

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 258

18 JULY 2014

PAGES 32571 TO 32640



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1 [PROCEEDINGS ON 18 JULY 2014]
 2 [09:06] CHAIRPERSON: The Commission resumes. Mr
 3 Gumbi, your light is on. I understand you came to see me
 4 in chambers but I hadn't arrived yet, to say that you had
 5 asked a question on behalf of, in respect of the Fundi
 6 family was a slip of the tongue, you didn't intend to say
 7 Fundi. I must tell you that you didn't have to apologise.
 8 It was obvious to us it was a slip of the tongue. We were
 9 following the questioning. You know for whom you appear
 10 and whom you don't appear. So no apology is required.
 11 Thank you for coming to tender an apology, but one wasn't
 12 necessary. You came with Mr Tip, who appears for Mrs
 13 Fundi, and I take it he didn't take offence that you had
 14 the slip of the tongue either. Is that right, Mr Tip?
 15 MR TIP SC: That is absolutely correct,
 16 Judge.
 17 CHAIRPERSON: Don't worry about it. It's
 18 not a cause for concern at all. We appreciated immediately
 19 what was happening and we didn't want to embarrass you by
 20 saying this to you obviously, it was obviously a slip of
 21 the tongue, but quite in order.
 22 MR GUMBI: Yes, Chairperson. We wanted
 23 to correct the record specifically on that particular
 24 aspect. It was not my deliberate intention to undermine my
 25 senior colleague Mr Tip on that one.

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1 CHAIRPERSON: Yes, well it's now on
 2 record; it was a slip of the tongue. Alright, I think the
 3 next cross-examiner is going to be Mr Ntsebeza SC. Is that
 4 correct, Mr Ntsebeza SC?
 5 MR NTSEBEZA SC: Yes, Mr Chairman. Thank
 6 you.
 7 CHAIRPERSON: Right, you can start your
 8 cross-examination once we get the witness on the screen and
 9 with the microphone working. I was told that – oh, he's on
 10 your screen but he's not on our screen. Well, that's
 11 alright. Some of us have been disadvantaged from time to
 12 time and we will watch it on that screen for the time being
 13 until it's sorted out. Remind him he's under oath. Are
 14 you feeling better this morning, Mr Mahlangu?
 15 MR MAHLANGU: I am, Sir, thank you very
 16 much.
 17 CHAIRPERSON: Have you told the witness
 18 he's under oath? Remind the witness he's still under oath.
 19 MR X: [s.u.o. through interpreter]
 20 MR MAHLANGU: Confirmed, Mr Chairperson.
 21 CHAIRPERSON: Alright. Well, I suggest
 22 you start, Mr Ntsebeza, and we will watch on the side
 23 screen until our screen sorts itself out.
 24 CROSS-EXAMINATION BY MR NTSEBEZA SC:
 25 Good morning this morning, Mr X.

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1 MR X: Morning, Sir. I am greeting you.
 2 MR NTSEBEZA SC: I want us to start at
 3 that part of the Xhosa language. Yesterday you said you
 4 are from the Qaukeni area. Is that so? Is that so?
 5 MR X: Yes, Sir.
 6 MR NTSEBEZA SC: Is that from King
 7 Mpondombini Sigcau, is that where you come from?
 8 MR X: Yes, Sir.
 9 CHAIRPERSON: Mr Ntsebeza, I take it
 10 you're not going to narrow the focus much more. I don't
 11 mind you asking who his king is because that king has a
 12 couple of million subjects, I believe.
 13 MR NTSEBEZA SC: I know.
 14 CHAIRPERSON: But the more particularised
 15 the questions become, the more I'll be inclined to disallow
 16 them. So bear that in mind.
 17 MR NTSEBEZA SC: Yes, Mr Chairman, I'll
 18 be careful not to make the whole arrangement about him
 19 being Mr X neutral. That is my name, Ntsebeza, my surname.
 20 CHAIRPERSON: I'm sorry –
 21 MR MPOFU: No, I –
 22 CHAIRPERSON: I'm sorry, Mr Mpofo,
 23 forgive me. Mr Ntsebeza, did you ask him his name?
 24 MR NTSEBEZA SC: No, Mr Chairman, I just
 25 said my name is Ntsebeza. I'm telling him my name.

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1 CHAIRPERSON: Oh well, I have no problem
 2 about that. That's what you say to him, is your name.
 3 MR NTSEBEZA SC: Yes.
 4 CHAIRPERSON: You're not Mr Z.
 5 MR NTSEBEZA SC: No, no, no, Mr Chairman.
 6 I worked for quite a number of years in Umtata as a lawyer.
 7 CHAIRPERSON: I think you're making it
 8 clear now that you're interpreting what Mr Ntsebeza is
 9 saying and not what the witness is saying. That's obvious
 10 from the contents of what is translated.
 11 MR MAHLANGU: It is. It's just happened
 12 that I'm looking at the witness. Actually I'm interpreting
 13 into English, yes.
 14 MR NTSEBEZA SC: When you people in
 15 Qaukeni refer to Umtata people, you refer to them as people
 16 from the colony, not so?
 17 MR X: It is so.
 18 MR NTSEBEZA SC: Mr Chairman, I'm told
 19 there's a problem, somebody is not letting in the family
 20 members.
 21 CHAIRPERSON: I'm told that the problem
 22 is that the people who want to be let in are not family,
 23 some of them are not family members and so that people are
 24 being obliged to prove their identity as family members.
 25 That's the problem, I think. Anyone who is a family member

