 finally on the screen. What line are you referring to, Mr 21 Ntsebeza? 22 MR NTSEBEZA SC: Line 3, Mr Chairman. 23 Then we'll read until we get to, it's with the Chairman at 24 line 11 asking the question, "So whoever took that 25 photograph, which is part of exhibit L, or not necessarily</p> | <p style="text-align: right;">Page 26144</p> <p>1 but I mean we have been down this path. It's where we are 2 demonstrating in the way the body was found and particular 3 in the way in which his left hand was still clasping the 4 handle of the panga, that it is highly improbable that the 5 panga could have been put in his hand. Do you recall that 6 we put that to you yesterday? 7 COLONEL VERMAAK: I recall it. 8 MR NTSEBEZA SC: We still put it to you. 9 Would you agree? The probability, would you agree with us 10 that it is highly unlikely that that panga, given the 11 manner in which the handle is still handled by the 12 deceased, Mr Sokanyile, it is highly unlikely that it was 13 put into his hand. Do you agree with that? 14 CHAIRPERSON: But isn't it likely that if 15 he was rolled over that it would have fallen out of his 16 hand, even if it had been in his hand when he was faced 17 downwards, and so somebody must have actually put it back 18 in his hand before the photograph was taken? Isn't that 19 right? 20 MR NTSEBEZA SC: He's lying on it, so 21 he's rolled – yes. 22 CHAIRPERSON: In fact if you turn him 23 around, it isn't stuck to his hand by glue, is it? How is 24 it going to still be in his hand, unless he goes into rigor 25 mortis or something, which isn't the case.</p> |

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| <p style="text-align: right;">Page 26145</p> <p>1 MR NTSEBEZA SC: That's exactly the 2 point, Mr Chairman. If that should be read and understood 3 with what we have been saying, that on the evidence – 4 CHAIRPERSON: Sorry to interrupt you. 5 Adv Hemraj points out that on the ground when he was face 6 downwards the blade was facing the other way, so someone 7 has picked up that panga and arranged it nicely so that the 8 photograph can be taken of it in his hand, which is not 9 acceptable conduct as far as I'm concerned. 10 MR NTSEBEZA SC: Yes. That's why I was 11 saying, Mr Chairman, that must be read with what we had put 12 to the witness and that is the unlikelihood of this witness 13 having been shot 600 metres away from the place and that he 14 could have been clasp – 15 CHAIRPERSON: Mr Ntsebeza, I'm sorry, I 16 don't want to interrupt you. I thought that you'd actually 17 achieved that in your cross-examination yesterday and I 18 hope you're not trying to undo what you did yesterday. 19 MR NTSEBEZA SC: Yes. 20 CHAIRPERSON: What you put to the witness 21 yesterday, if I can summarise it shortly as I understand 22 it, so if I've got it wrong you can correct me; this 23 witness had been under the impression that one of the 24 strikers who was wearing a white overall had been injured 25 and was being carried by his colleagues across the stream</p> | <p style="text-align: right;">Page 26147</p> <p>1 visit by Captain Moshwana. Mr Chairman, in the bundle of 2 the list of documents which the families was wanting to 3 rely on, can we deal with new exhibits which will be 4 relevant to this line of cross-examination. Firstly there 5 is the affidavit, the first affidavit, or the affidavit by 6 Captain Moshwana dated the 14th of October 2012. It is in 7 the bundle, I believe. You have it? 8 CHAIRPERSON: [Microphone off, inaudible] 9 what was that? 10 MR NTSEBEZA SC: It's a – 11 CHAIRPERSON: I've got an affidavit of 12 the 1st of April [Microphone off, inaudible]. What's the 13 next exhibit number? I left my copy in chambers, but it 14 doesn't matter, Adv Hemraj has brought her. Ms Pillay with 15 her usual diligence in this matter will tell me the next 16 exhibit number. 17 MS PILLAY: Chair, the next number if 18 OOO24. 19 CHAIRPERSON: The affidavit by Captain 20 Moshwana dated the 14th of October 2012 is marked exhibit 21 OOO24. 22 MR NTSEBEZA SC: Now Mr Chairman, we may 23 just as well give the following document its exhibit 24 number, which we'll get to when we do the cross-examination 25 around the issue of cartridges. It's a document which was</p> |
| <p style="text-align: right;">Page 26146</p> <p>1 and he thought – I think it's clear from his evidence – 2 that it was this, it was Mr Sokanyile whose dead body was 3 found on the other side of the stream. You then pointed 4 out to him a number of factors which tended to indicate 5 that that couldn't be right because he must have died 6 instantly, or almost instantly, besides which he had this 7 panga in his hand, he clearly even when he was lying face- 8 down had the panga in his hand, so it's highly unlikely 9 that he'd been carried, carrying his panga. So all the 10 circumstances point to him having been killed instantly at 11 the scene and not having been carried there, and the 12 witness as I understood it, agreed with that and he said 13 well, it must have been someone else who was being carried. 14 So I thought that was what you'd achieved in cross- 15 examination yesterday. If of course you didn't want to 16 achieve it or you want to have a go at undoing it, well 17 then be my guest. 18 MR NTSEBEZA SC: Mr Chairman knows me 19 well enough that I wouldn't like to undo it, and thank you 20 very much, Mr Chairman. I think that's a very good 21 summation of what we will argue in the end and we can then 22 move on, bearing in mind time. 23 Now the next topic I would like to deal with, 24 Colonel, is what – it pertains to the cartridges, all the 25 cartridges, including those which were found on a later</p> | <p style="text-align: right;">Page 26148</p> <p>1 compiled by Captain Moshwana which is entitled "Plans, 2 keys, photographs, and sworn statements, Marikana CAS115," 3 the same CAS-number we've been referring to, "/8, dated 4 March 31, 2014." 5 CHAIRPERSON: Very well, we'll call that 6 OOO [Microphone off, inaudible]. This is the document 7 dated the 1st of April 2014 headed "Supply of plans, keys, 8 photographs, and sworn statements, Marikana CAS115- 9 117/08/2012." Is that the document? 10 MR NTSEBEZA SC: Yes. 11 CHAIRPERSON: Ja, okay. Let's make that 12 OOO25 and then as we go along we'll paginate the numbers so 13 we will, it's quite a bulky document. 14 MR NTSEBEZA SC: Yes, Mr – 15 CHAIRPERSON: It's got a whole lot of 16 photographs. Shall we quietly paginate our copies now and 17 then we'll proceed more smoothly after that. Shall we do 18 that? Would you like to do that, Mr Ntsebeza? 19 MR NTSEBEZA SC: Yes, Mr Chairman. 20 CHAIRPERSON: Let's do that. 21 MR NTSEBEZA SC: Thank you. Now you have 22 – or sorry, sorry Mr Chairman. 23 CHAIRPERSON: [Microphone off, inaudible] 24 at paginating than I am. While we're busy doing that, my 25 understanding is that you talk about a cartridge which</p> |

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1 contains both the cartridge case and the projectile, and
 2 then when the projectile is no longer in the cartridge case
 3 one talks about a spent cartridge. The trouble is we in
 4 South Africa are so used to using the word "doppie" that we
 5 never use the expression "spent cartridge," but I give you
 6 permission to use the word "doppie" if you want to. I have
 7 23 pages. I hope that coincides with everybody else.
 8 Right, Mr Ntsebeza, your junior has paginated your copies
 9 for you?
 10 MR NTSEBEZA SC: Yes, they are, Mr
 11 Chairman.
 12 CHAIRPERSON: Right, so can we proceed?
 13 MR NTSEBEZA SC: Yes.
 14 CHAIRPERSON: Has the witness paginated
 15 his copy? He has?
 16 COLONEL VERMAAK: I have.
 17 CHAIRPERSON: He has. So right, so we're
 18 now ready for you to launch your next projectile in the
 19 cross-examination.
 20 MR NTSEBEZA SC: I hope I don't leave any
 21 "doppies." Thank you, Mr Chairman. Now Colonel, if we
 22 could turn to slide 23, just to re-orientate ourselves, of
 23 the presentation. Now do you see the red circle which we
 24 say indicates the area where the "doppies" were found?
 25 COLONEL VERMAAK: Yes.

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1 MR NTSEBEZA SC: Now in relation thereto
 2 I would like us to go to the document "Plans, photographs,"
 3 etcetera, the one that we have just made an exhibit.
 4 CHAIRPERSON: OOO25, page?
 5 MR NTSEBEZA SC: OOO25, what page is it?
 6 CHAIRPERSON: Page?
 7 MR NTSEBEZA SC: Mr Chairman, I'm just
 8 being guided –
 9 CHAIRPERSON: It's got a number of
 10 photographs as well, so you –
 11 MR NTSEBEZA SC: Page 6. It's headed
 12 "Measurements."
 13 CHAIRPERSON: Yes.
 14 MR NTSEBEZA SC: You see that?
 15 COLONEL VERMAAK: Yes.
 16 MR NTSEBEZA SC: It is the measurements
 17 made by Captain between the points, including the "doppie."
 18 Now if you went back then to slide 21, slide 21 of the
 19 presentation, there you are, photo number 17. We will have
 20 to be a bit gymnastic because we will be referring to slide
 21 20, we are now on 21, relevant to page 6 of exhibit OOO25.
 22 If it's not too confusing for you, Colonel. In other words
 23 we'll be going between the sketch plan and the photograph
 24 as well as what the captain says the photograph depicts.
 25 [10:05] COLONEL VERMAAK: I accept it.

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1 MR NTSEBEZA SC: Yes. The good thing
 2 about it is that you are on familiar grounds. You know
 3 what kind of, sort of how these photos are interpreted and
 4 because of your experience of securing crime scenes like,
 5 including this one. Now if we looked at what Captain
 6 Moshwana says relevant to point B to C, he says point B to
 7 C is 2,4 metres. You see that?
 8 COLONEL VERMAAK: Yes.
 9 MR NTSEBEZA SC: As a distance. Now you
 10 can see where point B is at on page 21 of the presentation
 11 and you can see where C is on page 25. That's the distance
 12 that is indicated as 2,4 metres. You see that?
 13 COLONEL VERMAAK: I do.
 14 MR NTSEBEZA SC: Now whilst we're on that
 15 page we'll see where N is, which is to the right of C, and
 16 the distance between B and N would be approximately not
 17 more than 3,5 metres. Would you agree with that as an
 18 intelligent guess?
 19 COLONEL VERMAAK: I will accept it.
 20 MR NTSEBEZA SC: Yes, now we now know
 21 that N on the sketch plan relevant to I is four and a half
 22 metres long. N to I, if you look on the sketch plan on
 23 page 6 of the sketch plan, you see N to I, 4,6 metres. You
 24 see that? No, no, sketch plan.
 25 COLONEL VERMAAK: Yes.

