

RealTime Transcriptions

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 237

30 MAY 2014

PAGES 29626 TO 29729



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Page 29626

1 [PROCEEDINGS ON 30 MAY 2014]
 2 [09:20] CHAIRPERSON: The Commission resumes. We
 3 were asked to wait this morning before coming in because
 4 the SAPS required a bit of extra time before they were
 5 ready and we are told they are ready, so we are continuing.
 6 Ms Baloyi, you're going to call the next witness?
 7 MS BALOYI: Thank you, Chair. The next
 8 witness, Chair, is Edward Malisela Sebatjane.
 9 CHAIRPERSON: Yes. Now I was informed
 10 that he was going to give evidence through an interpreter.
 11 MS BALOYI: Yes.
 12 CHAIRPERSON: I don't see an interpreter
 13 here.
 14 MS BALOYI: He is here. The arrangement,
 15 we did make the arrangement.
 16 CHAIRPERSON: Is this an invisible or
 17 invincible interpreter?
 18 MS BALOYI: Chair, I'll ask Mr Mokatedi
 19 to go and check what's happening with the interpreter. I
 20 do apologise for that.
 21 CHAIRPERSON: So we'd better adjourn
 22 until the interpreter becomes visible.
 23 MS BALOYI: It seems we have to, Chair.
 24 CHAIRPERSON: He needs an interpreter.
 25 COMMISSIONER HEMRAJ: Mr Wesley went to

Page 29627

1 call him.
 2 CHAIRPERSON: Are there housekeeping
 3 matters we can deal with without the benefit of
 4 interpretation?
 5 MS BALOYI: Chairperson, it's only one
 6 document that we'll introduce from the index.
 7 CHAIRPERSON: WWW1 –
 8 MS BALOYI: Yes and it's –
 9 CHAIRPERSON: - is the CV of Constable
 10 Sebatjane.
 11 MS BALOYI: Yes, that's the one document.
 12 In fact it is two documents, I do apologise for that. It's
 13 the CV, Chair, and then on your table, Chair, you would
 14 have been given a document. The cover page is "Photos of
 15 Mr Mpumza carrying weapons."
 16 CHAIRPERSON: So we'll make that WWW2.
 17 MS BALOYI: Yes, Chair.
 18 CHAIRPERSON: What's it called, a
 19 presentation I suppose?
 20 MS BALOYI: Chair, it comprises slides
 21 from these various media clips that we have.
 22 CHAIRPERSON: We normally call those
 23 things presentation, don't we?
 24 MS BALOYI: Okay.
 25 CHAIRPERSON: So presentation "Photos of

Page 29628

1 Mr Mpumza carrying weapons." And the CV you say is – so
 2 you now call Constable Edward Malisela Sebatjane, is that
 3 correct?
 4 MS BALOYI: Indeed so, Chair.
 5 MR NTSEBEZA SC: Mr Chair, may I just
 6 indicate – Mr Chair, can I just indicate that I've just
 7 communicated to my learned friend Adv Baloyi that we will
 8 not contest the presentation that has just been marked an
 9 exhibit.
 10 CHAIRPERSON: Thank you, Mr Ntsebeza.
 11 Constable Sebatjane, are you prepared to take the oath?
 12 CONSTABLE SEBATJANE: Yes, I do.
 13 CHAIRPERSON: Will you swear that the
 14 evidence you will give before this Commission will be the
 15 truth, the whole truth and nothing but the truth? Please
 16 raise your right hand and say, I swear, so help me God.
 17 CONSTABLE SEBATJANE: I swear, so help me
 18 God.
 19 EDWARD MALISELA SEBATJANE: (d.s.s.):
 20 CHAIRPERSON: You may be seated. Yes, Ms
 21 Baloyi?
 22 EXAMINATION BY MS BALOYI: Thank you,
 23 Chair. Constable Sebatjane, when did you join the SAPS?
 24 CONSTABLE SEBATJANE: I started in the
 25 SAP as a volunteer. I worked as a reservist.

Page 29629

1 CHAIRPERSON: Yes. Sorry, I should have
 2 asked you this before. Are you prepared to take the
 3 questions in English on the basis that if you don't
 4 understand the question you can indicate and it will be
 5 interpreted to you? You see we'll go much faster if the
 6 questions that you understand in English, you can then
 7 answer – I think you're speaking SiSwati, are you?
 8 CONSTABLE SEBATJANE: I'm not SiSwati.
 9 MR MABUNDA: Sepedi.
 10 CHAIRPERSON: Sepedi?
 11 CONSTABLE SEBATJANE: Yes.
 12 CHAIRPERSON: So if you're prepared to
 13 take the questions in English on the basis that if you
 14 don't understand you can say so and then you'll answer in
 15 Sepedi and that will be interpreted. Will that be
 16 acceptable to you?
 17 CONSTABLE SEBATJANE: Yes, it will,
 18 Chair.
 19 CHAIRPERSON: Thank you very much. You
 20 say you started out as a reservist?
 21 CONSTABLE SEBATJANE: Yes, that's –
 22 CHAIRPERSON: That appears from your – a
 23 police reservist, that's while you were doing other work.
 24 CONSTABLE SEBATJANE: In the year 2008,
 25 yes, as a reservist. From there, that is during the year

<p style="text-align: right;">Page 29630</p> <p>1 2009 I joined permanently the SAPS. Then I went to the 2 basic training as a policeman, it started in July, training 3 the programme for the duration of two years. I completed 4 my basic training during December 2009. From January up to 5 June in the year 2010 I worked as the client services, 6 that's in the charge office or the police station. 7 MS BALOYI: When did you join the TRT? 8 CONSTABLE SEBATJANE: The year 2011. 9 MS BALOYI: Now if you would look at the 10 document which is marked UUU3 – Chairperson, this is the 11 consolidated statement and it's item 3 in the bundle of 12 documents. 13 CHAIRPERSON: Yes, thank you. I read it 14 last night. 15 MS BALOYI: Thank you, Chair. Now do you 16 have that document in front of you? 17 CONSTABLE SEBATJANE: Yes. 18 MS BALOYI: And you see in paragraph 2 19 you say you were deployed in Marikana on the 15th of August 20 2012, is that correct? 21 CONSTABLE SEBATJANE: Paragraph 2 of the 22 consolidated statement – 23 MS BALOYI: Yes. 24 CONSTABLE SEBATJANE: Are you referring 25 to the consolidated statement? Yes. It is in paragraph 4.</p>	<p style="text-align: right;">Page 29632</p> <p>1 confirm that is your statement? 2 CONSTABLE SEBATJANE: I have got it, yes. 3 MS BALOYI: And you confirm the signature 4 on that statement? 5 CONSTABLE SEBATJANE: I confirm also the 6 signature. 7 MS BALOYI: Yes. 8 COMMISSIONER HEMRAJ: What is the date of 9 that statement? 10 CHAIRPERSON: It's undated - 11 MS BALOYI: It is not dated, 12 Commissioner. 13 CHAIRPERSON: But can the witness perhaps 14 tell us what – 15 MS BALOYI: Yes. 16 CHAIRPERSON: Can you remember on what 17 date you made that handwritten statement? 18 CONSTABLE SEBATJANE: Chair, I remember 19 that it could be during November 2013, 2012. 20 CHAIRPERSON: Yes, in other words a few 21 months after the shootings at Marikana. 22 CONSTABLE SEBATJANE: That is so, yes 23 Chair. 24 CHAIRPERSON: Thank you. 25 MS BALOYI: And if you then also look at</p>
<p style="text-align: right;">Page 29631</p> <p>1 COMMISSIONER HEMRAJ: You see, Constable, 2 is it in paragraph 2 - 3 MS BALOYI: Paragraph 2 – 4 COMMISSIONER HEMRAJ: - that you were 5 deployed for the first time at Marikana on the 15th of 6 August? 7 CONSTABLE SEBATJANE: Sorry, my 8 apologies. 9 MS BALOYI: Thank you, thank you 10 Commissioner. In fact, Chairperson, if I may I need to 11 take some steps back. I need to confirm first his 12 statement, which I realise I didn't do and I do apologise – 13 CHAIRPERSON: We only have people taking 14 one step back in this Commission but if you want to create 15 a new – 16 MS BALOYI: And I will take two steps 17 forward, Chair. 18 CHAIRPERSON: - you may do so. 19 MS BALOYI: Constable, perhaps let's 20 first deal with this. In your bundle of documents you've 21 got item 2 which is a manuscript statement which is 22 exhibit, in the index it's marked exhibit TTT7, can you see 23 that? It's a handwritten statement. 24 CONSTABLE SEBATJANE: Yes. 25 MS BALOYI: Yes, that document. Do you</p>	<p style="text-align: right;">Page 29633</p> <p>1 the consolidated statement which – 2 CHAIRPERSON: You got him to confirm his 3 signature but do you confirm the contents of the statement 4 under oath as well? 5 CONSTABLE SEBATJANE: Repeat your 6 question, Chair? 7 MS BALOYI: Do you confirm your 8 signature, that is your signature on that handwritten 9 statement? 10 CHAIRPERSON: No, no, he's done that but 11 then he must – the signature is one thing, he must – I take 12 it he must confirm the contents as well. 13 MS BALOYI: Thank you, Chair. 14 CHAIRPERSON: I asked him that, he hasn't 15 answered yet. Do you confirm the contents of the statement 16 also? 17 CONSTABLE SEBATJANE: I do, sir, Chair. 18 MS BALOYI: Thank you, Chair. And then 19 if we look at the consolidated statement UUU3, do you have 20 that in front of you? You confirm that is your statement? 21 CONSTABLE SEBATJANE: I do. I do, Chair. 22 MS BALOYI: And do you confirm the 23 signature? 24 CONSTABLE SEBATJANE: Ja, that is my – I 25 confirm that.</p>

<p style="text-align: right;">Page 29634</p> <p>1 MS BALOYI: Do you confirm the content of 2 the statement as your statement? 3 CONSTABLE SEBATJANE: I do. 4 MS BALOYI: Thank you. Now if we then go 5 back to deal with UUU3, you confirmed that in paragraph 2 6 you were first deployed in Marikana on the 15th of August, 7 is that correct? 8 CONSTABLE SEBATJANE: I do, yes. 9 MS BALOYI: And this was under the 10 command of Captain Ryland. Is Captain Ryland your 11 commander in your unit? 12 CONSTABLE SEBATJANE: He is my commander, 13 yes. 14 MS BALOYI: This is Honeydew TRT. 15 CONSTABLE SEBATJANE: Yes. 16 MS BALOYI: And in paragraph 3 you state 17 that you made three statements and one of them cannot be 18 found, is that correct? 19 CONSTABLE SEBATJANE: I agree, yes. 20 MS BALOYI: And this is the statement 21 that you say you made in August 2012? 22 CONSTABLE SEBATJANE: I agree. 23 MS BALOYI: Now the statement, the second 24 statement which is TTT7, your handwritten statement, you 25 say you made it in November 2012. How did it come about</p>	<p style="text-align: right;">Page 29636</p> <p>1 further statement." You see that? 2 CONSTABLE SEBATJANE: Yes. 3 MS BALOYI: This is a statement different 4 from your statement in November, the handwritten one. And 5 where is that - 6 CONSTABLE SEBATJANE: I would say that 7 the contents is almost the same because I was writing about 8 the things which occurred. 9 MS BALOYI: Yes, and what happened with 10 that statement of the 31st of August? Do you know where it 11 is? 12 CONSTABLE SEBATJANE: I do not know. 13 They said they could not find it. 14 MS BALOYI: Did you sign that statement? 15 CONSTABLE SEBATJANE: I did not sign it. 16 MS BALOYI: Yes. 17 COMMISSIONER HEMRAJ: When the made the 18 statement, who did you hand it over to? That's the 31st of 19 August statement. 20 CONSTABLE SEBATJANE: Well, I handed it 21 over to a certain lawyer. They wanted to go and type it so 22 that they could return it back to me so that I could sign. 23 COMMISSIONER HEMRAJ: And having signed 24 it, what happened to the statement? 25 MR MABUNDA: Sorry?</p>
<p style="text-align: right;">Page 29635</p> <p>1 that you made that statement? 2 CONSTABLE SEBATJANE: I had been phoned 3 at the police station, informing me that they could not 4 trace my statement. They then asked me to write a 5 statement, then I wrote it and then handed it over to them. 6 MS BALOYI: Yes and in paragraph 4 of 7 UUU3 you talk about attending the parade on the 15th of 8 August - 9 COMMISSIONER HEMRAJ: Before we go there, 10 Ms Baloyi. 11 MS BALOYI: I beg your pardon, 12 Commissioner? 13 COMMISSIONER HEMRAJ: Before we go there, 14 in paragraph 3 he says on the 31st of August 2012 he made a 15 further statement because the initial statement could not 16 be found. Can you clear that up first? 17 MS BALOYI: Yes. 18 COMMISSIONER HEMRAJ: Otherwise we're 19 going to be looking for another statement. 20 MS BALOYI: Yes. You see in paragraph 3 21 in the second page you say, "On the 31st of August 2012 I 22 made a further statement." Do you see that? 23 CONSTABLE SEBATJANE: Yes. 24 MS BALOYI: And you say "It is because 25 the initial statement could not be found, that I made a</p>	<p style="text-align: right;">Page 29637</p> <p>1 COMMISSIONER HEMRAJ: You signed it, 2 Constable, what happened to the statement? 3 CONSTABLE SEBATJANE: They did not bring 4 it back to me for signing since I handed it over to them, 5 thus I did not sign it. 6 COMMISSIONER HEMRAJ: Yes, thank you. 7 MS BALOYI: Commissioner, perhaps if I 8 may try and add some clarity and there's isn't much 9 clarity. We have tried to find this draft statement in our 10 records and we cannot find it. It seems it might be one of 11 those that got lost. 12 CHAIRPERSON: Not a draft statement. He 13 made - look, this has happened with a lot of the other 14 witnesses, they made statements, signed them, they were 15 handed over to Mr Pretorius or his staff - 16 MS BALOYI: Yes. 17 CHAIRPERSON: - that typed them. In most 18 cases they were typed, not - the typed version wasn't 19 signed but we've used it as a typed version of the 20 handwritten statement. 21 MS BALOYI: Yes. 22 CHAIRPERSON: On this occasion the 23 handwritten statement got lost. It was a statement because 24 he'd signed it and so he was then asked to rewrite the 25 statement as best he could remember and that he did in</p>

Page 29638

1 November.

2 MS BALOYI: Yes.

3 CHAIRPERSON: So that's what happened,

4 isn't it?

5 MS BALOYI: Yes, it –

6 CHAIRPERSON: You've tried to find the

7 original, so far without success.

8 MS BALOYI: Without success, Chair.

9 Thank you. Now Constable Sebatjane, if you look at

10 paragraph 4, we were starting on that where you say you

11 attended a parade on the 15th and you were briefed about the

12 strike, the injuries and that the strikers carried all

13 assortment of dangerous weapons, you see that?

14 CONSTABLE SEBATJANE: I see it, yes.

15 MS BALOYI: Who gave you the briefing on

16 the 15th, do you know the name?

17 CONSTABLE SEBATJANE: We arrived on the

18 15th. That day I didn't know who was that police because we

19 were many police who were going up and down so I didn't

20 know them at all.

21 MS BALOYI: Yes. Who was present at this

22 briefing, the units, who attended?

23 CONSTABLE SEBATJANE: TRT unit, POP,

24 those are the units who I can remember.

25 MS BALOYI: And in paragraph 4.1 you say

Page 29639

1 that you were briefed that your group would form part of

2 the support group to be positioned at the football field to

3 give the negotiation team support and wait for further

4 instructions, is that correct?

5 CONSTABLE SEBATJANE: Correct.

6 MS BALOYI: Yes and you set out there who

7 comprised that group that would provide support, the TRT,

8 the POP and K9 members, do you see that?

9 CONSTABLE SEBATJANE: I agree with that,

10 yes.

11 MS BALOYI: And then you go on to say,

12 "Later in the day we were instructed to return to the JOC

13 where a briefing occurred" and then in paragraph 4.2 you

14 set out what you were instructed for the following day.

15 You see that?

16 CONSTABLE SEBATJANE: I agree with that,

17 yes.

18 MS BALOYI: Now this briefing that you

19 set out at paragraph 4.2, is that a briefing in the evening

20 after you finished your duties?

21 CONSTABLE SEBATJANE: It was during the

22 evening, yes.

23 MS BALOYI: Now if you would turn to

24 paragraph 5 and you say there that on the 16th you reported

25 at 7:30 and did not attend the briefing that occurred in

Page 29640

1 the morning, you see that?

2 CONSTABLE SEBATJANE: I see that, yes.

3 MS BALOYI: And then you say "At about

4 9H00 members of the reserve group were briefed by Captain

5 Kidd and Ryland." Do you see that?

6 CONSTABLE SEBATJANE: I agree with that.

7 MS BALOYI: What was the briefing by

8 Captain Kidd and Ryland?

9 CONSTABLE SEBATJANE: That time when they

10 briefed, as they said that we will go away from where we

11 were and then we'll go to a certain place. They said that

12 we are going to remain at that point, looking after the

13 protected area, settlement, that is the makuku.

14 [09:40] MS BALOYI: And you then proceeded to the

15 briefing. If we could look at L235, slide L235. Now

16 perhaps while we wait for the video, Chair, you say that in

17 this briefing you were told that you would be deployed to

18 go and protect the informal settlement, is that what you

19 say?

20 CONSTABLE SEBATJANE: Yes.

21 MS BALOYI: Yes and what else was said to

22 you?

23 CONSTABLE SEBATJANE: Another additional

24 thing, we were told that the people who will be coming from

25 the mountain, coming to the settlement, we have to save

Page 29641

1 them and take their weapons.

2 MR NTSEBEZA SC: Mr Chair, I just want to

3 know whether there is any relevance.

4 MS BALOYI: Yes, Chair. I will go to the

5 correct slide. I do realise that I called a wrong slide –

6 MR NTSEBEZA SC: I'm sorry, I'm sorry.

7 MS BALOYI: Thank you, Mr Ntsebeza. The

8 video operator, if we could look at slide 181? I apologise

9 for that. L181. Now Constable Sebatjane, if you look at

10 that slide L181 are you able to point us, to point out to

11 us where it is that you were to deploy that morning?

12 CHAIRPERSON: Constable, they're bringing

13 you a pointer so you'll be able to show us.

14 CONSTABLE SEBATJANE: Somewhere – gravel

15 road –

16 MR MABUNDA: Ja, we were walking down

17 that slide – he is indicating the road and then he says

18 somewhere there where he is indicating there is a gravel

19 road and a railway line.

20 CHAIRPERSON: What he indicates is at the

21 bottom of the slide from right to left or left to right

22 there's a yellow line which indicates a road and he is

23 pointing there. And then I understood him to go further

24 and indicate also just above that, on the extreme left of

25 the slide, on the left side of the slide indicated that

Page 29642

1 they were there as well and it was in that context that he
2 spoke of gravel road. Is that correct? That could be
3 interpreted perhaps.
4 CONSTABLE SEBATJANE: Yes, that's
5 correct, Chair.
6 MS BALOYI: Now where you've indicated
7 where you say there's a gravel road, is that where you
8 positioned yourselves that morning?
9 CONSTABLE SEBATJANE: Yes, it's where we
10 were positioned.
11 MS BALOYI: Now, you then say that at
12 about 15H00 you were briefed by Captain Kidd that an
13 instruction will be given to POP members to deploy the
14 barbed wire, at which stage we should await an instruction
15 – at which point you should await an instruction. Do you
16 see that in your paragraph 6?
17 CONSTABLE SEBATJANE: I see that, Chair.
18 MS BALOYI: Yes, what was the instruction
19 that Captain Kidd said you would receive?
20 CONSTABLE SEBATJANE: He said we shall
21 move there in order to protect the settlement, that as the
22 people will be coming – those people who came from the
23 mountain they shouldn't worry those who did go to work.
24 MS BALOYI: Yes and? And what else would
25 you do?

Page 29643

1 CONSTABLE SEBATJANE: We will save them
2 and disarm them.
3 MS BALOYI: Yes. Now you proceed to tell
4 us that at some point Captain Kidd gave you an instruction.
5 At what time did he give you an instruction? Paragraph 7
6 of your statement. Whatever time you remember -
7 CONSTABLE SEBATJANE: Are you referring
8 to the time of the watch or just –
9 MS BALOYI: - to your recollection what
10 time was it?
11 CONSTABLE SEBATJANE: - a stage?
12 MS BALOYI: Yes, let me put it again. At
13 some point you were then briefed by Captain Kidd and you
14 say in paragraph 7 that he briefed you to proceed forward.
15 Do you see that paragraph 7?
16 CONSTABLE SEBATJANE: I see that, Chair.
17 MS BALOYI: What I'm asking you is about
18 what time was this, to your recollection?
19 CONSTABLE SEBATJANE: Between half past
20 and, half past three and four o'clock.
21 MR MABUNDA: He mentions the time sector,
22 between half past three and four o'clock.
23 MS BALOYI: Yes. And if we could go back
24 to slide 181, L181, Constable, if you could point out on
25 this slide after the briefing what your movements were?

Page 29644

1 What did you do as part of the group that was briefed by
2 Captain Kidd?
3 CONSTABLE SEBATJANE: We moved from where
4 we were and then we go down, as I'm indicating on the chart
5 itself, Chair.
6 CHAIRPERSON: He indicates that they
7 proceeded up on the right-hand side of the informal
8 settlement which is on the bottom left-hand corner of the
9 photograph and he then indicates a line which is diagonally
10 to the right above the two red figures in the corner of,
11 the top right-hand corner of the informal settlement as
12 depicted on the slide.
13 MS BALOYI: Yes and how did the members
14 form up there? What formation did you take?
15 CONSTABLE SEBATJANE: We stood, the basic
16 line which it could start from left to right or right to
17 left.
18 MS BALOYI: Yes, and?
19 CONSTABLE SEBATJANE: We remained
20 standing there so that when people come they will find us
21 in that basic line.
22 MS BALOYI: Yes. Mr Interpreter, I think
23 he said we were supposed to remain standing there. I think
24 that's a correct interpretation.
25 CONSTABLE SEBATJANE: Ja, we were

Page 29645

1 supposed to remain there, ja.
2 MS BALOYI: Yes, and?
3 CONSTABLE SEBATJANE: Then we did not
4 remain there but Captain Kidd said that we should move
5 forward, which we did, Chair.
6 MS BALOYI: Yes and you say in paragraph
7 7 still, "As we were proceeding forward we came across
8 strikers who were armed with dangerous weapons," you see
9 that? Do you see that? Paragraph 7.
10 CONSTABLE SEBATJANE: Yes, yes, I see it.
11 MS BALOYI: Yes. And then in the third
12 sentence you say, "They were instructed to drop their
13 weapons and to raise their arms, which they obliged." Do
14 you see that?
15 CONSTABLE SEBATJANE: I see that, Chair.
16 MS BALOYI: "The strikers were searched
17 to ensure that they did not hide any dangerous weapons in
18 their pockets or beneath some of their clothing that they
19 were wearing, after which they were allowed to proceed
20 further." Do you see that?
21 CONSTABLE SEBATJANE: Yes.
22 MS BALOYI: Now, you say "As we were
23 proceeding further" – in paragraph 8 – "we were instructed
24 by means of hand signal by one of the persons who were in a
25 chopper to stretch the line further to the left." Are you

<p style="text-align: right;">Page 29646</p> <p>1 able to indicate on this slide here where you were, where 2 the line was when you got this instruction? 3 CONSTABLE SEBATJANE: Where I'm 4 indicating is the position where I was, extreme between – 5 Captain Kidd and Ryland, they were also together with us. 6 CHAIRPERSON: What the witness is 7 indicating is a spot between the rectangle in which the 8 words "second line TRT/NIU/STF" is to be seen and the 9 rectangle with the words "FHA2 deployed to protect the 10 informal settlement." Between those two rectangles he 11 indicates that he was somewhere in that vicinity, halfway 12 between those two rectangles as I saw it. Is that correct? 13 CONSTABLE SEBATJANE: That is so. 14 MS BALOYI: And I understand you to say 15 you were on the extreme left of that basic line, is that 16 correct? 17 CONSTABLE SEBATJANE: Yes, Chair. 18 MS BALOYI: Now if we could go to exhibit 19 L235, now in this exhibit L235 we have established that 20 where it indicates "western," where it is written "western" 21 there's that blue circle, you see that? 22 CONSTABLE SEBATJANE: Yes. 23 MS BALOYI: We've established that that 24 is where the part of the basic line that was with Captain 25 Kidd ended up and then where you've got the oval blue, the</p>	<p style="text-align: right;">Page 29648</p> <p>1 indicated on the slide. 2 MS BALOYI: Indeed so, Chair, that is 3 what he is saying. In fact, Constable, if we could look at 4 slide 247 and then you indicate your exact position there. 5 Now again you see we've got where it is written "southern," 6 which we established is the one group and then "western" is 7 where Captain Kidd was. On this slide, where were you? 8 CONSTABLE SEBATJANE: I was there where 9 I'm indicating where there are some vehicles, around there. 10 CHAIRPERSON: The bottom right-hand 11 corner of the slide we can see a number of vehicles. I 12 think they're Nyalas, aren't they? The centre one is not a 13 Nyala, I think it's a Canter but anyway there are a number 14 of vehicles, four white vehicles at that point and then 15 another one slightly further up, in fact two further up but 16 there are four close to the bottom right-hand corner, 17 indicating somewhere near there. Is that correct, 18 Constable? 19 CONSTABLE SEBATJANE: That is so, Chair. 20 MS BALOYI: Yes. And in paragraph 8 of 21 UUU3 you say, "As we were proceeding further, we were 22 instructed by means of hand signal by one of the persons 23 who were in the chopper to stretch the line further to the 24 left. I, together with some members, ended up at the 25 north-western side of the koppie where we met some POP</p>
<p style="text-align: right;">Page 29647</p> <p>1 blue marking in oval shape where it's marked "southern" 2 we've established that was another part of the group that 3 was with Captain Kidd. Whereabouts were you in relation to 4 this slide? 5 CONSTABLE SEBATJANE: Somewhere where I'm 6 indicating on – 7 CHAIRPERSON: You will remember the 8 evidence of Captain Kidd was there were actually three 9 groups. 10 MS BALOYI: Yes. 11 CHAIRPERSON: The two indicated by the 12 blue ovals and a third one to the right, I think slightly 13 off the slide – 14 MS BALOYI: Yes, indeed, Chair. 15 CHAIRPERSON: - to the right, presumably 16 more or less in the top right-hand corner. 17 MS BALOYI: Yes. 18 CHAIRPERSON: Beyond the words, the sign 19 indicating the direction north. 20 MS BALOYI: Yes. 21 CHAIRPERSON: So from my understanding of 22 his evidence he is saying he was a member of that third 23 group – 24 MS BALOYI: Yes. 25 CHAIRPERSON: - whose position is not</p>	<p style="text-align: right;">Page 29649</p> <p>1 members arresting some of the protesters." You see that? 2 CONSTABLE SEBATJANE: I see that, Chair. 3 MS BALOYI: And then you say "We assisted 4 with the arrest, the searching and the loading of the 5 suspects into the trucks." Do you see that? 6 CONSTABLE SEBATJANE: I see that, Chair. 7 MS BALOYI: Okay. Now this slide 247 8 where you indicate where you were, what were you doing 9 there? What was happening there where you were, where the 10 Nyalas are? 11 CONSTABLE SEBATJANE: We did what we call 12 all round defence. So the members of the POP they were 13 busy searching those people there and then we protected 14 them, the POPS unit. 15 MS BALOYI: Now this which we see in the 16 slide and where you position yourself, is that what you are 17 describing in paragraph 8 of UUU3? 18 CONSTABLE SEBATJANE: Yes, Chair. 19 MS BALOYI: And then you say still in 20 paragraph 8, the last sentence you say, "At one stage I 21 only heard sounds of objects passing over my head which I 22 thought were bullets," you see that? 23 CONSTABLE SEBATJANE: I see that, Chair. 24 MS BALOYI: Whereabouts were you when you 25 heard these sounds?</p>