<p style="text-align: right;">Page 32575</p> <p>1 obviously is covered by the order –</p> <p>2 MR NTSEBEZA SC: Mr Chairman, I have a</p> <p>3 problem with that. All the time just when the families'</p> <p>4 representative is beginning a cross-examination of Mr X</p> <p>5 there is this requirement that there should be proof that</p> <p>6 people are family members.</p> <p>7 CHAIRPERSON: This has been the</p> <p>8 requirement from the very beginning. The order was that</p> <p>9 only parties would be entitled to enter, and I was informed</p> <p>10 that arrangements were in place where people could prove</p> <p>11 their identity as parties before they could be admitted,</p> <p>12 and it was discovered yesterday that there were a number of</p> <p>13 people in the chamber who didn't comply with that, who</p> <p>14 weren't parties, and who therefore had to be in the</p> <p>15 overflow room and that was the problem. I don't see that</p> <p>16 there can be any objection to enforcing the order I made.</p> <p>17 The fact that it wasn't enforced yesterday doesn't mean it</p> <p>18 doesn't have to be enforced today.</p> <p>19 MR NTSEBEZA SC: Mr Chairman, I'm at a</p> <p>20 loss for words because it's not just a question of</p> <p>21 yesterday. Ever since the arrangement started this house</p> <p>22 has been full of people and people were quite conscious of</p> <p>23 what your ruling had been relative to who is allowed to be</p> <p>24 here when Mr X is testifying. For me the coincidence, you</p> <p>25 know, is quite worrying, but –</p>	<p style="text-align: right;">Page 32577</p> <p>1 MR X: I do, Sir.</p> <p>2 MR NTSEBEZA SC: Even if a person is from</p> <p>3 Mqanduli, Orodale or Bomvana, even if a person is from</p> <p>4 Bizana or Flagstaff, even if a person is from Cala, where I</p> <p>5 was born, if it's people who speak isiXhosa language there</p> <p>6 is no possibility of them misunderstanding one another.</p> <p>7 You agree with me there?</p> <p>8 MR X: I understand you, Sir.</p> <p>9 MR NTSEBEZA SC: You see the people</p> <p>10 seated in front at the Chairperson, the lady from KZN and</p> <p>11 the short gentleman, that is Mr Tokota. Mr Tokota</p> <p>12 understands Xhosa. Even if he comes from the area of East</p> <p>13 London, the people known there as Ndlambes, and they call</p> <p>14 us Amatleka. Where I'm coming to is the following; he</p> <p>15 will not miss what you are saying because you're Mpondo and</p> <p>16 he is Ndlambe. You do understand me there, not so?</p> <p>17 MR X: If you could please ask the</p> <p>18 question again, Sir.</p> <p>19 MR NTSEBEZA SC: Mr Tokota is from East</p> <p>20 London, he speaks Xhosa. You understand?</p> <p>21 MR X: Yes, Sir.</p> <p>22 MR NTSEBEZA SC: You realise that even if</p> <p>23 you speak Mpondo he understands you because we all speak</p> <p>24 Xhosa, not so?</p> <p>25 MR X: Yes, Sir.</p>
<p style="text-align: right;">Page 32576</p> <p>1 CHAIRPERSON: I'm sorry, Mr Ntsebeza, as</p> <p>2 far as I understand there's no coincidence, or no worrying</p> <p>3 coincidence. What happened was, I understand, it was</p> <p>4 discovered yesterday that a number of people who were here</p> <p>5 in the chamber weren't entitled to be in the chamber in</p> <p>6 terms of the order I made and so from this morning attempts</p> <p>7 are being made to ensure that the order is complied with.</p> <p>8 The fact that it happens to coincide with the beginning of</p> <p>9 your cross-examination is obviously a coincidence, but it's</p> <p>10 not a worrying coincidence. It arises from the fact that</p> <p>11 the fact that people who were apparently not entitled to be</p> <p>12 in the chamber were in the chamber was only discovered</p> <p>13 yesterday.</p> <p>14 MR NTSEBEZA SC: Mr Chairman, perhaps in</p> <p>15 the interest of time my attorney must be attending to this</p> <p>16 and if there is a need for me to approach you, the</p> <p>17 Chairman, I will do so, but in the interest of time for now</p> <p>18 let's go with –</p> <p>19 CHAIRPERSON: That's a very appropriate</p> <p>20 attitude you're adopting, Mr Ntsebeza. So please continue.</p> <p>21 MR NTSEBEZA SC: Thank you, Mr Chairman.</p> <p>22 We act on instructions, Mr Chairman. What I was saying to</p> <p>23 you, Sir, was that we around Umtata, we understand when</p> <p>24 people from Pondoland speaks to us and we understand us</p> <p>25 clearly. You also agree with me?</p>	<p style="text-align: right;">Page 32578</p> <p>1 MR NTSEBEZA SC: I'm just trying to round</p> <p>2 up what was put yesterday by the gentleman with the white</p> <p>3 beard seated in front of me, Mr Budlender, who was saying</p> <p>4 yesterday, you remember he said yesterday because you are</p> <p>5 Mpondo there's no possibility that Ngqoko did not</p> <p>6 understand you as you were talking yesterday. Do you</p> <p>7 remember him saying that yesterday?</p> <p>8 MR X: I remember that.</p> <p>9 MR NTSEBEZA SC: What I'm now trying to</p> <p>10 say is that whoever that comes from those areas that I have</p> <p>11 mentioned who speaks either Mpondo or Xhosa, there is no</p> <p>12 possibility of not understanding one another. Do you</p> <p>13 understand me there?</p> <p>14 MR X: I understand you, Sir.</p> <p>15 MR MPOFU: Chairperson, I'm sorry to</p> <p>16 interrupt my learned colleague's cross-examination.</p> <p>17 There's a mini crisis outside there with the issue of</p> <p>18 access for the people and I decided to come inside with Mr</p> <p>19 Setati so that we can get directions from the Chair. There</p> <p>20 are 32 people, the majority of whom are my clients, and the</p> <p>21 rest are relatives of clients and they inform me that</p> <p>22 previously they had been told that there was a place for</p> <p>23 them, for 60 of them, and if there was an overflow then the</p> <p>24 rest would go to the overflow room, and now that there are</p> <p>25 only 32 of them they don't see any reasons why they should</p>