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1 MR NTSEBEZA SC: Sketch plan.
 2 Measurements, where it says measurements. Daar staan hy.
 3 Yes. Now B, N and I, if we go to the photographs and even
 4 the sketch plan – sketch plan, yes, sketch plan, you see in
 5 the sketch plan, page 20 of the presentation, B, N and I,
 6 they are in a straight line. You see that? Do you see
 7 where N is?
 8 COLONEL VERMAAK: Yes.
 9 MR NTSEBEZA SC: B, N and I are in a
 10 straight line.
 11 COLONEL VERMAAK: I saw it.
 12 MR NTSEBEZA SC: And an intelligent guess
 13 would therefore be that B to I is approximately seven and a
 14 half to eight metres, B to I. You see where B is, you see
 15 where I is.
 16 COLONEL VERMAAK: Yes.
 17 MR NTSEBEZA SC: Would you accept – we
 18 are trying to sort of in the end find what the diameter is
 19 of this range of photographs. The circle as well as what
 20 would be an approximate diameter, but the measurement now
 21 is between B to I and I would estimate it on the
 22 configurations to be seven and a half to eight metres. Are
 23 you happy with that?
 24 COLONEL VERMAAK: I am.
 25 MR NTSEBEZA SC: Now I want to put the

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1 proposition that I to J should be about, the estimation
 2 should be about two metres, 1,9 metres.
 3 CHAIRPERSON: Mr Ntsebeza, if you want to
 4 know what I to J is you don't have to estimate. Look at
 5 page 6 of OOO25 and you'll find the answer. It's 1.9
 6 metres.
 7 MR NTSEBEZA SC: Indeed, Mr Chairman. My
 8 juniors have been able to point that out to me that
 9 actually there is some support for that. J to K, same –
 10 well, not same measurements, 0,9, if one looks at page 6 of
 11 OOO25. You see that, Captain? I mean - how can I demote
 12 you? - Colonel.
 13 COLONEL VERMAAK: Yes.
 14 MR NTSEBEZA SC: And K to L is 2,4
 15 metres.
 16 COLONEL VERMAAK: That's correct.
 17 MR NTSEBEZA SC: And all of that gives
 18 you a total of 5,2 metres. Those distances put together
 19 gives you, quick arithmetic, gives you a total of 5,2
 20 metres, but together.
 21 COLONEL VERMAAK: I accept that.
 22 MR NTSEBEZA SC: Yes. Now would you be
 23 comfortable with a suggestion that I put to you now that
 24 the diameter, in other words when you have a circle the
 25 diameter is the line that comes from side to side, the

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1 diameter of the whole would be 12,5 to 13 metres? Whereas
 2 if we drew a straight line from B to L we would have, and
 3 we said that was the diameter, we would have a circle of
 4 12,5 to 13 metres. Would that –
 5 COLONEL VERMAAK: I didn't work it out,
 6 but I will take your word for that.
 7 MR NTSEBEZA SC: I'll be happy with that.
 8 So we are therefore, on your response to my proposition we
 9 will argue that our estimation therefore of the diameter is
 10 about 12, on the outside 13 metres. Now this is the area
 11 where all the "doppies" were found. Now I put it to you on
 12 Captain Moshwana, including his evidence of what was found
 13 when he went back, in fact I want us to go to that
 14 affidavit. I don't know, Mr Chairman, whether we gave it
 15 an exhibit number. The sketch plan to that affidavit, I
 16 don't know whether it's the one that is triple – the sketch
 17 plan on, is it OOO24, does it have a number?
 18 CHAIRPERSON: Adv Hemraj points out to me
 19 that the statement which is Captain Moshwana's statement
 20 has attached to it a copy of the same sketch plan as the
 21 one we've been looking at already, so we don't have to mark
 22 it again. One copy is enough.
 23 MR NTSEBEZA SC: No, there are additional
 24 cartridges. That's the ghost we want to exorcise. In this
 25 reference we, and that was more or less the bone of

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1 contention also –
 2 CHAIRPERSON: No, you're quite right.
 3 There's an extra R and S.
 4 MR NTSEBEZA SC: Yes.
 5 CHAIRPERSON: And a Q.
 6 MR NTSEBEZA SC: It's in response to –
 7 CHAIRPERSON: Q, S, R. Is that right?
 8 MR NTSEBEZA SC: Exactly, Mr Chairman.
 9 CHAIRPERSON: Alright, so you want that
 10 one in then. Alright, so that will be OOO – let's make his
 11 statement and the new plan with the extra spent cartridges
 12 on it OOO26.
 13 MR NTSEBEZA SC: Now, Colonel, if you
 14 look at what is on the screen now you'll see Q and you'll
 15 see R and you'll see S; Q, R, S. You see that?
 16 COLONEL VERMAAK: Yes.
 17 MR NTSEBEZA SC: Ja, now those are the
 18 additional "doppies" which were not indicated as we were
 19 leading you yesterday and which we kept on saying all in
 20 good time we will get there. Now we've got there. But the
 21 point I want to make here is that you can see all of these
 22 "doppies," including the ones that Captain Moshwana found
 23 on a later visit, this time with him assisted by the aid,
 24 in terms of his affidavit, of an metal detector. All of
 25 these "doppies" are in the same range within the circle

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1 which we have agreed with you is, if we want to give a
 2 range, 12, 13 metres. We can give you 14. Do you agree to
 3 that?
 4 COLONEL VERMAAK: I saw it.
 5 MR NTSEBEZA SC: Yes. The conclusion
 6 which we want to draw, and I think which you will support
 7 in the line of your responses, is therefore that these
 8 "doppies" are not in two different locations; they're in
 9 one location, almal van hulle. All of them. Do you agree?
 10 COLONEL VERMAAK: Chairperson, I observe
 11 that there's a lot of 9mm "doppies" there.
 12 MR NTSEBEZA SC: Yes.
 13 COLONEL VERMAAK: When I was there, there
 14 was one person who was shooting with a R5.
 15 MR NTSEBEZA SC: All in good time –
 16 COLONEL VERMAAK: So all the other
 17 "doppies" I cannot stand in for because why as far as I
 18 know the people who were with me was firing with a R5.
 19 MR NTSEBEZA SC: All in good time. We'll
 20 get there. We just want you to relax, as we would like
 21 everybody else to, that we are not putting anything to you
 22 that is a trap or something that we have not provided for
 23 in this presentation. So there are no trick questions.
 24 But can we confirm on the basis of Captain Moshwana's
 25 sketch plan that all the "doppies" for which he is

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1 accounting are in one location?
 2 COLONEL VERMAAK: They're on one
 3 location, yes.
 4 MR NTSEBEZA SC: That's good enough for
 5 us. Now there may have been a contention yesterday, if we
 6 go to slide 23, now slide 23, I'm just trying to gather my
 7 own thoughts now, you see the position of the red circles.
 8 COLONEL VERMAAK: Yes.
 9 MR NTSEBEZA SC: On the basis of this
 10 exercise from which we have just emerged can I put to you
 11 that the position and size of the red circle where it has
 12 the legend "the position of the cartridges," can we put it
 13 to you on the basis of what we have just demonstrated that
 14 that position is approximately – and I don't want to put it
 15 any higher than that – it's approximately correct?
 16 COLONEL VERMAAK: Yes.
 17 MR NTSEBEZA SC: I won't say, in fact it
 18 seems to me that it's too small, but anyway you remember I
 19 said we can make it 14 metres, and can I then make the
 20 suggestion, which I will argue that this is yet another
 21 demonstration that all of these "doppies" were found at the
 22 scene and were found at this position which we indicate
 23 there, which is the correct position, or the approximate
 24 correct position. Would you agree with that?
 25 COLONEL VERMAAK: Chair, I haven't got a

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1 problem with Captain Moshwana's sketch plan, so if it is
 2 according to him the position I agree to that.
 3 MR NTSEBEZA SC: That would be
 4 sufficient. Now what I want to put to you, because that's
 5 what we will argue if there is a contest about it, is that
 6 given your evidence-in-chief you see where you have on that
 7 sketch plan, as well – I mean on that slide, as well I
 8 think it was slide 7 where we started, you put your SAP
 9 members at a particular position relevant to that small, I
 10 mean relevant to that big circle. Now I know what you said
 11 about 18 months and all of that, but going only on what we
 12 have there and knowing now, as we do, that there was not
 13 only one visit but a second visit by Captain Moshwana to
 14 the crime scene which you on the 13th had ordered one of
 15 your members to secure, you recall that.
 16 [10:24] Now, there were, what I want to put to
 17 you is that at that place where you indicate is the
 18 position where your members were when they shot, after
 19 allegedly being shot at by the fleeing workers no
 20 cartridges were found at that position. Would you agree
 21 with that?
 22 COLONEL VERMAAK: There's only thing
 23 about your statement, Chair, you mentioned members that was
 24 shooting, I testified that there was one member shooting
 25 with a R5 and I also said that is just more or less the

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1 direction that I could remember we were at that stage. The
 2 exact where we were standing I can truly not give it to
 3 you.
 4 CHAIRPERSON: Colonel, if you go back to
 5 page 20 of the presentation, the sketch plan, that's the
 6 original plan, one sees that point H is a spent rifle
 7 cartridges, all the others are spent 9 millimetre
 8 cartridges. And so would it be a fair summary of the
 9 inference to what you're telling us today, in the light of
 10 what Mr Ntsebeza has put to you, is that when you tried to
 11 indicate it in your evidence in chief where your people,
 12 who the people who were with you were, you actually got it
 13 wrong. That you indicated on for example, slide 7 of the
 14 presentation a position which we've seen several times on
 15 the screen, which is different from the position where this
 16 circle is and all the spent cartridges were found. Would
 17 you concede now, in the light of what's been put to you,
 18 what you've been shown you, that you made a mistake and
 19 that you in fact should have said and you would have said
 20 if you'd been aware of what's being put to you that your
 21 people were standing and were firing from that red circular
 22 section which we've seen in the photograph? Is that fair?
 23 COLONEL VERMAAK: Chair, I remember why I
 24 said it was more or less that point that I've indicated, it
 25 was next to that informal house standing alone, one side