<p style="text-align: right;">Page 29650</p> <p>1 CONSTABLE SEBATJANE: Still around where 2 I've indicated, together with the POPS unit. 3 MS BALOYI: Yes, and were you – 4 MR NTSEBEZA SC: Can he indicate again, 5 Mr Chairman, I'm sorry? 6 CHAIRPERSON: Once again he indicates – 7 CONSTABLE SEBATJANE: The vicinity where 8 I'm showing. 9 CHAIRPERSON: - in the vicinity of those 10 four white vehicles in the bottom right-hand corner which I 11 mentioned earlier. 12 MS BALOYI: And were you able to make out 13 where the shots were coming from? 14 CONSTABLE SEBATJANE: No. 15 MS BALOYI: And then you say at paragraph 16 9, you say "After loading the suspects that were arrested 17 towards the northern western side, I noticed that there 18 were a lot of members inside and next to the koppie. We 19 assisted and loaded further suspects into the truck." Do 20 you see that? 21 CONSTABLE SEBATJANE: I see that, Chair. 22 MS BALOYI: And then you say, "As we 23 approached the koppie I saw one black male wearing a white 24 jacket with dreadlocks hair came out running towards the 25 direction of Captain Kidd and suddenly made a turn and ran</p>	<p style="text-align: right;">Page 29652</p> <p>1 circles, the one is an oval really and the other is a 2 circle, about a third of the way up on the right-hand side 3 of the photograph, one a red circle, one a blue oval. 4 That's where he indicates he was standing. 5 MS BALOYI: Yes and who were you working, 6 walking with rather? 7 CHAIRPERSON: I put it wrongly. That's 8 the direction, he was walking in that direction. 9 MS BALOYI: Yes. 10 [10:00] CHAIRPERSON: I summarised it 11 incorrectly. They were with you, were they? 12 CONSTABLE SEBATJANE: Yes. 13 MS BALOYI: And where was Captain Kidd? 14 CONSTABLE SEBATJANE: I didn't see him 15 until the time he started screaming. Then I saw him in 16 that vicinity. 17 CHAIRPERSON: Sorry he indicates the 18 position below the letters TERN Western on the right-hand 19 of the slide. 20 MS BALOYI: And the gentleman that you 21 describe, the dreadlocked gentleman, where was he when you 22 first saw him? 23 CONSTABLE SEBATJANE: Well he was 24 somewhere where I've indicated. 25 CHAIRPERSON: He indicates also below the</p>
<p style="text-align: right;">Page 29651</p> <p>1 towards our direction." You see that? 2 CONSTABLE SEBATJANE: I see that, Chair. 3 MS BALOYI: Now if you would look at the 4 document that we marked WW – 5 CHAIRPERSON: Before we have the 6 document, can he perhaps show us on slide 247 where – he 7 told us where he was, he was near the vehicles in the 8 bottom right-hand corner, that's the last position he 9 indicated – can he show us where this person with the 10 dreadlocks came out. I take it that was, we're going to 11 hear in due course that that was Mr Mpumza. 12 MS BALOYI: Yes Chair, I wanted to 13 confirm that. 14 CHAIRPERSON: But if he can show us where 15 he saw Mr Mpumza, where Captain Kidd was and where he was 16 and then perhaps you can go further because it will help me 17 at least to follow what is being said. 18 MS BALOYI: Thank you, Chair. Constable, 19 what you describe in your paragraph 9 where you say you saw 20 a white, a man with dreadlocked hair, where were you when 21 you first saw this man, if you would indicate on the slide? 22 CONSTABLE SEBATJANE: At that time we 23 were just walking, we were walking in that direction, that 24 vicinity where I am indicating now. 25 CHAIRPERSON: He indicates the two</p>	<p style="text-align: right;">Page 29653</p> <p>1 word western in the right-hand side of the slide, just 2 below the letter W is a vehicle and he indicates in the 3 vicinity of that vehicle. Is that correct, Constable? 4 CONSTABLE SEBATJANE: Correct, Chair. 5 MS BALOYI: And you say when you saw him 6 he was running in the direction of Captain Kidd, that's 7 what you say. 8 CONSTABLE SEBATJANE: He was running as 9 though he was going to Captain Kidd but shortly thereafter 10 he turned. 11 MS BALOYI: And you say he turned to 12 where? 13 CONSTABLE SEBATJANE: He then turned and 14 ran towards our direction. 15 MS BALOYI: Now when he turned towards 16 your direction are you able to indicate what distance he 17 was from you at that point? 18 CHAIRPERSON: What he indicates is below 19 that vehicle which I referred to which is below the letter 20 W, he indicates below that vehicle and slightly to the 21 right on the slide. 22 MS BALOYI: And you say in paragraph 9 23 that you and Constable Mabe screamed and shouted 24 instructing the striker to drop his weapon. 25 CONSTABLE SEBATJANE: That is so, it's</p>

Page 29654

1 what did, Chair.

2 MS BALOYI: Do you know whether the

3 striker could hear at this point, could hear you?

4 CONSTABLE SEBATJANE: Yes.

5 MS BALOYI: And what was the striker's

6 reaction to you shouting?

7 CONSTABLE SEBATJANE: He stopped running

8 but he moved quickly, fast.

9 MS BALOYI: Can you indicate on the slide

10 where he was when he stopped running?

11 CONSTABLE SEBATJANE: It would be in that

12 vicinity that I'm indicating, Chair.

13 CHAIRPERSON: He indicates a spot very

14 close to the top of the light blue oval and the red circle

15 where they intersect. He indicates a position close to the

16 top of the blue oval and also the top of the red circle

17 where they intersect on the right-hand side of the

18 photograph.

19 MR NTSEBEZA SC: Mr Chairman, I'm told by

20 one of my juniors who's conversant with language that there

21 was misinterpretation of how the – what happened when they–

22 CHAIRPERSON: Well you know the answer

23 interpreted again, I was simply endeavouring to indicate

24 for the benefit of those who are going to read the record

25 later, the area the witness was indicating with the

Page 29655

1 pointer.

2 MR NTSEBEZA SC: It just that at the time

3 that I wanted to intervene –

4 CHAIRPERSON: Yes, yes I understand.

5 MR NTSEBEZA SC: - my microphone was not

6 working.

7 CHAIRPERSON: What exactly was the –

8 perhaps your junior gave you the information to tell us if

9 you can't do so.

10 SPEAKER: Mr Chair, it was in response to

11 a question from Ms Baloyi when she asked what happened when

12 they told him to stop and whether he could he could hear

13 them. And in response he said [African language] which

14 means he stopped running and he started walking slowly but

15 the interpreter said he stopped running and walked quickly.

16 CHAIRPERSON: Would you be kind enough

17 for the benefit of the transcribers to spell what you said

18 in Sepedi? Before we get there if Ms Baloyi and the

19 interpreter concur that that's actually what was said then

20 we don't have to get the actual Sepedi words on the record

21 because I think -

22 MS BALOYI: I agree, Chair, the witness

23 said he stopped running and started walking slowly.

24 CHAIRPERSON: Thanks.

25 MR MABUNDA: Also to confirm this, Mr

Page 29656

1 Chairperson, that was – I indicated that to Ms Baloyi.

2 CHAIRPERSON: So there's unanimity on the

3 point. So you're ahead on that point, Mr Ntsebeza.

4 MR NTSEBEZA SC: Okay.

5 MS BALOYI: Now, Constable, you were

6 point out where the striker was, where he stopped running

7 and started walking slowly. Did he walk towards you at

8 this point?

9 CONSTABLE SEBATJANE: Yes.

10 MS BALOYI: Who was with you at that

11 point of the police?

12 CONSTABLE SEBATJANE: It was myself,

13 Constable Mabe and Constable Buthelezi.

14 MS BALOYI: Now if I can ask you, with

15 the assistance of pointer, to indicate on the slide where

16 the three of you, the TRT members were when the striker

17 started walking slowly and the formation that you took?

18 CONSTABLE SEBATJANE: It could have been

19 where I've indicated first, in that vicinity.

20 MS BALOYI: Is that where the striker

21 was?

22 CONSTABLE SEBATJANE: Yes.

23 CHAIRPERSON: What he indicates is the

24 position more or less in the centre of the red circle,

25 close to the head of the yellow arrow which ends in the

Page 29657

1 middle of the red circle.

2 COMMISSIONER HEMRAJ: So sorry, that

3 point that you've just shown, is that where you were or

4 where the striker was?

5 CONSTABLE SEBATJANE: It's the place

6 where we were.

7 CHAIRPERSON: I understood him to

8 indicate that's where he and his two colleagues were and he

9 indicated earlier that the striker was some distance away,

10 not very far but just beyond the top of the red circle and

11 the blue oval. That's right, Constable, did I get it

12 right?

13 MR NTSEBEZA SC: Mr Chair, is that a red

14 circle or is it a blue circle with the –

15 CHAIRPERSON: Red circle, maybe dark

16 orange and then next to it is a blue, is a light blue oval.

17 So I talk about the red circle which has the arrow head in

18 it. And then next to it is a light blue oval. Do you

19 agree Mr Ntsebeza?

20 MR NTSEBEZA SC: Ja I think we are ad

21 idem, Mr Chair.

22 MS BALOYI: And I asked you to also

23 indicate the formation that you and Constables Mabe and

24 Buthelezi took at that point.

25 CONSTABLE SEBATJANE: We were standing in

<p style="text-align: right;">Page 29658</p> <p>1 what we call the basic line but it was only three of us as 2 I've just mentioned, Chair. In the middle was Constable 3 Mabe, Constable Buthelezi was on my right. 4 MS BALOYI: Yes and what – 5 CHAIRPERSON: No, no, no sorry I don't 6 understand that. Who was in the centre? There were the 7 three of you who were standing basically in a line, right? 8 Now who was in the middle? 9 CONSTABLE SEBATJANE: Constable Mabe. 10 CHAIRPERSON: Mabe was in the middle, who 11 was on the right-hand side? 12 CONSTABLE SEBATJANE: Constable 13 Buthelezi. 14 CHAIRPERSON: Buthelezi on the right-hand 15 side and you were on the left-hand side of Mabe. 16 CONSTABLE SEBATJANE: Yes, Chair. Were 17 you standing or walking? 18 CONSTABLE SEBATJANE: We were walking. 19 CHAIRPERSON: And were you walking in the 20 direction of the dreadlocked striker? 21 CONSTABLE SEBATJANE: Yes, Chair. 22 MS BALOYI: And at that point what the 23 distance between the three of you? The three being the 24 police members, Chairperson. 25 CHAIRPERSON: Do you mean his distance</p>	<p style="text-align: right;">Page 29660</p> <p>1 CHAIRPERSON: Taken where, is this taken 2 at koppie – 3 MS BALOYI: At the koppie, indeed, Chair. 4 CHAIRPERSON: At koppie 1? 5 MS BALOYI: It is at koppie 1, Chair, in 6 fact, Chair, it is a blow up of slide, the next slide 4 and 7 5 in the same bundle which are shot from a video by the 8 koppie. And we see Mr Mpumza to the right of the gentleman 9 who's back is to the camera and he's sitting down. That is 10 on – and then on the last slide, Chair, you see only a part 11 of him to the extreme right, at the end of the picture. 12 You see only his leg, we were able to identify the – he 13 seemed to have a cloth on his leg, around his jeans and 14 when you blow up the picture it's clear that it is him. 15 CHAIRPERSON: He appears to have a weapon 16 of some kind in his hand. 17 MS BALOYI: Indeed, even the work – 18 CHAIRPERSON: And the hand we can see in 19 the extreme right is the hand of the person whose leg we 20 can see as well. 21 MS BALOYI: Yes, Chair. Now, Constable 22 if we could then go back to UUU3, the consolidated 23 statement. You said at paragraph 10, you've explained that 24 you then shouted, the three of you shouted at Mr Mpumza to 25 drop his weapons. What happens next, won't you please</p>
<p style="text-align: right;">Page 29659</p> <p>1 from Mabe and Mabe's distance from Buthelezi? 2 MS BALOYI: Yes. Chair. 3 CHAIRPERSON: All right how close were 4 you to Constable Mabe? 5 CONSTABLE SEBATJANE: I would say that 6 from me three paces, Mabe. From Mabe to Buthelezi it could 7 be the same distance as I mentioned. 8 CHAIRPERSON: You were extreme left, 9 three paces to your right was Mabe, three paces to his 10 right was Buthelezi, more or less. 11 MS BALOYI: Thank you, Chair. Now just 12 for completeness perhaps if we could at exhibit WWW2 and 13 here we look at slide 4, page 4. Are you there Constable? 14 That's the slide on the screen. 15 CONSTABLE SEBATJANE: Okay. 16 MS BALOYI: Do you confirm for the record 17 that that is the gentleman that you describe as the 18 dreadlocked person? 19 CONSTABLE SEBATJANE: He's the one, yes. 20 MS BALOYI: Chair, that is Mr Mpumza. 21 COMMISSIONER HEMRAJ: What was the date 22 of this photograph, Ms Baloyi? 23 MS BALOYI: Chairperson, as I understand 24 it is the 16th, Mr Chaskalson he indicated that this is on 25 the 16th.</p>	<p style="text-align: right;">Page 29661</p> <p>1 explain to the Commission what happens? 2 CONSTABLE SEBATJANE: He knelt down as 3 though he was dropping his weapons. At that moment he was 4 looking in the direction of Constable Buthelezi then I 5 turned, I walked behind him. I took my firearm and put it 6 in the holster, I will say that I was just about three 7 paces away from him. In that moment that I was busy taking 8 out my handcuffs he stood up quickly, then he turned and 9 looked at me. 10 MS BALOYI: And faced me. 11 CONSTABLE SEBATJANE: And faced me, 12 sorry. He picked up his left hand which he had a weapon in 13 it. 14 MS BALOYI: What weapon did he have in 15 his hand. 16 CHAIRPERSON: You indicate with your own 17 left arm, he raised his left arm above his shoulder towards 18 the back – 19 CONSTABLE SEBATJANE: Towards the back. 20 MS BALOYI: Thank you, Chair. What 21 weapon did he have in his left hand? 22 CONSTABLE SEBATJANE: It was a assegai, a 23 spear. 24 MS BALOYI: A spear, Chair. Yes. 25 CONSTABLE SEBATJANE: He wanted to stab</p>

<p style="text-align: right;">Page 29662</p> <p>1 me.</p> <p>2 CHAIRPERSON: He indicates again with his</p> <p>3 left arm coming downwards, forwards actually, he's actually</p> <p>4 saying he comes forward more or less at shoulder height.</p> <p>5 CONSTABLE SEBATJANE: Yes. I turned to</p> <p>6 my left.</p> <p>7 CHAIRPERSON: Did you turn to your left</p> <p>8 or your right? The interpreter said left but you moved</p> <p>9 your right shoulder to the right, so how did you move?</p> <p>10 CONSTABLE SEBATJANE: I turned to my</p> <p>11 left.</p> <p>12 MR MABUNDA: He said he turned to his</p> <p>13 left.</p> <p>14 CHAIRPERSON: Your right shoulder went to</p> <p>15 the right and your left shoulder came forward, so in that</p> <p>16 sense you turned to your left.</p> <p>17 CONSTABLE SEBATJANE: Ja, my left</p> <p>18 shoulder was on his chest. It was his chest. Then I</p> <p>19 pulled out my firearm.</p> <p>20 MS BALOYI: You say that he missed your</p> <p>21 neck. How close was he to your neck?</p> <p>22 CONSTABLE SEBATJANE: Just here, he's</p> <p>23 indicating there.</p> <p>24 MS BALOYI: Below the chin.</p> <p>25 CHAIRPERSON: It's about three or four</p>	<p style="text-align: right;">Page 29664</p> <p>1 MS BALOYI: And you say that you drew</p> <p>2 your pistol and fired one round to his chest.</p> <p>3 CONSTABLE SEBATJANE: Yes.</p> <p>4 MS BALOYI: And do you know if you hit</p> <p>5 him with that shot in his chest?</p> <p>6 CONSTABLE SEBATJANE: I do not know.</p> <p>7 MS BALOYI: And then you go on to say I</p> <p>8 then moved two or three steps backwards, the suspect then</p> <p>9 charged again. Do you see that.</p> <p>10 CONSTABLE SEBATJANE: Yes.</p> <p>11 MS BALOYI: When you say the suspect then</p> <p>12 charged again, what did he do?</p> <p>13 CONSTABLE SEBATJANE: He came running</p> <p>14 towards me holding his spear up.</p> <p>15 MS BALOYI: With his left arm.</p> <p>16 CONSTABLE SEBATJANE: Left, left.</p> <p>17 CHAIRPERSON: If you give us that gesture</p> <p>18 again please, Constable.</p> <p>19 [10:19] Sorry, - describe it. You indicate with the left</p> <p>20 hand above his left shoulder, is that correct? And then</p> <p>21 did he move, did he lunge forward with it or did his left</p> <p>22 arm move forward?</p> <p>23 CONSTABLE SEBATJANE: He wanted to stab,</p> <p>24 ja. Yes, he was running towards me.</p> <p>25 CHAIRPERSON: I know he wanted, your</p>
<p style="text-align: right;">Page 29663</p> <p>1 inches from his neck, I don't what that is metrical terms</p> <p>2 but anyway, three or four inches from his neck, he</p> <p>3 indicates with his hand as if the front of the assegai came</p> <p>4 past his neck as it were, from right to left.</p> <p>5 MS BALOYI: Yes.</p> <p>6 CHAIRPERSON: Mr interpreter, I think you</p> <p>7 must, if I may say so, confine yourself to interpreting</p> <p>8 because you give gestures which sometimes aren't exactly</p> <p>9 the same as the witness, it distracts us. We'll</p> <p>10 concentrate, we don't need his gestures interpreted to us,</p> <p>11 just his words. And if I get it wrong in my description</p> <p>12 then he will be able to correct me, I hope.</p> <p>13 CONSTABLE SEBATJANE: Then I moved</p> <p>14 backward, that moment, then I pulled out my firearm. I</p> <p>15 started to –</p> <p>16 COMMISSIONER HEMRAJ: Just a second, he</p> <p>17 indicates that he pulled out his firearm with his right</p> <p>18 hand.</p> <p>19 CONSTABLE SEBATJANE: With my right hand,</p> <p>20 yes. Then I started to fire.</p> <p>21 MS BALOYI: How far were you from him at</p> <p>22 that point?</p> <p>23 CONSTABLE SEBATJANE: I will say,</p> <p>24 estimation about two to three paces away from him at that</p> <p>25 moment.</p>	<p style="text-align: right;">Page 29665</p> <p>1 impression was he wanted to stab you but did he move his</p> <p>2 left arm forward or did he just raise his arm with the</p> <p>3 assegai without actually moving forward? What exactly</p> <p>4 happened?</p> <p>5 CONSTABLE SEBATJANE: Chair –</p> <p>6 CHAIRPERSON: Say it in Sepedi and the</p> <p>7 interpreter will interpret if you're lost for words in</p> <p>8 English.</p> <p>9 CONSTABLE SEBATJANE: He was holding the</p> <p>10 spear up like this. That moment I was – he raised his</p> <p>11 spear and then I started to run.</p> <p>12 MS BALOYI: No, Chair –</p> <p>13 MR MABUNDA: Stepping back, yes.</p> <p>14 MS BALOYI: No, Chair. The witness says</p> <p>15 – yes.</p> <p>16 CHAIRPERSON: Mr Interpreter, you know, I</p> <p>17 know it's difficult but you are trying to repeat the</p> <p>18 gestures, you don't always repeat them exactly –</p> <p>19 MR MABUNDA: Oh, sorry.</p> <p>20 CHAIRPERSON: - exactly the same gesture</p> <p>21 you see and that leads to a bit of confusion but let him –</p> <p>22 you interpret what he says and he will give us the gestures</p> <p>23 and I'll try –</p> <p>24 MR MABUNDA: Thank you.</p> <p>25 CHAIRPERSON: - to describe them and if I</p>

Page 29666

1 get them wrong he will correct me.

2 MR MABUNDA: Thank you, Chairman.

3 MR NTSEBEZA SC: Mr Chairman, I thought I

4 was going to make the suggestion during the tea break.

5 Certainly from our perspective and I can see the concerns

6 also of my learned friend Ms Baloyi, this is a very

7 critical aspect both for SAPS, because he must be

8 exonerated if he didn't do anything wrong, and it's also

9 very important from the perspective of the families and if

10 there is a more able interpreter, then we would prefer.

11 And I don't want to take anything from the present

12 interpreter but it is clear in the period –

13 CHAIRPERSON: What's your suggestion?

14 MR NTSEBEZA SC: My suggestion is that

15 we, if Mr Mahlangu can substitute the current interpreter

16 then he should.

17 CHAIRPERSON: Alright, so –

18 MR NTSEBEZA SC: And I don't want him to

19 think that it's a measure of demeaning him.

20 CHAIRPERSON: Yes, it's – so are you

21 suggesting we take the first comfort break now?

22 MR NTSEBEZA SC: If we could.

23 CHAIRPERSON: Then Mr Mahlangu and the

24 interpreter, the present interpreter, can consult with each

25 other and we can then decide the best way, they can then

Page 29667

1 decide the best way forward.

2 MR NTSEBEZA SC: Yes, Mr Chairman.

3 CHAIRPERSON: Alright. So we'll take the

4 first comfort break now.

5 [COMMISSION ADJOURNS COMMISSION RESUMES]

6 [10:47] CHAIRPERSON: The Commission resumes.

7 You're still under oath, Constable. Ms Baloyi?

8 MS BALOYI: Thank you, Chair.

9 CHAIRPERSON: What is the position in

10 relation to the interpretation? I see you've taken over?

11 MR MAHLANGU: I will now relieve Mr

12 Mabunda, Chairperson. It was –

13 CHAIRPERSON: You'll relieve him. You

14 were here, I understand, to relieve him at some stage.

15 MR MAHLANGU: That's correct.

16 CHAIRPERSON: And the first comfort break

17 was the appropriate stage and you're now relieving him, is

18 that the position?

19 MR MAHLANGU: The end of the preamble,

20 yes.

21 CHAIRPERSON: Okay.

22 MR NTSEBEZA SC: Mr Chairman, I would

23 like Mr Mabunda – I thought I was going to see him during

24 the comfort break – I would like him to understand that

25 there is nothing personal against him about all of this

Page 29668

1 arrangement. It's done in the best interests of the

2 Commission.

3 CHAIRPERSON: I'm sure he understands and

4 everyone understands. Ms Baloyi?

5 EDWARD MALISELA SEBATJANE: (s.u.o.):

6 EXAMINATION BY MS BALOYI (CONTD.): Thank

7 you, Chair. Constable, we were looking at paragraph 11 of

8 your statement and you were describing that after you'd

9 fire, after you drew the pistol and fired one round to his

10 chest, you then said "I then moved two or three steps

11 backwards. The suspect then charged again." Can you

12 please describe what you mean when you say the suspect then

13 charged again?

14 CONSTABLE SEBATJANE: He raised his

15 spear –

16 MS BALOYI: Can you indicate how he

17 raised his hand and spear?

18 CONSTABLE SEBATJANE: He came towards me.

19 As I now indicate, he raised it up.

20 MS BALOYI: You raise your left hand up,

21 yes?

22 CONSTABLE SEBATJANE: He came towards me,

23 running.

24 MS BALOYI: Yes.

25 CONSTABLE SEBATJANE: I fired a shot

Page 29669

1 again. He tried to stab at me, I ducked away. I knelt

2 down and fired again. He kept on coming. I also kept on

3 firing whilst retreating backwards. I fell, I fell on my

4 back, Chairperson. Whilst I was lying in that position

5 having fallen back, I kept on firing. He was at that stage

6 standing where my feet were.

7 MS BALOYI: At that point are you on your

8 back, lying on your back?

9 CONSTABLE SEBATJANE: Yes.

10 MS BALOYI: When he was at your feet?

11 CONSTABLE SEBATJANE: That's correct,

12 Chairperson. At that time I was lying on my back. Whilst

13 I was shooting I saw him fall as well. He fell with his

14 face forward, looking at me. Before hitting the ground his

15 body turned around and he landed on his back. He had

16 fallen next to my left hand. Whilst he was lying there he

17 tried to raise his spear again, again indicate with the

18 left hand –

19 MS BALOYI: You indicate that by raising

20 your left hand wide.