<p style="text-align: right;">Page 32579</p> <p>1 be blocked from coming in here, and more importantly, and 2 without repeating what Mr Ntsebeza said, the irony is the 3 fact that they have been allowed in the hall for the past 4 six or seven days of Mr X's evidence and it is now the 5 portion from, this is the portion that they have an 6 interest in that is starting where the families and the 7 injured and AMCU are the ones who are doing the cross- 8 examination, and the fact that they are, only now that they 9 are being barred. So they see it as a sinister motive, 10 which I assured them it was not, Chairperson, and I 11 explained the whole thing about the ruling, but the 12 situation is that they're now sitting outside and they 13 would like to come in.</p> <p>14 CHAIRPERSON: Yes, have you finished, Mr 15 Mpopu? Well, as you say you explained to them the ruling. 16 The ruling was that parties could come in, that is to say 17 the injured and arrested persons could come in, your 18 clients, and the representatives of the families, the 19 widows who had been in attendance since we started could 20 come in as well because they were parties. But it was only 21 discovered yesterday that people had been allowed into the 22 chamber who weren't covered by the order and weren't 23 allowed by the order. That's what happened.</p> <p>24 But I don't understand the problem because if 25 they go to the overflow room there is a television link-up;</p>	<p style="text-align: right;">Page 32581</p> <p>1 the past the order wasn't enforced and it wasn't 2 appreciated that that was the case.</p> <p>3 MR MPOFU: I'll try again, Chairperson. 4 These are people, as I say, the people who are out there 5 are people who are either my clients directly in the sense 6 that they were injured or arrested, or who are relatives of 7 people who fall into that category. So the reason that 8 they are here is not for some casual incident. They are 9 either directly parties or in a broader sense of the word 10 representatives of parties, and they are only 32 and 11 they've been here before on that same basis, and what we 12 don't understand is why only today that they are being 13 blocked.</p> <p>14 So I understand what the Chairperson says. I'm 15 saying on the basis of the fact that they are parties, or 16 related to parties, they should be allowed in, in any 17 event. But I'm also saying that whatever purpose for 18 barring them was before, it has no actual effect now.</p> <p>19 CHAIRPERSON: I'm afraid you're not 20 understanding me, Mr Mpopu. Insofar as the people 21 concerned are your clients, insofar as they are injured and 22 arrested persons they're entitled to be in the chamber and 23 no one can keep them out. They have a right to be here. 24 So I'm not concerned with that.</p> <p>25 There are other people here who have no right to</p>
<p style="text-align: right;">Page 32580</p> <p>1 they will be able to see what's going on in the chamber. 2 They will hear the question being asked, they will hear the 3 answers. All they won't see is the – as I understand it – 4 is the face of the witness. The fact that the order 5 wasn't, I don't know why it wasn't, but the fact that the 6 order wasn't properly enforced up to now doesn't mean that 7 it shouldn't be enforced from now on. But please go and 8 tell them that if they go to the overflow chamber they will 9 see everything that's happening here except the face of the 10 witness, and we will then carry on without any difficulty 11 enforcing the order I made.</p> <p>12 MR MPOFU: No, Chairperson, maybe we 13 don't understand each other. I'm saying these are people 14 who have been here since when Mr X started. So they have 15 seen the face of Mr X more than, over more than 10 days.</p> <p>16 CHAIRPERSON: No, I understand exactly. 17 It's not a question of my misunderstanding. I understand 18 that. The fact of the matter is that they were not 19 permitted to be in the chamber in terms of the order. 20 [09:26] Through some administrative error - I do not 21 understand what caused it – the order was not enforced and 22 some of them got into the chamber when they shouldn't have 23 been. I don't understand why that's the basis for an 24 irregular, for the continuation with the knowledge of the 25 fact that the order is not being enforced simply because in</p>	<p style="text-align: right;">Page 32582</p> <p>1 be here, but their reasonable needs are catered for because 2 they can go into the overflow room and they will see what's 3 happening. But the fact that they've been erroneously 4 admitted into the chamber previously isn't a reason for 5 continuing with that situation.</p> <p>6 MR MPOFU: No, okay, I'm sorry, I said 7 this was the last attempt. This is the last attempt. What 8 I'm saying, Chairperson, is that your ruling was that 9 simply our parties are allowed in the room. You said 10 members of the public will go to the overflow room. I'm 11 saying these people do not fall into the category of 12 members of the public in the sense of interpreting your 13 order. That's really what I [speaking simultaneously with 14 interpreter].</p> <p>15 CHAIRPERSON: I understood what you said. 16 The fact of the matter is that they are not parties and the 17 distinction is drawn between those people who are parties 18 and those people who are members of the public. Some 19 members of the public have got more interest in what's 20 happening than others and they fall into that category. 21 What I suggest you do is we, let's take a short 22 adjournment. [Microphone off, inaudible] Is it correct 23 that your clients, the injured and arrested persons, some 24 of them are not in the chamber? 25 MR MPOFU: All of them are not in the</p>

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1 chamber.

2 CHAIRPERSON: Well, obviously they're

3 entitled to be here and no one should keep them out.

4 MR MPOFU: That's the –

5 CHAIRPERSON: We are only concerned with

6 people who are not parties in the strict sense.

7 MR MPOFU: That's exactly what I – that's

8 why I was saying there's a misunderstanding between us,

9 Chairperson, because they –

10 CHAIRPERSON: Your clients are all males,

11 anyway. The injured and arrested persons are all male

12 persons, all males.

13 MR MPOFU: Well, Chairperson, that then

14 becomes a matter of interpretation. That's why I was

15 saying they are either clients. The ones who are female,

16 if they're here it's somebody's brother is maimed, or

17 sister is here, then are they a party or not a party?

18 CHAIRPERSON: They're obviously not

19 parties.

20 MR MPOFU: Well, they are. They're

21 representatives of a party, Chairperson.

22 CHAIRPERSON: A party is a party

23 [inaudible, speaking simultaneously with interpreter]

24 MR MPOFU: Well, they're certainly not

25 members of the public in the sense.

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1 CHAIRPERSON: No, that's –

2 MR MPOFU: That's the real issue, ja.

3 CHAIRPERSON: That's a proposition that

4 can't stand. But anyway, what I suggest is that we take –

5 MR MPOFU: But now we're going to have a

6 walk out now, Chairperson, which is unnecessary.

7 CHAIRPERSON: Well, if people who are not

8 entitled to be here are walking out then that's [speaking

9 simultaneously with interpreter] -

10 MR MPOFU: No, these are the widows –

11 CHAIRPERSON: If people who are entitled

12 to be here –

13 MR MPOFU: These are the widows who are

14 walking out, Chairperson, because these people regard

15 themselves as one group. So these categorisations which

16 are defined and erudite are not going to assist us,

17 Chairperson.

18 CHAIRPERSON: I have made an order. I

19 expect it to be complied with, and if people don't like me

20 to enforce orders I made and they want to take action, then

21 they must take what action they consider appropriate –

22 MR MPOFU: Chairperson, I suggest a five-

23 minute break because I think this can be resolved.

24 CHAIRPERSON: Yes. We adjourn for five

25 minutes.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]

2 [10:17] CHAIRPERSON: The Commission resumes. We

3 took longer than five minutes for two reasons. Firstly we

4 had a full discussion with the respective parties as to

5 what we need to do in the situation in which we find

6 ourselves. And the secondly the police required extra time

7 to read certain material that had only been presented to

8 them yesterday to Mr X so he could understand. That was

9 why we took the first comfort break instead of just a five

10 minute adjournment. What we decided is that pro tem which

11 means for today only we'll allowed people who were in the

12 chamber yesterday, who should not have been in the chamber

13 yesterday, who were in the chamber contrary to the order

14 that was made, to remain in the chamber today. It is to be

15 understood that from Monday onwards the order must be

16 complied with. It may be that in certain aspects the order

17 may have to be changed, it may also be that they will not

18 be changed. That's a matter that I don't have to deal with

19 now.

20 I want to stress we must proceed with the

21 evidence with a minimum amount of interruption and

22 distraction so that we can perform the task we've been

23 called upon to do in the time available to us. But there's

24 one thing I want to say before we start, restart and that

25 is that I expect people who are in the chamber to remain

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1 silent at all times while the evidence is being presented.

2 I don't expect any comments to be made, any behaviour of a

3 kind that is unacceptable. I won't hesitate to order

4 people who don't comply with that to leave the chamber.

5 Please tell the witness he's still under oath.

6 MR X: I understand, Sir.

7 MR NTSEBEZA SC: If we now understand

8 then we would be faster in going through the evidence. We

9 agree that this incident took place on the 16th of August on

10 the day that 34 people were killed, do you agree?

11 MR X: Yes, Sir.

12 MR NTSEBEZA SC: And on that day a number

13 of people were arrested. You were not amongst the people

14 who were arrested, not so?

15 MR X: Yes, I escaped.

16 MR NTSEBEZA SC: During October whilst

17 the Commission was already in progress, October of 2012 Mr

18 Mpofo complained that some of his people kept on being

19 arrested, you were aware of that?

20 MR X: I do know about it.

21 MR NTSEBEZA SC: People were arrested in

22 October and some were charged with murder and other cases

23 relating to that, you are aware of it?