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1 and that is why I could identify it more or less where we
 2 were standing when the members shoot back with the R5.
 3 CHAIRPERSON: Does that mean that you
 4 stay with what you pointed out.
 5 COLONEL VERMAAK: That's correct, Chair.
 6 CHAIRPERSON: You say that any shooting
 7 was done from the place where all the spent cartridges were
 8 found must have been done by other people in your absence.
 9 COLONEL VERMAAK: That's correct, they
 10 were not with me for sure.
 11 CHAIRPERSON: And it would appear, it
 12 flows from fact, from what we've heard, that Captain
 13 Moshwana then didn't find any cartridges at the place that
 14 you pointed out. And we don't know whether he looked but
 15 certainly there's no evidence that any spent cartridges
 16 were found at the place you indicated as opposed from where
 17 shots were fired. Is that fair?
 18 COLONEL VERMAAK: Yes, according to his
 19 statement and what he show on his drawing I accept that. I
 20 don't when he was sweeping the whole area as was indicating
 21 now by Mr Ntsebeza that the next day when he went back he
 22 discovered another three cartridges on the point that was
 23 pointed out as the area where the people were shooting
 24 from. So there's a possibility, Chair, that he might miss
 25 the cartridge, I didn't say he did but I know for sure that

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1 informal house was a marker what I can remember we were
 2 next to it.
 3 CHAIRPERSON: We do know that the three
 4 extra spent cartridges he found he found with the aid of a
 5 metal detector which that, of course, wasn't the next day,
 6 it was, you know, a day subsequent, it was the 9th of
 7 October. But then he re-visited the crime scene he says in
 8 OOO 24, Para 4 and he used a metal detector to search for
 9 cartridge cases and he found these three Q, R and S. So
 10 it's probable, I would think, they were covered by sand or
 11 something of that sort which is why he didn't pick them up
 12 the first up but with the metal detector he could find
 13 them. Now how many shots were fired in the vicinity that
 14 you were talking about, that you indicated to us on page 23
 15 of the presentation, you know that spot near the informal
 16 houses, but how many shots were fired? You said an R5 was
 17 used by one member.
 18 COLONEL VERMAAK: One member and –
 19 CHAIRPERSON: How many shots did he fire?
 20 COLONEL VERMAAK: He was shooting one
 21 shot from that point.
 22 CHAIRPERSON: Did he only fire one shot?
 23 COLONEL VERMAAK: He fire one shot from
 24 that point.
 25 CHAIRPERSON: And then the other people

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1 with you, how many people were with you altogether?
 2 COLONEL VERMAAK: There were about eight
 3 members.
 4 CHAIRPERSON: About eight members. I
 5 think we understand that the POP there are normally units
 6 of eight, there's one R5 and the rest of them are pistols.
 7 COLONEL VERMAAK: Chair, no.
 8 CHAIRPERSON: Ten.
 9 COLONEL VERMAAK: Most of the members who
 10 was with me was TRT.
 11 CHAIRPERSON: Oh TRT, all right. Okay so
 12 I was on a bit of a dwaalspoor for a moment but you had how
 13 many people with you about?
 14 COLONEL VERMAAK: About eight members.
 15 CHAIRPERSON: About eight. One of them
 16 was using an R5 and he only fired once. And the others -
 17 COLONEL VERMAAK: I have instructed him,
 18 Chair, he was the only member that I've instructed to shoot
 19 at the person who was shooting at us.
 20 CHAIRPERSON: Yes, yes I understand.
 21 COLONEL VERMAAK: So nobody else shoot
 22 back onto that person.
 23 CHAIRPERSON: I see, all right but you
 24 said other shots were fired. Were they with pistols?
 25 COLONEL VERMAAK: No not with –

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1 CHAIRPERSON: Am I understanding you
 2 correctly when you say from the spot that you pointed out
 3 only one shot was fired and that was with an R5?
 4 COLONEL VERMAAK: That's a R5.
 5 CHAIRPERSON: So there wouldn't have been
 6 any cartridge, any spent cartridge cases from 9 millimetres
 7 -
 8 COLONEL VERMAAK: From 9 millimetres, no.
 9 CHAIRPERSON: - at that spot?
 10 COLONEL VERMAAK: No, Chair.
 11 CHAIRPERSON: There would or should have
 12 been one R5 spent cartridge.
 13 COLONEL VERMAAK: That's correct, Chair.
 14 CHAIRPERSON: And if anyone had gone
 15 looking for it they might have found it and they have
 16 needed a metal detector by the time they went because it
 17 might been covered by the sand. Is that fair?
 18 COLONEL VERMAAK: That is a possibility
 19 yes, Chair.
 20 MR NTSEBEZA SC: Colonel, can I just
 21 follow that up by putting this? Can we agree that Captain
 22 Moshwana's affidavit, paragraph 4 thereof, I don't know
 23 what exhibit number is, OOO24, he gives two dates. The
 24 first date is the day of the occurrence and the second date
 25 is in October. In other words he didn't go there the next

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1 day as Commissioner Hemraj pointed out to the Chairman. He
 2 went there three months later, more or less. Can we agree
 3 on that? It's on the second visit three months down the
 4 line that he now finds Q, R, S.
 5 COLONEL VERMAAK: I cannot query his
 6 statement, Chair.
 7 MR NTSEBEZA SC: You cannot?
 8 COLONEL VERMAAK: I cannot query that
 9 statement.
 10 MR NTSEBEZA SC: Yes, oh yes, yes, yes
 11 indeed. And then I think we are able to agree that he put,
 12 in terms of the sketch plan that we have just been looking
 13 at which was an annexure to his affidavit, that there's
 14 three additional doppies, Q, R and S are located in the
 15 same circle, the same range as where the other doppies
 16 which had indicated on the 13th of August 2012.
 17 COLONEL VERMAAK: Chair, if I can answer
 18 this question by using an example. On the 16th LCRC was
 19 also doing the scenes where the people were shot and I
 20 remember it was shown on the television when the President
 21 visit Marikana the people of the informal settlement handed
 22 over to him a few doppies as well. So that just shows
 23 there is a possibility that he could miss it because why on
 24 the 16th there was a whole group of LCRC and forensic people
 25 on the scene and I can't exactly remember how long after

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1 the incident the scene was visited by the President
 2 himself. And that was on television where the people
 3 handed over a few doppies to the President.
 4 MR NTSEBEZA SC: I hear you, Colonel, but
 5 are we on the evidence that we have presented so far, are
 6 we able to agree that when Captain Moshwana in a crime
 7 scene which you on the 13th had ordered must be secured, he
 8 did his measurements on the 13th and when in October,
 9 approximately three months again, he went there now with
 10 the aid of metal detectors. He locates all the cartridges
 11 which he had none on the 13th as well as on his visits in
 12 October, he finds and locates them and plots them in the
 13 same area in the relation to which we agreed that the
 14 diameter about 12 to 13 metres if it were a circle around
 15 it. Can you agree on that?
 16 COLONEL VERMAAK: Chairperson –
 17 MR NTSEBEZA SC: Just leave the President
 18 alone for now.
 19 COLONEL VERMAAK: Chairperson, the time
 20 period for three months that lapsed that the Captain went
 21 back to the scene I do accept that but I must also point
 22 out on the 13th at no stage did the Captain ask me to point
 23 out specific points what happened there. He never talked
 24 to me on the 13th. So he was doing the scene there on his
 25 own without any input from my side. The securement of the

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1 scene was not a scene where they were shooting from, it was
 2 a scene where we found the body. That is the crime scene
 3 where I posted the members.
 4 MR NTSEBEZA SC: Colonel, I don't want to
 5 be fair to you, I mean I don't want to be unfair to you.
 6 You see I understand you to have accepted the proposition
 7 which I put, all the cartridges, all the doppies were found
 8 in the same circle. But let me just take you up on that.
 9 You see you give me the impression when you give that
 10 response, that as Captain Moshwana was doing his thing on
 11 the 13th you were observing him, you were aware of what he –
 12 you say he just didn't ask you.
 13 COLONEL VERMAAK: Sir, I never saw
 14 Captain Moshwana there, the member of LCRC who I talked to
 15 was Captain Botha, ag Colonel Botha. Colonel Botha was the
 16 member of LCRC who I talked to on the scene. I believe
 17 that the rest of the team arrived later on when we've
 18 already left but they didn't approach me at any time. The
 19 only people that they know from LCRC who was there was
 20 Colonel Botha.
 21 MR NTSEBEZA SC: Now secondly, you will
 22 recall that I put it to you yesterday and I'm going to put
 23 it to you again, that the events of the 13th of August 2012
 24 with your participation became a subject of debate at
 25 Roots. The events of the 13th informed the compilation of

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1 exhibit L with your knowledge and I daresay with your
 2 participation and that you would have been aware of
 3 inaccuracies if there were any in both the affidavits and
 4 the sketch plans of Captain Moshwana. The sketch plan of
 5 the 13th depicting what he had found on the 13th and the
 6 sketch depicting what he found in October. So I want to
 7 put it to you that we must accept and if you accept it with
 8 your concurrence all the better, that insofar as the events
 9 of the 13th of August are concerned we have evidence
 10 objectively taken at the scene by Captain Moshwana which
 11 indicates where the spent cartridges or the doppies, to use
 12 a neutral word, were. Do you contest that?
 13 COLONEL VERMAAK: Chairperson, at Roots I
 14 never saw any statement of any LCRC member. This statement
 15 and this sketch plans I saw it now for the first time when
 16 this documents were handed over to me. I cannot say that
 17 the information in the sketch plans and the statement of
 18 Captain Moshwana is wrong. What he has observed that is
 19 what he put on his sketch plan and that is also what he
 20 testify about.
 21 MR NTSEBEZA SC: And of course the photos
 22 that he took are further indications of where he says he
 23 found spent cartridges.
 24 COLONEL VERMAAK: I can accept that.
 25 MR NTSEBEZA SC: Yes. Now I think the

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1 rest with regard to this is something that we will argue,
 2 but I just felt it was important that I give you the
 3 benefit of a comment. Mr Chairman, I know that I am the
 4 one who should be concerned about time but it would be a
 5 convenient stage at this time to take the comfort break.
 6 CHAIRPERSON: You're not the only who's
 7 concerned about time but we will take the – this will be
 8 the tea adjournment and we will take it now and then from
 9 the end of the adjournment through until 12:30 we will
 10 proceed without any further adjournments unless they become
 11 absolutely necessary.
 12 MR NTSEBEZA SC: Thank you very much, Mr
 13 Chairman.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [11:08] CHAIRPERSON: The Commission
 16 resumes. You're still bound by your affirmation,
 17 Lieutenant-Colonel.
 18 SALMON JOHANNES VERMAAK: Affirms.
 19 CHAIRPERSON: Mr Ntsebeza.
 20 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
 21 Thank you, Mr Chairman. Colonel –
 22 MS PILLAY: Chair, if we can just clear
 23 up the question of Mr Moshwana's statement; I think we've
 24 marked it twice as an exhibit, as OOO24 and OOO26.
 25 CHAIRPERSON: So we'll cancel the OOO26

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1 and we'll just keep it as OOO24. It won't be the only
 2 document that will figure twice in the papers. It will
 3 join all the others in only figuring once. Adv Hemraj
 4 draws my attention to the fact that the one we marked –
 5 well, I'm not quite sure which is which, but OOO26 we do
 6 need, I think, as a self-standing exhibit because that's
 7 the second sketch plan which adds Q, R and S. Is that
 8 correct, Mr Ntsebeza?
 9 MR NTSEBEZA SC: Yes, it is. It was
 10 annexed to the –
 11 CHAIRPERSON: What we'll do, we'll change
 12 the situation. We won't mark his statement twice. We
 13 withdraw the allocation of OOO26 to the second copy of his
 14 statement but we will keep it for the sketch plan, the
 15 second sketch plan to which Mr Ntsebeza referred, the one
 16 which includes Q, R and S. Will that be in order, Ms
 17 Pillay? Do I have your permission to do that?
 18 MS PILLAY: That's fine.
 19 MR NTSEBEZA SC: Your permission, my
 20 learned friend.
 21 CHAIRPERSON: Do I have your permission
 22 as well, Mr Ntsebeza? That's very nice.
 23 MR NTSEBEZA SC: Yes, it is –
 24 CHAIRPERSON: I'm not going to ask
 25 anybody else.