21 CONSTABLE SEBATJANE: That is correct,

22 Chair. I rolled away towards my right. I stood up, I

23 pointed my firearm at him. He was trying to rise but he

24 was, he did not have the power to do so. I stood there

25 wait, looking at him until the arrival of the other police.

<p style="text-align: right;">Page 29670</p> <p>1 MS BALOYI: Yes. Now you have described 2 him carrying his spear on the left-hand side and that being 3 the weapon that he was attempting to use to stab you, is 4 that correct? 5 CONSTABLE SEBATJANE: Yes. 6 MS BALOYI: Did he have anything else on 7 his right-hand side? 8 CONSTABLE SEBATJANE: On his right-hand 9 side he had a piece of iron that looks like a knobkerrie. 10 MS BALOYI: And then you say at the end 11 of paragraph 11 that in total you fired nine rounds in 12 self-defence, do you see that? 13 CONSTABLE SEBATJANE: Yes. 14 MS BALOYI: And do you know whether 15 these, all nine rounds hit him? 16 CONSTABLE SEBATJANE: I do not know. 17 COMMISSIONER HEMRAJ: In your describing 18 of him lunging at you with the spear, can you perhaps 19 explain to us how many times it was that you saw him make 20 that movement that you've described with the spear? 21 CONSTABLE SEBATJANE: Chairperson, it 22 could have been between four and five times that he tried. 23 COMMISSIONER HEMRAJ: This was while he 24 was on his feet? 25 CONSTABLE SEBATJANE: That is so.</p>	<p style="text-align: right;">Page 29672</p> <p>1 defence of my life." Is that so? 2 CONSTABLE SEBATJANE: Yes. 3 MS BALOYI: Did you become aware whether 4 Constable Buthelezi, I think it is, fired any shots in that 5 time when you were confronted with Mr Mpumza? 6 CONSTABLE SEBATJANE: I did not know 7 anything there. 8 MS BALOYI: Now in paragraph 13 of your 9 statement you then describe that Colonel McIntosh, Captain 10 Kidd and Captain Ryland appeared at the scene, do you see 11 that? 12 CONSTABLE SEBATJANE: I see that, yes. 13 MS BALOYI: Do you know who of them 14 arrived first, did you see? 15 CONSTABLE SEBATJANE: I would not be able 16 to say by name who it was that arrived first but Colonel 17 McIntosh arrived after the others. 18 MS BALOYI: Sorry, you say Colonel 19 McIntosh arrived? 20 CONSTABLE SEBATJANE: After Captain Kidd 21 and Ryland. Between Captain Kidd and Ryland, I would not 22 be able to say which arrived first. 23 MS BALOYI: Yes. Now Constable 24 Sebatjane, if you hadn't fired at Mr Mpumza in the way that 25 you describe it happened, what would have happened?</p>
<p style="text-align: right;">Page 29671</p> <p>1 COMMISSIONER HEMRAJ: Yes, thank you, 2 Constable. 3 MS BALOYI: Thank you, Chair. 4 CHAIRPERSON: At what point did you fire 5 the last shot? You said you stood up and you pointed the 6 pistol at him but he was lying on the ground and he – I 7 think you said he was trying to lift the spear but he 8 couldn't. At what stage did you fire your last shot? 9 CONSTABLE SEBATJANE: The last shot I 10 fired, Chairperson, was still, was whilst I was still lying 11 on my back whilst he was still standing on his feet. 12 CHAIRPERSON: Thank you. 13 MS BALOYI: Now when he fell on his back 14 and you say he was lying next to you and you say on his 15 left-hand side he had his spear, did he have any weapon, 16 did he have a weapon in the right-hand side – on his right 17 hand rather? 18 CONSTABLE SEBATJANE: At the time that I 19 stood up it was in the region of next to his feet. 20 MS BALOYI: And you say this is when you 21 were standing up? 22 CONSTABLE SEBATJANE: That's right. 23 MS BALOYI: Now you then also – you then 24 also say in paragraph 12 that "It came to my attention 25 later that Constable Mabe discharged his firearm in private</p>	<p style="text-align: right;">Page 29673</p> <p>1 CONSTABLE SEBATJANE: I believe he would 2 have stabbed me with his spear. 3 MS BALOYI: Now if we would look at 4 exhibit L247 again, now you will see from that slide 5 there's writing there which says "eastern." Can you see 6 that on that slide? 7 CONSTABLE SEBATJANE: Yes, I see it. 8 MS BALOYI: And then you have a red arrow 9 which ends in a red circle, can you see that? 10 CONSTABLE SEBATJANE: Yes, I do. 11 MS BALOYI: Yes and then from that red 12 circle you see a dotted line, a yellow line which ends in a 13 red circle and a blue circle. Do you see that? 14 CONSTABLE SEBATJANE: Yes, I do. 15 MS BALOYI: Yes. Now that slide there 16 was prepared by the SAPS and it describes, it purports to 17 describe the path that Mr Mpumza took from the red circle 18 to where the yellow dotted line starts, to the yellow 19 arrow, to the end of that line where you have the blue and 20 red circles. You see that? That's a straight line, you 21 see that? 22 CONSTABLE SEBATJANE: I do see it. 23 MS BALOYI: Okay. Now did you give that 24 description of the path that Mr Mpumza took, ending up in 25 the red and in the blue circle? Did you give that</p>

<p style="text-align: right;">Page 29674</p> <p>1 description to the SAPS? 2 CONSTABLE SEBATJANE: No, I did not give 3 that description. 4 MS BALOYI: Do you know who gave that 5 description of the path as the path that Mr Mpumza 6 followed, ending up where he had a confrontation with you? 7 CONSTABLE SEBATJANE: I do not know who 8 gave that description. 9 MS BALOYI: And who, if anyone, did you 10 give a report to regarding this incident and your 11 observations of the movements of Mr Mpumza? 12 CONSTABLE SEBATJANE: I spoke to my 13 commander, Captain Ryland. 14 MS BALOYI: Yes? 15 CONSTABLE SEBATJANE: I explained to him 16 what had transpired. 17 MS BALOYI: Yes. Now if we look at 18 exhibit TTT6 and we look at slide 9 thereof, now you will 19 see at the top of that document is written "Mr Mpumza's 20 more likely path and the truth position of his body." You 21 see that? 22 CONSTABLE SEBATJANE: Yes, I do see it. 23 MS BALOYI: Yes. Now that writing that 24 is at the top of that document, is what is put there by the 25 representatives of Mr Mpumza's family and they depict what</p>	<p style="text-align: right;">Page 29676</p> <p>1 family, to the representatives of the family of Mr Mpumza, 2 Mr Mpumza took the path indicated by the long dotted line, 3 yellow line, and ended up at that blue circle which looks 4 like there's a bush there and then he turned and followed 5 the smaller dotted line to the small circle. That's what 6 is – 7 CHAIRPERSON: The small red circle. 8 MS BALOYI: The small red circle, thank 9 you, Chair. 10 CHAIRPERSON: Extreme right-hand side. 11 MS BALOYI: Yes. Now it is put that that 12 is the path, likely path that was followed by Mr Mpumza 13 before your encounter with him. Is that how you 14 experienced Mr Mpumza's approach to you? 15 CONSTABLE SEBATJANE: No, it is not. 16 MS BALOYI: Now if we then go back to 17 your UUU3 consolidated statement where you say at paragraph 18 14, "I remained at the scene together with Constable 19 Madumo, Makubane, Hlongwane and East Rand POP members for a 20 relief group," you see that? Paragraph 14. 21 CONSTABLE SEBATJANE: Yes, I do. Yes, I 22 see it. 23 MS BALOYI: Yes. Now did you at any 24 point before or after this incident with Mr Mpumza, did you 25 at any point go into the koppie, into koppie 3?</p>
<p style="text-align: right;">Page 29675</p> <p>1 they say is the likely path followed by Mr Mpumza. Now if 2 you look carefully, when you start at where it's written 3 "eastern" where you've got a red line which ends in an 4 arrow in a red circle, you see that? 5 CONSTABLE SEBATJANE: The small circle? 6 MS BALOYI: Yes. No, the first circle. 7 "Eastern," you see where it's written "eastern?" 8 CONSTABLE SEBATJANE: I see the 9 "eastern." 10 MS BALOYI: There's a red line, you see 11 that – 12 CONSTABLE SEBATJANE: I do see it. 13 MS BALOYI: - an arrow at the end and 14 that circle, you see that? 15 CONSTABLE SEBATJANE: I do. 16 MS BALOYI: And then starting from there 17 you have the dotted line which is in yellow and it ends in 18 what looks like a blue dotted circle, you see that? 19 CONSTABLE SEBATJANE: I do. 20 MS BALOYI: Okay and then from that blue 21 circle you have a shorter dotted line which ends in an 22 arrow and it ends in a red circle. Do you see that, the 23 small circle? 24 CONSTABLE SEBATJANE: I see it. 25 MS BALOYI: Yes. Now according to the</p>	<p style="text-align: right;">Page 29677</p> <p>1 CONSTABLE SEBATJANE: No, I did not get 2 into the mountain. 3 MS BALOYI: Relating to that perhaps if 4 we could look at L249, slide L249. Now that slide, it 5 depicts, you have on the left hand, you've got a purple 6 rectangle where it's written "FHA2 TRT, POP, K9" you see 7 that? 8 CONSTABLE SEBATJANE: Yes, I do see it. 9 MS BALOYI: And from that you've got 10 arrows, some go to the left and some to the right, purple 11 arrows. The ones going to the left, it goes to a rectangle 12 which is written "FHA2 TRT, POP, K9", you see that? 13 CONSTABLE SEBATJANE: Yes, I do. 14 MS BALOYI: Did you at any point end up 15 where – at the second rectangle which is to the left of the 16 screen about in the middle of that picture? Were you at 17 any point positioned there in that area of the koppie? 18 CONSTABLE SEBATJANE: Just to make sure, 19 is that the one you're referring to which I'm pointing at? 20 MS BALOYI: Yes, that was the second one, 21 yes. 22 CONSTABLE SEBATJANE: I did not reach 23 that place. 24 MS BALOYI: Where did you end up? Where 25 you describe –</p>

<p style="text-align: right;">Page 29678</p> <p>1 CHAIRPERSON: The one he points out is 2 the one which is below the rectangle that indicates the 3 direction north and it's just over halfway up the left-hand 4 side of the slide. 5 MS BALOYI: Thank you, Chair. Now the 6 description that you give in your particular 14 where you 7 say and you and Madumo and Makubane, you remained at the 8 scene. Where on this screen were you? 9 CONSTABLE SEBATJANE: We were at that 10 point where I'm now indicating with the pointer, Mr 11 Chairperson. 12 CHAIRPERSON: That's below the letters 13 TRT in that rectangle to which I referred a few minutes 14 ago, the one below the – on the extreme left below the 15 rectangle indicating the direction north. 16 MS BALOYI: Yes, thank you, Chair. 17 Chair, I think I'm at the end of my evidence in chief. If 18 I may, with your leave, just check my notes to see that 19 I've covered the necessary topics. 20 CHAIRPERSON: Do you want me to give you 21 an adjournment? 22 MS BALOYI: Thank you, Chair, if you 23 could. 24 CHAIRPERSON: Well, perhaps we should – 25 no, it's too early to take the tea adjournment, we'll just</p>	<p style="text-align: right;">Page 29680</p> <p>1 Constable Buthelezi had a nine millimetre. 2 COMMISSIONER HEMRAJ: Yes, thank you so 3 much. 4 EXAMINATION BY MS BALOYI (CONTD.): Thank 5 you, Chair. Chair, just for completeness we've arranged 6 for the video JJJ17.48 to be shown. What it is, Chair, it 7 is the video of the koppie on the 16th of August and it 8 clearly shows Mr Mpumza armed and in different shots on the 9 koppie. 10 CHAIRPERSON: How long is this video 11 going to be, just a few seconds? 12 MS BALOYI: Chairperson, it's a few 13 seconds. It's about 12 seconds. 14 CHAIRPERSON: Alright, okay, so we'll 15 watch it now. 16 MS BALOYI: Chair, the video starts at 17 one, one minute point 28. 18 CHAIRPERSON: 1.28 yes, I see, 1.28. 19 [VIDEO IS SHOWN] 20 CHAIRPERSON: 1 point, 1:33 yes. 21 MS BALOYI: Yes. Constable – 22 CHAIRPERSON: Is it possible to see from 23 the video whether Mr Mpumza was left handed or right 24 handed? It looks, he's holding – 25 [VIDEO IS SHOWN]</p>
<p style="text-align: right;">Page 29679</p> <p>1 take a five minute adjournment. 2 MS BALOYI: Thank you, Chair. 3 [COMMISSION ADJOURNS COMMISSION RESUMES] 4 [11:11] CHAIRPERSON: The Commission resumes. 5 Constable, you're still under oath. 6 EDWARD MALISELA SEBATJANE: (s.u.o.). 7 CHAIRPERSON: Ms Baloyi, have you had a 8 chance to look through your notes? 9 MS BALOYI: I have – 10 CHAIRPERSON: Just to round off your 11 examination in chief? 12 MS BALOYI: I have, thank you, Chair. 13 COMMISSIONER HEMRAJ: May I just ask for 14 clarity on something first. Constable, all the shots that 15 you fired were from a nine millimetre? 16 CONSTABLE SEBATJANE: That's correct, 17 Chair. 18 COMMISSIONER HEMRAJ: And the two 19 policemen that were with you, do you know what firearms 20 they had in their possession? 21 CONSTABLE SEBATJANE: I do know. 22 COMMISSIONER HEMRAJ: Can you tell us, 23 please? 24 CONSTABLE SEBATJANE: Constable Mabe had 25 an R5 and his sidearm which is a nine millimetre.</p>	<p style="text-align: right;">Page 29681</p> <p>1 MS BALOYI: Yes, Chair. 2 CHAIRPERSON: [Microphone, inaudible] – 3 see? 4 MS BALOYI: Chair, no. I think this is 5 the clearest it is, in fact. The rest of it is just 6 further pictures of him in the same position. Chair this 7 is all. 8 CHAIRPERSON: He's in the front row too, 9 I think. 10 MS BALOYI: Yes, he is to the right - 11 CHAIRPERSON: Yes. 12 MS BALOYI: - the gentleman at 1.38. 13 CHAIRPERSON: Thank you. Alright so 14 that's the end of the video? 15 MS BALOYI: That is the end of the video, 16 Chair. 17 CHAIRPERSON: Have you any further 18 questions in examination? 19 MS BALOYI: That is the evidence of the 20 Constable, Chair. 21 COMMISSIONER HEMRAJ: Constable, at the 22 time you fired the first shot that you say you aimed at the 23 chest of Mr Mpumza, how far were you away from him? 24 CONSTABLE SEBATJANE: I would estimate 25 between two and three paces way, Chair.</p>

<p style="text-align: right;">Page 29682</p> <p>1 COMMISSIONER HEMRAJ: 20 paces – no. 2 CHAIRPERSON: One or two. 3 COMMISSIONER HEMRAJ: Two or three he 4 said. Thank you very much. 5 CHAIRPERSON: Yes, I understand you're 6 going to cross-examine, Mr Ntsebeza. On behalf of which 7 parties are you going to cross-examine? 8 MR NTSEBEZA SC: On behalf of the family, 9 Mr Chairman. 10 CHAIRPERSON: And as I understand some of 11 the other party, the other party represented by SERI, which 12 is AMCU, is not going to cross-examine, is that correct? 13 MR NTSEBEZA SC: I'm told they are not 14 going to cross-examine, yes. 15 CHAIRPERSON: Alright, well, please start 16 with your cross-examination. 17 CROSS-EXAMINATION BY MR NTSEBEZA SC: 18 Thank you, Mr Chairman. Mr Chairman, can we do some 19 housekeeping? We sent out a list of documents and with 20 regards thereto we indicated that we are going to have 21 Botha's enhanced video which is a new exhibit. 22 CHAIRPERSON: Yes, how do I describe it? 23 It will be WWW3, will it? How do I describe it? Video? 24 MR NTSEBEZA SC: It's Botha's enhanced 25 video.</p>	<p style="text-align: right;">Page 29684</p> <p>1 MR NTSEBEZA SC: No, I don't know what 2 exhibit number this one is. 3 CHAIRPERSON: That'll be WWW4. 4 MR NTSEBEZA SC: 4. And then we have a 5 statement from Constable Mabe. 6 CHAIRPERSON: A statement from Constable 7 Mabe? 8 MR NTSEBEZA SC: Yes. 9 CHAIRPERSON: That's WWW5. 10 MR NTSEBEZA SC: Yes, Mr Chairman. Then 11 a statement from Constable Buthelezi. 12 CHAIRPERSON: I seem to remember seeing 13 that. A statement from Constable Buthelezi, that will be 14 WWW6. 15 MR NTSEBEZA SC: And then there is a 16 statement of Constable Buthelezi, additional. 17 CHAIRPERSON: Additional statement from 18 Constable Buthelezi. 19 MR NTSEBEZA SC: then we have – 20 CHAIRPERSON: That'll be – shall we make 21 the first one, the first Buthelezi statement WWW6.1 and the 22 second one WWW6.2? 23 MR NTSEBEZA SC: Yes, Mr Chairman. And a 24 statement from Ngonyama – 25 CHAIRPERSON: He's also a Constable, is</p>
<p style="text-align: right;">Page 29683</p> <p>1 CHAIRPERSON: Taken – oh, I see, Botha's 2 enhanced video. 3 MR NTSEBEZA SC: Yes, Mr Chairman. 4 CHAIRPERSON: It's Lieutenant-Colonel 5 Botha's enhanced video. 6 MR NTSEBEZA SC: Yes. 7 CHAIRPERSON: Yes? That's not been an 8 exhibit before or has it been an exhibit in an unenhanced 9 form? 10 MR NTSEBEZA SC: I understand in its 11 unenhanced form it was an exhibit. 12 CHAIRPERSON: Do you know what the 13 exhibit number of that was - well, you don't have to tell 14 us now. You can tell us. 15 MR NTSEBEZA SC: Yes, Mr Chairman. 16 CHAIRPERSON: Any other exhibits? 17 MR NTSEBEZA SC: Then there's a power 18 presentation entitled "Screen shots from exhibit 12, I2." 19 CHAIRPERSON: It's a presentation and the 20 name is? 21 MR NTSEBEZA SC: "Screen shots from 22 exhibit I2." 23 CHAIRPERSON: From exhibit I2? 24 MR NTSEBEZA SC: Yes, Mr Chair. 25 CHAIRPERSON: Right, any other exhibit?</p>	<p style="text-align: right;">Page 29685</p> <p>1 he? 2 MR NTSEBEZA SC: Yes, I think he is, Mr 3 Chairman. It doesn't say in his statement what his rank 4 is, maybe the witness will assist us there. And then there 5 is – 6 CHAIRPERSON: Sorry, I haven't marked 7 that one yet. 8 MR NTSEBEZA SC: Sorry – 9 CHAIRPERSON: WWW7. 10 MR NTSEBEZA SC: WWW. 11 CHAIRPERSON: And then? Anymore? 12 MR NTSEBEZA SC: And the last one, Mr 13 Chairman, will be a one-pager additional slide. 14 CHAIRPERSON: Sorry? 15 MR NTSEBEZA SC: Additional slide, we'll 16 give it a name, additional slide. 17 CHAIRPERSON: I mean that's not a very 18 clear description, is it? WWW8 is an additional slide. 19 Yes, how does one describe it further? 20 MR NTSEBEZA SC: It's setting out the 21 formation of the witness Mabe and Buthelezi and two POPS 22 members at the area where Mr Mpumza was – 23 CHAIRPERSON: It's an additional slide 24 setting out the? 25 MR NTSEBEZA SC: The positions.</p>

<p style="text-align: right;">Page 29686</p> <p>1 CHAIRPERSON: The position? 2 MR NTSEBEZA SC: Of Mr Mabe, Sebatjane 3 and Buthelezi and two POPS members at the place where Mr 4 Mpumza was killed. 5 CHAIRPERSON: Am I to understand that 6 these exhibits, new exhibits, copies of them have been 7 given to us? 8 MR NTSEBEZA SC: I understand so, Mr 9 Chairman. 10 CHAIRPERSON: We don't have them but 11 there may have been a hitch somewhere. 12 MR NTSEBEZA SC: What do you not have, Mr 13 Chairman, so that I can establish? You don't have 14 anything? 15 COMMISSIONER HEMRAJ: I'm afraid we don't 16 have statements of any of those – 17 CHAIRPERSON: Perhaps something can be 18 done about that as you proceed with your cross-examination. 19 MR NTSEBEZA SC: Mr Chairman, I'm going 20 to – 21 CHAIRPERSON: We won't spend time – 22 MR NTSEBEZA SC: - if you don't have the 23 statements for whom, the constables with whom he was, you 24 won't follow. 25 CHAIRPERSON: But are they available in a</p>	<p style="text-align: right;">Page 29688</p> <p>1 CONSTABLE SEBATJANE: Yes, I do have the 2 statements, Chair. 3 CHAIRPERSON: And the slide presentation, 4 the video and so on, have you seen that? 5 CONSTABLE SEBATJANE: [Inaudible]. 6 CHAIRPERSON: Okay. So you're ahead of 7 us in that but anyway, carry on in the meanwhile Mr 8 Ntsebeza and if attempts can be made out of the chamber to 9 make up the deficiency in the papers we've got then that'll 10 be something to be commended, but start with your cross- 11 examination in the meanwhile. 12 MR NTSEBEZA SC: I'm terribly 13 embarrassed, Mr Chairman, but these things are – 14 CHAIRPERSON: It may be on our side if 15 you gave them to us and somehow they didn't come to us – 16 MR NTSEBEZA SC: Yes. 17 CHAIRPERSON: - then the embarrassment is 18 ours, so let's not apportion or accept blame, let's just 19 carry on with the cross-examination. 20 MR NTSEBEZA SC: Yes. 21 CROSS-EXAMINATION BY MR NTSEBEZA SC: 22 Yes. Now I just want to check with the witness because 23 there is objective evidence that we're going to be relying 24 on which I believe was sent to him. Now slide L247 of 25 exhibit L, that we all have and I just want to check with</p>
<p style="text-align: right;">Page 29687</p> <p>1 form so that they can be put on the screen? 2 MR NTSEBEZA SC: Yes, I would like them 3 to be put on the screen. 4 CHAIRPERSON: Have arrangements been made 5 for them to be put up on the screen? 6 MR NTSEBEZA SC: Okay, Mr Chairman, maybe 7 let me start with the areas where I think we can make some 8 meaningful progress. 9 CHAIRPERSON: Has the witness been 10 given – 11 MR NTSEBEZA SC: That's what I want to 12 put – has the witness, that's what I would like to 13 establish – this index of documents for the cross- 14 examination of Constable Sebatjane I would like to know 15 whether the witness has all the statements. My learned 16 friend must have been working from some of them. 17 CHAIRPERSON: Ms Baloyi, can you tell us? 18 Has the Constable, the witness – 19 MS BALOYI: Chair, he should have it, 20 yes, he should have the bundle. 21 CHAIRPERSON: Let's ask him. You're 22 still under oath, if I didn't remind you. 23 EDWARD MALISELA SEBATJANE: (s.u.o.): 24 CHAIRPERSON: Have you seen these 25 statements that Mr Ntsebeza refers to?</p>	<p style="text-align: right;">Page 29689</p> <p>1 the witness that he has it. Now, did you get exhibit OOO11 2 which is a transcript of a video? My learned friend can 3 assist us if the witness is still ploughing through all 4 those documents. 5 MS BALOYI: Yes. 6 MR NTSEBEZA SC: I just want to check 7 with everybody including the Commissioners whether we have 8 all of these. Transcript of that video exhibit OOO11, I 9 believe that the witness did, the video itself – yes, yes, 10 I just want to check whether, you know, the witness has 11 dealt with those. Presentation TTT6 is one that we have 12 also had in evidence in chief. The additional slide which 13 is a new exhibit, did the witness get that? 14 CHAIRPERSON: The additional slide 15 exhibit WWW8, that's the additional slide setting out the 16 positions of Constables Mabe, Sebatjane and Buthelezi and 17 two POPS members. 18 MS BALOYI: Chairperson, perhaps if I 19 could assist to try and speed up. The witness does have 20 the full set of documents that are in Mr Ntsebeza's bundle 21 – index, rather. He may be slow to try and locate them in 22 his file but he does have them. 23 MR NTSEBEZA SC: Thank you, Mr Chairman. 24 Now Constable, maybe let me first start by clarifying an 25 aspect in your evidence in chief which is important for me</p>