24 MR X: Yes, Sir.

25 MR NTSEBEZA SC: You were not one of

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1 those who were arrested and accused in October of 2012.
 2 MR X: We were not arrested in October or
 3 charged with the crime of murder or any other charge during
 4 October of 2012. I was not found as yet.
 5 MR NTSEBEZA SC: Yes, is that you were
 6 not arrested by the police, you surrendered, you went
 7 yourself to the police, not so?
 8 MR X: Correct, Sir.
 9 MR NTSEBEZA SC: Between the dates the
 10 26th of January and the 29th of January 2013 you went to the
 11 police and made what is known as warning statements. Do
 12 you remember that?
 13 MR X: Yes I do.
 14 MR NTSEBEZA SC: You made seven
 15 statements. Do you still remember that or not?
 16 MR X: I do remember that.
 17 MR NTSEBEZA SC: Now, Mr Chairman, for
 18 the record those warning statements would be AAAA2 to
 19 AAAA8. According to those statements you made the
 20 agreement, you made the confession that you were involved
 21 in the murder of people, in the killing of people and
 22 attempted murders of people. Also intimidation of people.
 23 Is it so?
 24 MR X: Yes, it is so.
 25 MR NTSEBEZA SC: According to my

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1 knowledge and how I know it you were not charged with any
 2 crime. You have not been charged with any of the things
 3 that you admitted having done. So?
 4 MR X: I agree, Sir.
 5 MR NTSEBEZA SC: You do know that there
 6 are people that deny having been involved in these things
 7 but those people have been charged with crimes, you do know
 8 that.
 9 MR X: Yes, Sir.
 10 MR NTSEBEZA SC: Do you know why you have
 11 not been charged, a reason for not being charged?
 12 MR X: Because of speaking the truth.
 13 MR NTSEBEZA SC: You do know that you are
 14 still going to be – or else say that you've been given the
 15 indemnity, not being charged.
 16 MR X: I do know that.
 17 MR NTSEBEZA SC: I do not know what the
 18 position is but has there been a person coming to you to
 19 tell you that you are going to be charged at one or the
 20 other time or that you are going to be indemnified, that
 21 you're not going to be prosecuted?
 22 MR X: I have not been told by anybody,
 23 but what I do know is that if somebody has done wrong then
 24 the person is guilty.
 25 MR NTSEBEZA SC: Have you not been

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1 approached by any other person who says since you are
 2 coming out with all the truth now the law is going to take
 3 its course and we will thereafter come to you and charge
 4 you?
 5 MR X: No nobody has said so, but what I
 6 do know is that if one has done wrong he is guilty of a
 7 crime.
 8 MR NTSEBEZA SC: And also if you had done
 9 wrong like all the others the police will charge you to
 10 appear in courts like all other people. Do you agree with
 11 me that if you have done such things you should have
 12 already appeared before court?
 13 MR X: Yes, it is so.
 14 MR NTSEBEZA SC: What confuses me is that
 15 after you had made all these confessions there's not been
 16 one policeman or a prosecutor who says you see now the
 17 reasons for your not being charged for such serious things
 18 about which you have confessed, this and that – does that
 19 not worry you? Does it not surprise you that this has not
 20 happened?
 21 MR X: No, it does not.
 22 MR NTSEBEZA SC: I will come back to this
 23 later. Did you ever say to any person that if – did you
 24 ever ask any person after giving evidence about all these
 25 serious allegations, all these serious crimes, will I then

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1 be charged with these things?
 2 MR X: If you could repeat your question,
 3 it wasn't very clear.
 4 MR NTSEBEZA SC: Is there any person to
 5 whom you went to after giving evidence in this Commission
 6 will I be charged, will I ever be charged with all these
 7 serious crimes that I committed, which I agree to, which I
 8 confess to?
 9 MR X: No police.
 10 MR NTSEBEZA SC: Did anybody say to you
 11 look Mr X, if you give evidence in that Commission you will
 12 not be charged with all these crimes, these murders and all
 13 these other things that you agree to, have been involved
 14 in?
 15 MR X: Nobody has.
 16 MR NTSEBEZA SC: What we have agreed
 17 nobody has spoken to you what it is that you will receive,
 18 that you will get after giving evidence.
 19 MR X: Nobody has.
 20 MR NTSEBEZA SC: Yesterday you said you
 21 only thought so, or you said yesterday nobody encouraged
 22 you, it was only your own idea that you come to give
 23 evidence before this Commission. Do you remember saying so
 24 yesterday?
 25 MR X: I said so, yes.

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1 MR NTSEBEZA SC: And you said the reason
2 you did so is because you feel pained about all these
3 serious measures that you committed.
4 MR X: Yes, Sir.
5 MR NTSEBEZA SC: And again yesterday -
6 before I go to that there's one thing I want to tell you.
7 In my 30 years experience working with the law and during
8 that time I've met quite a number of people that were Mr Xs
9 in those cases and particularly during the cases that -
10 when we were facing cases of terrorism, I'm going to put
11 this thing in this manner to you. People like you usually
12 give evidence because they've promised something or that
13 they think there is something they will gain as a result of
14 giving that evidence. Do you fall in that category of
15 people? Because to come and give false evidence about
16 others that you did this and this and this because of that
17 belief.
18 MR X: No there's nothing I hope to gain.
19 I have not been promised anything.
20 MR NTSEBEZA SC: As this gentleman, Mr
21 Budlender said yesterday that you involve yourself in
22 particular things where there is evidence to show that you
23 were totally not involved in. Do you remember him saying
24 so to you yesterday?
25 MR X: I do, Sir.

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1 MR NTSEBEZA SC: I am also going to, at
2 the end of this matter going to put it that you have
3 involved yourself in quite a number of things where - from
4 some other evidence that you were not at the places where
5 you say you had been.
6 [10:36] What do you say to that, Sir?
7 MR X: I understand, yes.
8 MR NTSEBEZA SC: No, don't just say you
9 are understanding me. What do you say to that?
10 MR X: I was there. I wouldn't involve
11 myself in such cases as the Marikana and things and which
12 wasn't involved.
13 MR NTSEBEZA SC: I have told you that
14 based on my experiences people have involved them in very
15 serious things in which they were believing that for their
16 whole lives they would be getting money by having told
17 lies.
18 MR X: It's not the same. I was there,
19 Sir.
20 MR NTSEBEZA SC: The evidence will show -
21 some of the things that you say you have done because the
22 evidence is not the same. Yesterday when you gave evidence
23 here it became clear when the chairperson questioned you
24 that there are certain people that you do not want to refer
25 to by name, people that you say were present when certain