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1 MR NTSEBEZA SC: It is by agreement with
 2 my learned friend.
 3 CHAIRPERSON: Alright, let's carry on
 4 with the cross-examination.
 5 MR NTSEBEZA SC: Thank you, Mr Chairman.
 6 CHAIRPERSON: You'll be finished by half
 7 past 12, Mr Ntsebeza, I believe?
 8 MR NTSEBEZA SC: We'll make the best
 9 endeavour to do so.
 10 CHAIRPERSON: Otherwise you're going to
 11 absent yourself from the JSC next week, are you?
 12 MR NTSEBEZA SC: On Tuesday we'll be in
 13 the middle of interviewing potential judges. We'll see.
 14 Thank you, Mr Chairman. Now Colonel, I will move to the
 15 next topic. I just want to conclude the exercise which
 16 we've just emerged from by putting to you that on the
 17 objective evidence which we have taken you through, and I'm
 18 not unmindful of all the other possibilities which you
 19 raise about whether on the day of the visit of the
 20 President some other "doppies" were picked up and all of
 21 that. That is not before the Commissioner, I mean the
 22 Chairman and the Commissioners, but you know, I've taken
 23 note of that.
 24 But what I am putting to you is that on the
 25 objective evidence which we have demonstrated to you by way

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1 of this exercise we will argue that the only reasonable
 2 conclusion from this evidence is that Mr Sokanyile was shot
 3 from the position where not just the majority but all of
 4 the cartridges, or as we have now come to call them, the
 5 "doppies," were found. Do you have a difficulty with that?
 6 COLONEL VERMAAK: Chairperson, I cannot
 7 speculate on that. I just can give my statement from what
 8 I have experienced on that day.
 9 MR NTSEBEZA SC: Yes. No, I was not
 10 asking you to speculate. I was asking you to comment on
 11 what we say is exhibited by the object evidence, but I've
 12 taken note of your response.
 13 I now want to get on to new matter and that
 14 matter is who shot Mr Sokanyile and relevant thereto there
 15 is a new exhibit, Mr Chairman, which I would like to
 16 introduce. It's the affidavit of Officer – now I don't
 17 know how to pronounce this, De Caires, do you know,
 18 Colonel, how do we pronounce that D-E, and then C-A-I-R-E-
 19 S? De Caires.
 20 COLONEL VERMAAK: I just want to see if –
 21 MR NTSEBEZA SC: My junior doesn't know
 22 it.
 23 CHAIRPERSON: It looks like [Microphone
 24 off, inaudible]. Or have I been given the wrong one? Oh,
 25 I was let down there for a moment. I'm getting the right

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1 one now.
 2 MR NTSEBEZA SC: Mr Chairman, I don't
 3 know how to –
 4 CHAIRPERSON: Don't worry, give me a
 5 copy, I'll endeavour to pronounce his name. Unless it's a
 6 Venda, in which case –
 7 MR NTSEBEZA SC: No, it looks like
 8 Portuguese or Spanish. De Caires.
 9 CHAIRPERSON: Oh, it looks like Silva De
 10 Caires. Do you know Cindy, it looks like a lady, she's a
 11 warrant-officer –
 12 MR NTSEBEZA SC: Yes.
 13 CHAIRPERSON: Forensic analyst, she's in
 14 the ballistic section. I don't know if you –
 15 COLONEL VERMAAK: No, I don't know her.
 16 CHAIRPERSON: She's Cindy Maria Silva de
 17 Caires. It sound like a Portuguese name, I would guess.
 18 It's spelt D – her surname, probably with these Spanish and
 19 Portuguese names they have, it goes, the whole name is
 20 probably Silva de Caires. Silva, S-I-L-V-A, de, D-E of
 21 course, and Caires, C-A-I-R-E-S.
 22 COLONEL VERMAAK: I accept, Chair.
 23 CHAIRPERSON: If she's Spanish her maiden
 24 name would have been Silva and she would have married Mr
 25 Caires, but whether that applies that Portuguese people I

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1 don't know. But what exhibit do we want Warrant-Officer –
 2 MR NTSEBEZA SC: De Caires.
 3 CHAIRPERSON: Yes, what exhibit number do
 4 we give it? OOO27? OOO27, Ms Pillay, is that okay?
 5 MS PILLAY: That's correct, Chair.
 6 MR NTSEBEZA SC: Oh, I depend on Ms
 7 Pillay and my juniors, Mr Chairman, for these kinds of
 8 exercises.
 9 CHAIRPERSON: Alright, well I hope we've
 10 pronounced her name correctly, but we've marked her
 11 affidavit so now you can put it to the witness to see what
 12 happens.
 13 MR NTSEBEZA SC: Thank you. Just so that
 14 we are sure that we are speaking about the same incidents,
 15 same persons and everything else, we have been referring to
 16 this CAS-number, 115/08/2012. You see on the first page of
 17 exhibit OOO27 –
 18 CHAIRPERSON: What's the CAS-number?
 19 Sorry.
 20 MR NTSEBEZA SC: It's –
 21 CHAIRPERSON: 115?
 22 MR NTSEBEZA SC: It's 115, Mr Chairman,
 23 /08/2012.
 24 CHAIRPERSON: Yes, well if you look at
 25 page 2 of your presentation, which is OOO23, you will see

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1 that that number is given to your circle which is where all
 2 the "doppies" were found.
 3 MR NTSEBEZA SC: Yes.
 4 CHAIRPERSON: So it looks as if the IPID
 5 file, IPID docket in respect of the death of the late Mr
 6 Sokanyile is CAS115/08/2012.
 7 MR NTSEBEZA SC: 115, yes Mr Chairman.
 8 CHAIRPERSON: Will you agree with that,
 9 Lieutenant-Colonel? Does that make sense to you? Right,
 10 okay.
 11 COLONEL VERMAAK: That's correct, Chair.
 12 CHAIRPERSON: So now we know we're in
 13 business. We know that Warrant-Officer Silva de Caires's
 14 affidavit relates to Mr Sokanyile's case.
 15 MR NTSEBEZA SC: Now there is another
 16 number which I think will be able to inform us that we are
 17 dealing with the same and that what is called a LAB-number,
 18 L-A-B number. I don't know what LAB stands for.
 19 CHAIRPERSON: Laboratory?
 20 MR NTSEBEZA SC: Yes.
 21 CHAIRPERSON: It's probably the number of
 22 these particular exhibits that were tested at the forensic
 23 science laboratory.
 24 MR NTSEBEZA SC: Yes, on the first page,
 25 on that very same page, Colonel, you will see it's on the

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1 top left corner and the number is 268994/2012. You see
 2 that?
 3 COLONEL VERMAAK: I do.
 4 MR NTSEBEZA SC: On the next page
 5 thereto, it's now typed and it's very clear, this time on
 6 the top right-hand corner of the page. Do you see that?
 7 COLONEL VERMAAK: Yes.
 8 MR NTSEBEZA SC: Yes, now if we turned to
 9 paragraph 3 of this exhibit, now you see there in
 10 paragraphs 3 to 4 Adjudant de Caires list the cartridges
 11 that were found on the scene. Do you see that?
 12 COLONEL VERMAAK: Yes.
 13 MR NTSEBEZA SC: And from these
 14 paragraphs, in particular paragraphs 3.1 to 3.2 and 4.1 to
 15 4.3 she lists 17 cartridges in total that she testifies or
 16 she deposes to as having been found at the scene,
 17 cartridges B to O and Q to S. You see that, in those
 18 paragraphs?
 19 COLONEL VERMAAK: Yes.
 20 MR NTSEBEZA SC: Now all of these
 21 cartridges besides H were 9mm cartridges according to what
 22 she says here, correct?
 23 COLONEL VERMAAK: I accept the statement.
 24 MR NTSEBEZA SC: H, as the Chairman has
 25 pointed out to you in the diagram is indeed a rifle

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1 cartridge, 5.56mm rifle cartridge. You see that?
 2 COLONEL VERMAAK: I do.
 3 MR NTSEBEZA SC: So there was one rifle
 4 "doppie" in the scene in which all these cartridges were
 5 found. Now from paragraph 6, 6.1 read with what we have
 6 just gone through, Warrant-Officer de Caires concludes that
 7 cartridges B to E and cartridge G and cartridge J to M and
 8 cartridge O, R, S, which were the ones that were found
 9 later on by Moshwana, she concludes that they all were
 10 fired from the same firearm. Do you see that?
 11 COLONEL VERMAAK: Yes.
 12 MR NTSEBEZA SC: Then if we went to
 13 paragraph 6.2, 6.2 – oh yes, you see, and if we read that
 14 with paragraphs 3.2 and 4.2, her conclusion is that the
 15 "doppies" F, I, N and Q were fired from the same firearm.
 16 Do you see that? That conclusion which she –
 17 COLONEL VERMAAK: Yes.
 18 MR NTSEBEZA SC: - she makes. She says
 19 so in so many words in 6.2, the cartridge case mentioned in
 20 3.2 was fired in the same firearm as the cartridges –
 21 sorry, I mean the conclusion is there. We should then
 22 leave cartridge H, which we now know to have been the rifle
 23 "doppie" which was fired obviously because of its nature
 24 from a separate firearm. You would agree with that, with
 25 her conclusion that H was fired from a different –