<p style="text-align: right;">Page 29690</p> <p>1 and that is relevant to the statements that you made. Now 2 in your consolidated statement in paragraph 3 you said you 3 made the statement during the month of August 2012. 4 CONSTABLE SEBATJANE: Yes, that's true. 5 MR NTSEBEZA SC: Is that the statement 6 that is missing? 7 CONSTABLE SEBATJANE: That's the 8 statement I was being questioned about which could not be 9 found. 10 MR NTSEBEZA SC: You are sure it is not 11 the statement that we have as an exhibit which was your 12 handwritten statement TTT7? 13 CONSTABLE SEBATJANE: It's not that one. 14 MR NTSEBEZA SC: That statement TTT7 is a 15 statement that you made in November 2012, you say? 16 CONSTABLE SEBATJANE: That's what I'm 17 saying. 18 CHAIRPERSON: It's the first statement, 19 as I understand it, he made for IPID. It was a warning 20 statement. 21 MR NTSEBEZA SC: Yes – 22 CHAIRPERSON: And that he says, as we see 23 here, was submitted to IPID officials but seems to have got 24 lost or mislaid. He then made another statement on the 31st 25 of August which we don't seem to have either. That's also</p>	<p style="text-align: right;">Page 29692</p> <p>1 lost or otherwise, should now be consolidated in that you 2 give a great more detail in your statement than you had 3 given before. There must have been a reason for you to 4 make a consolidated statement, is that right? 5 CONSTABLE SEBATJANE: That's correct. 6 MR NTSEBEZA SC: So we accept that you 7 were giving more detail in your later statement than you 8 had given before. 9 CONSTABLE SEBATJANE: It is true. 10 MR NTSEBEZA SC: And you would have 11 applied your mind to make sure that you include all detail 12 because you were going to, you were giving a statement for 13 this Commission, for this Commission to have the clearest 14 of pictures of what happened on the day that you were 15 deployed on the 16th of August 2012. Do you agree with 16 that? 17 CONSTABLE SEBATJANE: I agree with you, 18 sir. 19 MR NTSEBEZA SC: Now, I would like us to 20 look at your November statement, with that in mind, and I 21 would like us to look at paragraph 7 because let me tell 22 you up front my interest – of course I've got interests in 23 other things like, you know, I can't understand how you 24 were deployed to make sure that people did not go into the 25 informal settlement when in fact that is where they stay,</p>
<p style="text-align: right;">Page 29691</p> <p>1 got lost and then that's why he made the third statement. 2 This is what he says, namely, TTT7 which is the statement 3 he says he made in November. 4 MR NTSEBEZA SC: Yes and in your 5 statement, the statement that you made in November, I would 6 like it to be put up, is the statement that you made in 7 your own handwriting. 8 CONSTABLE SEBATJANE: That's correct. 9 MR NTSEBEZA SC: And the last statement 10 in the series of statements that you made is the statement 11 that you made a fortnight ago. 12 CONSTABLE SEBATJANE: That's correct, 13 sir. 14 MR NTSEBEZA SC: On the 14th of May, it's 15 just about that time when I think a lot of people were 16 making consolidated statements, Lieutenant-Colonel 17 McIntosh, Captain Kidd, people were making consolidated 18 statements around that time. Do you know that it would be 19 so, that also Captain Kidd and Lieutenant McIntosh were 20 making statements around about that time. 21 CONSTABLE SEBATJANE: No, I had no idea 22 that they had made – 23 MR NTSEBEZA SC: Their aim, as I 24 understand it and you'll correct me if I am wrong, was to 25 make sure that any statements that you had made before,</p>	<p style="text-align: right;">Page 29693</p> <p>1 but I'll leave that for somebody else. My main interest 2 here is for you to assist the Commission in actually 3 finding how Mr Mpumza was killed. Two of his sisters are 4 here and they have been – and I can tell you now, when you 5 were testifying they were crying outside there, they want 6 to know the truth of how he met his death and I would hope 7 you would assist with that. So that's why I'm directing 8 you straight to paragraph 7. Do you have paragraph 7 9 there? 10 CONSTABLE SEBATJANE: I have it, sir. 11 MR NTSEBEZA SC: You say there, and I 12 think – “I fired one round to his chest,” do you see that? 13 “I fired one round to his chest,” do you see that, “and 14 then I moved backwards two to three steps. The suspect 15 then charged again. I then fired towards the suspect's 16 body” and as if you wanted to emphasise the point you say 17 in brackets, “upper body, while stepping backwards.” 18 CONSTABLE SEBATJANE: I see it. 19 [11:31] MR NTSEBEZA SC: Let's just start with 20 your evidence today. That statement under oath given by 21 you two years ago doesn't bring any doubt as to what you 22 meant. You shot at Mpumza's chest and today you want the 23 Commission to be in doubt as to whether you shot him. Can 24 you explain that? 25 CONSTABLE SEBATJANE: If you could just</p>

<p style="text-align: right;">Page 29694</p> <p>1 repeat your question, sir?</p> <p>2 MR NTSEBEZA SC: The question is simple.</p> <p>3 In this statement you say you shot him at his chest. Today</p> <p>4 in your evidence you say you do not know whether it hit him</p> <p>5 in his chest.</p> <p>6 CONSTABLE SEBATJANE: Maybe I can explain</p> <p>7 in this manner. When I said I shot at, towards him,</p> <p>8 shooting means the way in which I stretch my hand – as he</p> <p>9 indicates forward – this was into his body.</p> <p>10 MS BALOYI: Chair – (Sepedi word) – is</p> <p>11 chest.</p> <p>12 MR MAHLANGU: I'm sorry, this was (Sepedi</p> <p>13 word), this was in the direction of his chest.</p> <p>14 MR NTSEBEZA SC: Yes. I'm waiting for</p> <p>15 you to explain to the Commission, are you saying this was</p> <p>16 an inelegant way of putting it there? "I shot," "I fired</p> <p>17 one round to his chest." Were you wanting to say in the</p> <p>18 direction of his chest? As it is, he has got wounds on the</p> <p>19 upper left of his chest.</p> <p>20 CONSTABLE SEBATJANE: I shot at his</p> <p>21 chest, yes, and stepped back.</p> <p>22 MR NTSEBEZA SC: Yes, but why today are</p> <p>23 you seeking to let the Commission think that you may have</p> <p>24 missed because when you earlier gave this testimony, that's</p> <p>25 the testimony you gave. It's only when you were asked by</p>	<p style="text-align: right;">Page 29696</p> <p>1 shots later and you're not sure how many of them hit him,</p> <p>2 is that also what you're saying?</p> <p>3 CONSTABLE SEBATJANE: That is how I'm</p> <p>4 putting it, Chairperson.</p> <p>5 MR NTSEBEZA SC: So are you saying you</p> <p>6 don't know whether the first shot hit him?</p> <p>7 CONSTABLE SEBATJANE: That's what I'm</p> <p>8 saying, Chair.</p> <p>9 MR NTSEBEZA SC: All the nine shots which</p> <p>10 you say in your statement, both in your earlier statement</p> <p>11 and in the consolidated statement, do you know if any of</p> <p>12 those shots hit him?</p> <p>13 CONSTABLE SEBATJANE: I don't know.</p> <p>14 MR NTSEBEZA SC: So you don't know if you</p> <p>15 hit him at all?</p> <p>16 CONSTABLE SEBATJANE: That's what I am</p> <p>17 saying, Chairperson.</p> <p>18 MR NTSEBEZA SC: So you don't know who</p> <p>19 killed him, because he died there, that is not in dispute.</p> <p>20 CONSTABLE SEBATJANE: Let me put it in</p> <p>21 this way, sir –</p> <p>22 MR NTSEBEZA SC: Before you put it in any</p> <p>23 other way, you don't know who killed him there?</p> <p>24 CHAIRPERSON: No, Mr Ntsebeza, I think</p> <p>25 you must give him a chance to answer as he wishes to</p>
<p style="text-align: right;">Page 29695</p> <p>1 my learned friend whether you know whether or not the shot</p> <p>2 had landed on him that you raised doubt. Why do you do</p> <p>3 that? Do you have an answer?</p> <p>4 CONSTABLE SEBATJANE: That the bullet hit</p> <p>5 him I did not deny that. I cannot say that all the bullets</p> <p>6 that I fired at him landed, hit him.</p> <p>7 MR NTSEBEZA SC: Now we are getting</p> <p>8 somewhere. You are now saying if the Commission understood</p> <p>9 you earlier on when you were giving your evidence in chief</p> <p>10 that you had said you do not know whether you hit him in</p> <p>11 the chest, that was wrong. The correct version is that you</p> <p>12 hit him in the chest. You don't know if the nine, eight</p> <p>13 other rounds which you said you fired at him, hit the</p> <p>14 target but that one which was aimed at his chest, it hit</p> <p>15 him in the chest. Is that your evidence now?</p> <p>16 CONSTABLE SEBATJANE: I also do not say</p> <p>17 this one actually hit him.</p> <p>18 CHAIRPERSON: So what you're saying is</p> <p>19 you're not sure if the first shot – we're talking about the</p> <p>20 first shot at the moment, the one which you described as</p> <p>21 being to the chest, you're not sure if that shot hit him,</p> <p>22 is that correct?</p> <p>23 CONSTABLE SEBATJANE: That is correct,</p> <p>24 Chairperson.</p> <p>25 CHAIRPERSON: You also fired some other</p>	<p style="text-align: right;">Page 29697</p> <p>1 answer. If he doesn't answer, if his answer doesn't</p> <p>2 constitute an answer to your question you can then follow</p> <p>3 up but I think –</p> <p>4 MR NTSEBEZA SC: Mr Chairman –</p> <p>5 CHAIRPERSON: - we must allow him to give</p> <p>6 evidence as he wishes.</p> <p>7 MR NTSEBEZA SC: I understand, I</p> <p>8 understand, Mr Chairman. Put it in your own way?</p> <p>9 CONSTABLE SEBATJANE: At this moment,</p> <p>10 Chairperson, at the time of the incident I knew that I was</p> <p>11 the only person who had shot. That is the reason I went</p> <p>12 and said I am the person that shot.</p> <p>13 MR NTSEBEZA SC: I didn't understand</p> <p>14 that. Are you saying when did you know that you were not</p> <p>15 the only person that shot at him?</p> <p>16 CONSTABLE SEBATJANE: I'm saying at the</p> <p>17 time of the incident, when this thing happened I did not</p> <p>18 hear any other person firing shots. At the time that Mr</p> <p>19 Mpumza had fallen I knew, what I knew at that time was that</p> <p>20 it was, it were my bullets that had shot him. Even today</p> <p>21 being before this Commission, Chair, I am not denying the</p> <p>22 fact that I did fire shots. I am also not saying I did not</p> <p>23 kill Mr Mpumza.</p> <p>24 MR NTSEBEZA SC: You must say something.</p> <p>25 You had a consultation with your lawyers, they have told</p>

<p style="text-align: right;">Page 29698</p> <p>1 you how many times Mr Mpumza was shot. I can tell you now 2 he was shot 13 times. He was shot with nine millimetre 3 bullets, he was shot with high velocity bullets, R5s and 4 you have told us that there was somebody with an R5. 13 5 bullets entered his body on that day. So whether you agree 6 with me under oath or not, it's there, it's objective 7 evidence. Now are you saying, because I want to understand 8 you very clearly, are you saying it is the first time today 9 that you realise that you may not have been the killer of 10 Mr Mpumza? 11 CONSTABLE SEBATJANE: Not today. I heard 12 that time that the post-mortem revealed that there was 13 another firearm of a higher velocity than mine than was 14 used but me, Mr Chairperson, I am here today, I am not 15 denying that I did shoot Mr Mpumza. I am not denying that. 16 MR NTSEBEZA SC: When did you come to 17 know that you may not, as you testified here before God in 18 front of those Commissioners, that you may not be the 19 person who killed Mpumza? When did you get to know that? 20 CONSTABLE SEBATJANE: I don't remember so 21 – it could have been months, it's quite some time now. 22 CHAIRPERSON: May I ask you this? You 23 say in paragraph 12 of your consolidated statement, "It 24 only came to my attention later that Constable Mabe 25 discharged his firearm in private defence of my life." Now</p>	<p style="text-align: right;">Page 29700</p> <p>1 MR NTSEBEZA SC: Yes, are you saying 2 there were no POPS members – 3 CONSTABLE SEBATJANE: Where we were, the 4 POPS members were walking behind us. 5 MR NTSEBEZA SC: In our additional slide 6 we'll give a different version but that's for the future. 7 Now the three of you, you said you formed a line. Who said 8 you must form that line, straight line? 9 CONSTABLE SEBATJANE: Let me explain it 10 this way, in terms of police practices we do not just walk 11 anyhow, Chairperson. Either we form a basic line or we 12 form a single line. Single line means one behind the other 13 following each other. 14 MR NTSEBEZA SC: What is your answer? Do 15 you still remember the question? 16 CONSTABLE SEBATJANE: Yes. 17 MR NTSEBEZA SC: Yes. 18 CONSTABLE SEBATJANE: - gave that 19 instruction, basic line, it's the practice that we walk in 20 a basic – 21 MR NTSEBEZA SC: So your evidence is that 22 it just formed itself, you just found yourself in a 23 straight line. It's going to be important later on in 24 relation to where you were standing but I just want to hear 25 your evidence now.</p>
<p style="text-align: right;">Page 29699</p> <p>1 when did you learn that? When did you discover or when 2 were you told that Constable Mabe who was with you on the 3 day in question had also fired at the deceased with his 4 firearm? 5 CONSTABLE SEBATJANE: It was something 6 that happened later that evening, Chair. 7 CHAIRPERSON: And I think you told us 8 Constable Mabe had an R5, am I right? 9 CONSTABLE SEBATJANE: Yes. 10 CHAIRPERSON: So you learnt later that 11 evening, in other words on the evening of the 16th, that 12 Constable Mabe using an R5 had also fired at the deceased, 13 is that right? 14 CONSTABLE SEBATJANE: That's correct, 15 Chair. 16 MR NTSEBEZA SC: And your evidence would 17 then be that when you had – was it you who had given the 18 command that you must form a line? You remember you 19 testified that when you were at the scene there was you, 20 Mabe and Buthelezi and two POPS members and then you were 21 in a straight line. Who had said you must form a straight 22 line? 23 CONSTABLE SEBATJANE: If I remember well, 24 Chair, I did not include the two POPS members. It was just 25 the three of us only, members of the TRT.</p>	<p style="text-align: right;">Page 29701</p> <p>1 CONSTABLE SEBATJANE: Possibly there's a 2 misunderstanding here, you don't understand me well. The 3 first basic line that was formed was by Captain Kidd. 4 After we had loaded the people onto the trucks we then 5 walked on our own in the form of a basic line – 6 MR NTSEBEZA SC: I'm sorry I've got to 7 interrupt you – 8 CONSTABLE SEBATJANE: - one on each side. 9 MR NTSEBEZA SC: - let me tell you why. 10 We haven't got all day, we haven't got all year and if you 11 just answer the questions that I put to you then it would 12 be much quicker, especially because we have got to allow 13 time for interpretation. So just answer the questions, 14 they are very shot. 15 CHAIRPERSON: Repeat the question, Mr 16 Ntsebeza, let's hear the answer. 17 MR NTSEBEZA SC: The question is, are you 18 saying that the line just formed itself, there was no-one 19 who gave command? 20 CONSTABLE SEBATJANE: There was no-one 21 who gave a command. 22 MR MAHLANGU: As stated. 23 CHAIRPERSON: Mr Ntsebeza, I normally 24 take tea round about this time but when it's convenient for 25 you let me know and we'll take the tea adjournment. So if</p>

<p style="text-align: right;">Page 29702</p> <p>1 you want to carry on and deal with this point I'm in your 2 hands.</p> <p>3 MR NTSEBEZA SC: Mr Chair, let's take the 4 tea now.</p> <p>5 CHAIRPERSON: We'll take the tea now – 6 MR NTSEBEZA SC: So that when we come 7 back we –</p> <p>8 CHAIRPERSON: Let's try very hard to be 9 back at 12 o'clock.</p> <p>10 [COMMISSION ADJOURNS COMMISSION RESUMES] 11 [12:06] CHAIRPERSON: You're still under oath, 12 Constable. Mr Ntsebeza, you're still cross-examining I 13 believe.</p> <p>14 MR NTSEBEZA SC: Thank you, Mr Chairman, 15 I still am. Constable, so you wrote your consolidated 16 statement a fortnight ago, the aim was to give a little bit 17 more detail than you had given in the other statements 18 before. Is that right?</p> <p>19 CONSTABLE SEBATJANE: That's correct. 20 MR NTSEBEZA SC: But the record will show 21 that today in your testimony you gave much more detail 22 about the event than you gave in X consolidated statement 23 that you intended to show the deficiencies of your previous 24 statements. Do you agree?</p> <p>25 CONSTABLE SEBATJANE: It's true.</p>	<p style="text-align: right;">Page 29704</p> <p>1 that's a legitimate basis for cross-examination. But the 2 mere fact that the oral evidence is fuller than the 3 consolidated statement in itself is not a matter for 4 surprise, it normally happens. But if there are details 5 which you want to put specifically to the witness which you 6 say one would expect to have seen in the previous statement 7 then obviously you must go ahead.</p> <p>8 MR NTSEBEZA SC: Mr Chair, that's why I 9 said the record will show but let me give you a glaring 10 one. In your statement which you made a fortnight ago you 11 didn't tell those – you were making a statement as you told 12 the commissioners here that there was active participation 13 that is of either Constable Buthelezi or Constable Mabe.</p> <p>14 CHAIRPERSON: Look at paragraph 12. 15 MR NTSEBEZA SC: No paragraph 12, Mr 16 Chairman, he seemed to say he came know later that Mabe 17 discharged his firearm. Today he says they formed a line, 18 they shot, in his statement, paragraph 11 he doesn't 19 mention them at all.</p> <p>20 MS BALOYI: Chairperson, that is not 21 correct. In paragraph 10 he does refer to Constable 22 Buthelezi and Mabe and their participation. 23 CHAIRPERSON: But the point is that 24 there's no suggestion as I read it that they fired or that 25 he was aware of the fact that they or one of them fired.</p>
<p style="text-align: right;">Page 29703</p> <p>1 MR NTSEBEZA SC: Why is that so? 2 CONSTABLE SEBATJANE: When I wrote the 3 statement, that is the hand-written one, I wrote it on my 4 own. The one that I made a few weeks ago was – I was being 5 questioned what had happened and I was explaining and the 6 questions came. That is why it contains more material than 7 before.</p> <p>8 MR NTSEBEZA SC: I was not talking about 9 your statement, I'm saying when you testified of the actual 10 event how Mpumza allegedly attacked you and you shot and 11 all. You gave more detail in your oral testimony than 12 there is in your statement. I think the record will show 13 that. I'm just wanting to know why you did that. Why 14 didn't you have that detail in your statement?</p> <p>15 CONSTABLE SEBATJANE: If you could 16 possibly show me on the statement where that difference is 17 I would understand possibly better.</p> <p>18 CHAIRPERSON: What is the extra detail to 19 which you refer? You know it very often happens, more 20 often than not in fact that when a witness comes to give 21 oral evidence you get more detail than is in what one would 22 have previously regarded as the fullest consolidated 23 statement. But there may be – of course it sometimes 24 happens that material details are left out which one have 25 would have expected to be in the earlier statement and</p>	<p style="text-align: right;">Page 29705</p> <p>1 MR NTSEBEZA SC: Exactly. 2 CHAIRPERSON: Indeed 12 says it only came 3 to my attention later that Constable Mabe discharged his 4 firearm and he says he learnt that that evening. So the 5 point of the cross-examination relates to his failure to 6 mention, if he was aware of it at the time and that's a 7 matter that may be investigated, but his failure to mention 8 in his statement that he was aware at the time that he was 9 the only shottist as far as the deceased is concerned. So 10 I think I'll allow the question to continue but I will keep 11 an eye on the point that you've raised so that no 12 unfairness to the witness. Mr Ntsebeza, I did ask you 13 before we went into this discussion what details 14 specifically should have been mentioned, you mentioned one 15 I think, namely that there were these other shots fired. 16 The question, of course, we still have to know about is 17 whether he was aware at the time that these were being 18 fired. Perhaps I should ask him. While you were firing 19 the shots that you told us about we now know, because you 20 later learnt yourself, that Constable Mabe shot as well and 21 we know, I think in fact we've been told, there are 13 22 wounds and you could only have been responsible, assuming 23 every one of your bullets hit the deceased, you could only 24 responsible for nine wounds. So there are at least were 25 caused by somebody else, maybe more or your shots didn't</p>

<p style="text-align: right;">Page 29706</p> <p>1 hit the deceased. The question is did you know, while you 2 were shooting your nine rounds that one or other or both of 3 your colleagues were also shooting at the deceased? 4 CONSTABLE SEBATJANE: I did not know 5 then, Chairperson. It was later that evening that I learnt 6 of the shooting by Constable Mabe. I did not Constable 7 Buthelezi on that day, on the 16th. I only came to know 8 that Constable Buthelezi had fired shots when I was shown 9 his statement. 10 MR NTSEBEZA SC: So your evidence is that 11 somebody standing not very far away from you with R5 rifle 12 shooting at somebody you didn't hear at the time that it 13 happened, you didn't see at the time that it happened. Is 14 that what the Commission to accept? 15 CONSTABLE SEBATJANE: Before responding 16 to your question, Sir, I would like to explain the reason, 17 if you'd give me the chance to do so. I was scared when I 18 was firing these shots, there was a lot of noise. There 19 were helicopters flying around, I did not hear the firearm 20 of any other person. 21 MR NTSEBEZA SC: So your answer is yes. 22 CONSTABLE SEBATJANE: Yes, that's so. 23 MR NTSEBEZA SC: I think let's – I 24 thought I'd come to this later on, can we go to exhibit 25 OOO11 which is a transcript which you have read over the</p>	<p style="text-align: right;">Page 29708</p> <p>1 two days ago, Chair. 2 MR NTSEBEZA SC: If we start at the top 3 of the page where it says – do you see that? Is it 4 possible to blow this thing up if you can't raise it? 5 Where it says I'll keep an eye for you, this, I'll come to 6 your side, maybe and all of that and then I want you to 7 remember this side. Call Nyala this side, call Nyala this 8 side. I just want you to remember that. And that is 9 attributed to Captain Ryland. Now if we went to 16:21.02 10 you see there, the words I'm not going to repeat which have 11 been repeated quite often. Now if you read from that that 12 something, "I shot him at least 10 times, he keeps coming, 13 coming, there's a muti there, there's a muti, leave it, 14 leave it, leave it, ja that's a muti shit ja, it doesn't 15 work here, baba. Here we stay forward, we stay forward, we 16 are going, we stay forward. [African Language]. Ek het 17 hom 10, ek het leeg gemaak, hy kom nog steeds. Hoor hoe, 18 dis klein, ek het 'n kleiner gun gehad, 'n 2.2 né." Now – 19 CHAIRPERSON: One of the questions will 20 be whether your voice is recorded on this transcript. Are 21 you able, now that you've seen it and it's been read to you 22 by Mr Ntsebeza, are you able to identify anything on this 23 transcript that you said? There are times next to the 24 particular things that were said, so you don't have to say 25 I said and then read out the whole thing. If you look at</p>
<p style="text-align: right;">Page 29707</p> <p>1 last 48 to 72 hours? Can we shoot – put it up on there on 2 the screen please? It's a transcript of a video clip which 3 – 16:21.02. Now you have read that overnight, you read it 4 overnight or a few days before did you? That was a 5 question if it didn't sound like one. 6 CONSTABLE SEBATJANE: If you could repeat 7 the question, Sir. 8 MR NTSEBEZA SC: This is a transcript, 9 one of the documents that were sent to you which you read 10 overnight or when you got the documents. 11 CHAIRPERSON: Did you in fact read it 12 last night, Constable? 13 CONSTABLE SEBATJANE: I went through some 14 of them, not the whole transcript. 15 CHAIRPERSON: Did you go through this 16 part? 17 CONSTABLE SEBATJANE: No. 18 CHAIRPERSON: This document is a 19 transcript from I think it is Captain Ryland's cell phone. 20 Have you not read this before today? 21 CONSTABLE SEBATJANE: Can you repeat, 22 Chair, the question Chair? 23 CHAIRPERSON: Have you read that before 24 today, this transcript? 25 CONSTABLE SEBATJANE: I received it some</p>	<p style="text-align: right;">Page 29709</p> <p>1 it can you see there's a statement there, one that includes 2 that I shot him at least 10 times that's at 2:15, that's 3 2:15 on this particular transcript. Now did you say those 4 words? 5 CONSTABLE SEBATJANE: Chair, I don't 6 remember saying such words. 7 MR NTSEBEZA SC: Chair, can we play the 8 video? 9 CHAIRPERSON: Yes well perhaps if you 10 listen to the video you may recognise your voice and you 11 may also, of course, recognise the voices of the other 12 people. So you can help us on that also. 13 MR NTSEBEZA SC: I believe the video is 14 CC22, is that so? 15 CHAIRPERSON: Do I have to give a 16 warning? I suppose we do, do we? 17 MR NTSEBEZA SC: It's on Ryland's video I 18 believe. I2, yes I think it's on Ryland's video. 19 CHAIRPERSON: Do I have to give a warning 20 to people, give them a chance to leave the chamber? We are 21 going to see a video with some pictures I think of the late 22 Mr Mpumza and we're also going to hear the sound track of 23 what was being said by some of the people at the time. And 24 it may well be that of those present in the chamber may 25 experience emotional distress in hearing what – will hear</p>