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1 crimes were committed. You remember that?
2 MR X: I do remember, Sir.
3 MR NTSEBEZA SC: And you said the reason
4 was they knew where you come from.
5 MR X: Yes, Sir.
6 MR NTSEBEZA SC: That is why you were
7 doubtful about referring to them by their names. Did you
8 want the chairperson and the commission to believe that you
9 are in danger?
10 MR X: I don't understand that, Sir.
11 MR NTSEBEZA SC: Yesterday you said I
12 can't answer that question because there are people from
13 that area - you said you were reluctant to answer that
14 question because there are people there that you had a
15 difficulty with.
16 MR X: I remember that, yes.
17 MR NTSEBEZA SC: The chairperson insisted
18 that how do you know that thing come out - do you remember
19 that?
20 MR X: Yes, I do.
21 MR NTSEBEZA SC: Now the question is did
22 you believe that your life is in danger? Did you want us
23 to believe that your life is in danger?
24 MR X: Yes, it is so.
25 MR NTSEBEZA SC: Now that brings me to

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1 the next question. As you are there where you are now
2 being referred to as Mr X and we cannot say you are a
3 person from that area from Qaukeni have you been told by
4 the police what would be the ultimate, what is going to
5 happen to you after you had given evidence?
6 MR X: I have not been told, Sir. I do
7 know what is going to happen.
8 MR NTSEBEZA SC: What is going to happen?
9 MR X: The people that are guilty would
10 be arrested.
11 MR NTSEBEZA SC: And what will happen to
12 you? You'll be kept there in captivity?
13 MR X: I would be arrested and be
14 charged. I killed.
15 MR NTSEBEZA SC: You have mentioned
16 already that nobody has ever mentioned that you would be
17 charged. What will happen is - do you really know what is
18 exactly going to happen to you after you have given
19 evidence. Mr X, you are now finished giving evidence.
20 MR MATHIBEDI SC: Sorry, Chairperson, I
21 think the witness has answered the question. It was not
22 based on what somebody told him what's going to happen but
23 it was, the question was do you know what's going to happen
24 to you after testifying and he said I know.
25 CHAIRPERSON: Mr Ntsebeza, that's also

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1 according to my recollection what he said.
 2 MR NTSEBEZA SC: Let me ask the question.
 3 Have you been told what is going to happen after you have
 4 given your evidence in this commission? Will you be under
 5 the protection that you're being given by the police whilst
 6 giving evidence?
 7 MR X: I have not been told.
 8 MR NTSEBEZA SC: What do you think will
 9 happen? What do you think is going to happen?
 10 MR X: What I'm thinking is that I will
 11 also be charged because I also killed.
 12 MR NTSEBEZA SC: When I asked you a few
 13 minutes ago you said you were scared that your life could
 14 be in danger. You remember saying that?
 15 MR X: I remember, Sir.
 16 MR NTSEBEZA SC: What makes you think
 17 your life is in danger?
 18 MR X: Because I mentioned everything
 19 that we did at Marikana, everything that we did there.
 20 MR NTSEBEZA SC: Who is it that you are
 21 scared of? Who will do something to you that will endanger
 22 your life?
 23 MR X: The person or people that I have
 24 involved about everything that we did wrong.
 25 CHAIRPERSON: Mr Mahlangu, I understand

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1 that he said when you interpreted, "I mentioned everything
 2 that we did," or words to that affect. He added "to the
 3 police" so in other words I told the police about
 4 everything we did at Marikana. Is that correct?
 5 MR MAHLANGU: My colleague confirms it
 6 is.
 7 CHAIRPERSON: Yes, thank you.
 8 MR NTSEBEZA SC: You say what scared you?
 9 What makes you think your life is in danger?
 10 MR X: The truth that I came out with
 11 about what it is that we did.
 12 MR NTSEBEZA SC: You see, you're not
 13 answering the question. I'm asking you this and instead of
 14 responding you -
 15 MR X: Please repeat the question, Sir.
 16 MR NTSEBEZA SC: I'm saying to you, I'm
 17 asking you what it is or who it is that would put your life
 18 in danger as you have already mentioned that you're scared
 19 that your life could be in danger.
 20 MR X: I'm scared of the people with whom
 21 we committed these serious things together with at
 22 Marikana.
 23 MR NTSEBEZA SC: What will they do? What
 24 are you scared of?
 25 MR MAHLANGU: I'm sorry, Chairperson.

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1 I'm not very clear what he said.
 2 MR X: I'm scared because it is alleged
 3 that it is the police at Marikana who killed us.
 4 MR NTSEBEZA SC: Young man, you see, what
 5 you are now saying doesn't really – it's not very clear.
 6 Let me tell you in this manner. The people that are being
 7 charged were charged in 2012 before, even before you went
 8 to the police. The police knew when they charged those
 9 people that they were dependent on evidence that is not
 10 your evidence against the people who were being charged.
 11 Do you understand? In other words the police even if you
 12 were not there, the police already had the evidence against
 13 the people that they had already charged. You understand
 14 that?
 15 MR X: I don't know that evidence but I
 16 understand you.
 17 MR NTSEBEZA SC: I'm telling you if that
 18 is not the position Mr Mathibedi would've said so to me
 19 already.
 20 MR MATHIBEDI SC: Well, the position is
 21 that there's nothing to justify that the police had all the
 22 information that they required, that the investigation –
 23 MR NTSEBEZA SC: The main point, Mr
 24 Chair, to the extent that this might be an implication of
 25 my [inaudible]. The police have sufficient evidence on the

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1 basis of which they could charge all the people who he has
 2 implicated later on in his statements and that's the only
 3 point I'm making.
 4 CHAIRPERSON: Two points. We don't know
 5 exactly what all the charges were but the second – and that
 6 is even if the police have got two witnesses to testify to
 7 what they want them to testify about. If a third witness
 8 comes and strengthens the state's case he might still be
 9 viewed with hostility by the accused and their friends so
 10 there is an illogicality in what you're putting.
 11 MR NTSEBEZA SC: Mr Chairman, if I had to
 12 come back to this point and make available to the
 13 commission who was charged on what day, when they appeared
 14 and all of that I could probably file a sheet of paper as
 15 an exhibit, as a new exhibit, but I shouldn't delay my
 16 cross-examination with telling you this. Mr Mathibedi can
 17 clarify this. I want to put it to you in this way. The
 18 truth of the matter is not, of your giving this evidence,
 19 is not that you think you are going to be killed. The
 20 people that you are accusing do know that your evidence
 21 would not stand against them in the cases in which you
 22 accuse them in the court where we will eventually go to
 23 because what Mr Budlender mentioned to you yesterday is
 24 that you involve you in certain things where it is quite
 25 clear that you could not have been there. The second thing