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1 COLONEL VERMAAK: I accept.
 2 MR NTSEBEZA SC: Yes. In fact I mean
 3 that's the inference that we obviously would be able to
 4 draw. So it seems to me that we are able from all of this
 5 to suggest, and we would argue that three firearms fired
 6 the cartridges that were found at that scene, if we look at
 7 what Warrant-Officer Silva de Caires has compiled, is it
 8 two 9mm pistols and one R5.
 9 COLONEL VERMAAK: I accept the statement.
 10 MR NTSEBEZA SC: Now Mr Chairman, can we
 11 introduce another affidavit as a new exhibit, and that
 12 would be the statement – no, affidavit of Colonel Pieterse.
 13 CHAIRPERSON: Lieutenant-Colonel
 14 Pieterse.
 15 MR NTSEBEZA SC: Lieutenant-Colonel
 16 Pieterse.
 17 CHAIRPERSON: [Microphone off, inaudible]
 18 MS PILLAY: Chair, this will be OOO28.
 19 CHAIRPERSON: OOO28 and it's an affidavit
 20 of Lieutenant-Colonel [Microphone off, inaudible]. Sorry,
 21 was my microphone on? The affidavit of Lieutenant-Colonel
 22 David Stephanus [inaudible] Pieterse is exhibit OOO28.
 23 MR NTSEBEZA SC: Now if we went to
 24 paragraph 10, you see the same LAB-number. You see in
 25 paragraph 10 we have the same LAB-number that refers to Mr

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1 Sokanyile in that paragraph. You see that?
 2 COLONEL VERMAAK: Yes.
 3 MR NTSEBEZA SC: So ja, we are dealing
 4 with the same thing. Now that paragraph as you can see
 5 lists 17 cartridges that were collected at the scene. You
 6 see that?
 7 COLONEL VERMAAK: Yes.
 8 MR NTSEBEZA SC: Now paragraph 13.2 –
 9 13.2, please. Is there somebody who responds to me who
 10 should put that thing on the screen? 13.2. 13, 1-3.
 11 CHAIRPERSON: 13, 1-3, point 2.
 12 MR NTSEBEZA SC: Now we again see that H,
 13 you remember there was still this "doppie" H. Now it's
 14 cartridge 268994/12, H. It was fired from the rifle with
 15 serial number that. You see that? 22336969. I don't know
 16 whether you say 669, or 696.
 17 [11:28] COLONEL VERMAAK: Yes, Chair.
 18 MR NTSEBEZA SC: Now, or just to link
 19 everything, the number 268994/12 tells us that this
 20 cartridge H, or "doppie" H is the cartridge, or the
 21 "doppie" H that was found at the scene where Mr Sokanyile
 22 was killed. Are we able to agree on that?
 23 COLONEL VERMAAK: At the point where they
 24 found the "doppies" or at the specific scene where the body
 25 was lying?

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1 MR NTSEBEZA SC: No, it's at the point
 2 where they found the "doppies," which is –
 3 COLONEL VERMAAK: Yes, I agree there.
 4 MR NTSEBEZA SC: Yes. Now there is a
 5 discharge sheet which I believe is already an exhibit, Mr
 6 Chair, HHH23. It's a discharge sheet for the 13th of
 7 August, which is again in question. Have you got that? We
 8 have 6 there, the number 6. Again you can see there a
 9 number which we have become familiar with, serial number
 10 336969, which would seem to point that the member who
 11 carried the firearm on the day is Constable Mguye. You see
 12 that?
 13 COLONEL VERMAAK: Yes.
 14 MR NTSEBEZA SC: It would be a reasonable
 15 inference therefore to draw from this that it was Constable
 16 Mguye on this evidence that fired the cartridge H that was
 17 found on the scene on the 13th of August 2012. Is that
 18 correct?
 19 COLONEL VERMAAK: That's correct, but I
 20 see he did fire 10 rounds.
 21 MR NTSEBEZA SC: Come again.
 22 COLONEL VERMAAK: He fired 10 in total.
 23 MR NTSEBEZA SC: Yes.
 24 CHAIRPERSON: I see he's TRT Rustenburg.
 25 Was he one of the TRT people who went with you – remember

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1 you told us how you went in the direction of the stream and
 2 you told us that only one R5 shot was fired. Now do you
 3 know who fired that shot? Or alternatively, do you know
 4 whether Constable Mguye was one of those who went with you?
 5 COLONEL VERMAAK: No, I now take notice
 6 of that for the first time, Chair. At that stage I didn't
 7 know the members, as I testified and said they –
 8 MR NTSEBEZA SC: "Onbekend."
 9 COLONEL VERMAAK: Yes, they were unknown
 10 to me.
 11 CHAIRPERSON: You did tell us they were
 12 TRT –
 13 COLONEL VERMAAK: I said they were TRT,
 14 yes.
 15 CHAIRPERSON: From Rustenburg?
 16 COLONEL VERMAAK: I asked them from where
 17 they are and they said Rustenburg, but I didn't have their
 18 names available.
 19 CHAIRPERSON: This point has now been
 20 effectively brought forward for the, into the clear light
 21 of day for the first time. So Constable Mguye apparently
 22 fired 10 times with his R5. You don't know if he was one
 23 of those with you and if he was – firstly, you don't know
 24 if he was one of those with you and you don't know whether
 25 he was the person who fired the one R5 shot that you spoke

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1 about. That's something you can't help us on.
 2 COLONEL VERMAAK: Well, the R5 that they
 3 found in that specific area I can say that is, there's no
 4 doubt about that.
 5 MR NTSEBEZA SC: Yes.
 6 COLONEL VERMAAK: But the fact that I
 7 said that is not the point where I was where the people, or
 8 where the person was shooting from, that could be that they
 9 were at a different stage there. I don't know.
 10 CHAIRPERSON: No, I understand that, but
 11 of course if Mguye was one of the people with you and if
 12 only one shot was fired and then one – the total effect of
 13 all the evidence might indicate that your memory is
 14 mistaken as to where you were with the people with you when
 15 the shots were fired. I understand you've got a clear
 16 recollection that you told us about, but I think what's
 17 being investigated now is whether you're not possibly
 18 mistaken and - but you can't help us as to whether
 19 Constable Mguye was with you, but maybe we must, that can
 20 be investigated further. Anyway, at the moment it's
 21 inconclusive.
 22 COLONEL VERMAAK: That's correct, Chair.
 23 MR NTSEBEZA SC: What however is
 24 conclusive, and I'd like to debate this with you, is that
 25 however many cartridges he fired from his rifle on that day

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1 – 10, 20, 30, whatever the number – there's one thing that
 2 this evidence shows, is that one of those was fired at the
 3 place where we found the other cartridges. You agree with
 4 that?
 5 COLONEL VERMAAK: I do agree with that.
 6 MR NTSEBEZA SC: Alright, now if we turn
 7 to 13.4 of Lieutenant-Colonel Pieterse's affidavit, I think
 8 it is OOO28, you see there what it says in 13.4. That
 9 speaks for itself, but do you agree that what it says is
 10 that those "doppies" were fired, those are "doppies" of
 11 cartridges which had been fired from the firearm with
 12 serial number Q049587. Is that correct?
 13 COLONEL VERMAAK: Yes, I agree.
 14 MR NTSEBEZA SC: Mr Chairman, in the
 15 interest of time I don't know whether we should read that
 16 into the record, but that's what it says.
 17 CHAIRPERSON: [Microphone off, inaudible]
 18 on the exhibits before us, so –
 19 MR NTSEBEZA SC: Yes. Yes, Mr Chairman.
 20 Now then let's do again this exercise, let's go to the
 21 discharge sheet and let's look at number 15 thereof.
 22 Number 15 tells us that we are dealing with Constable
 23 Nyende, or Yende. You never know sometimes. Do you see
 24 that, Colonel?
 25 COLONEL VERMAAK: Yes.

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1 MR NTSEBEZA SC: Now serial number of his
 2 gun –
 3 CHAIRPERSON: I'm sorry, I'm probably
 4 being my usual obtuse self, but I don't see a Yende here on
 5 this thing. Ah, there we are, now we've got Yende. He had
 6 Q049587. That was his – but there was a PX one. What were
 7 the two numbers we were looking at before? There was a PX
 8 something. Where Thupe, Captain Thupe as we mentioned
 9 earlier, he had a –
 10 MR NTSEBEZA SC: Yes.
 11 CHAIRPERSON: - he had a 9mm PX2693E, but
 12 when we had the exhibit before us of the, by, was it
 13 Lieutenant-Colonel Pieterse, what were the – here I've got
 14 it. We're looking for Q049587. There we've got it.
 15 That's Yende.
 16 MR NTSEBEZA SC: That's Constable Yende.
 17 CHAIRPERSON: That's Constable Yende, and
 18 there's also Q036933. Is that there?
 19 COLONEL VERMAAK: It's Mogale.
 20 CHAIRPERSON: That's Mogale.
 21 MR NTSEBEZA SC: Yes, we are getting
 22 there.
 23 CHAIRPERSON: They are both POPS people
 24 from, Mogale is a warrant-officer, Yende is a constable.
 25 They were POPS people from Johannesburg. So they fired 14

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1 and 12, and then we've got PX3749E, that was the one I
 2 mentioned earlier. Where is that?
 3 MR NTSEBEZA SC: They are not for us, Mr
 4 Chairman.
 5 CHAIRPERSON: They're not linked?
 6 MR NTSEBEZA SC: Well, they may be in the
 7 discharge sheet, but we are trying to isolate in the
 8 discharge sheet only those "doppies" that are relevant to
 9 what we have been canvassing with the Colonel as having
 10 been reflective of cartridges found by Captain Moshwana in
 11 August and October of 2012. If we could take it step by
 12 step, Mr Chairman –
 13 CHAIRPERSON: Sorry, Mr Ntsebeza.
 14 MR NTSEBEZA SC: No, no, Mr Chairman,
 15 it's okay.
 16 CHAIRPERSON: Carry on.
 17 MR NTSEBEZA SC: Thank you. Colonel,
 18 just to just place it on the record, because the Chairman
 19 has got the grip of all of it and the Commissioners they
 20 have seen where we want to go; there is a serial number
 21 there of Constable Yende's firearm, a 9mm, it's Q049587.
 22 You see that?
 23 COLONEL VERMAAK: Is it Yende's firearm
 24 number?
 25 MR NTSEBEZA SC: Yes.