<p style="text-align: right;">Page 29710</p> <p>1 if they stay and seeing what they'll see if they stay. So 2 I ask that nothing be shown or played until 30 seconds has 3 expired from the time I've finished speaking to enable 4 those who think they will be distressed and would like not 5 to be exposed to that to leave the chamber. The 30 seconds 6 will start as soon as Mr Mahlangu has finished interpreting 7 what I've said. 8 CHAIRPERSON: The 30 seconds will start 9 now. The 30 seconds is up, one person left. Everyone else 10 has stayed. 11 [12:26] [VIDEO SHOWN] 12 It now reads three minutes 15 seconds when we 13 stopped the video. 14 MR NTSEBEZA SC: We have run past the 15 area where it is marked on exhibit OOO11, 16:21:02 where 16 that expletive is made and, Mr Chairman, I can indicate 17 that it took me 45 minutes of playing this for me to hear 18 this. So we won't have the luxury here of – I can say on 19 oath, if I had to – 20 CHAIRPERSON: I haven't sworn you in, Mr 21 Ntsebeza. 22 MR NTSEBEZA SC: When we argue, if it is 23 contested that those words were used, we will argue that 24 they are there. I understand also that exhibit OOO11 was 25 agreed to between the evidence leaders and certainly SAPS</p>	<p style="text-align: right;">Page 29712</p> <p>1 passage that you put which is at 00:02:15. Mr Ntsebeza? 2 Do you want to use the pointer? 3 MR NTSEBEZA SC: Yes, for the witness. 4 That's where we start, do you see that? 5 CHAIRPERSON: What Mr Ntsebeza's doing is 6 he is pointing to the passage in the transcript on the 7 screen that is the section 00:02:15. 8 MR NTSEBEZA SC: In your state – in your 9 statement so far we know, one, you admit having shot at him 10 and in your statements, the November statement and the 27, 11 May 2014 statement, you shot him nine times. Now who was 12 saying that or who do you want the Commission to accept 13 said that? Is it you? 14 CONSTABLE SEBATJANE: I don't remember 15 speaking such words, Chairperson. I also do not know who 16 it is who said these words. 17 MR NTSEBEZA SC: It certainly was not Mr 18 Mpumza so it must have been one of the members of the SAPS. 19 Who do you want to say it is? 20 CONSTABLE SEBATJANE: I cannot point a 21 finger at any person that I do not know. 22 MR NTSEBEZA SC: And then "There's muti 23 there, there's muti, there's muti. Leave it, leave it. 24 Yes, that's a muti" and then you say something there, "does 25 not work here." It should be "here," "here baba." Who was</p>
<p style="text-align: right;">Page 29711</p> <p>1 leaders, so what is here is an agreed transcript. What is 2 in issue is whether this witness is the one who said those 3 – but he can assist us with what has been seen so far, if I 4 could ask the questions. Now Constable, you have seen the 5 video, you now know the transcript and the transcript is an 6 agreed document. Now, I just want to know, let's start at 7 16:21:02 – 8 CHAIRPERSON: So do you want the slide 9 back on the screen of the transcript you've now got – 10 MR NTSEBEZA SC: Yes, that slide – 11 CHAIRPERSON: That's exhibit OOO11. 12 MR NTSEBEZA SC: OOO11, Mr Chairman. You 13 see where, to the right of 00, 0215, you see that? 14 CHAIRPERSON: What's it, 00? 15 MR NTSEBEZA SC: 00 – 16 CHAIRPERSON: Yes? 2.15. 17 MR NTSEBEZA SC: Yes. 18 CHAIRPERSON: Yes, I think it would be 19 sensible to start, if I may suggest, at the previous line. 20 00 and then 01 and then 39, so that's where it is on the 21 video clip itself and then the suggestion is it's the voice 22 of Captain Rylands but the transcriber wasn't sure, talking 23 in relation to Constable Sebatjane, "Ja, leave him, leave 24 him, he's alright" and presumably I take that means that 25 Constable Sebatjane is alright and then we go on from the</p>	<p style="text-align: right;">Page 29713</p> <p>1 saying that? 2 CONSTABLE SEBATJANE: The voice heard on 3 the tape is not mind. I don't know whose voice it is. 4 MR NTSEBEZA SC: Yes. 5 CHAIRPERSON: That's the passage at 6 00:02:50. 7 MR NTSEBEZA SC: And then – why doesn't 8 it work now – then there's this slide. Okay, no, no, I 9 want to – this slide. 10 CHAIRPERSON: 03:20, this is the one 11 beginning "Blom, Blom." 12 MR NTSEBEZA SC: Yes. Who is saying 13 that, "Ek het leeggemaak." Or just, "Ja, ek het hom 10, ek 14 het leeggemaak." I think somewhere it says "Ek het die mag 15 leeggemaak," meaning I emptied the magazine. 16 CHAIRPERSON: Mr Ntsebeza, in the middle 17 of that line is the word Sebatjane. I'm not sure if that's 18 something that one can hear on the tape or whether it's the 19 transcriber's indication as to the person that he or she 20 thinks said the words following, "Ek het hom" – so can you 21 help me on that? You say you've listened to it 40, several 22 times. In that line does one hear the word Sebatjane or – 23 MR NTSEBEZA SC: No, Chair – 24 CHAIRPERSON: - is that an indication by 25 the transcriber that he or she thinks that the person who</p>

<p style="text-align: right;">Page 29714</p> <p>1 said "Ek het hom," et cetera was this witness?</p> <p>2 MR NTSEBEZA SC: Somebody is speaking and</p> <p>3 is mentioning Sebatjane by name, that's why the name is</p> <p>4 there. It's not an indication that he's – now what's your</p> <p>5 comment on that indication? We must accept that it is</p> <p>6 accept that it's a recordal of what you saw on the video,</p> <p>7 you were there.</p> <p>8 CONSTABLE SEBATJANE: What I can say is</p> <p>9 that the person is speaking in Afrikaans. People who were</p> <p>10 there speaking Afrikaans was Captain Ryland and Captain</p> <p>11 Kidd would also speak Afrikaans and Constable Louw. Those</p> <p>12 are the people I know who can speak Afrikaans but which one</p> <p>13 of them is speaking, I cannot say.</p> <p>14 MR NTSEBEZA SC: Now we know from your</p> <p>15 evidence that people who shot at the deceased Mr Mpumza, on</p> <p>16 your admission it was you and Constable Mabe, do you think</p> <p>17 that was Constable Mabe talking like that? "Ek het</p> <p>18 leeggemaak, hy kom nog steeds." And I want you to find, to</p> <p>19 bear in mind that in your statement this thing about, I</p> <p>20 shot him but he keeps on coming is a recurring refrain in</p> <p>21 your statements, all of them, as you answered the questions</p> <p>22 that were – now we're saying that "Blom, Blom, ek het hom</p> <p>23 10", "Ek het leeggemaak, hy kom nog steeds," something</p> <p>24 which I find in your statement consistently, in the</p> <p>25 November statement and in the May 2014 statement. I shot</p>	<p style="text-align: right;">Page 29716</p> <p>1 Afrikaans, Chair, yes. If I had my own choice I wouldn't</p> <p>2 have done it because I had a difficulty in it.</p> <p>3 MR NTSEBEZA SC: This is what I'm going</p> <p>4 to argue at the end, Constable, and listen to me carefully.</p> <p>5 What I'm going to put to the Commission is that</p> <p>6 consistently in your statement, and I'm not even sure you</p> <p>7 were speaking the truth in your statements, in all of them,</p> <p>8 but consistently in your statement you had told your</p> <p>9 colleagues who came there that you had shot at Mpumza 10</p> <p>10 times and what you see there are your colleagues</p> <p>11 complimenting you on the basis of what you have told them</p> <p>12 you have done. That's why they say, "Sebatjane" and then</p> <p>13 "Ek het hom 10, ek het leeggemaak en hy kom nog steeds."</p> <p>14 That's a reflection of somebody in that group of people</p> <p>15 around you who tells, who speaks about what you told them.</p> <p>16 Otherwise how would they have known you had shot at Mpumza</p> <p>17 10 times?</p> <p>18 CONSTABLE SEBATJANE: I will explain in</p> <p>19 this manner, Mr Chairman. After the shooting Captain</p> <p>20 Ryland asked me how many shots I'd fired. I took my</p> <p>21 magazine out of the firearm. On the indicator, the</p> <p>22 magazine indicator it was showing between seven and 10 and</p> <p>23 that is why I said 10 rounds.</p> <p>24 MS BALOYI: Chairperson, before Mr</p> <p>25 Ntsebeza moves on perhaps if we can be clear which aspect</p>
<p style="text-align: right;">Page 29715</p> <p>1 him, he keeps on coming, I shot him again, I checked my</p> <p>2 magazine, I had fired nine shots. I suppose nine shots</p> <p>3 after the first shot.</p> <p>4 CONSTABLE SEBATJANE: Firstly, I cannot</p> <p>5 speak Afrikaans. I have already explained to the</p> <p>6 Commission who was Afrikaans-speaking there. Those words,</p> <p>7 "Blom, Blom, ready position boss – aanval" – those are not</p> <p>8 my words as I have read them.</p> <p>9 CHAIRPERSON: Can't you speak Afrikaans</p> <p>10 at all?</p> <p>11 MR NTSEBEZA SC: No –</p> <p>12 CONSTABLE SEBATJANE: I can read but I</p> <p>13 cannot –</p> <p>14 MR MAHLANGU: I can read it but I cannot</p> <p>15 speak it.</p> <p>16 CHAIRPERSON: You passed Afrikaans for</p> <p>17 Matric, according to your CV.</p> <p>18 CONSTABLE SEBATJANE: Poorly.</p> <p>19 MR MAHLANGU: Poorly, as he says.</p> <p>20 CONSTABLE SEBATJANE: I can bring my</p> <p>21 Matric certificate along, Mr Chairperson.</p> <p>22 CHAIRPERSON: That's what your CV says,</p> <p>23 exhibit WWW1, that one of your course subjects for Matric</p> <p>24 was Afrikaans, so you know some Afrikaans.</p> <p>25 CONSTABLE SEBATJANE: There was</p>	<p style="text-align: right;">Page 29717</p> <p>1 of this transcript is considered to be commending and</p> <p>2 congratulating the Colonel, the Constable, so that at the</p> <p>3 appropriate time we can deal with it.</p> <p>4 CHAIRPERSON: I must confess I didn't see</p> <p>5 that either, Mr Ntsebeza, but perhaps you can help me.</p> <p>6 MR NTSEBEZA SC: I think the</p> <p>7 appropriate –</p> <p>8 CHAIRPERSON: You're putting it as a</p> <p>9 fact.</p> <p>10 MR NTSEBEZA SC: No, I can't put it as a</p> <p>11 fact, Mr Chair, because I wasn't –</p> <p>12 CHAIRPERSON: Let's take it off the table</p> <p>13 then and carry on with things we can put on the table.</p> <p>14 MR NTSEBEZA SC: I can't put it on as a</p> <p>15 fact, Mr Chair, all I can't put it all as a fact, Mr Chair.</p> <p>16 All I'm saying is that is what we'll argue. What certainly</p> <p>17 did come from the witness on his own testimony is "Blom,</p> <p>18 Blom, ready position boss, dinges aanval Sebatjane, ek het</p> <p>19 hom 10, ek het leeggemaak, hy kom nog steeds." I'm saying</p> <p>20 in line with what he says about his ability to speak</p> <p>21 Afrikaans, that clearly is not something that he is himself</p> <p>22 saying but what I started and we'll argued that what starts</p> <p>23 at 00:02:15, "I shot him at least 10 times, he keeps</p> <p>24 coming, coming," that we will attribute to him because it's</p> <p>25 consistent –</p>

Page 29718

1 CHAIRPERSON: You attribute it to him,
 2 alright. May I ask you this, you tell us in your statement
 3 that, the November statement which is exhibit TTT7, it's on
 4 the last page, it's in paragraph, part of paragraph 7 you
 5 explain how you fell and you continued firing and you then
 6 say that "He," that's the suspect as you call him, "then
 7 fell next to me on my left side facing up." And then you
 8 say "Colonel McIntosh came running towards us. He then
 9 requested medical personnel," I think it is, "to the
 10 scene." And then you, I think you say, "As I looked around
 11 I noticed that Captain Kidd and Captain Ryland were also
 12 not far from us" and then you say "I then checked my
 13 firearm and noticed that I fired nine rounds." Now, so it
 14 was after, according to the statement it was after Captain
 15 Kidd and Captain Ryland had arrived that you checked your
 16 firearm to see how many rounds you fired. Was the magazine
 17 empty at that stage?
 18 CONSTABLE SEBATJANE: I checked my
 19 magazine, Chairperson, when Captain Ryland asked me how
 20 many times I had shot. My magazine indicated, which showed
 21 that I had still seven – that I had seven rounds inside the
 22 magazine. What I can also explain, Chairperson, is from
 23 indicator, magazine indicator number 7 there is no 8 or 9,
 24 7 and then 10. The magazine stands at 7 then it would mean
 25 there would be 8 or 9 still in the magazine.

Page 29719

1 CHAIRPERSON: Yes, I see. Now, what I
 2 was interested in was whether - the Afrikaans expression
 3 "Ek het leeggemaak" means I emptied it and I wanted to know
 4 whether you emptied your magazine and from your evidence
 5 you didn't.
 6 CONSTABLE SEBATJANE: No, I did not
 7 finish all the bullets in my magazine, sir.
 8 COMMISSIONER HEMRAJ: Is Constable Mabe
 9 able to speak Afrikaans?
 10 CONSTABLE SEBATJANE: What I know is that
 11 he knows a little Afrikaans.
 12 COMMISSIONER HEMRAJ: And as far as you
 13 know there were only the two of you that shot, fired shots
 14 in that particular incident in that vicinity?
 15 CONSTABLE SEBATJANE: At that time, yes,
 16 that incident. I know only the two of us.
 17 COMMISSIONER HEMRAJ: Thank you.
 18 MR NTSEBEZA SC: And of course what you
 19 say, you say here, is not inconsistent with your statement.
 20 In 00:02:15 you don't talk about you emptying the magazine,
 21 you simply say you shot at him 10 times. So as far as that
 22 goes –
 23 CHAIRPERSON: No, no, I was referring to
 24 the 00:03:20 –
 25 MR NTSEBEZA SC: Yes. No, I understand –

Page 29720

1 CHAIRPERSON: It says "Ek het
 2 leeggemaak," that's what I was interested in.
 3 MR NTSEBEZA SC: No, that's the portion,
 4 Mr Chairman, we've indicated that we would argue somebody
 5 else was relating the thing as a third person. So when you
 6 heard the video and you have now read the transcript, does
 7 it trigger anything in your mind as to what was said and
 8 done at that time when this is recorded? Did you hear
 9 those things being said?
 10 CONSTABLE SEBATJANE: Chair, I was
 11 confused at that time, I was scared, I was shaking but what
 12 I remember was that I was very thirsty, I needed something
 13 to drink, water.
 14 MR NTSEBEZA SC: So you heard nothing,
 15 you were dizzy, so you can't really assist us as to who
 16 said those things, why they were being said at that time.
 17 CONSTABLE SEBATJANE: Not at the moment,
 18 I can be of no assistance.
 19 [12:45] MR NTSEBEZA SC: Now can I just ask you,
 20 now that you see what was recorded to have been said at the
 21 place and at the time, what is your impression of what is
 22 happening there? To me, let me tell you what I will submit
 23 it is, it is a celebration by police officers who have just
 24 killed a person.
 25 CHAIRPERSON: Ms Baloyi?

Page 29721

1 MS BALOYI: Chairperson, it would be
 2 helpful if we are again shown specifically what Mr Ntsebeza
 3 is referring to as a celebration.
 4 MR NTSEBEZA SC: Well, when you say
 5 that –
 6 CHAIRPERSON: You won't be able to argue
 7 this –
 8 MR NTSEBEZA SC: - I shot him 10 times –
 9 CHAIRPERSON: Sorry, sorry, Mr Ntsebeza.
 10 You won't be able to argue it at the end just in the
 11 abstract, as it were. You will have to refer to specific
 12 passages in the transcript. So perhaps it's a good idea
 13 that you tell us now what they are.
 14 MR NTSEBEZA SC: Mr Chairman, the one
 15 that I've just – I don't want to repeat, Mr Chairman gave
 16 us an indication that we don't have to repeat that, that's
 17 why I was avoiding it. Somebody has just been killed,
 18 there is no doubt about that, and has been killed in this
 19 incident. People are saying there's muti –
 20 CHAIRPERSON: Where does the rejoicing
 21 come from?
 22 MR NTSEBEZA SC: The rejoice is, "That
 23 muti doesn't work here, baba. Ka-ka-ka-ka." It's like a
 24 feeding frenzy of wolves at a dead body, that's what I will
 25 submit at the end of this inquiry.

<p style="text-align: right;">Page 29722</p> <p>1 MS BALOYI: Chairperson, objection. Mr 2 Ntsebeza is not entitled to be making the speeches that 3 he's making unless there is evidence to that effect. He 4 reads words and he says there's a frenzy. There is no 5 evidence of a frenzy on the documents. 6 CHAIRPERSON: Well, what he's saying is 7 that these are the passages that he's going to rely on, 8 which is what you asked him to indicate, and he will 9 contend that they are indicative of what he calls a feeding 10 frenzy, I think. As long as it's clear that this is – as 11 long as two things are clear. One, what he's going to 12 submit and, two, what he relies on in support of the 13 submission. At the end of the day you may well argue that 14 the submission is incorrect, that the passages he relies on 15 don't support the submission. He will argue the contrary, 16 we will have to decide but I don't think I can stop him. 17 Anyway, I think you've made the point fairly fully, Mr 18 Ntsebeza. You've put to the witness what you are going to 19 argue, we must give him a chance to reply and you've given 20 the detail upon which you will rely for the submission to 21 help him to answer. 22 MR NTSEBEZA SC: Mr Chairman, I just add 23 that when they say there, "That muti she doesn't work here, 24 baba," there's a triumphalist tone that says even with your 25 muti, we're going to kill you.</p>	<p style="text-align: right;">Page 29724</p> <p>1 go to where we started with you, exhibit L slide 247 which 2 is what was put up by my learned friend in evidence in 3 chief. Now together with another slide, which we have had 4 overnight or the last 48 to 72 hours, we will contend this 5 is what happened, that as this slide shows Mpumza ran to 6 the NIU line and we don't dispute that. In fact we'll say, 7 with the assistance of a statement from Colonel Modiba – I 8 mean Ngonyama, a statement from Ngonyama, UUU, is it WWW7? 9 It was a new exhibit we showed, Mr Chairman. 10 CHAIRPERSON: One of the ones we put in 11 at the beginning of your cross-examination. 12 MR NTSEBEZA SC: Yes, at paragraph – 13 CHAIRPERSON: WWW7 – 14 MR NTSEBEZA SC: Yes. At paragraph 6 15 thereof he says, "I went with Lieutenant-Colonel Modiba. 16 We went in between the bush and the koppie towards the 17 north of the koppie. We know that Modiba" – ja, "one of 18 them with dreadlocks came out with a spear in his right 19 hand and came straight to my direction, running. I 20 instructed him to stop while firing two warning shots since 21 he was coming fast but he didn't stop. Instead he changed 22 direction and ran away." Do you see that? Do you hear 23 that or do you want to read it for yourself? 24 CONSTABLE SEBATJANE: I see, Chair. 25 MR NTSEBEZA SC: Now we say that's merely</p>
<p style="text-align: right;">Page 29723</p> <p>1 CHAIRPERSON: Do you wish to comment on 2 that? 3 MR NTSEBEZA SC: It's not an expression 4 of sympathy. 5 CHAIRPERSON: Alright, okay, do you want 6 to answer, Constable? Do you agree with what Mr Ntsebeza 7 is putting to you? 8 CONSTABLE SEBATJANE: I do not agree with 9 what Mr Ntsebeza says. 10 MR NTSEBEZA SC: Well, I suppose because 11 you were dizzy at the time, on your evidence – 12 CHAIRPERSON: Mr Ntsebeza, I don't think 13 it's appropriate to make a comment. He has said he was 14 confused, he says he'd been through this experience which 15 he described but I don't think it's necessary to make 16 comments. Just please ask him questions. 17 MR NTSEBEZA SC: Mr Chair, I think I will 18 argue at the end, irrespective of what he says, that this 19 is clearly not an expression – those are not expressions 20 of – 21 CHAIRPERSON: I understand that, Mr 22 Ntsebeza. You've made it clear what you're going to argue 23 but you're busy asking the witness questions at the moment, 24 you're not arguing yet, so carry on with the questions. 25 MR NTSEBEZA SC: Now I would like us to</p>	<p style="text-align: right;">Page 29725</p> <p>1 supportive of – can we go back to 247 please – that's 2 merely supportive of what SAPS themselves are alleging, 3 that at about 20 past four that day or thereabouts, they 4 give the time, Mr Mpumza was coming this direction, saw the 5 NIU line and then he turned in the direction indicated by 6 the red arrow. You didn't see him at that stage, did you? 7 CONSTABLE SEBATJANE: I did not see him. 8 I also did not see that – 9 MR NTSEBEZA SC: According to you, you 10 would have been here at that stage. Is that the area that 11 you had indicated to my learned friend? Charles, can you 12 give me – 13 CHAIRPERSON: Mr Ntsebeza, you say you 14 would be here and you point at something but I couldn't see 15 it on the screen so I can't, for the benefit of posterity 16 as it were, record what you pointed out. 17 MR NTSEBEZA SC: Chair, we say we don't 18 disagree with the presentation that this, he came this way, 19 met with this NIU line and then turned as also Mr Ngonyama 20 says and ran in this direction. 21 CHAIRPERSON: Yes. What you were doing 22 is you were pointing, this is on exhibit L247, you were 23 pointing to firstly the section, it's a number of little 24 rectangles, orange I think, and the word "eastern" is above 25 them. That presumably indicates members of the NIU and</p>

Page 29726

1 then there's a red arrow from there going to the right on
 2 the slide and which the arrow ends in a red circle. At
 3 that red circle there is a yellow arrowhead. The arrow
 4 comes from the bushes and then the indication is that the
 5 red arrow, sorry, the yellow arrow is then continued. In
 6 other words, the person whose direction is indicated by the
 7 arrow turns and goes to the right of the slide and that's
 8 basically the area you pointed out. Do you – I'm not sure
 9 whether you intended to indicate that the person whose
 10 direction is indicated by the yellow arrow turned at the
 11 arrowhead in the middle of the red circle or whether he
 12 advanced further towards the NIU who are presumably
 13 depicted, or their position is depicted under the word
 14 "eastern" but perhaps you can explain that yourself.
 15 MR NTSEBEZA SC: Yes, Mr Chairman. Our
 16 theory of the case is that he didn't run as 247, slide 247
 17 suggests, straight in this way. Our theory of the case is
 18 that he ran to a bush, that is where he went into –
 19 CHAIRPERSON: I'm sorry to interrupt you.
 20 I understand you people have put in a modified version of
 21 this slide indicating where you say he ran and that was
 22 referred to already in examination in chief but that's the
 23 portion dealing with the person's movement towards the
 24 right of the slide. The point that I wasn't clear on and
 25 what your case is, is in relation to the first direction in

Page 29727

1 which the person moved and the point at which he turned
 2 round and went in the other direction. I know you dispute
 3 that he ended up near that red circle at the extreme right,
 4 I understand that. Your case is, slightly above that he
 5 went into the bush, I understand that but I'm concerned
 6 with the first part. It said he came out of the bush, he
 7 moved diagonally downwards but in a direction towards the
 8 left of the slide and then changed direction. I don't
 9 understand you to quarrel with that but do you accept or
 10 rather does your theory accept that he changed direction at
 11 that, at the yellow arrowhead in the red circle or do you
 12 say he went further to the left, towards the NIU people who
 13 were under the word "eastern?" You understand my problem?
 14 MR NTSEBEZA SC: I do understand, Mr
 15 Chairman. We say from this point we can't be exact but
 16 what our theory is, is that he did not go – he saw, when he
 17 saw the NIU line he turned, he turned and that what is
 18 being confirmed by the Colonel -
 19 CHAIRPERSON: So am I correct, am I
 20 correctly understanding you, it's not material for you as
 21 to how far he went towards the left.
 22 MR NTSEBEZA SC: Indeed.
 23 CHAIRPERSON: What is material for you is
 24 that he changed direction when he saw the NIU –
 25 MR NTSEBEZA SC: Changed direction and

Page 29728

1 we'll –
 2 CHAIRPERSON: - perhaps when they fired
 3 warning shots at him and he proceeded to the right of the
 4 slide, not as shown on the slide but he went towards the
 5 bush which is clearly visible on the slide above those two
 6 circles, the red and the blue which are at the right-hand
 7 side of the slide. Is that an accurate summary of the
 8 position?
 9 MR NTSEBEZA SC: Yes, Mr Chairman, and
 10 our theory is going to be that it is from that bush that he
 11 then again got out at the time when the witness and his
 12 colleagues were advancing towards him and at the time that
 13 there would have been a Nyala coming as one was being
 14 called for by, as reflected in exhibit OOO11. So what we
 15 are suggesting and we'll say Captain Greyling's statement
 16 also supports this, Mpumza was hiding here in this bush, in
 17 this bush Mr Chairman, becomes aware –
 18 CHAIRPERSON: I'm sorry to interrupt you.
 19 This bush being the bush to which we've already referred
 20 which is underneath the word "western" on the extreme
 21 right-hand corner of the slide, right-hand side – not
 22 right-hand corner, right-hand side of the slide under the
 23 word "western." There's a bush there. That, you say, is
 24 where he was hiding.
 25 MR NTSEBEZA SC: Yes, Mr Chair.

Page 29729

1 CHAIRPERSON: I see it's now 1 o'clock so
 2 if you've finished expounding the theory which you're going
 3 to take us through further on Monday morning at 9 o'clock,
 4 it's appropriate for us to take the adjournment now unless
 5 there's something you want to say before we do that.
 6 MR NTSEBEZA SC: Mr Chairman, we can do
 7 whatever we have not done on Monday morning.
 8 CHAIRPERSON: Thank you, we will now
 9 adjourn.
 10 [COMMISSION ADJOURNED]
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 23 .
 24 .
 25 .