<p style="text-align: right;">Page 32599</p> <p>1 is – I don't know, do you want to say something to that?</p> <p>2 MR X: Yes, I do want to talk, Sir.</p> <p>3 MR MAHLANGU: Mr Chairperson is now</p> <p>4 reciting his praise songs. I am not turning – in other</p> <p>5 words he recited his praises and at the end of the whole</p> <p>6 thing he said I am not turning on what I've already said.</p> <p>7 CHAIRPERSON: What in fact did you mean</p> <p>8 by "he recited his praise songs"?</p> <p>9 MR NTSEBEZA SC: Mr Chairman, he was, as</p> <p>10 Mr Tokota will also confirm, the witness out of turn – I</p> <p>11 think the point he wants to make because at the end he says</p> <p>12 I am from - I don't, I will not go back on anything that</p> <p>13 I've said. Now, what he was saying was recalling his clan</p> <p>14 names where you would say I'm so and so and then he will go</p> <p>15 and praise himself by saying I am not only – if I were to</p> <p>16 say I must do my own self praising I would [African</p> <p>17 language] you know, that kind of thing. That's what he was</p> <p>18 saying. It was not an answer to any of my questions.</p> <p>19 MR MAHLANGU: If I may further explain to</p> <p>20 you –</p> <p>21 CHAIRPERSON: Yes, please, Mr Mahlangu.</p> <p>22 I didn't understand what you interpreted. Maybe you</p> <p>23 interpreted it literally but that's why I asked the witness</p> <p>24 what he meant by it. Perhaps you can give some explanation</p> <p>25 because I'm at a disadvantage here obviously.</p>	<p style="text-align: right;">Page 32601</p> <p>1 there is something you are going to gain, something that</p> <p>2 you will get.</p> <p>3 MR MATHIBEDI SC: Sorry, Chair –</p> <p>4 CHAIRPERSON: Mr Mathibedi, your light –</p> <p>5 MR MATHIBEDI SC: - before the witness</p> <p>6 answers, what is the basis of the proposition that's being</p> <p>7 put to the witness?</p> <p>8 MR NTSEBEZA SC: Well, Mr Chairman, I</p> <p>9 will argue that it is the oddest thing that a person who</p> <p>10 has committed such serious crimes, who has made these kinds</p> <p>11 of confessions to those crimes, that he has not been</p> <p>12 charged, that he says he has not been told anything, it can</p> <p>13 only be, that's the basis, it is a matter of fact [speaking</p> <p>14 simultaneously with interpreter] but he fears for his life.</p> <p>15 CHAIRPERSON: I would have thought the</p> <p>16 question could perhaps more appropriately be put on the</p> <p>17 basis that not as an assertion that you are going to gain</p> <p>18 something, but that you must be expecting a gain of some –</p> <p>19 you put it as a direct statement, it will happen. That's</p> <p>20 the objection. The objection I think is correct, but if</p> <p>21 you could reformulate the question you may be able to put</p> <p>22 the thrust of the point you make, the basis of the point to</p> <p>23 the witness without incurring Mr Mathibedi's objection.</p> <p>24 MR NTSEBEZA SC: Thank you very much.</p> <p>25 Let me put it in this manner to avoid any complaints. The</p>
<p style="text-align: right;">Page 32600</p> <p>1 MR MAHLANGU: Yes, Sir. The – I wouldn't</p> <p>2 say all but all the black tribes of South Africa have got</p> <p>3 clan names and each and every clan name says how brave</p> <p>4 those people are. He was actually singing his clan names,</p> <p>5 praising themselves.</p> <p>6 [10:56] And at the end of the day as Adv Ntsebeza senior</p> <p>7 counsel says, and then he says "Because of my being from</p> <p>8 Qaukeni I do not turn from what I have said."</p> <p>9 CHAIRPERSON: I understand, thank you.</p> <p>10 Mr Ntsebeza, do I understand you've finished your cross-</p> <p>11 examination?</p> <p>12 MR NTSEBEZA SC: No, Mr Chairman.</p> <p>13 CHAIRPERSON: So I misunderstood you.</p> <p>14 MR NTSEBEZA SC: No, no. No, I –</p> <p>15 CHAIRPERSON: Because you said something</p> <p>16 about – anyway, never mind what you said. So let's carry</p> <p>17 on then.</p> <p>18 MR NTSEBEZA SC: No, I was saying at the</p> <p>19 end he then said, that is at the end of him having said all</p> <p>20 those praises, he then says, "I am the man from Qaukeni, I</p> <p>21 don't turn back on what I say."</p> <p>22 I want to say to you, I'm saying for the last</p> <p>23 time the reason you decided to come and give evidence in</p> <p>24 this Commission is because it's your belief, or you have</p> <p>25 been promised, but I believe it's your own belief that</p>	<p style="text-align: right;">Page 32602</p> <p>1 actual reason why you decided to come and give evidence in</p> <p>2 this Commission is because you have that belief that there</p> <p>3 is something to gain from it, either that you will not be</p> <p>4 charged with crimes, or else that you are going to be, you</p> <p>5 will be used to go and give evidence in order that you at</p> <p>6 the end do not, are not charged and eventually go to jail.</p> <p>7 What do you say to that?</p> <p>8 MR X: I do not believe that I would get</p> <p>9 anything. It is painful, it is the pain that I felt of the</p> <p>10 people whose relatives were killed and how we killed them.</p> <p>11 MR NTSEBEZA SC: But the truth of the</p> <p>12 matter is that there are no people that you're scared of</p> <p>13 that are putting your life in danger, or people that would</p> <p>14 kill you.</p> <p>15 MR X: How many people have been killed</p> <p>16 in Marikana as a result of the Commission?</p> <p>17 MR NTSEBEZA SC: I don't know that, but</p> <p>18 the person who's asking questions here, it's me, Sir.</p> <p>19 There is something that appeared in the papers which we</p> <p>20 showed your lawyers where your mother says she is worried</p> <p>21 that your life is in danger. Did you hear about that?</p> <p>22 Have you heard that?</p> <p>23 MR X: I have, Sir. I have heard that</p> <p>24 some people went to my home and threatened the people that</p> <p>25 something will happen to them after the end of the</p>

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1 Commission.

2 MR NTSEBEZA SC: No, no, no, no, no –

3 MR MATHIBEDI SC: No, Chair, the witness

4 said some people went to his home and told him that they

5 are lawyers –

6 MR NTSEBEZA SC: From the Commission.

7 MR MAHLANGU: That they are lawyers from

8 the Commission?

9 MR NTSEBEZA SC: Yes.

10 MR MATHIBEDI SC: That's correct.

11 MR X: There's one who said he knows the

12 names of the people that arrived at my home, that I should

13 give them his number.

14 MR NTSEBEZA SC: What I'm asking you is

15 if you know.

16 MR X: I'm saying yes, I'm aware of this.

17 MR NTSEBEZA SC: Now I believe that the

18 article can be put up. I don't know whether it's a new

19 exhibit.

20 CHAIRPERSON: Before you move on to the

21 article I think we should take a five-minute break at this

22 stage. Five minutes means five minutes.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]

24 [11:11] CHAIRPERSON: The Commission resumes, but

25 the microphone is off at the other – oh, something is

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1 happening on the other side. When it comes back on again

2 and the microphone is working, would you please remind him

3 he's still under oath, and Mr Ntsebeza will continue in one

4 of the 11 official languages.

5 MR X: [s.u.o. through interpreter]

6 MR QGIRANA: Witness is still under oath.

7 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):

8 Can we put the article up?

9 CHAIRPERSON: I think you want to put in

10 an extract from the City Press. Is that correct? And that

11 has to have an exhibit number. Is that correct?