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1 CHAIRPERSON: Look there, 28 on this
 2 exhibit.
 3 COLONEL VERMAAK: Yes.
 4 MR NTSEBEZA SC: Yes.
 5 CHAIRPERSON: HHH23.
 6 MR NTSEBEZA SC: No, you can be sure that
 7 we are simply seeking you to confirm, otherwise –
 8 CHAIRPERSON: [Microphone off, inaudible]
 9 Sorry, if I read the ballistic evidence together with the
 10 discharge sheet, together with plan, details of what
 11 cartridge cases were found where, it appears now that
 12 Warrant-Officer Mogale's firearm fired some of the 9mm
 13 rounds because his cartridge cases were found there, and
 14 Constable Yende also fired some because some of his
 15 cartridge cases were found there. So we now, it would
 16 appear the circumstantial evidence seems to indicate that
 17 Warrant-Officer Mogale and Constable Yende were part of the
 18 group, if it was a group, that were in that circle who
 19 fired off 9mm rounds. That's what that indicates. That's
 20 right, is it?
 21 MR NTSEBEZA SC: Very much so, Mr
 22 Chairman.
 23 COLONEL VERMAAK: That's correct,
 24 Chairperson.
 25 MR NTSEBEZA SC: Ja, now what we are

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1 saying, if you bear in mind that we are now looking at what
 2 Colonel Pieterse says in paragraph 13.4 of his affidavit,
 3 is that Yende fired cartridges B to E, G, J to M, O, R, and
 4 S, and all of those were found on the scene. You see that?
 5 COLONEL VERMAAK: Yes.
 6 MR NTSEBEZA SC: Now if we went to
 7 paragraph 13.5 of that affidavit you'll see that we deal
 8 with serial number Q036933, relative to "doppies" F, I, N
 9 and Q which were fired from that serial number firearm, in
 10 other words from the firearm with that serial number. Do
 11 you see that?
 12 COLONEL VERMAAK: Yes.
 13 MR NTSEBEZA SC: Now in the discharge
 14 sheet, if we looked at number 13 on that sheet you'll see
 15 that the relevant number, I mean member of SAPS, as the
 16 Chairman correctly pointed out, is Warrant-Officer Mogale
 17 and the serial number of his firearm is again, as we
 18 indicated, Q036933. You agree?
 19 COLONEL VERMAAK: I agree.
 20 MR NTSEBEZA SC: Now the affidavit points
 21 out that Warrant-Officer Mogale fired the cartridges F, I,
 22 N and Q at the scene relating to Mr Sokanyile. That seems
 23 to be without a doubt. Do we agree?
 24 COLONEL VERMAAK: Yes.
 25 MR NTSEBEZA SC: Now we want to be able

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1 to persuade the Commission, and we would like to put what
 2 we would seek to argue, that one can draw minimum of two
 3 conclusions from all of this evidence which we have
 4 canvassed with you. The first is that the only reasonable
 5 inference is that three officers, or one of these three
 6 officers were under your command. One – let's put it this
 7 way; one of the officers of these three - Yende, Mogale,
 8 Mguye - shot and killed Mr Sokanyile. Would it be an
 9 unreasonable inference?
 10 COLONEL VERMAAK: I don't think there's
 11 any evidence that one of those firearms that have been
 12 discharged there was the firearm that was the one who shot
 13 the late Mr Sokwane.
 14 MR NTSEBEZA SC: Sokanyile.
 15 COLONEL VERMAAK: Sokanyile.
 16 MR NTSEBEZA SC: Yes, we proceed on the
 17 basis that at the end of it all, as we have been trying to
 18 indicate to you, that there were no other cartridges which
 19 were found in the crime scene, and that will be the basis
 20 on which we will premise the argument that if we look at
 21 all of this objective evidence – where the body was, where
 22 the cartridges were found, the fact that the body was in a
 23 straight line with the cartridges which were found – all of
 24 that would be the premise on which we will argue that it is
 25 reasonable to infer that one of the three officers, Yende,

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1 Mogale, Mguye, fired the shot that killed Mr Sokanyile.
 2 COLONEL VERMAAK: Chair, I cannot agree
 3 to that because why there is no evidence that proves that
 4 statement.
 5 MR NTSEBEZA SC: Except the only evidence
 6 that there is, is the objective one, but then we will argue
 7 about that at a later stage. The same proposition from all
 8 of this evidence, you will recall that in your statement –
 9 and I'm not giving it the way you gave it, verbatim, but
 10 you were indicating that your member, or members shot in
 11 the direction of a protester who was firing at you. That's
 12 the first part.
 13 [11:48] The second part you indicated the place
 14 where you imagined or where you testified in chief your
 15 members were in the direction in which you were firing.
 16 Now we're going through the exercise to show the
 17 improbability of that side. But the point here is that
 18 other than where we have located all the cartridges that
 19 were found there were no cartridges found in the place
 20 where you testified your members were when they fired at
 21 the protestors. Would you disagree with that?
 22 COLONEL VERMAAK: Chair, I stick to my
 23 statement where I was with my member who was shooting at -
 24 the person who was shooting at us and if I remember clearly
 25 it was the total opposite side from where we found the

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1 body.

2 MR NTSEBEZA SC: If we assume your

3 members, on your evidence, were returning fire from the

4 protestors and if in returning the fire Mr Sokanyile was

5 hit and we now know from all the evidence that there was a

6 single shot that would have killed him with three minutes.

7 There were no cartridges either at where you indicate the

8 body to have been found or where the body was actually

9 found, no cartridges were found at those places. Do you

10 agree with that? The objective evidence shows that from

11 the place where the body was and in that vicinity there are

12 no cartridges which were found there.

13 CHAIRPERSON: Do you mean on the other

14 side of the screen, do you mean on the same side?

15 MR NTSEBEZA SC: On the other side of the

16 screen.

17 CHAIRPERSON: Where the body was found.

18 MR NTSEBEZA SC: Yes –

19 CHAIRPERSON: That's clear. Even if he

20 doesn't agree with you it's clear from the evidence we

21 have.

22 MR NTSEBEZA SC: Yes, Mr Chairman, thank

23 you very much but these are things that happened. Now on

24 the evidence as a whole, the objective evidence the nature

25 of the wounds that were being treated on Mr Sokanyile a

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1 single shot, the paralysis of the spinal cord. And what we

2 posited to you to have been the probable position in which

3 he was shot, looking backwards because of the entrance and

4 the exit of the wound we will argue that it's unlikely that

5 Mr Sokanyile was shot by anyone who was acting in self

6 defence or even in self defence. Would you argue against

7 that?

8 COLONEL VERMAAK: I'm listening to your

9 statement, Chair.

10 MR NTSEBEZA SC: Yes I'm putting to you

11 as the person who was pursuing these people, as you were

12 there and you said you shot and you identified Mr Sokanyile

13 as the person who on your view was the person who got shot

14 at that day. I say all the evidence objectively – there's

15 no evidence that this man was shot by anyone who was acting

16 in self defence or anyone who felt that he was in immediate

17 danger and therefore had to shoot and kill Mr Sokanyile, a

18 so-called fugitive.

19 COLONEL VERMAAK: Mr Chair, I never said

20 that the deceased was a person that we are shooting at. We

21 were saying on the opposite side was a person that was

22 shooting at us but I never said that he was the person who

23 was shooting at us.

24 MR NTSEBEZA SC: Well I heard you the

25 first time, I hear you now but I'm simply testing what your

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1 evidence in chief was because your evidence in chief up to

2 the end thereof and the evidence up to the point where we

3 began to cross-examine and debate with you the

4 probabilities, your evidence clearly had the tenor that

5 whoever it was that you were saying had a white overall and

6 everything else was Mr Sokanyile. There was a body, there

7 was a person who died, there was a person who was across

8 the river.

9 MS PILLAY: Chair, just an objection.

10 The witness never testified that the body he saw – the

11 person from the air was Mr Sokanyile.

12 MR NTSEBEZA SC: Yes, I do understand

13 that. Your testimony to this point or to use a local

14 lexicon, up to so far has always been that we are dealing

15 with Mr Sokanyile.

16 CHAIRPERSON: What do you say about that

17 proposition – your evidence as I understand it, is that you

18 saw someone with an overall being carried by some of his

19 colleagues.

20 COLONEL VERMAAK: That is correct, Chair.

21 CHAIRPERSON: You also say that at a

22 later when you went over the river you found someone in a

23 white overall lying on the ground and we know that was Mr

24 Sokanyile. It was put to you that all the surrounding

25 evidence or circumstantial evidence seems to indicate quite

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1 clearly that he wasn't the person who was being carried and

2 you agreed with that, I think.

3 COLONEL VERMAAK: That I agree.

4 CHAIRPERSON: You also described a

5 situation where you and the people with were being shot at

6 and you said, if I understand you correctly, one shot was

7 fired back with an R5, is that right?

8 COLONEL VERMAAK: That is correct, Chair.

9 CHAIRPERSON: Are you able to say whether

10 that shot brought about the death of anyone, any of the

11 people that were beside the river?

12 COLONEL VERMAAK: No, Chair, the

13 direction that shot was fired nobody was found dead, that

14 was injured or deadly wounded at that specific area.

15 CHAIRPERSON: Can I ask you something

16 else while Mr Ntsebeza's reassembling his forces to proceed

17 with the attack? That spot where there was this orange or

18 reddish circle on the photograph where spent cartridges

19 were found, some of which can be linked to the firearms of

20 two members of the POPS and from Johannesburg, at any stage

21 when you were in the vicinity did you see people firing

22 from there?

23 COLONEL VERMAAK: No, Chair, there was

24 nobody else except the people who was with me.

25 CHAIRPERSON: So it would seem, if that's

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1 correct, it would seem either shots were fired from there
 2 after you left or were fired from there before you arrived.
 3 COLONEL VERMAAK: Both of them is
 4 possibilities, Chair.
 5 CHAIRPERSON: But I take it's rather
 6 unlikely that these shots were being fired after you were
 7 there because presumably most of the strikers had
 8 disappeared from the scene.
 9 COLONEL VERMAAK: Yes, I cannot –
 10 CHAIRPERSON: By the time you left the
 11 scene, is that correct?
 12 COLONEL VERMAAK: That's correct.
 13 CHAIRPERSON: So on the probabilities
 14 shots were clearly fired from that area, right?
 15 COLONEL VERMAAK: That's correct.
 16 CHAIRPERSON: And again from the evidence
 17 we have so far it looks as if Warrant Officer Mogale and
 18 Constable Yendi at least will have to tell us how their
 19 cartridge cases happened to be found there. But if they
 20 were involved in firing from there on probabilities it was
 21 before you got there. Is that correct? It looks like it.
 22 COLONEL VERMAAK: It looks like if they
 23 were there before I was on that scene where we followed the
 24 person.
 25 CHAIRPERSON: And somebody, as we saw,