A				
aanval 29715:7 29717:18	aim 29691:23 29702:16	arresting 29649:1	29669:4,5,8,8,12,15	29667:4,16,24
ability 29717:20	aimed 29681:22	arrival 29669:25	29671:11,13	briefed 29638:11
able 29641:10,13	29695:14	arrived 29638:17	29676:16 29694:21	29639:1 29640:4,10
29646:1 29650:12	allegedly 29703:10	29672:14,16,17,19,22	29702:7,9 29711:9	29642:12 29643:13
29653:16 29660:12	alleging 29725:2	29718:15	29725:1	29643:14 29644:1
29663:12 29666:10	allow 29697:5	arrow 29656:25	backward 29663:14	briefing 29638:15,22
29672:15,22	29701:12 29705:10	29657:17 29673:8,19	backwards 29664:8	29639:13,18,19,25
29708:21,22 29719:9	allowed 29645:19	29675:4,13,22	29668:11 29669:3	29640:7,15,17
29721:6,10	alright 29666:17	29725:6 29726:1,2,3	29693:14,17	29643:25
abstract 29721:11	29667:3 29680:14	29726:5,5,7,10	barbed 29642:14	bring 29637:3
accept 29688:18	29681:13 29682:15	arrowhead 29726:3,11	basic 29630:2,4	29693:21 29715:20
29692:6 29706:14	29711:24,25 29718:2	29727:11	29644:15,21	bringing 29641:12
29712:12 29714:5,6	29723:5	arrows 29677:10,11	29646:15,24 29658:1	bullet 29695:4
29727:9,10	AMCU 29682:12	asked 29626:3 29629:2	29700:11,19,20	bullets 29649:22
acceptable 29629:16	answer 29629:7,14	29633:14 29635:4	29701:3,5	29695:5 29697:20
accurate 29728:7	29654:22 29695:3	29637:24 29655:11	basically 29658:7	29698:3,3,5 29705:23
active 29704:12	29696:25 29697:1,1,1	29657:22 29694:25	29726:8	29719:7
actual 29655:20	29697:2 29700:14	29716:20 29718:19	basis 29629:3,13	bundle 29630:11
29703:9	29701:11,13,16	29722:8	29704:1 29716:11	29631:20 29660:7
ad 29657:20	29706:21 29722:21	asking 29643:17	bear 29714:19	29687:20 29689:20
add 29637:8 29722:22	29723:6	29723:23	beg 29635:11	bush 29676:4 29724:16
additional 29640:23	answered 29633:15	aspect 29666:7	beginning 29713:11	29726:18 29727:5,6
29684:16,17	29714:21	29689:25 29716:25	29724:11	29728:5,10,16,17,19
29685:13,15,16,18,23	Anymore 29685:11	assegai 29661:22	behalf 29682:6,8	29728:19,23
29689:12,14,15	anyway 29648:13	29663:3 29665:3	believe 29673:1	bushes 29726:4
29700:5	29663:2 29688:7	assist 29685:4 29689:3	29688:24 29689:9	busy 29649:13 29661:7
adjourn 29626:21	29722:17	29689:19 29693:2,7	29702:13 29709:13	29723:23
29729:9	apologies 29631:8	29711:3 29720:15	29709:18	Buthelezi 29656:13
ADJOURNED	apologise 29626:20	assistance 29656:15	beneath 29645:18	29657:24 29658:3,13
29729:10	29627:12 29631:12	29720:18 29724:7	benefit 29627:3	29658:14 29659:1,6
adjournment 29678:21	29641:8	assisted 29649:3	29654:24 29655:17	29659:10 29661:4
29678:25 29679:1	appeared 29672:10	29650:19	29725:15	29672:4 29680:1
29701:25 29729:4	appears 29629:22	assortment 29638:13	best 29637:25 29666:25	29684:11,13,16,18,21
ADJOURNS 29667:5	29660:15	assuming 29705:22	29667:1 29668:1	29685:21 29686:3
29679:3 29702:10	applied 29692:11	attacked 29703:10	better 29626:21	29689:16 29699:20
admission 29714:16	apportion 29688:18	attempting 29670:3	29703:17	29704:13,22 29706:7
admit 29712:9	approach 29676:14	attempts 29688:8	beyond 29647:18	29706:8
Adv 29628:7	approached 29650:23	attend 29639:25	29657:10	
advanced 29726:12	appropriate 29667:17	attended 29638:11,22	bit 29626:4 29665:21	C
advancing 29728:12	29717:3,7 29723:13	attending 29635:7	29702:16	call 29626:6 29627:1,22
afraid 29686:15	29729:4	attention 29671:24	black 29650:23	29628:2 29649:11
African 29655:13	area 29640:13	29698:24 29705:3	blame 29688:18	29658:1 29708:7,7
29708:16	29654:25 29677:17	attribute 29717:24	Blom 29713:11,11	29718:6
Afrikaans 29714:9,10	29685:22 29710:15	29718:1	29714:22,22 29715:7	called 29627:18
29714:11,12 29715:5	29725:10 29726:8	attributed 29708:9	29715:7 29717:17,18	29641:5 29728:14
29715:9,16,24,24	areas 29687:7	August 29630:19	blow 29660:6,14	calls 29722:9
29716:1 29717:21	aren't 29648:12	29631:6 29634:6,21	29708:4	camera 29660:9
29719:2,9,11	argue 29710:22,23	29635:8,14,21	blue 29646:21,25	Canter 29648:13
Afrikaans-speaking	29716:4 29717:16	29636:10,19 29680:7	29647:1,12 29652:3	can't 29715:9 29727:15
29715:6	29720:4 29721:6,10	29690:3,25 29692:15	29654:14,16	Captain 29634:10,10
ago 29678:14 29691:11	29722:13,15,19	available 29686:25	29657:11,14,16,16,18	29640:4,8 29642:12
29693:21 29702:16	29723:18,22	avoiding 29721:17	29673:13,19,25	29642:19 29643:4,13
29703:4 29704:10	argued 29717:22	await 29642:14,15	29675:18,20 29676:3	29644:2 29645:4
29708:1	arguing 29723:24	aware 29672:3	29728:6	29646:5,24 29647:3,8
agree 29634:19,22	arm 29661:17,17	29704:25 29705:6,8	body 29669:15	29648:7 29650:25
29639:9,16 29640:6	29662:3 29664:15,22	29705:17 29728:17	29674:20 29693:16	29651:15 29652:13
29655:22 29657:19	29665:2,2		29693:17 29694:9	29653:6,9 29672:9,10
29692:15,17 29698:5	armed 29645:8	B	29698:5 29721:24	29672:20,21
29702:24 29723:6,8	29680:8	baba 29708:15	boss 29715:7 29717:18	29674:13 29691:17
agreed 29710:25	arms 29645:13	29712:25 29721:23	Botha's 29682:21,24	29691:19 29701:3
29711:1,6	arranged 29680:5	29722:24	29683:1,5	29707:19 29708:9
ahead 29656:3 29688:6	arrangement 29626:14	back 29631:11,14	bottom 29641:21	29711:22 29714:10
29704:7	29626:15 29668:1	29634:5 29636:22	29644:8 29648:10,16	29714:10 29716:19
	arrangements 29687:4	29637:4 29643:23	29650:10 29651:8	29718:11,11,14,15,19
	arrest 29649:4	29660:9,22 29661:18	brackets 29693:17	29728:15
	arrested 29650:16	29661:19 29665:13	break 29666:4,21	carefully 29675:2

29716:4 carried 29638:12 carry 29688:7,19 29702:1 29717:13 29723:24 carrying 29627:15 29628:1 29670:2 case 29726:16,17,25 29727:4 cases 29637:18 caused 29705:25 CC22 29709:14 celebration 29720:23 29721:3 cell 29707:19 centre 29648:12 29656:24 29658:6 certain 29636:21 29640:11 certainly 29666:5 29710:25 29712:17 29717:16 certificate 29715:21 cetera 29714:1 Chairman 29650:5 29654:19 29666:2,3 29667:2,22 29682:9 29682:18,18 29683:3 29683:15 29684:10 29684:23 29685:3,13 29686:9,13,19 29687:6 29688:13 29689:23 29697:4,8 29702:14 29704:16 29710:16 29711:12 29716:19 29720:4 29721:14,15 29722:22 29724:9 29726:15 29727:15 29728:9,17 29729:6 chamber 29688:8 29709:20,24 29710:5 chance 29679:8 29696:25 29706:17 29709:20 29722:19 changed 29724:21 29727:8,10,24,25 charge 29630:6 charged 29664:9,12 29668:11,13 29693:15 Charles 29725:11 chart 29644:4 Chaskalson 29659:24 check 29626:19 29678:18 29688:22 29688:25 29689:6,10 checked 29715:1 29718:12,15,18 chest 29662:18,18 29664:2,5 29668:10 29681:23 29693:12 29693:13,22 29694:3 29694:5,11,13,17,18 29694:19,21 29695:11,12,14,15,21	chief 29678:17 29679:11 29689:12 29689:25 29695:9 29724:3 29726:22 chin 29662:24 choice 29716:1 chopper 29645:25 29648:23 circle 29646:21 29652:2,3 29654:14 29654:16 29656:24 29657:1,10,14,14,15 29657:17 29673:9,12 29673:13,13,17,25 29675:4,5,6,14,18,21 29675:22,23 29676:3 29676:5,7,8 29726:2 29726:3,11 29727:3 29727:11 circles 29652:1 29673:20 29728:6 clarifying 29689:24 clarity 29637:8,9 29679:14 clear 29635:16 29660:14 29666:12 29685:18 29716:25 29722:10,11 29723:22 29726:24 clearest 29681:5 29692:13 clearly 29680:8 29698:8 29717:21 29723:19 29728:5 client 29630:5 clip 29707:2 29711:21 clips 29627:21 close 29648:16 29654:14,15 29656:25 29659:3 29662:21 cloth 29660:13 clothing 29645:18 colleagues 29657:8 29706:3 29716:9,10 29728:12 Colonel 29672:9,16,18 29717:2 29718:8 29724:7 29727:18 come 29634:25 29644:20 29688:15 29698:16 29702:6 29706:24 29708:5 29717:17 29721:21 comes 29662:4 29703:20 29726:4 comfort 29666:21 29667:4,16,24 coming 29626:3 29640:24,25 29642:22 29650:13 29662:3 29669:2 29708:12,13 29714:20 29715:1 29717:24,24 29724:21 29725:4	29728:13 command 29634:10 29699:18 29701:19 29701:21 commander 29634:11 29634:12 29674:13 commended 29688:10 commending 29717:1 comment 29714:5 29723:1,13 comments 29723:16 Commission 29626:2 29628:14 29631:14 29661:1 29667:5,5,6 29668:2 29679:3,3,4 29692:13,13 29693:2 29693:23 29694:15 29694:23 29695:8 29697:21 29702:10 29702:10 29706:14 29712:12 29715:6 29716:5 29729:10 Commissioner 29626:25 29631:1,4 29631:10 29632:8,12 29635:9,12,13,18 29636:17,23 29637:1 29637:6,7 29657:2 29659:21 29663:16 29670:17,23 29671:1 29679:13,18,22 29680:2 29681:21 29682:1,3 29686:15 29719:8,12,17 commissioners 29689:7 29698:18 29704:12 communicated 29628:7 completed 29630:3 completeness 29659:12 29680:5 complimenting 29716:11 comprised 29639:7 comprises 29627:20 concentrate 29663:10 concerned 29705:9 29727:5 concerns 29666:5 concur 29655:19 confess 29717:4 confine 29663:7 confirm 29631:11 29632:1,3,5 29633:2 29633:3,7,12,15,20 29633:22,25 29634:1 29651:13 29655:25 29659:16 confirmed 29634:5 29727:18 confrontation 29674:6 confronted 29672:5 confused 29720:11 29723:14 confusion 29665:21 congratulating 29717:2 considered 29717:1	consistent 29717:25 consistently 29714:24 29716:6,8 consolidated 29630:11 29630:22,25 29633:1 29633:19 29660:22 29676:17 29690:2 29691:16,17 29692:1 29692:4 29696:11 29698:23 29702:15 29702:22 29703:22 29704:3 constables 29657:23 29686:23 29689:16 constitute 29697:2 consult 29666:24 consultation 29697:25 contains 29703:6 CONTD 29668:6 29680:4 contend 29722:9 29724:4 content 29634:1 contents 29633:3,12,15 29636:7 contest 29628:8 contested 29710:23 context 29642:1 continue 29705:10 continued 29718:5 29726:5 continuing 29626:5 contrary 29722:15 convenient 29701:24 conversant 29654:20 copies 29686:6 corner 29644:8,10,11 29647:16 29648:11 29648:16 29650:10 29651:8 29728:21,22 correct 29628:3 29630:20 29634:7,18 29639:4,5 29641:5 29642:2,5 29644:24 29646:12,16 29648:17 29653:3,4 29663:12 29664:20 29666:1 29667:15 29669:11,21 29670:4 29679:16 29682:12 29691:8,12,24 29692:5 29695:11,22 29695:23 29699:14 29702:19 29704:21 29727:19 correctly 29727:20 couldn't 29671:8 29725:14 course 29651:11 29692:22 29703:23 29705:16 29709:11 29715:23 29719:18 cover 29627:14 covered 29678:19 create 29631:14 critical 29666:7	cross 29687:13 29688:10 cross-examination 29682:16,17 29686:18 29688:19 29688:21 29704:1 29705:5 29724:11 cross-examine 29682:6 29682:7,12,14 cross-examining 29702:12 crying 29693:5 current 29666:15 CV 29627:9,13 29628:1 29715:17,22 <hr/> D <hr/> dangerous 29638:13 29645:8,17 dark 29657:15 date 29632:8,17 29659:21 dated 29632:11 day 29638:18 29639:12 29639:14 29692:14 29698:5 29699:3 29701:10 29706:7 29722:13 29725:3 days 29707:4 29708:1 dead 29721:24 deal 29627:3 29631:20 29634:5 29702:1 29717:3 dealing 29726:23 dealt 29689:11 death 29693:6 deceased 29699:3,12 29705:9,23 29706:1,3 29714:15 December 29630:4 decide 29666:25 29667:1 29722:16 defence 29649:12 29672:1 29698:25 deficiencies 29702:23 deficiency 29688:9 demeaning 29666:19 deny 29695:5 denying 29697:21 29698:15,15 depict 29674:25 depicted 29644:12 29726:13,13 depicts 29677:5 deploy 29641:11 29642:13 deployed 29630:19 29631:5 29634:6 29640:17 29646:9 29692:15,24 describe 29651:19 29652:21 29659:17 29664:19 29665:25 29668:12 29672:9,25 29673:17 29677:25 29682:22,23
---	---	--	---	--

<p>29685:19 described 29670:1,20 29695:20 29723:15 describes 29673:16 describing 29649:17 29668:8 29670:17 description 29663:11 29673:24 29674:1,3,5 29674:8 29678:6 29685:18 detail 29692:2,7,11 29702:17,21 29703:11,14,18,21 29722:20 details 29703:24 29704:4 29705:13 diagonally 29644:9 29727:7 didn't 29631:12 29638:18,19 29666:8 29687:22 29688:15 29697:13 29717:4 29719:5 29724:21 29725:6 29726:16 die 29713:14 died 29696:19 difference 29703:16 different 29636:3 29680:8 29700:6 difficult 29665:17 difficulty 29716:2 dinges 29717:18 directing 29693:7 direction 29647:19 29650:25 29651:1,23 29652:8,8 29653:6,14 29653:16 29658:20 29661:4 29678:3,15 29694:13,18 29724:19,22 29725:4 29725:5,20 29726:6 29726:10,25 29727:2 29727:7,8,10,24,25 dis 29708:18 disagree 29725:18 disarm 29643:2 discharged 29671:25 29698:25 29704:17 29705:3 discover 29699:1 discussion 29705:13 dispute 29696:19 29724:6 29727:2 distance 29653:16 29657:9 29658:23,25 29659:1,7 distracts 29663:9 distress 29709:25 distressed 29710:4 dizzy 29720:15 29723:11 document 29627:6,11 29627:14 29630:10 29630:16 29631:25 29651:4,6 29674:19 29674:24 29707:18</p>	<p>29711:6 documents 29627:12 29630:12 29631:20 29682:19 29687:13 29689:4,20 29707:9 29707:10 29722:5 doesn't 29685:3 29693:21 29697:1,1 29713:7 29721:23 29722:23 doing 29629:23 29649:8 29712:5 29725:21 don't 29626:12 29627:23 29629:3,14 29665:18 29666:11 29666:18 29683:13 29684:1 29686:10,13 29686:15,22 29690:25 29695:12 29696:6,13,14,18,23 29698:20 29701:2 29712:14 29713:3 29719:20 29721:15 29721:16 29722:15 29722:16 29723:12 29723:15 29724:6 29725:17 29727:8 dotted 29673:12,18 29675:17,18,21 29676:2,5 doubt 29693:21,23 29695:2 29721:18 downwards 29662:3 29727:7 draft 29637:9,12 dreadlocked 29651:20 29652:21 29658:20 29659:18 dreadlocks 29650:24 29651:10 29724:18 drew 29664:1 29668:9 drink 29720:13 drop 29645:12 29653:24 29660:25 dropping 29661:3 ducked 29669:1 due 29651:11 duration 29630:3 duties 29639:20 d.s.s 29628:19</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>earlier 29650:11 29657:9 29694:24 29695:9 29696:10 29703:25 early 29678:25 East 29676:19 eastern 29673:5 29675:3,7,7,9 29725:24 29726:14 29727:13 Edward 29626:8 29628:2,19 29668:5 29679:6 29687:23</p>	<p>effect 29722:3 eight 29695:12 either 29690:25 29700:11 29704:13 29717:5 ek 29708:16,17,18 29713:13,13,13,14,20 29714:1,17,22,23 29716:13,13 29717:18,19 29719:3 29720:1 embarrassed 29688:13 embarrassment 29688:17 emotional 29709:25 emphasise 29693:16 emptied 29713:15 29719:3,4 empty 29718:17 emptying 29719:20 en 29716:13 enable 29710:3 encounter 29676:13 endeavouring 29654:23 ended 29646:25 29648:24 29676:3 29727:3 ends 29656:25 29673:9 29673:12 29675:3,17 29675:21,22 29726:2 English 29629:3,6,13 29665:8 enhanced 29682:21,24 29683:2,5 ensure 29645:17 entered 29698:5 entitled 29683:18 29722:2 especially 29701:12 establish 29686:13 29687:13 established 29646:19 29646:23 29647:2 29648:6 estimate 29681:24 estimation 29663:24 et 29714:1 evening 29639:19,22 29699:6,11,11 29705:4 29706:5 event 29702:22 29703:10 everybody 29689:7 evidence 29626:10 29628:14 29647:8,22 29678:17 29681:19 29688:23 29689:12 29689:25 29693:20 29694:4 29695:9,15 29697:6 29698:7 29699:16 29700:21 29700:25 29703:21 29704:2 29706:10 29710:25 29714:15 29719:4 29722:3,5</p>	<p>29723:11 29724:2 exact 29648:4 29727:15 exactly 29655:7 29663:8 29665:3,18 29665:20 29705:1 examination 29628:22 29668:6 29679:11 29680:4 29681:18 29687:14 29688:11 29726:22 exhibit 29628:9 29631:22,22 29646:18,19 29659:12 29673:4 29674:18 29682:21 29683:8,8,11,13,18 29683:22,23,25 29684:2 29688:25 29689:1,8,13,15 29690:11 29706:24 29710:15,24 29711:11 29715:23 29718:3 29724:1,9 29725:22 29728:14 exhibits 29683:16 29686:6,6 exonerated 29666:8 expect 29704:6 expected 29703:25 experience 29709:25 29723:14 experienced 29676:14 expired 29710:3 explain 29661:1 29670:19 29693:24 29694:6,15 29700:9 29706:16 29716:18 29718:5,22 29726:14 explained 29660:23 29674:15 29715:5 explaining 29703:5 expletive 29710:16 exposed 29710:5 expounding 29729:2 expression 29719:2 29723:3,19 expressions 29723:19 extra 29626:4 29703:18 extreme 29641:24 29646:4,15 29659:8 29660:11,19 29676:10 29678:14 29727:3 29728:20 eye 29705:11 29708:5</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 29669:14 faced 29661:10,11 facing 29718:7 fact 29627:12 29631:10 29648:3,15 29660:6 29681:5 29692:25 29697:22 29703:20 29704:2,25 29705:21 29707:11 29717:9,11 29717:15,15 29724:6</p>	<p>failure 29705:5,7 fairly 29722:17 fall 29669:13 fallen 29669:5,16 29697:19 families 29666:9 family 29674:25 29676:1,1 29682:8 far 29638:7 29657:10 29663:21 29681:23 29705:9 29706:11 29711:3 29712:9 29718:12 29719:12 29719:21 29727:21 fast 29654:8 29724:21 faster 29629:5 feeding 29721:24 29722:9 feet 29669:6,10 29670:24 29671:11 29671:19 fell 29669:3,3,13 29671:13 29718:5,7 FHA2 29646:9 29677:6 29677:12 field 29639:2 figures 29644:10 file 29689:22 find 29636:13 29637:9 29637:10 29638:6 29644:20 29714:18 29714:24 finding 29693:3 finger 29712:21 finish 29719:7 finished 29639:20 29710:3,6 29729:2 fire 29663:20 29668:9 29671:4,8 29697:22 firearm 29661:5 29662:19 29663:14 29663:17 29669:23 29671:25 29698:13 29698:25 29699:4 29704:17 29705:4 29706:19 29716:21 29718:13,16 firearms 29679:19 fired 29664:2 29668:9 29668:25 29669:2 29670:11 29671:10 29672:4,24 29679:15 29681:22 29693:12 29693:13,15 29694:16 29695:6,13 29695:25 29699:3,12 29704:24,25 29705:15,18 29706:8 29715:2 29716:20 29718:13,16 29719:13 29728:2 firing 29669:3,5 29697:18 29705:18 29706:18 29718:5 29724:20 first 29631:5,11,20</p>
---	--	--	---	---

29634:6 29635:16 29651:21 29652:22 29656:19 29666:21 29667:4,16 29672:14 29672:16,22 29675:6 29679:14 29681:22 29684:21,21 29689:24 29690:18 29695:19,20 29696:6 29698:8 29701:3 29715:3 29726:25 29727:6 firstly 29715:4 29725:23 five 29670:22 29679:1 flying 29706:19 follow 29651:17 29686:24 29697:2 followed 29674:6 29675:1 29676:4,12 following 29639:14 29700:13 29713:20 football 29639:2 form 29639:1 29644:14 29683:9,11 29687:1 29699:18,21 29700:8 29700:11,12 29701:5 formation 29644:14 29656:17 29657:23 29685:21 formed 29700:7,22 29701:3,18 29704:17 fortnight 29691:11 29702:16 29704:10 forward 29631:17 29643:14 29645:5,7 29662:4,15 29664:21 29664:22 29665:2,3 29667:1 29669:14 29694:9 29708:15,15 29708:16 forwards 29662:3 found 29634:18 29635:16,25 29690:9 29700:22 four 29643:20,22 29648:14,16 29650:10 29662:25 29663:2 29670:22 29725:3 frenzy 29721:24 29722:4,5,10 friend 29628:7 29666:6 29687:16 29689:2 29695:1 29724:2 29725:11 front 29630:16 29633:20 29663:3 29681:8 29692:22 29698:18 full 29689:20 fuller 29704:2 fullest 29703:22 fully 29722:17 further 29635:15,22 29636:1 29639:3	29641:23 29645:20 29645:23,25 29648:15,15,21,23 29650:19 29651:16 29681:6,17 29685:19 29726:12 29727:12 29729:3 future 29700:6 <hr/> G <hr/> gehad 29708:18 gemaak 29708:17 gentleman 29652:20,21 29659:17 29660:8 29681:12 gesture 29664:17 29665:20 gestures 29663:8,10 29665:18,22 getting 29695:7 give 29626:10 29628:14 29639:3 29643:5 29663:8 29664:17 29665:22 29673:23 29673:25 29674:2,10 29678:6,20 29685:16 29692:2 29696:25 29697:5 29700:6 29702:16 29703:20 29704:9 29706:17 29709:15,19,20 29722:19 29725:4,12 given 29627:14 29642:13 29686:7 29687:10 29692:3,8 29693:20 29699:17 29702:17 29722:19 giving 29692:7,12 29695:9 glaring 29704:9 go 29626:19 29629:5 29634:4 29635:9,13 29636:21 29639:11 29640:10,11,18 29641:4,23 29642:23 29643:23 29644:4 29646:18 29651:16 29660:22 29664:7 29676:16,25 29677:10 29692:24 29704:7 29706:24 29707:15 29711:25 29724:1 29725:1 29727:16 God 29628:16,18 29698:17 goes 29677:11 29719:22 29726:7 going 29626:6,10 29635:19 29638:19 29640:12 29651:10 29653:9 29654:24 29666:4 29667:23 29677:11 29680:11 29682:6,7,12,14,20 29686:19 29688:23	29692:12 29700:23 29708:10,16 29709:21,22 29716:3 29716:5 29722:7,11 29722:18,25 29723:22 29726:1 29728:10 29729:2 good 29721:12 gravel 29641:14,18 29642:2,7 great 29692:2 Greyling's 29728:15 ground 29669:14 29671:6 group 29639:1,2,7 29640:4 29644:1 29647:2,23 29648:6 29676:20 29716:14 groups 29647:9 gun 29708:18 <hr/> H <hr/> hadn't 29672:24 hair 29650:24 29651:20 half 29643:19,20,22 halfway 29646:11 29678:3 hand 29628:16 29636:18 29645:24 29648:22 29660:16 29660:18,19 29661:12,15,21 29663:3,18,19 29664:20 29668:17 29668:20 29669:16 29669:18,20 29671:17 29677:5 29694:8 29724:19 handcuffs 29661:8 handed 29635:5 29636:20 29637:4,15 29680:23,24 hands 29702:2 handwriting 29691:7 handwritten 29631:23 29632:17 29633:8 29634:24 29636:4 29637:20,23 29690:12 hand-written 29703:3 happened 29636:9,24 29637:2,13 29638:3 29654:21 29655:11 29665:4 29672:25,25 29692:14 29697:17 29699:6 29703:5 29706:13,13 29724:5 happening 29626:19 29649:9 29720:22 happens 29660:25 29661:1 29703:19,24 29704:4 hard 29702:8 hasn't 29633:14 haven't 29685:6	29701:10,10 29710:20 head 29649:21 29656:25 29657:17 hear 29651:11 29654:3 29654:3 29655:12 29697:18 29700:24 29701:16 29706:12 29706:19 29709:22 29709:25 29710:17 29713:18,22 29720:8 29724:22 heard 29649:21,25 29698:11 29713:2 29720:6,14 hearing 29709:25 height 29662:4 helicopters 29706:19 help 29628:16,17 29651:16 29709:12 29713:21 29717:5 29722:21 helpful 29721:2 HEMRAJ 29626:25 29631:1,4 29632:8 29635:9,13,18 29636:17,23 29637:1 29637:6 29657:2 29659:21 29663:16 29670:17,23 29671:1 29679:13,18,22 29680:2 29681:21 29682:1,3 29686:15 29719:8,12,17 het 29708:16,17,18 29713:13,13,14,14,20 29714:1,17,22,23 29716:13,13 29717:18,19 29719:3 29720:1 he'd 29637:24 29723:14 he's 29633:10 29680:24 29681:8 29684:25 29711:24 29714:4 29722:3,6,7,11 hide 29645:17 hiding 29728:16,24 high 29698:3 higher 29698:13 hit 29664:4 29670:15 29694:4 29695:4,6,10 29695:12,13,14,17,21 29696:1,6,12,15 29705:23 29706:1 hitch 29686:11 hitting 29669:14 Hlongwane 29676:19 hoe 29708:17 holding 29664:14 29665:9 29680:24 holster 29661:6 hom 29708:17 29713:13,20 29714:1 29714:22 29716:13 29717:19	Honeydew 29634:14 Hoor 29708:17 hope 29663:12 29693:6 hours 29707:1 29724:4 housekeeping 29627:2 29682:19 hy 29708:17 29714:18 29714:23 29716:13 29717:19 <hr/> I <hr/> idea 29691:21 29721:12 idem 29657:21 identify 29660:12 29708:22 important 29666:9 29689:25 29700:23 impression 29665:1 29720:21 inaudible 29681:2 29688:5 inches 29663:1,2 incident 29674:10 29676:24 29697:10 29697:17 29719:14 29719:16 29721:19 include 29692:11 29699:24 includes 29709:1 including 29689:7 inconsistent 29719:19 incorrect 29722:14 incorrectly 29652:11 index 29627:6 29631:22 29687:13 29689:21 indicate 29628:6,6 29629:4 29641:24 29646:1 29648:4 29649:8 29650:4 29651:21 29653:16 29654:9,23 29656:15 29657:8,23 29661:16 29664:19 29668:16 29668:19 29669:17 29669:19 29710:16 29722:8 29726:9 indicated 29641:25 29642:6 29647:11 29648:1 29650:2 29651:9 29652:24 29656:1,19 29657:9 29659:24 29676:2 29682:20 29718:20 29720:4 29725:5,11 29726:6,10 indicates 29641:20,22 29644:6,9 29646:11 29646:20 29650:6 29651:25 29652:4,17 29652:25 29653:2,18 29653:20 29654:13 29654:15 29656:23 29662:2 29663:3,17 29678:2 29694:9
--	--	---	--	--