12 MR NTSEBEZA SC: Yes, Mr Chairman, thank

13 you.

14 CHAIRPERSON: That will be AAAA41

15 according to my notes, article City Press, what is the date

16 of the article? What was the date? 29 June 2014.

17 MR NTSEBEZA SC: 29 June.

18 CHAIRPERSON: Very well. Exhibit AAAA41

19 will be an article headed "Mother of Mr X: I know my son is

20 going to die." Yes, I've entered it in my book as exhibit

21 AAAA41.

22 MR NTSEBEZA SC: The media people in some

23 arrived at your home, I do not know whether they said they

24 were lawyers from this Commission, but they arrived there.

25 There is a heading there where your mother says "I know he

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1 will die; there is no way he will come back alive." Yes,

2 and your mother says, "There is no way he can come back

3 here and think he will live a normal live again." On this

4 next page, "Someone asked me if I had heard what this Mr X

5 has had to say. She, the neighbour, said she recognised

6 his voice and she told me the things that he has been

7 saying. Everyone seems to know who he is. She also told

8 me that there might be people who want to hurt us. What

9 have we done? We have never been to Johannesburg. I don't

10 even know what happened there or what is he saying."

11 And then almost halfway down the page she says,

12 "I last saw him 2012 and he was talking about other miners

13 not being happy about him staying a National Union of

14 Mineworkers member. He said they threatened him because he

15 would not join the new union. That's when he disappeared."

16 She then says, "The day he returns he's a dead man. People

17 here are not happy that he's doing this. What the police

18 did to those miners was wrong and he's now testifying for

19 them. It doesn't matter if these miners went to sangomas

20 or whatever, the police had no right to gun down so many

21 people. How many police officers died that way?" And then

22 there's, it was 34 to zero.

23 Then towards the end of that page, "The last

24 Christmas we were with him was probably two years ago and

25 he brought gifts for everyone. That's how he has always

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1 been. That's the kind of man he was." And then on the

2 last page she says, "He told me he was," after the reporter

3 says they spoke on the phone just more than a month ago,

4 and then the mother is reported to have says, "He told me

5 he was in police custody and he might never come home

6 again, but when I tried to call the number again it had

7 been disconnected."

8 This is a point that came up, I'm not saying this

9 is the truth or not, I do not know whether you once spoke

10 to your mother about these things or not. What do you say,

11 what is the position?

12 MR X: The person I spoke to is the

13 uncle. The uncle phoned them and asked these people their

14 names.

15 MR NTSEBEZA SC: What I want to know is

16 whether you, before I brought up this article of the

17 newspaper, is whether you knew about this that the media

18 people went to your mother, they talked to her and she

19 raised her fears about your life, as it is said in this

20 newspaper?

21 MR X: Yes, I hear. I remember it.

22 MR NTSEBEZA SC: You heard about it?

23 MR X: Yes, I did.

24 MR NTSEBEZA SC: Did you read the

25 newspaper? I got the impression yesterday you do grasp

Page 32607

1 here and there.

2 MR X: Yes, this appears in the

3 newspapers. Yes, I have read the newspaper.

4 MR NTSEBEZA SC: So this is not something

5 new, you read about this in the newspaper?

6 MR X: Yes, this does not surprise me. I

7 know about it.

8 MR NTSEBEZA SC: Yes. Just [speaking

9 simultaneously with interpreter] you read about it?

10 MR X: Yes, I did.

11 MR NTSEBEZA SC: So we are in agreement

12 that your mother has heard about what is said in this

13 article?

14 MR X: Yes.

15 MR NTSEBEZA SC: She is a Christian lady?

16 Or she's the mother that you love? You love your mother?

17 MR X: Yes, Sir.

18 MR NTSEBEZA SC: I'm sure if you had a

19 way you would avoid, do everything to avoid that you put

20 your mother in something that will hurt her or put her in a

21 predicament.

22 MR X: Please repeat the question.

23 MR NTSEBEZA SC: I'm saying you'll do

24 everything in order not to hurt your mother. Is that not

25 so?

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1 MR X: Yes, Sir.

2 CHAIRPERSON: Can I ask you a question

3 about something you dealt with a moment ago? Did you read

4 this article in the City Press?

5 MR X: Yes, there is a newspaper that I

6 left at home that I saw that looks like this.

7 CHAIRPERSON: It was a City Press

8 newspaper, was it?

9 MR X: Yes, Sir.

10 MR NTSEBEZA SC: Yes, now you are

11 confirming what you said earlier on to me, which Mr Chair

12 did not hear clearly. You told me that you read this

13 article.

14 CHAIRPERSON: Do you read the City Press

15 every week?

16 MR QGIRANA: Excuse me, Chair?

17 CHAIRPERSON: Do you read the City Press

18 every week?

19 MR X: I sometimes buy it, not all the

20 time but sometimes.

21 MR NTSEBEZA SC: Seems it was yesterday,

22 you remember you said that thing is out of order. You

23 remember saying so?

24 MR X: I remember.

25 MR NTSEBEZA SC: What I want to say is

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1 that when one looks at your situation, you told the police

2 that you committed heinous crimes, but you have never been

3 charged by the police for those crimes.

4 CHAIRPERSON: I'm sorry, Mr Interpreter,

5 I'm told that you haven't interpreted everything that's

6 been said. I know it's difficult for you sometimes, you're

7 interrupted while you're interpreting, but I'm told there

8 were some things that you didn't interpret. I don't know

9 what they were, but the comment before the question.

10 COMMISSIONER TOKOTA: No, no, it was not

11 a comment. He was about to interpret it when he said

12 "Yihasoma." That is the only part he did not interpret.

13 You interrupted when he was about to interpret.

14 CHAIRPERSON: It means?

15 MR NTSEBEZA SC: You do speak English.

16 COMMISSIONER TOKOTA: You can speak

17 English.

18 MR QGIRANA: Yes.

19 MR NTSEBEZA SC: Out of order –

20 MR X: Yes, I do.

21 MR NTSEBEZA SC: You are not that blank

22 because the City Press is also written in English. Is that

23 not so?

24 MR X: Yes, Sir.

25 MR NTSEBEZA SC: Now the second point is

Page 32610

1 that you believe that you are putting your life in danger

2 by coming to this Commission and give evidence. Is that

3 not so?

4 MR X: Yes, Sir.

5 MR NTSEBEZA SC: And your mother back

6 home also has that belief. As we see in the newspaper,

7 this is troubling her.

8 MR X: It was, yes, it does.

9 MR NTSEBEZA SC: Now I'm not going to

10 repeat what I've said, but we are going to argue at the end

11 to this Commission and the other Commissioners that this

12 person is putting his life in danger, worrying his mother,

13 because he believes there is a gain at the end for him.

14 You will gain something out of this. Is there something

15 you wanted to say?

16 CHAIRPERSON: Mr Interpreter –

17 MR X: No. No Sir, it's no such thing.

18 CHAIRPERSON: Mr Mathibedi?

19 MR MATHIBEDI SC: I think he has answered

20 but I wanted to state that in fairness it should have been

21 put to the witness what is it that he was going to gain.