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1 fired at least one, maybe more but at least one R5 shot.
 2 COLONEL VERMAAK: That's correct, Chair.
 3 CHAIRPERSON: And that's the person, I
 4 forget his name now, but that was the person whose firearm
 5 was also dealt with in that discharge sheet.
 6 COLONEL VERMAAK: That's correct.
 7 CHAIRPERSON: Constable Nduli. That
 8 seems to be the sum total so far where we are.
 9 COLONEL VERMAAK: That's correct, Chair.
 10 MR NTSEBEZA SC: Yes thank you, Mr
 11 Chairman. I know I had indicated to you that I would come
 12 back to your statements but I just want to and now we can
 13 agree, that your evidence was that when you assembled this
 14 group of people who were going to pursue the protestors
 15 after you had landed your helicopter, you said in your
 16 statement that you did not know the identities of the
 17 members whom you gathered together on that day to pursue
 18 the protestors. I don't think there's a –
 19 COLONEL VERMAAK: That's correct, Chair.
 20 MR NTSEBEZA SC: I think you say that in
 21 your statement, you say that in your evidence. So you
 22 wouldn't know – certainly on that day you did meet but
 23 would you know now as you sit and testify whether Yendi,
 24 Mogale and Mguye were members who were under your command?
 25 COLONEL VERMAAK: No, that I cannot

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1 confirm.
 2 MR NTSEBEZA SC: Okay.
 3 COLONEL VERMAAK: There might be members
 4 of that group where the cartridges were found but where I
 5 was with the members that I took with me that was not on
 6 that point.
 7 MR NTSEBEZA SC: But as I understood it
 8 you had asked your members, one of your members to secure
 9 the scene where Mr Sokanyile's body was found. I think we
 10 have traversed that.
 11 COLONEL VERMAAK: Yes, I leave some
 12 members there to secure the area.
 13 MR NTSEBEZA SC: Yes, now and obviously I
 14 would assume that you didn't come back to find someone else
 15 now securing the scene. You still found the same members
 16 that you had asked to secure the scene when you came back.
 17 COLONEL VERMAAK: When I went back with
 18 the members who made the threat against the General
 19 afterwards they go back to the scene with Colonel Moolman
 20 to make sure that the members is still there and also that
 21 they have Nyala, a armoured vehicle with them.
 22 MR NTSEBEZA SC: Was it the same members
 23 whom you had left?
 24 COLONEL VERMAAK: That was the same
 25 members that I left there.

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1 MR NTSEBEZA SC: Now there are
 2 statements, Mr Chairman, it would appear they will be new
 3 exhibits, maybe. The first we want to look at is the
 4 statement by Constable Yendi which we would like Mr
 5 Chairman to give an exhibit number.
 6 CHAIRPERSON: Exhibit 9. We have got a
 7 typed version and a manuscript version.
 8 MR NTSEBEZA SC: Indeed, Mr Chairman.
 9 CHAIRPERSON: It appears to be the same
 10 statement, some kind person has typed it out for us. So
 11 we'll call the manuscript OOO29.1 and we'll call the typed
 12 script 0029.2. Let's do the other one as well while we're
 13 about it. I take it you're going to put the other one.
 14 The other one is Warrant Officer Mogale, we'll make his
 15 manuscript statement OOO30.1 and the typed version OOO30.2.
 16 MR NTSEBEZA SC: And then the next one
 17 would be what, Mguye.
 18 MS PILLAY: Chair, that's HHH30.
 19 MR NTSEBEZA SC: Is HHH30 Mr Mguye?
 20 MS PILLAY: HHH30.
 21 MR NTSEBEZA SC: Now paragraph 6 of
 22 Constable Yendi's statement. Can we call up that
 23 statement? Let's go to 7 rather. That is Yendi, 7, 7 no,
 24 no. Can you call up 6, paragraph 6, but I want the page
 25 that says on the other side of the river.

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1 CHAIRPERSON: It's paragraph 7 which is
 2 on the next page.
 3 MR NTSEBEZA SC: On the other side of the
 4 river. Ja there we are where the cursor is.
 5 CHAIRPERSON: The key passage, do you see
 6 that? The key passage is this. What he says is that after
 7 he'd done various things which were dealt in earlier
 8 paragraphs, he says that the body of a man left behind on
 9 the other side of the river, he and his colleagues jumped
 10 the river to go and see him. He was lying with his front
 11 on the ground. No he's talking about Mr Sokanyile.
 12 Underneath him was a stick or a panga. The paramedics were
 13 also summoned as he was injured dead, he puts it quite
 14 crisply. "I stood guard at the scene until mortuary van
 15 came and took the body." Now you were involved also in
 16 having that scene preserved as it were, weren't you?
 17 COLONEL VERMAAK: That's correct, Chair.
 18 CHAIRPERSON: Now what arrangements did
 19 you make to have the scene preserved?
 20 COLONEL VERMAAK: I only go back to the
 21 main scene where I later explained to Brigadier Calitz what
 22 the situation was and I also pointed out to him that there
 23 was a body lying on the other side of the river and I sent
 24 Nyala to go and protect the scene for us. Later we left
 25 the scene while the LCRC members was still busy with their

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1 work on the scene itself.
 2 MR NTSEBEZA SC: Colonel, it's been a
 3 long day, I don't want to be unfair –
 4 CHAIRPERSON: It's not so long, it's so
 5 long.
 6 MR NTSEBEZA SC: Indeed, I don't know
 7 whether your answer should be understood to be saying that
 8 you dispute having asked the members of the group that you
 9 were leading to secure the crime scene. The scene where Mr
 10 Sokanyile was killed or was found to be dead because I
 11 thought that we are in agreement as far as that goes.
 12 [12:07] Whoever you saw wearing white overalls
 13 etcetera and all of that who has been identified as Mr
 14 Sokanyile. That is the body on all the evidence which was
 15 across the river and this constable, this constable in that
 16 paragraph says on the other side of the river there was a
 17 body of a man left behind. We all jumped the river to and
 18 see. He was lying with his front on the ground, this is
 19 uncannily like – underneath him there was a stok or panga
 20 etcetera, etcetera. Now we want to argue and this is what
 21 I'm putting to you, that this must have been the member, in
 22 other words Constable Yende must have been the member or
 23 one of the members that you posted to secure the scene and
 24 he's testifying about that in this part of the affidavit.
 25 Would you disagree with that?

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1 COLONEL VERMAAK: Chair, if I read
 2 through his statement quickly I don't see anywhere that he
 3 stated that he was posted by me at that scene. I can't say
 4 that his statement is not true but I cannot say that he
 5 wasn't one of the members that was there. But I know for a
 6 fact that the people who was with me was from the point
 7 where I pointed it out more or less. So I don't know,
 8 maybe must he come and testify who gave him that
 9 instruction to stay there because why if I read his
 10 statement he didn't say that he was instructed by anybody.
 11 CHAIRPERSON: Did you instruct anybody or
 12 any people –
 13 COLONEL VERMAAK: This is before me –
 14 CHAIRPERSON: Sorry, can I just finish
 15 the question? Did you instruct anybody or any persons in
 16 the police service to preserve the scene by inter alia
 17 making sure that the body wasn't interfered with, in other
 18 words did you post people to be at the body to see to it
 19 that there was no interference. Is that right
 20 COLONEL VERMAAK: That's correct, Chair.
 21 CHAIRPERSON: Now was there someone there
 22 already, a constable from the POP in Johannesburg?
 23 COLONEL VERMAAK: Chair, that's possible.
 24 I don't know the members but I know that most of the
 25 members who was with me was TRT members and I posted four

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1 members there to secure the scene for me. I went back and
 2 I go and organise a Nyala to assist the members there for
 3 protection purposes.
 4 MR NTSEBEZA SC: Colonel, I thought that
 5 we would not spend a bit of time on this. Now I recall
 6 that we wanted to make sure that when you came back you
 7 found the same people that you had posted there to secure
 8 the scene before you went away. I think we were agreed
 9 about that isn't it?
 10 COLONEL VERMAAK: Yes, Chair, if I maybe
 11 just – I picked up now in the statement if you go to
 12 paragraph 6 in Constable Yende's statement and if I can
 13 read it "I also retaliated back to stop them shooting on
 14 the ground and took a few minutes. I fired 12 rounds as we
 15 are Public Order members who were carrying shotguns in my
 16 Nyala." So if he was on the scene what happened to that
 17 cartridges of the shotgun?
 18 MR NTSEBEZA SC: We should not trip now,
 19 Colonel. I think there it's clear that he's not talking
 20 about –
 21 MR CHASKALSON SC: Sorry –
 22 CHAIRPERSON: Mr Chaskalson is saying
 23 something.
 24 MR CHASKALSON SC: Chairperson, the typed
 25 copy that has been put up has a page missing from a written

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1 copy that I had seen.

2 CHAIRPERSON: The manuscript copy also

3 has a page missing.

4 MR CHASKALSON SC: I have another copy

5 that has the missing page, I think in fairness to the

6 witness he must be given the missing page and we should all

7 see it.

8 CHAIRPERSON: In fairness I think we

9 should see it too.

10 COMMISSIONER HEMRAJ: Mr Chaskalson, our

11 copy stops - paragraph 4 stops on page 1 and the second

12 page starts at paragraph 6.

13 MR CHASKALSON SC: Yes the missing pages

14 are – well the missing paragraphs are on the missing page.

15 It's the same statement, there's just a page missing.

16 CHAIRPERSON: The page is missing -

17 MR CHASKALSON SC: Maybe if I can get the

18 missing page printed and everybody can see it.

19 MR NTSEBEZA SC: Mr Chairman, why don't

20 we go to the other two statements –

21 CHAIRPERSON: I was going to suggest that

22 to you yes, let's see if we can finish the other two

23 statements by half past 12.

24 MR NTSEBEZA SC: Yes, Mr Chairman.

25 CHAIRPERSON: Possibly if you are engaged

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1 on other business your junior can wrap up with this

2 statement or such other points as remain when we resume on

3 Tuesday.

4 MR NTSEBEZA SC: Indeed, Mr Chairman.

5 Let's suspend therefore the missing page, I'm reminded that

6 there was a misfit page at one stage in the life of this

7 Commission. If we look at Constable Mguye's statement.

8 Now that would be OOO – that's the one that already has an

9 exhibit number HHH13.

10 CHAIRPERSON: Sorry, what we see on the

11 screen doesn't help us but let's go on a bit further,

12 either the rest of this page or the next page.

13 MR NTSEBEZA SC: It's okay if you dealt

14 with the one that is on the screen, Chairman, as long as we

15 know it to be the statement attributable to Constable

16 Mguye.

17 CHAIRPERSON: Well I haven't got it in

18 front of me, what does the front page of the statement say?

19 Whose statement does it say it is? Mr Mguye apparently.

20 MR NTSEBEZA SC: Mguye ja, Chair.

21 CHAIRPERSON: Well isn't that the one you

22 want?