<p>29725:25 indicating 29641:17,18 29644:4 29646:4,7 29647:6,19 29648:9 29648:17 29651:24 29654:12,25 29662:23 29678:10 29678:15 29726:21 indication 29713:19,24 29714:4,5 29721:16 29726:4 indicative 29722:9 indicator 29716:21,22 29718:23,23 inelegant 29694:16 informal 29640:18 29644:7,11 29646:10 29692:25 information 29655:8 informed 29626:9 informing 29635:3 initial 29635:15,25 injuries 29638:12 inquiry 29721:25 inside 29650:18 29718:21 instructed 29639:12,14 29645:12,23 29648:22 29724:20 instructing 29653:24 instruction 29642:13 29642:14,15,18 29643:4,5 29646:2 29700:19 instructions 29639:4 intended 29702:23 29726:9 interest 29692:22 29693:1 interested 29719:2 29720:2 interests 29668:1 29692:22 interpret 29665:7,22 interpretation 29627:4 29644:24 29667:10 29701:13 interpreted 29629:5,15 29642:3 29654:23 29663:10 interpreter 29626:10 29626:12,17,19,22,24 29644:22 29655:15 29655:19 29662:8 29663:6 29665:7,16 29666:10,12,15,24,24 interpreting 29663:7 29710:6 interrupt 29701:7 29726:19 29728:18 intersect 29654:15,17 intervene 29655:3 introduce 29627:6 investigated 29705:7 invincible 29626:17 invisible 29626:16</p>	<p>IPID 29690:19,23 iron 29670:9 irrespective 29723:18 isn't 29637:8 29638:4 issue 29711:2 item 29630:11 29631:21 it's 29627:5,8,12 29630:11 29631:22 29631:23 29632:10 29642:9 29647:1 29648:13 29665:17 29666:8,19,20 29668:1 29675:2,7 29677:6 29678:3,25 29680:12,13 29682:24 29683:4,19 29685:20,23 29690:13,18 29691:14 29694:25 29698:6,6,21 29700:19,23 29701:24 29711:21 29713:18 29714:4,6 29717:24 29718:3,4 29721:12,23 29722:10 29723:3,13 29723:15 29725:23 29727:20 29729:1,4 I'll 29626:18 29665:23 29693:1 I'm 29629:8 I've 29628:6 I2 29683:18,22,23 29709:18</p> <hr/> <p style="text-align: center;">J</p> <p>ja 29633:24 29641:16 29644:25 29645:1 29657:20 29662:17 29664:24 29708:14 29708:14 29711:23 29713:13 29724:17 jacket 29650:24 January 29630:4 jeans 29660:13 JJJ17.48 29680:6 JOC 29639:12 join 29628:23 29630:7 joined 29630:1 July 29630:2 June 29630:5 junior 29655:8 juniors 29654:20</p> <hr/> <p style="text-align: center;">K</p> <p>Ka-ka-ka-ka 29721:23 keep 29705:10 29708:5 keeps 29708:12 29714:20 29715:1 29717:23 kept 29669:2,2,5 Kidd 29640:5,8 29642:12,19 29643:4 29643:13 29644:2 29645:4 29646:5,25</p>	<p>29647:3,8 29648:7 29650:25 29651:15 29652:13 29653:6,9 29672:10,20,21 29691:17,19 29701:3 29714:11 29718:11 29718:15 kill 29697:23 29722:25 killed 29686:4 29693:3 29696:19,23 29698:19 29720:24 29721:17,18 killer 29698:9 kind 29655:16 29660:16 klein 29708:18 kleiner 29708:18 knelt 29661:2 29669:1 knew 29697:10,19,19 knobkerrie 29670:9 know 29636:10,12 29638:16,18,20 29641:3 29654:2,22 29664:4,6,25 29665:16,17 29670:14,16 29672:6 29672:13 29674:4,7 29679:19,21 29683:12 29684:1 29687:14 29689:10 29691:18 29692:23 29693:6 29694:4 29695:1,10,12 29696:6,11,13,14,18 29696:23 29697:14 29698:17,19 29701:25 29703:13 29703:19 29704:16 29705:16,19,21 29706:1,4,7 29711:5 29711:6 29712:9,15 29712:21 29713:3 29714:12,14 29715:24 29719:3,10 29719:13,16 29724:17 29727:2 known 29716:16 knows 29719:11 kom 29708:17 29714:18,23 29716:13 29717:19 koppie 29648:25 29650:18,23 29660:2 29660:3,4,5,8 29676:25,25 29677:17 29680:7,9 29724:16,17 K9 29639:8 29677:6,12</p> <hr/> <p style="text-align: center;">L</p> <p>L 29688:25 29724:1 landed 29669:15 29695:2,6 language 29654:20 29655:13 29708:16 late 29709:21</p>	<p>lawyer 29636:21 lawyers 29697:25 leaders 29710:25 29711:1 leads 29665:21 learn 29699:1 learned 29628:7 29666:6 29687:15 29689:2 29695:1 29724:2 29725:11 learnt 29699:10 29705:4,20 29706:5 leave 29678:18 29693:1 29708:13,14,14 29709:20 29710:5 29711:23,23 29712:23,23 leeg 29708:17 leeggemaak 29713:13 29713:14,15 29714:18,23 29716:13 29717:19 29719:3 29720:2 left 29641:21,21,24,25 29644:16,17 29645:25 29646:15 29648:24 29659:8 29661:12,17,17,21 29662:3,6,7,8,11,13 29662:15,16,17 29663:4 29664:15,16 29664:16,19,20,21 29665:2 29668:20 29669:16,18,20 29677:5,10,11,15 29678:14 29680:23 29694:19 29703:24 29710:9 29718:7 29727:8,12,21 left-hand 29644:8 29658:15 29670:2 29671:15 29678:3 leg 29660:12,13,19 legitimate 29704:1 letter 29653:2,19 letters 29652:18 29678:12 let's 29631:19 29687:21 29688:18 29688:18 29693:19 29701:16 29702:3,8 29711:6 29717:12 let's 29706:23 Lieutenant 29691:19 Lieutenant-Colonel 29683:4 29691:16 29724:15 life 29672:1 29698:25 lift 29671:7 light 29654:14 29657:16,18 line 29641:19,22 29644:9,16,21 29645:25 29646:2,8 29646:15,24 29648:23 29658:1,7</p>	<p>29673:12,12,18,19,20 29675:3,10,17,21 29676:2,3,5 29699:18 29699:21,22 29700:7 29700:8,8,11,12,12 29700:19,23 29701:3 29701:5,18 29704:17 29711:19 29713:17 29713:22 29717:20 29724:6 29725:5,19 29727:17 list 29682:19 listen 29709:10 29716:4 listened 29713:21 little 29702:16 29719:11 29725:23 loaded 29650:19 29701:4 loading 29649:4 29650:16 locate 29689:21 long 29676:2 29680:10 29722:10,11 look 29630:9 29632:25 29633:19 29637:13 29638:9 29640:15 29641:8,9 29648:3 29651:3 29659:13 29673:3 29674:17,18 29675:2 29677:4 29679:8 29692:20,21 29704:14 29708:25 looked 29661:9 29718:10 looking 29635:19 29640:12 29661:4 29668:7 29669:14,25 looks 29670:9 29675:18 29676:3 29680:24 lost 29637:11,23 29665:7 29690:24 29691:1 29692:1 lot 29637:13 29650:18 29691:15 29706:18 Louw 29714:11 lunge 29664:21 lunging 29670:18 luxury 29710:18 lying 29669:4,8,12,16 29671:6,10,14 L181 29641:9,10 29643:24 L235 29640:15,15 29646:19,19 L247 29673:4 29688:24 29725:22 L249 29677:4,4</p> <hr/> <p style="text-align: center;">M</p> <p>Mabe 29653:23 29656:13 29657:23 29658:3,9,10,15 29659:1,4,6,6,9 29671:25 29679:24 29684:5,7 29685:21</p>
---	--	---	--	---

<p>29686:2 29689:16 29698:24 29699:2,8 29699:12,20 29704:13,16,22 29705:3,20 29706:6 29714:16,17 29719:8 Mabe's 29659:1 Mabunda 29629:9 29636:25 29641:16 29643:21 29655:25 29662:12 29665:13 29665:19,24 29666:2 29667:12,23 Madumo 29676:19 29678:7 mag 29713:14 magazine 29713:15 29715:2 29716:21,22 29718:16,19,20,22,23 29718:24,25 29719:4 29719:7,20 Mahlangu 29666:15,23 29667:11,15,19 29694:12 29701:22 29710:6 29715:14,19 main 29693:1 making 29691:16,17,20 29704:11 29722:2,3 Makubane 29676:19 29678:7 makuku 29640:13 male 29650:23 Malisela 29626:8 29628:2,19 29668:5 29679:6 29687:23 man 29651:20,21 manner 29694:7 29716:19 manuscript 29631:21 Marikana 29630:19 29631:5 29632:21 29634:6 marked 29628:8 29630:10 29631:22 29647:1 29651:4 29685:6 29710:15 marking 29647:1 material 29703:6,24 29727:20,23 Matric 29715:17,21,23 matter 29704:3 29705:7 matters 29627:3 McIntosh 29672:9,17 29672:19 29691:17 29691:19 29718:8 mean 29658:25 29668:12 29685:17 29718:24 29724:8 meaningful 29713:15 meaningful 29687:8 means 29645:24 29648:22 29655:14 29694:8 29700:12 29711:24 29719:3 meant 29693:22</p>	<p>measure 29666:19 media 29627:21 medical 29718:9 member 29647:22 members 29639:8 29640:4 29642:13 29644:13 29648:24 29649:1,12 29650:18 29656:16 29658:24 29676:19 29685:22 29686:3 29689:17 29699:20,24,25 29700:2,4 29712:18 29725:25 mention 29704:19 29705:6,7 mentioned 29650:11 29658:2 29659:7 29705:14,14 mentioning 29714:3 mentions 29643:21 mere 29704:2 merely 29724:25 29725:2 met 29648:25 29693:6 29725:19 metrical 29663:1 microphone 29655:5 29681:2 middle 29657:1 29658:2,8,10 29677:16 29713:16 29726:11 millimetre 29679:15,25 29680:1 29698:2 mind 29692:11,20 29713:3 29714:19 29720:7 mine 29698:13 minute 29679:1 29680:17 minutes 29678:13 29710:12,17 misinterpretation 29654:21 mislaid 29690:24 missed 29662:20 29694:24 missing 29690:6 misunderstanding 29701:2 Modiba 29724:7,15,17 modified 29726:20 Mokatedi 29626:18 moment 29661:3,7 29663:14,25 29665:10 29695:20 29697:9 29720:17 29723:23 Monday 29729:3,7 month 29690:3 months 29632:21 29698:21 morning 29626:3 29640:1 29641:11 29642:8 29729:3,7</p>	<p>mountain 29640:25 29642:23 29677:2 move 29642:21 29645:4 29662:9 29664:21,22 29665:1 moved 29644:3 29654:8 29662:8 29663:13 29664:8 29668:10 29693:14 29727:1,7 movement 29670:20 29726:23 movements 29643:25 29674:11 moves 29716:25 moving 29665:3 Mpumza 29627:15 29628:1 29651:11,15 29659:20 29660:8,24 29672:5,24 29673:17 29673:24 29674:5,11 29675:1 29676:1,2,12 29676:24 29680:8,23 29681:23 29685:22 29686:4 29693:3 29697:19,23 29698:1 29698:10,15,19 29703:10 29709:22 29712:18 29714:15 29716:9,16 29724:5 29725:4 29728:16 Mpumza's 29674:19 29674:25 29676:14 29693:22 muti 29708:13,13,14 29712:22,23,23,24 29721:19,23 29722:23,25</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>n 29708:18,18 name 29638:16 29672:16 29683:20 29685:16 29714:3,3 near 29648:17 29651:7 29727:3 necessary 29678:19 29723:15 neck 29662:21,21 29663:1,2,4 need 29631:10,11 29663:10 needed 29720:12 needs 29626:24 negotiation 29639:3 new 29631:15 29682:21 29686:6 29689:13 29724:9 Ngonyama 29684:24 29724:8,8 29725:19 night 29630:14 29707:12 nine 29670:11,15 29679:15,25 29680:1 29695:12 29696:9 29698:2 29705:24</p>	<p>29706:2 29712:11 29715:2,2 29718:13 NIU 29724:6 29725:5 29725:19,25 29726:12 29727:12 29727:17,24 nog 29708:17 29714:18 29714:23 29716:13 29717:19 noise 29706:18 normally 29627:22 29701:23 29704:4 north 29647:19 29678:3,15 29724:17 northern 29650:17 north-western 29648:25 notes 29678:18 29679:8 noticed 29650:17 29718:11,13 November 29632:19 29634:25 29636:4 29638:1 29690:15 29691:3,5 29692:20 29712:10 29714:25 29718:3 no-one 29701:18,20 Ntsebeza's 29689:20 29712:5 number 29648:11,13 29683:13 29684:2 29718:23 29725:23 Nyala 29648:13 29708:7,7 29728:13 Nyala's 29648:12 29649:10 né 29708:18</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 29628:11 29633:4 29667:7 29679:5 29687:22 29693:20 29698:6 29702:11 29710:19 objection 29722:1 objective 29688:23 29698:6 objects 29649:21 obliged 29645:13 observations 29674:11 obviously 29704:7 occasion 29637:22 occurred 29636:8 29639:13,25 office 29630:6 officers 29720:23 officials 29690:23 oh 29665:19 29683:1 okay 29627:24 29649:7 29656:4 29659:15 29667:21 29673:23 29675:20 29680:14 29687:6 29688:6 29713:8 29723:5 Once 29650:6 ones 29677:11</p>	<p>29724:10 one-pager 29685:13 OOO11 29689:1,8 29706:25 29710:15 29710:24 29711:11 29711:12 29728:14 operator 29641:8 oral 29703:11,21 29704:2 orange 29657:16 29725:24 order 29642:21 original 29638:7 outside 29693:5 oval 29646:25 29647:1 29652:1,3 29654:14 29654:16 29657:11 29657:16,18 ovals 29647:12 overnight 29707:3,4,10 29724:4 o'clock 29643:20,22 29702:9 29729:1,3</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>paces 29659:6,9,9 29661:7 29663:24 29681:25 29682:1 page 29627:14 29635:21 29659:13 29708:3 29718:4 papers 29688:9 parade 29635:7 29638:11 paragraph 29630:18 29630:21,25 29631:2 29631:3 29634:5,16 29635:6,14,20 29638:10,25 29639:13,19,24 29642:16 29643:5,14 29643:15 29645:6,9 29645:23 29648:20 29649:17,20 29650:15 29651:19 29653:22 29660:23 29668:7 29670:11 29671:24 29672:8 29676:17,20 29690:2 29692:21 29693:8,8 29698:23 29704:14 29704:15,18,21 29718:4,4 29724:12 29724:14 pardon 29635:11 part 29639:1 29644:1 29646:24 29647:2 29660:10 29707:16 29718:4 29727:6 participation 29704:12 29704:22 particular 29678:6 29708:24 29709:3 29719:14 parties 29682:7 party 29682:11,11</p>
---	---	--	--	--

<p>passage 29712:1,6 29713:5</p> <p>passages 29721:12 29722:7,14</p> <p>passed 29715:16</p> <p>passing 29649:21</p> <p>path 29673:17,24 29674:5,5,20 29675:1 29676:2,12,12</p> <p>people 29631:13 29640:24 29642:22 29642:22 29644:20 29649:13 29691:15 29691:17 29692:24 29701:4 29709:12,20 29709:23 29714:9,12 29714:15 29716:14 29721:19 29726:20 29727:12</p> <p>period 29666:12</p> <p>permanently 29630:1</p> <p>person 29651:9 29659:18 29660:19 29697:11,12,15,18 29698:19 29706:20 29710:9 29712:21 29713:19,25 29714:9 29720:5,24 29726:6,9 29727:1</p> <p>personal 29667:25</p> <p>personnel 29718:9</p> <p>persons 29645:24 29648:22</p> <p>person's 29726:23</p> <p>perspective 29666:5,9</p> <p>phone 29707:19</p> <p>phoned 29635:2</p> <p>photograph 29644:9 29652:3 29654:18 29659:22</p> <p>Photos 29627:14,25</p> <p>picked 29661:12</p> <p>picture 29660:11,14 29677:16</p> <p>pictures 29681:6 29692:14 29709:21</p> <p>piece 29670:9</p> <p>pistol 29664:2 29668:9 29671:6</p> <p>place 29640:11 29657:5 29677:23 29686:3 29720:21</p> <p>play 29709:7</p> <p>played 29710:2</p> <p>playing 29710:17</p> <p>please 29628:15 29660:25 29664:18 29668:12 29679:23 29682:15 29707:2 29723:16 29725:1</p> <p>ploughing 29689:3</p> <p>pockets 29645:18</p> <p>point 29640:12 29641:10,10 29642:15 29643:4,13 29643:24 29648:14</p> <p>29653:17 29654:3 29656:3,3,6,8,11 29657:3,24 29658:22 29663:22 29669:7 29671:4 29676:24,25 29677:14,17 29678:10 29680:17 29680:20 29693:16 29702:1 29704:23 29705:5,11 29712:20 29722:17 29725:14 29726:24 29727:1,15</p> <p>pointed 29669:23 29671:5 29725:16 29726:8</p> <p>pointer 29641:13 29655:1 29656:15 29678:10 29712:2</p> <p>pointing 29641:23 29677:19 29712:6 29725:22,23</p> <p>points 29678:1</p> <p>police 29629:23 29630:6 29635:3 29638:18,19 29656:11 29658:24 29669:25 29700:10 29720:23</p> <p>policeman 29630:2</p> <p>policemen 29679:19</p> <p>Poorly 29715:18,19</p> <p>POP 29638:23 29639:8 29642:13 29648:25 29649:12 29676:19 29677:6,12</p> <p>POPS 29649:14 29650:2 29685:21 29686:3 29689:17 29699:20,24 29700:2 29700:4</p> <p>portion 29720:3 29726:23</p> <p>position 29646:4 29647:25 29648:4 29649:16 29651:8 29652:18 29654:15 29656:24 29667:9,18 29669:4 29674:20 29681:6 29686:1 29715:7 29717:18 29726:13 29728:8</p> <p>positioned 29639:2 29642:8,10 29677:17</p> <p>positions 29685:25 29689:16</p> <p>possession 29679:20</p> <p>possible 29680:22 29708:4</p> <p>possibly 29701:1 29703:16,17</p> <p>posterity 29725:15</p> <p>post-mortem 29698:12</p> <p>power 29669:24 29683:17</p> <p>practice 29700:19</p> <p>practices 29700:10</p>	<p>preamble 29667:19</p> <p>prefer 29666:10</p> <p>prepared 29628:11 29629:2,12 29673:16</p> <p>present 29638:21 29666:11,24 29709:24</p> <p>presentation 29627:19 29627:23,25 29628:8 29683:18,19 29688:3 29689:11 29725:18</p> <p>presumably 29647:15 29711:24 29725:25 29726:12</p> <p>Pretorius 29637:15</p> <p>previous 29702:23 29704:6 29711:19</p> <p>previously 29703:22</p> <p>private 29671:25 29698:25</p> <p>problem 29727:13</p> <p>proceed 29643:3,14 29645:19 29686:18</p> <p>proceeded 29640:14 29644:7 29728:3</p> <p>proceeding 29645:7,23 29648:21</p> <p>PROCEEDINGS 29626:1</p> <p>programme 29630:3</p> <p>progress 29687:8</p> <p>protect 29640:18 29642:21 29646:9</p> <p>protected 29640:13 29649:13</p> <p>protesters 29649:1</p> <p>provide 29639:7</p> <p>pulled 29662:19 29663:14,17</p> <p>purple 29677:5,10</p> <p>purports 29673:16</p> <p>put 29643:12 29652:7 29661:5 29674:24 29676:11 29687:1,3,5 29687:12 29691:6 29696:20,22 29697:8 29701:11 29704:5 29707:1 29712:1 29716:5 29717:10,13 29717:14,15 29722:18 29724:2,10 29726:20</p> <p>putting 29694:16 29696:4 29717:8 29723:7</p>	<p>questioned 29690:8 29703:5</p> <p>questions 29629:3,6,13 29681:18 29701:11 29701:13 29703:6 29708:19 29711:4 29714:21 29723:16 29723:23,24</p> <p>quicker 29701:12</p> <p>quickly 29654:8 29655:15 29661:8</p> <p>quite 29698:21 29708:11</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>railway 29641:19</p> <p>raise 29628:16 29645:13 29665:2 29668:20 29669:17 29708:4</p> <p>raised 29661:17 29665:10 29668:14 29668:17,19 29695:2 29705:11</p> <p>raising 29669:19</p> <p>ran 29650:25 29653:14 29724:5,22 29725:20 29726:18,21</p> <p>Rand 29676:19</p> <p>rank 29685:3</p> <p>reach 29677:22</p> <p>reaction 29654:6</p> <p>read 29630:13 29654:24 29704:24 29706:25 29707:3,3,9 29707:11,20,23 29708:11,21,25 29715:8,12,14 29720:6 29724:23</p> <p>reads 29710:12 29722:4</p> <p>ready 29626:5,5 29715:7 29717:18</p> <p>realise 29631:12 29641:5 29698:9</p> <p>really 29652:1 29720:15</p> <p>reason 29692:3 29697:11 29706:16</p> <p>receive 29642:19</p> <p>received 29707:25</p> <p>recognise 29709:10,11</p> <p>recollection 29643:9,18</p> <p>record 29654:24 29655:20 29659:16 29702:20 29703:12 29704:9 29725:16</p> <p>recordal 29714:6</p> <p>recorded 29708:20 29720:8,20</p> <p>records 29637:10</p> <p>rectangle 29646:7,9 29677:6,11,15 29678:2,13,15</p> <p>rectangles 29646:10,12 29725:24</p>	<p>recurring 29714:20</p> <p>red 29644:10 29652:3 29654:14,16 29656:24 29657:1,10 29657:13,15,17 29673:8,9,11,13,17 29673:20,25 29675:3 29675:4,10,22 29676:7,8 29725:6 29726:1,2,3,5,11 29727:3,11 29728:6</p> <p>refer 29703:19 29704:21 29721:11</p> <p>referred 29653:19 29678:13 29726:22 29728:19</p> <p>referring 29630:24 29643:7 29677:19 29719:23 29721:3</p> <p>refers 29687:25</p> <p>reflected 29728:14</p> <p>reflection 29716:14</p> <p>refrain 29714:20</p> <p>regarded 29703:22</p> <p>regarding 29674:10</p> <p>regards 29682:20</p> <p>region 29671:19</p> <p>rejoice 29721:22</p> <p>rejoicing 29721:20</p> <p>relates 29705:5</p> <p>relating 29677:3 29720:5</p> <p>relation 29647:3 29667:10 29700:24 29711:23 29726:25</p> <p>relevance 29641:3</p> <p>relevant 29690:1</p> <p>relief 29676:20</p> <p>relies 29722:12,14</p> <p>relieve 29667:11,13,14</p> <p>relieving 29667:17</p> <p>rely 29722:7,20</p> <p>relying 29688:23</p> <p>remain 29640:12 29644:23 29645:1,4</p> <p>remained 29644:19 29676:18 29678:7</p> <p>remember 29632:16,18 29637:25 29638:24 29643:6 29647:7 29684:12 29698:20 29699:18,23 29700:15 29708:7,8 29709:6 29712:14 29720:12</p> <p>remind 29687:22</p> <p>repeat 29633:5 29665:17,18 29694:1 29701:15 29707:6,21 29708:10 29721:15 29721:16</p> <p>repeated 29708:11</p> <p>reply 29722:19</p> <p>report 29674:10</p> <p>reported 29639:24</p> <p>representatives</p>
---	---	--	--