23 MR NTSEBEZA SC: It's fine now, Mr

24 Chairman.

25 CHAIRPERSON: It's fine, are you happy

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1 now? All right now let's go to the page we were on, you'll

2 see the bit where the constable deals with the matter we're

3 busy with because otherwise we'll never finish by half past

4 12.

5 MR NTSEBEZA SC: Mr Chairman, but we'll

6 try and –

7 CHAIRPERSON: Have you got the statement?

8 COLONEL VERMAAK: Yes, Chair.

9 CHAIRPERSON: You have, well good luck to

10 you. All right now let's carry on.

11 MR NTSEBEZA SC: The only point we want

12 to make, Mr Chairman, really about the statement it's very

13 [indistinct]. You see he doesn't mention any firing by

14 anyone at the stream and it talks really about the main

15 incident. By the main incident I'm talking about where we

16 started off where you saw things happening from a

17 helicopter, teargas, this, that and the next thing. I just

18 want to get your agreement, do you see Constable Mguye does

19 not purport to be giving an account of what happened at the

20 place where the doppies place seem to have been at.

21 CHAIRPERSON: Yes, no on the contrary, he

22 appears to say in the paragraph beginning "while it was

23 tried to rescue him" and so on he appears to be saying that

24 on what can describe as the field where the main engagement

25 took place between the strikers and the members of the

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1 police that was where he used his R5 and he fired off 10

2 rounds. He doesn't say that he fired off anything in the

3 vicinity of that orange circle. So that's something he's

4 going to have come and explain to us but I don't know if

5 the witness can help us on that.

6 MR NTSEBEZA SC: Mr Chairman, to the

7 extent that we were exploring with him objective evidence

8 and the objective evidence does put rifle doppie age at the

9 place where the other doppies are. So I was just making

10 the point that if he was writing this statement in the

11 course of giving material facts relevant to why a discharge

12 from his firearm was found where the other doppies were

13 found this statement in its entirety doesn't address that.

14 Do you agree with that?

15 COLONEL VERMAAK: Yes there's lack of

16 information in this statement, I agree.

17 CHAIRPERSON: That he appears to say that

18 he fired all 10 rounds that he fired at what I call the

19 field of engagement as opposed to in the orange circle.

20 COLONEL VERMAAK: That's correct, Chair.

21 CHAIRPERSON: If you know what I mean.

22 COLONEL VERMAAK: Ja.

23 CHAIRPERSON: So that's something that he

24 may have to explain. There may be an explanation but let's

25 hold our breaths and wait for it. Have we now got the

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1 missing page?
 2 MR NTSEBEZA SC: We would like time to
 3 read that, Mr Chairman.
 4 CHAIRPERSON: Yes all right. Well carry
 5 on with the other statement you were going to put to the
 6 witness.
 7 MR NTSEBEZA SC: Indeed, Mr Chairman.
 8 CHAIRPERSON: If we don't get there by
 9 12:30 then I'm sure your junior will be happy to assist us
 10 on Tuesday morning with it.
 11 MR NTSEBEZA SC: Yes, Mr Chairman. Now,
 12 Mr Chairman, was it 0030 that I watched? 30.2 Mogale,
 13 Warrant Officer Mogale. You see again, once again we now
 14 know that Warrant Mogale fired in the vicinity –
 15 CHAIRPERSON: He appears to have, I mean
 16 let's not – I mean the probabilities seem to point in that
 17 direction, the circumstantial evidence points in that
 18 direction. You never know, things have happened in this
 19 Commission before that have surprised us, so there may be a
 20 surprise in this one too. But let's stick on your
 21 circumstantial evidence point of the moment. The evidence
 22 seems to point with high degree of probability that he was
 23 one of those in the orange circle who fired.
 24 COLONEL VERMAAK: Yes, I agree on that.
 25 CHAIRPERSON: All right now that's where

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1 Mr Ntsebeza is.
 2 MR NTSEBEZA SC: And if this statement is
 3 made as an account by him of why a cartridge or a doppie
 4 that is traceable to the firearm that was definitely fired
 5 in the red circle as we have come to label it it does not
 6 assist anyone. It does not explain why he was there or why
 7 the doppie is where Captain Moshwana found it to be. You
 8 agree with that I'm sure.
 9 COLONEL VERMAAK: Yes Chair, I just want
 10 to know or maybe we have to look into the information, what
 11 weapons was issued also to this member because why both of
 12 them look as if they are talking about shotguns. They are
 13 POP members, so I know on the discharge sheet they
 14 mentioned the R5 but we we'll have to go the SAP first
 15 teams maybe to –
 16 CHAIRPERSON: I'm sure the police in
 17 their evidence – I mean the legal representatives of the
 18 police and evidence leaders can go into that. At the
 19 moment we've got the discharge sheet which tells us what it
 20 tells us in relation to the weapons used by these
 21 particular policemen on the day, on the 13th and that
 22 evidence was the evidence Mr Ntsebeza relies on. But the
 23 point he makes, I don't know if you can take it any
 24 further, is that Warrant Officer Mogale's statement doesn't
 25 help us – it doesn't explain to us how it was that a spent

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1 cartridge from a firearm that he used that day was found in
 2 what I call the orange circle and Mr Ntsebeza calls the red
 3 circle. We're using different colours but we're talking
 4 about the same circle.
 5 COLONEL VERMAAK: Yes. I don't know,
 6 it's information or something that we have experienced in
 7 the past is sometimes the driver of Nyala have a R5 or a
 8 shotgun with him. And when things get hot there's taking
 9 people who are taking that firearm to use it and sometimes
 10 they didn't declare they have shot that specific rounds.
 11 And afterwards you will find out but this member said he
 12 didn't fire any shots but when they linked then he said yes
 13 he remembers so and so used his firearm.
 14 CHAIRPERSON: The discharge tends to
 15 indicate that they, I don't know, but they admitted that
 16 they fired all these shots.
 17 COLONEL VERMAAK: That's correct.
 18 CHAIRPERSON: Anyway these are
 19 interesting matters that we will pursue when they come here
 20 but I don't know, with respect, that you can help us on it.
 21 Unless there's something Mr Ntsebeza wants to put to you
 22 about it.
 23 MR NTSEBEZA SC: Just two questions, Mr
 24 Chairman, and then we can call it a day. My juniors will
 25 deal with the rest on Tuesday. Colonel, I've just been

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1 reminded that - I have not been able to find it anywhere
 2 and I don't think you have testified about it either, did
 3 you yourself on that day carry a 9 millimetre pistol?
 4 COLONEL VERMAAK: No, not at all.
 5 MR NTSEBEZA SC: You didn't carry
 6 anything?
 7 COLONEL VERMAAK: No.
 8 MR NTSEBEZA SC: Did you use any firearm
 9 on the day?
 10 COLONEL VERMAAK: No.
 11 MR NTSEBEZA SC: Oh I see because I was
 12 going to ask because I haven't been able to find any
 13 ballistic analysis of a firearm that could have –
 14 CHAIRPERSON: The evidence was that he
 15 normally doesn't carry a firearm. He keeps it in a safe in
 16 his office. There is a reason that I take it is private to
 17 him and we won't probe but he has a reason for that. Am I
 18 correct?
 19 COLONEL VERMAAK: That's correct, Chair.
 20 CHAIRPERSON: Only on rare occasions did
 21 he take his firearm out of the safe. Is that correct?
 22 COLONEL VERMAAK: That's correct.
 23 CHAIRPERSON: This wasn't one of them.
 24 COLONEL VERMAAK: Ja. No, no, Chair.
 25 MR NTSEBEZA SC: I just wanted to make

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1 sure that one of those rarest occasions was not the 13th but
 2 you have testified that. The last question, Colonel, I got
 3 the impression in your evidence that you were saying this
 4 was not an operation really that called for other units
 5 other than POP members. Did I misread your – or did I
 6 misunderstand your evidence?
 7 COLONEL VERMAAK: Chair, we saw the
 8 Nyalas from the air, we didn't know at that stage there was
 9 TRT and NIU members being deployed there, so we take it
 10 that the people who have been deployed was POP members.
 11 And yes it was a illegal march and normally POP will handle
 12 it.
 13 MR NTSEBEZA SC: Let me just explain why
 14 I ask the question. The tenor of your evidence as I
 15 understood it in being critical of the plan, Scott plan,
 16 whatever and all of that was what led me to conclude that –
 17 in fact I think at one stage you said if you were in
 18 charge. And you had even suggested this to those who had
 19 been doing the planning, that you would have regarded this
 20 as a POP operation. And that the other units
 21 [12:27] And that the other units would not,
 22 were not appropriate for this operation. Now, I am
 23 paraphrasing what I understood your tenor of the evidence
 24 to have been. Have I done justice to assuming that that
 25 was the nature of your evidence?

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1 COLONEL VERMAAK: Yes, I agreed that,
 2 that was a public order policing incident there.
 3 MR NTSEBEZA SC: Now, that is – you see
 4 it struck me against that, that when you assemble a possie,
 5 I mean, I am sorry I don't want to be colloquial. When you
 6 assemble people of your members that must pursue the
 7 protestors or you own evidence you assembled TRT members
 8 and it's units you know who are certainly not POP members.
 9 What informed you or what informed your decision to choose
 10 TRT members?
 11 COLONEL VERMAAK: Chair, if you can
 12 remember I said I asked Captain Loest. He was with me in
 13 the helicopter and I asked him that he must get members for
 14 me to go with me to follow that person and then he came
 15 with those members and due to the time I took the members
 16 and I go with them. And also for the fact that there is a
 17 R5 involved. So it was no intention to go and disperse
 18 people. It was going to be secure the scene where we saw
 19 people was dragging a person, to go and to secure the scene
 20 there. But on our way we got a person who was shooting at
 21 us. So, no I didn't take them with me for a crowd control
 22 situation. I think they were at that stage the only
 23 persons that reacted to the request of Captain Loest but I
 24 think he can testify about that specifically.
 25 MR NTSEBEZA SC: Mr Chairman, it is now

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1 exactly half past 12. But can I just ask one aspect.
 2 CHAIRPERSON: It depends how long the
 3 aspect is, because we have got people who have made travel
 4 arrangements and who will be gravely embarrassed and very
 5 angry with me if I –
 6 MR NTSEBEZA SC: Okay, Mr Chairman, maybe
 7 let me –
 8 CHAIRPERSON: Perhaps your learned junior
 9 can ask this question on Tuesday morning. Give it to her
 10 in writing to make sure she gets it correct.
 11 MR NTSEBEZA SC: Thank you, Mr Chairman.
 12 Mr Chairman, for today then that is the end of my cross-
 13 examination.
 14 CHAIRPERSON: Thank you, we will adjourn
 15 now until Tuesday morning here at this venue at 9 o'clock
 16 or shortly thereafter.
 17 [COMMISSION ADJOURNED]
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