<p>29674:25 29676:1 represented 29682:11 requested 29718:9 required 29626:4 reserve 29640:4 reservist 29628:25 29629:20,23,25 responding 29706:15 response 29655:10,13 responsible 29705:22 29705:24 rest 29681:5 resumes 29626:2 29667:5,6 29679:3,4 29702:10 retreating 29669:3 return 29636:22 29639:12 revealed 29698:12 rewrite 29637:24 rifle 29706:11 right 29628:16 29641:21,21 29644:10,16,16 29647:12,15 29653:21 29657:11 29657:12 29658:3,7 29659:3,9,10 29660:8 29660:11,19 29662:8 29662:9,9,14,15 29663:4,17,19 29669:22 29671:16 29671:22 29677:10 29680:23 29681:10 29683:25 29692:4 29699:8,13 29702:18 29711:13 29724:18 29726:1,7,24 29727:3 29728:3 right-hand 29644:7,11 29647:16 29648:10 29648:16 29650:10 29651:8 29652:2,18 29653:1 29654:17 29658:11,14 29670:7 29670:8 29671:16 29676:10 29728:6,21 29728:21,22,22 rise 29669:23 road 29641:15,17,19,22 29642:2,7 rolled 29669:22 round 29649:12 29664:2 29668:9 29679:10 29693:12 29693:13 29694:17 29701:24 29727:2 rounds 29670:11,15 29695:13 29706:2 29716:23 29718:13 29718:16,21 row 29681:8 run 29665:11 29710:14 29726:16 running 29650:24 29653:6,8 29654:7,10</p>	<p>29655:14,15,23 29656:6 29664:13,24 29668:23 29718:8 29724:19 Ryland 29634:10,10 29640:5,8 29646:5 29672:10,21,21 29674:13 29708:9 29714:10 29716:20 29718:11,15,19 Rylands 29711:22 Ryland's 29707:19 29709:17,18 R5 29679:25 29698:4 29699:8,12 29706:11 R5s 29698:3</p> <hr/> <p style="text-align: center;">S</p> <p>SAP 29628:25 SAPS 29626:4 29628:23 29630:1 29666:7 29673:16 29674:1 29710:25 29712:18 29725:2 save 29640:25 29643:1 saw 29646:12 29650:23 29651:15,19,21 29652:15,22 29653:5 29669:13 29670:19 29714:6 29725:4 29727:16,17,24 saying 29647:22 29648:3 29662:4 29690:17 29694:15 29695:8,18 29696:2,5 29696:8,17 29697:14 29697:16,22 29698:7 29698:8 29700:1 29701:18 29703:9 29709:6 29712:12 29713:1,12 29714:22 29717:16,19,22 29721:19 29722:6 says 29635:14 29641:17 29665:14 29665:22 29673:5 29690:22 29691:2,3 29704:17 29705:2,4 29708:3,5 29713:14 29715:19,22 29717:20 29720:1 29722:4,24 29723:9 29723:14,18 29724:15 29725:20 scared 29706:17 29720:11 scene 29672:10 29676:18 29678:8 29699:19 29718:10 screamed 29653:23 screaming 29652:15 screen 29659:14 29677:16 29678:8 29683:18,21 29687:1 29687:3,5 29707:2 29711:9 29712:7</p>	<p>29725:15 searched 29645:16 searching 29649:4,13 seated 29628:20 second 29634:23 29635:21 29646:8 29663:16 29677:15 29677:20 29684:22 seconds 29680:11,13 29680:13 29710:2,5,8 29710:9,12 section 29712:7 29725:23 sector 29643:21 seeing 29684:12 29710:1 seeking 29694:23 seen 29646:8 29687:24 29688:4 29704:6 29708:21 29711:3,4 self-defence 29670:12 sense 29662:16 sensible 29711:19 sent 29682:19 29688:24 29707:9 sentence 29645:12 29649:20 Sepedi 29629:9,10,15 29655:18,20 29665:6 29694:10,12 SERI 29682:11 series 29691:10 services 29630:5 set 29639:6,14,19 29689:20 setting 29685:20,24 29689:15 settlement 29640:13,18 29640:25 29642:21 29644:8,11 29646:10 29692:25 seven 29716:22 29718:21,21 shaking 29720:11 shape 29647:1 shit 29708:14 shoot 29698:15 29707:1 shooting 29669:13 29694:8 29706:2,3,6 29706:12 29716:19 shootings 29632:21 shorter 29675:21 shortly 29653:9 shot 29660:7 29664:5 29668:25 29671:5,8,9 29681:22 29693:22 29693:23 29694:3,7 29694:16,20 29695:1 29695:19,20,21 29696:6 29697:11,12 29697:15,20 29698:1 29698:2,2,3 29701:14 29703:10 29704:18 29705:20 29708:12 29709:2 29712:9,11</p>	<p>29714:15,20,25 29715:1,3 29716:9,16 29717:23 29718:20 29719:13,21 29721:8 shots 29650:13 29672:4 29679:14 29680:8 29683:18,21 29696:1 29696:9,12 29697:18 29697:22 29705:15 29705:19,25 29706:8 29706:18 29715:2,2 29716:20 29719:13 29724:20 29728:3 shottist 29705:9 shoulder 29661:17 29662:4,9,14,15,18 29664:20 shouldn't 29642:23 shouted 29653:23 29660:24,24 shouting 29654:6 show 29641:13 29651:6 29651:9,14 29702:20 29702:23 29703:12 29703:16 29704:9 showed 29718:20 29724:9 showing 29650:8 29716:22 shown 29657:3 29680:6 29680:19,25 29706:8 29710:2,11 29721:2 29728:4 shows 29680:8 29724:5 side 29641:25 29644:7 29648:25 29650:17 29652:2 29653:1 29654:17 29658:11 29658:15,15 29670:2 29670:7,9 29671:15 29671:16 29676:10 29678:4 29688:14 29701:8 29708:6,7,7 29708:8 29718:7 29728:7,21,22 sidearm 29679:25 sign 29636:14,15,22 29637:5 29647:18 signal 29645:24 29648:22 signature 29632:3,6 29633:3,8,8,11,23 signed 29636:23 29637:1,14,19,24 signing 29637:4 simple 29694:2 simply 29654:23 29719:21 single 29700:12,12 sir 29633:17 29691:13 29692:18 29693:10 29694:1 29696:21 29706:16 29707:7 29719:7 sisters 29693:3 SiSwati 29629:7,8</p>	<p>sitting 29660:9 slide 29640:15 29641:5 29641:5,8,10,17,21 29641:25,25 29643:24,25 29644:12 29646:1 29647:4,13 29648:1,4 29648:7,11 29649:7 29649:16 29651:6,21 29652:19 29653:1,21 29654:9 29656:15 29659:13,14 29660:6 29660:6,10 29673:4,6 29673:15 29674:18 29677:4,4 29678:4 29685:13,15,16,18,23 29688:3,24 29689:12 29689:14,15 29700:5 29711:8,10 29713:8,9 29724:1,3,5 29726:2 29726:7,16,21,24 29727:8 29728:4,4,5 29728:7,21,22 slides 29627:20 slightly 29647:12 29648:15 29653:20 29727:4 slow 29689:21 slowly 29655:14,23 29656:7,17 small 29675:5,23 29676:5,7,8 smaller 29676:5 somebody 29693:1 29698:4 29705:25 29706:11,12 29714:2 29716:14 29720:4 29721:17 soon 29710:6 sorry 29629:1 29631:7 29636:25 29641:6,6 29650:5 29652:17 29657:2 29658:5 29661:12 29664:19 29665:19 29672:18 29685:6,8,14 29694:12 29701:6 29721:9,9 29726:5,19 29728:18 sound 29707:5 29709:22 sounds 29649:21,25 southern 29647:1 29648:5 speak 29714:11,12 29715:5,9,15 29717:20 29719:9 SPEAKER 29655:10 speaking 29629:7 29710:3 29712:15 29714:2,9,10,13 29716:7 speaks 29716:15 spear 29661:23,24 29664:14 29665:10 29665:11 29668:15</p>
--	---	---	---	--

29668:17 29669:17 29670:2,18,20 29671:7,15 29673:2 29724:18 specific 29721:11 specifically 29704:5 29705:14 29721:2 speeches 29722:2 speed 29689:19 spell 29655:17 spend 29686:21 spoke 29642:2 29674:12 spot 29646:7 29654:13 stab 29661:25 29664:23 29665:1 29669:1 29670:3 stabbed 29673:2 staff 29637:15 stage 29642:14 29643:11 29649:20 29667:14,17 29669:5 29671:8 29718:17 29725:6,10 standing 29644:20,23 29652:4 29657:25 29658:7,17 29669:6 29671:11,21 29700:24 29706:11 stands 29718:24 start 29644:16 29675:2 29682:15 29687:7 29688:10 29689:24 29693:19 29708:2 29710:6,8 29711:6,19 29712:4 started 29628:24 29629:20 29630:2 29652:15 29655:14 29655:23 29656:7,17 29663:15,20 29665:11 29717:22 29724:1 starting 29638:10 29675:16 starts 29673:18 29680:16 29717:22 state 29634:16 29712:8 stated 29701:22 statements 29634:17 29637:14 29686:16 29686:23 29687:15 29687:25 29688:2 29690:1 29691:10,16 29691:18,20,25 29702:17,24 29712:10 29714:21 29716:7 station 29630:6 29635:3 stay 29692:25 29708:15 29708:15,16 29710:1 29710:1 stayed 29710:10 steeds 29708:17 29714:18,23	29716:13 29717:19 step 29631:14 stepped 29694:21 stepping 29665:13 29693:17 steps 29631:11,16 29664:8 29668:10 29693:14 stood 29644:15 29661:8 29669:22,24 29671:5,19 stop 29655:12 29722:16 29724:20 29724:21 stopped 29654:7,10 29655:14,15,23 29656:6 29710:13 straight 29673:20 29693:8 29699:21,21 29700:8,23 29724:19 29726:17 stretch 29645:25 29648:23 29694:8 strike 29638:12 striker 29653:24 29654:3 29656:6,16 29656:20 29657:4,9 29658:20 strikers 29638:12 29645:8,16 striker's 29654:5 subjects 29715:23 submission 29722:13 29722:14,15,20 submit 29720:22 29721:25 29722:12 submitted 29690:23 substitute 29666:15 success 29638:7,8 suddenly 29650:25 suggest 29711:19 suggesting 29666:21 29728:15 suggestion 29666:4,13 29666:14 29704:24 29711:21 suggests 29726:17 summarised 29652:10 summary 29728:7 support 29639:2,3,7 29722:12,15 supportive 29725:1,2 supports 29728:16 suppose 29627:19 29709:16 29715:2 29723:10 supposed 29644:23 29645:1 sure 29668:3 29677:18 29690:10 29691:25 29692:11,24 29695:19,21 29696:1 29711:22 29713:17 29716:6 29726:8 surprise 29704:4 suspect 29664:8,11	29668:11,12 29693:14 29718:6 suspects 29649:5 29650:16,19 suspect's 29693:15 swear 29628:13,16,17 sworn 29710:20 sympathy 29723:4 s.u.o 29668:5 29679:6 29687:23 <hr/> T <hr/> table 29627:13 29717:12,13 take 29628:11 29629:2 29629:13 29631:11 29631:16 29633:11 29641:1 29644:14 29651:10 29666:11 29666:21 29667:3 29678:25 29679:1 29701:24,25 29702:3 29702:5 29711:24 29717:12 29729:3,4 taken 29660:1,1 29667:10 29683:1 talk 29635:7 29657:17 29719:20 talking 29695:19 29703:8 29711:22 29714:17 tape 29713:3,18 target 29695:14 tea 29666:4 29678:25 29701:24,25 29702:4 29702:5 team 29639:3 tell 29632:14 29643:3 29655:8 29679:22 29683:13,14 29687:17 29692:21 29693:4 29698:1 29701:9 29704:11 29718:2 29720:22 29721:13 tells 29716:15 terms 29663:1 29700:10 TERN 29652:18 terribly 29688:12 testified 29698:17 29699:19 29703:9 testifying 29693:5 testimony 29694:24,25 29702:21 29703:11 29717:17 thank 29626:7 29628:10,22 29629:19 29630:13 29630:15 29631:9,9 29632:24 29633:13 29633:18 29634:4 29637:6 29638:9 29641:7 29651:18 29659:11 29661:20 29665:24 29666:2	29667:8 29668:6 29671:1,3,12 29676:8 29678:5,16,22 29679:2,12 29680:2,4 29681:13 29682:4,18 29689:23 29702:14 29719:17 29729:8 Thanks 29655:24 that'll 29684:3,20 29688:9 that's 29627:11 29629:21,23 29630:6 29636:18 29638:3 29642:4 29644:24 29651:8 29652:4,7 29671:22 29673:20 29676:5 29678:12 29681:14 29683:7 29684:9 29685:17 29687:11,12 29689:15 29690:4,7 29690:16,25 29691:1 29693:7 29694:24 29696:7,16 29700:6 29711:11,20 29712:4 29712:24 29713:5,17 29714:3 29715:22 29716:12,14 29718:6 29720:2,3 29721:16 29721:24 29724:25 29725:1 29726:7,22 theory 29726:16,17 29727:10,16 29728:10 29729:2 thereabouts 29725:3 thereof 29674:18 29724:15 thereto 29682:20 there's 29637:8 29641:22 29642:7 29646:21 29673:5 29675:10 29676:4 29683:17 29701:1 29712:22,23,23 29713:8 29721:19 29722:4,24 29726:1 29728:23 29729:5 they're 29641:12 29648:12 thing 29633:11 29640:24 29697:17 29708:4,25 29714:19 29720:5 things 29627:23 29636:8 29688:13 29692:23 29708:24 29717:13 29720:9,16 29722:11 think 29629:7 29644:22,23 29647:12 29648:12 29648:13 29655:21 29657:20 29663:6 29666:19 29671:7 29672:4 29678:17 29681:4,9 29685:2	29687:7 29691:15 29693:12 29694:23 29696:24 29697:3 29699:7 29703:12 29705:10,15,21 29706:23 29707:19 29709:18,21 29710:4 29711:18 29713:14 29714:16 29717:6 29718:9,10 29722:10 29722:16,17 29723:12,15,17 29725:24 thinks 29713:20,25 third 29645:11 29647:12,22 29652:2 29691:1 29720:5 thirsty 29720:12 thought 29649:22 29666:3 29667:23 29706:24 three 29634:17 29643:20,22 29647:8 29656:16 29658:1,7 29658:23,23 29659:6 29659:9,9 29660:24 29661:6 29662:25 29663:2,24 29664:8 29668:10 29681:25 29682:3 29693:14 29699:25 29700:7 29710:12 time 29626:4 29631:5 29640:9 29643:5,6,8 29643:10,18,21 29651:22 29652:15 29655:2 29669:12 29671:18 29672:5 29681:22 29686:21 29691:15,18,20 29697:10,17,18,19 29698:8,12,21 29701:13,24 29705:6 29705:8,17 29706:12 29706:13 29709:23 29710:3 29717:3 29719:15 29720:8,11 29720:16,21 29723:11 29725:4 29728:11,12 times 29670:19,22 29698:1,2 29708:12 29708:23 29709:2 29712:11 29713:22 29716:10,17 29717:23 29718:20 29719:21 29721:8 today 29693:20,22 29694:3,22 29697:20 29698:8,11,14 29702:21 29704:17 29707:20,24 told 29626:5 29640:17 29640:24 29651:7 29654:19 29655:12 29682:13 29697:25
---	---	---	--	--

<p>29698:4 29699:2,7 29704:11 29705:19 29705:21 29716:8,11 29716:15 tone 29722:24 top 29644:11 29647:16 29654:14,16,16 29657:10 29674:19 29674:24 29708:2 topics 29678:19 total 29670:11 trace 29635:4 track 29709:22 training 29630:2,2,4 transcriber 29711:22 29713:25 transcribers 29655:17 transcriber's 29713:19 transcript 29689:2,8 29706:25 29707:2,8 29707:14,19,24 29708:20,23 29709:3 29711:1,5,5,9 29712:6 29717:1 29720:6 29721:12 transpired 29674:16 tried 29637:9 29638:6 29669:1,17 29670:22 trigger 29720:7 triumphalist 29722:24 TRT 29630:7 29634:14 29638:23 29639:7 29656:16 29677:6,12 29678:13 29699:25 TRT/NIU/STF 29646:8 truck 29650:19 trucks 29649:5 29701:4 true 29690:4 29692:9 29702:25 truth 29628:15,15,15 29674:20 29693:6 29716:7 try 29637:8 29665:23 29689:19,21 29702:8 trying 29665:17 29669:23 29671:7 TTT6 29674:18 29689:11 TTT7 29631:22 29634:24 29690:12 29690:14 29691:2 29718:3 turn 29639:23 29650:25 29662:7 turned 29653:10,11,13 29653:15 29661:5,8 29662:5,10,12,16 29669:15 29676:4 29725:5,19 29726:10 29727:1,17,17 turns 29726:7 two 29627:12 29630:3 29631:16 29644:10 29646:10,12 29647:11 29648:15 29651:25 29657:8</p>	<p>29663:24 29664:8 29668:10 29679:18 29681:25 29682:2,3 29685:21 29686:3 29689:17 29693:3,14 29693:21 29699:20 29699:24 29708:1 29719:13,16 29722:11,12 29724:20 29728:5 type 29636:21 typed 29637:17,18,18 29637:19</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>unanimity 29656:2 undated 29632:10 underneath 29728:20 understand 29629:4,6 29629:14 29646:14 29655:4 29658:6 29659:23 29667:14 29667:24 29682:5,10 29683:10 29686:5,8 29690:19 29691:24 29692:23 29697:7,8 29697:13 29698:7 29701:2 29703:17 29710:24 29719:25 29723:21 29726:20 29727:4,5,9,13,14 understanding 29647:21 29727:20 understands 29668:3,4 understood 29641:23 29657:7 29695:8 unenanced 29683:8 29683:11 unfairness 29705:12 unit 29634:11 29638:23 29649:14 29650:2 units 29638:22,24 upper 29693:17 29694:19 use 29670:3 29712:2 UUU 29724:8 UUU3 29630:10 29633:19 29634:5 29635:7 29648:21 29649:17 29660:22 29676:17</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>various 29627:21 vehicle 29653:2,3,19,20 vehicles 29648:9,11,14 29648:14 29650:10 29651:7 velocity 29698:3,13 version 29637:18,19 29695:11 29700:6 29726:20 vicinity 29646:11 29650:7,9 29651:24 29652:16 29653:3 29654:12 29656:19</p>	<p>29719:14 video 29640:16 29641:8 29660:7 29680:6,7,10,16,19 29680:23,25 29681:14,15 29682:21,23,25 29683:2,5 29688:4 29689:2,8,9 29707:2 29709:8,10,13,17,18 29709:21 29710:11 29710:13 29711:5,21 29714:6 29720:6 visible 29626:22 29728:5 voice 29708:20 29709:10 29711:21 29713:2,3 voices 29709:11 volunteer 29628:25</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>W 29653:2,20 wait 29626:3 29639:3 29640:16 29669:25 waiting 29694:14 walk 29656:7 29700:10 29700:19 walked 29655:15 29661:5 29701:5 walking 29641:16 29651:23,23 29652:6 29652:8 29655:14,23 29656:7,17 29658:17 29658:18,19 29700:4 want 29631:14 29641:2 29666:11,18 29678:20 29687:11 29688:22,25 29689:6 29689:10 29693:5,22 29698:7 29700:24 29702:1 29704:5 29708:6,8 29711:6,8 29712:2,12,19 29713:9 29714:18 29721:15 29723:5 29724:23 29729:5 wanted 29636:21 29651:12 29655:3 29661:25 29664:23 29664:25 29665:1 29693:16 29719:3 wanting 29694:17 29703:13 warning 29690:19 29709:16,19 29724:20 29728:3 wasn't 29637:18 29711:22 29717:11 29726:24 watch 29643:8 29680:15 water 29720:13 way 29652:2 29666:25 29667:1 29672:24 29681:25 29694:8,16</p>	<p>29696:21,23 29697:8 29700:10 29725:18 29726:17 weapon 29653:24 29660:15 29661:12 29661:14,21 29670:3 29671:15,16 weapons 29627:15 29628:1 29638:13 29641:1 29645:8,13 29645:17 29660:25 29661:3 wearing 29645:19 29650:23 weeks 29703:4 went 29626:25 29630:1 29662:14 29697:11 29705:13 29707:13 29708:9 29724:15,16 29726:18 29727:2,5 29727:12,21 29728:4 Wesley 29626:25 western 29646:20,20 29648:6 29650:17 29652:18 29653:1 29728:20,23 we'd 29626:21 we'll 29627:6,16 29629:5 29640:11 29667:3 29678:25 29680:14 29685:15 29700:6 29701:25 29702:5 29717:16,22 29724:6 29728:1,15 we're 29635:18 29651:10 29688:23 29695:19 29714:22 29722:25 we've 29637:19 29646:23 29647:2 29648:5 29680:5 29688:9 29720:4 29728:19 We'll 29663:9 we're 29709:22 we've 29705:21 what's 29626:19 29627:18 29666:13 29711:14 29714:4 Whereabouts 29647:3 29649:24 whilst 29669:3,4,12,16 29671:11 whist 29671:10 white 29648:14 29650:10,23 29651:20 wide 29669:20 wire 29642:14 wish 29723:1 wishes 29696:25 29697:6 witness 29626:6,8 29632:13 29646:6 29654:25 29655:22 29663:9 29665:14</p>	<p>29685:4,21 29687:9 29687:12,15,18 29688:22 29689:1,3,9 29689:10,13,19 29703:20 29704:5 29705:12 29711:2 29712:3 29714:1 29717:17 29722:18 29723:23 29728:11 witnesses 29637:14 wolves 29721:24 word 29653:1 29694:10 29694:13 29713:17 29713:22 29725:24 29726:13 29727:13 29728:20,23 words 29632:20 29646:8,9 29647:18 29655:20 29663:11 29665:7 29699:11 29708:10 29709:4,6 29710:23 29712:15 29712:16 29713:20 29715:6,8 29722:4 29726:6 work 29629:23 29642:23 29660:17 29708:15 29712:25 29713:8 29721:23 29722:23 worked 29628:25 29630:5 working 29652:5 29655:6 29687:16 worry 29642:23 wouldn't 29716:1 wounds 29694:18 29705:22,24 write 29635:4 writing 29636:7 29673:5 29674:23 written 29646:20 29648:5 29674:19 29675:2,7 29677:6,12 wrong 29641:5 29663:11 29666:1,8 29691:24 29695:11 wrongly 29652:7 wrote 29635:5 29702:15 29703:2,3 WW 29651:4 WWW 29685:10 WWW1 29627:7 29715:23 WWW2 29627:16 29659:12 WWW3 29682:23 WWW4 29684:3 WWW5 29684:9 WWW6 29684:14 WWW6.1 29684:21 WWW6.2 29684:22 WWW7 29685:9 29724:8,13 WWW8 29685:18 29689:15</p>
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<p style="text-align: center;">X</p> <p>X 29702:22</p> <hr/> <p style="text-align: center;">Y</p> <p>year 29629:24,25 29630:5,8 29701:10 years 29630:3 29693:21 yellow 29641:22 29656:25 29673:12 29673:18,18 29675:17 29676:3 29726:3,5,10 29727:11 you'd 29668:8 you'll 29629:14 29641:13 29667:13 29691:24 you're 29626:6 29629:7,12 29665:7 29667:7,17 29677:19 29679:5 29682:5 29687:21 29688:6 29695:18,19,21 29696:1,2 29717:8 29723:22,23,24 29729:2 you've 29631:20 29638:6 29642:6 29646:25 29667:10 29670:20 29675:3 29677:5,9 29711:9 29713:21 29722:17 29722:18,19 29723:22 29729:2</p> <hr/> <p style="text-align: center;">0</p> <p>00 29711:13,14,15,20 00:02:15 29712:1,7 29717:23 29719:20 00:02:50 29713:6 00:03:20 29719:24 01 29711:20 0215 29711:13 03:20 29713:10 09:20 29626:2 09:40 29640:14</p> <hr/> <p style="text-align: center;">1</p> <p>1 29660:4,5 29680:20 29729:1 1.28 29680:18,18 1.38 29681:12 1:33 29680:20 10 29660:23 29704:21 29708:12,17 29709:2 29713:13 29714:23 29716:9,13,17,22,23 29717:19,23 29718:24 29719:21 29721:8 10:00 29652:10 10:19 29664:19 10:47 29667:6 11 29668:7 29670:11</p>	<p>29704:18 11:11 29679:4 11:31 29693:19 12 29671:24 29680:13 29683:18 29698:23 29702:9 29704:14,15 29705:2 12:06 29702:11 12:26 29710:11 12:45 29720:19 13 29672:8 29698:2,4 29705:21 14 29676:18,20 29678:6 14th 29691:14 15 29710:12 15H00 29642:12 15th 29630:19 29631:5 29634:6 29635:7 29638:11,16,18 16th 29639:24 29659:24,25 29680:7 29692:15 29699:11 29706:7 16:21.02 29707:3 29708:9 16:21:02 29710:15 29711:7 181 29641:8 29643:24</p> <hr/> <p style="text-align: center;">2</p> <p>2 29630:18,21 29631:2 29631:3,21 29634:5 2.15 29711:16 2.2 29708:18 2:15 29709:2,3 20 29682:1 29725:3 2008 29629:24 2009 29630:1,4 2010 29630:5 2011 29630:8 2012 29630:20 29632:19 29634:21 29634:25 29635:14 29635:21 29690:3,15 29692:15 2013 29632:19 2014 29626:1 29712:11 29714:25 247 29648:4 29649:7 29651:6 29724:1 29725:1 29726:16,16 27 29712:10 28 29680:17</p> <hr/> <p style="text-align: center;">3</p> <p>3 29630:11 29634:16 29635:14,20 29676:25 29690:2 30 29626:1 29710:2,5,8 29710:9 31st 29635:14,21 29636:10,18 29690:24 39 29711:20</p> <hr/> <p style="text-align: center;">4</p>	<p>4 29630:25 29635:6 29638:10 29659:13 29659:13 29660:6 29684:4 4.1 29638:25 4.2 29639:13,19 40 29713:21 45 29710:17 48 29707:1 29724:4</p> <hr/> <p style="text-align: center;">5</p> <p>5 29639:24 29660:7</p> <hr/> <p style="text-align: center;">6</p> <p>6 29642:16 29724:14</p> <hr/> <p style="text-align: center;">7</p> <p>7 29643:5,14,15 29645:7,9 29692:21 29693:8,8 29718:4,23 29718:24,24 7:30 29639:25 72 29707:1 29724:4</p> <hr/> <p style="text-align: center;">8</p> <p>8 29645:23 29648:20 29649:17,20 29718:23,25</p> <hr/> <p style="text-align: center;">9</p> <p>9 29650:16 29651:19 29653:22 29674:18 29718:23,25 29729:3 9H00 29640:4</p>		
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