22 CHAIRPERSON: That sounds like a valid

23 point, Mr Ntsebeza. What do you say to that?

24 MR NTSEBEZA SC: Well, for one, he has

25 himself said he has not been charged. For one it may well

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1 be that he believes that if he testifies here he will not
 2 be charged with those persons who have been charged with
 3 the crimes to which he has confessed, and that's a benefit.
 4 CHAIRPERSON: Mr Mathibedi?
 5 MR MATHIBEDI SC: Chairperson,
 6 [inaudible] wrong. The fact that a warning statement was
 7 taken from the witness, it means that he was charged but he
 8 was not brought before court. He was not prosecuted. I
 9 think there should be a clear line in between the two,
 10 Chair.
 11 MR NTSEBEZA SC: The witness has not been
 12 charged, Mr Chairman. My learned friend knows it. I don't
 13 want Mr Pretorius to testify, but he will confirm and I
 14 would have expected that he'd instructed his senior counsel
 15 to that effect, that this man has not been charged.
 16 CHAIRPERSON: The standing rule of the
 17 position, the legal position is that the fact that a
 18 warning statement is taken indicates that the police
 19 suspect that a person may well be guilty of a crime.
 20 [11:31] Which is why we give them a warning, but it
 21 doesn't follow that he's been charged. It would depend
 22 upon the statements he makes and so forth, but it doesn't
 23 follow automatically from the fact that a warning statement
 24 has been made that a person has been charged. It very
 25 often happens that the two coincide, but it doesn't follow

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1 automatically. So that's my understanding. But if he's
 2 being charged of course, then he gets 48 hours before he
 3 can appear in court and all sorts of things. So perhaps
 4 you can reformulate the question in a way that is in
 5 accordance with the law and the practise as we understand
 6 it.
 7 MR NTSEBEZA SC: Yes, Chair. This is
 8 just a legal argument. Let me ask you this question.
 9 After you made those certain statements last year you never
 10 appeared in any court of law, been charged with any crime
 11 is that not so?
 12 MR X: Yes, Sir.
 13 MR NTSEBEZA SC: Up until today you never
 14 appeared in any case where you were told, that murder case
 15 of that policeman or that security has been postponed, you
 16 will come back on a certain date although the other people
 17 are appearing in court. Is that not so?
 18 MR X: I've never appeared in court.
 19 MR NTSEBEZA SC: I want day 145 to be
 20 shown. Just to add on what we were saying in the morning
 21 when I was asking you whether you know of anything why is
 22 it that you have not been charged? You said it is because
 23 you are telling the truth. Do you remember that?
 24 MR X: Yes, Sir.
 25 MR NTSEBEZA SC: That is why I was saying

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1 if that is the reason the fact that you say you are telling
 2 the truth you will not be charged, as Mr Mathibedi wants to
 3 know what was the benefit to you? Do we understand each
 4 other?
 5 MR X: I will be charged because I
 6 killed, I acted.
 7 MR NTSEBEZA SC: No, Mr X, what you're
 8 saying now should correspond with what you said earlier on.
 9 MR X: Can you repeat the question, Sir?
 10 MR NTSEBEZA SC: I asked you this morning
 11 whether you know of a reason why is that you have not been
 12 charged and you answered and said it is because you are
 13 telling the truth. Do you remember that? Do you remember
 14 saying that?
 15 MR X: Yes I do.
 16 MR NTSEBEZA SC: Now that is one of the
 17 reasons, or that is one of the benefits that you will get.
 18 If you testify in this Commission, that you told the truth
 19 -
 20 MR X: That is not so, Sir.
 21 MR NTSEBEZA SC: We will argue about that
 22 later I just wanted to put it to you so that you know where
 23 I'm going. We look on day, 145 T16020 line 16 to 16021
 24 line 3. Here I was asking General Mpembe about what was
 25 happening along the railway line on the 13th. I thoroughly

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1 asked General Mpembe whether these young men when you were
 2 talking to them there show any respect to you. Not just
 3 respect, but the utmost respect as I put it in English.
 4 That appears at 16, line 16. He responded by saying, "I
 5 agree with you, Mr Ntsebeza." Do you follow?
 6 MR X: I'm there.
 7 MR NTSEBEZA SC: Mr Mpembe was there
 8 talking to these young men, understanding what they were
 9 saying when he was in front of this Commission, he says I
 10 agree with you. They showed me the utmost respect. I even
 11 said to him you may not have agreed with certain things
 12 they were saying to you, but this conversation you had with
 13 them they were showing you the utmost respect. Do you see
 14 there now Major-General Mpembe is saying he was of the
 15 opinion that these young men are showing respect. Do you
 16 that's what he's saying there?
 17 MR X: That's what General Mpembe's
 18 saying, Sir. There was no respect there, Mr Chair.
 19 MR NTSEBEZA SC: I haven't asked that
 20 question yet. Can you see here that General Mpembe - was
 21 involved here, he's saying Mr Ntsebeza, I agree with you.
 22 Do you dispute that although it appears there as having
 23 been said by him?
 24 MR X: I dispute that.
 25 MR NTSEBEZA SC: We are going to quote

<p style="text-align: right;">Page 32615</p> <p>1 this part in General Mpembe's evidence and say Mr X can say 2 what he's saying but General Mpembe himself is saying these 3 young men along the railway line showed me the necessary 4 respect. Now can you please go to exhibit AAAA1? That is 5 your first statement you made in February 2013. And 6 paragraph 10 of this statement – 7 CHAIRPERSON: Mr Ntsebeza, I was 8 proposing to take the tea adjournment at quarter to twelve. 9 The witness looks to me that he's a bit tired now and in 10 any event we've got on the screen that handwritten version 11 of the statement. May I suggest we take the tea 12 adjournment now, we arrange for the typed version of the 13 statement to be on the screen, the witness can also 14 presumably at the location where he is also have a cup of 15 tea. And I'm sure we'll all be much refreshed when you 16 continue at 12 o'clock. My calculations, if I take half an 17 hour off for the mini crisis as Mr Mpofu described it, 18 you've had about two hours, you've got two and a half, so 19 when we resume you'll have about half an hour by my 20 calculation. We'll take the tea adjournment now. Let's 21 all try to be back at 12 o'clock. 22 MR NTSEBEZA SC: Mr Chairman, I've got 23 another half an hour from AMCU, by arrangement. 24 CHAIRPERSON: Oh I see, all right, well – 25 MR NTSEBEZA SC: At the end of the day.</p>	<p style="text-align: right;">Page 32617</p> <p>1 you putting? I don't see it on the screen. 2 MR NTSEBEZA SC: It's paragraph 10, page 3 6. 4 CHAIRPERSON: It's a long paragraph and 5 it's the – which line, how does the line begin that you 6 want to refer the witness to? 7 MR NTSEBEZA SC: It's after instructions 8 from the sangoma. 9 MR MATHIBEDI SC: The fourth line from 10 the bottom, Mr Chair. 11 CHAIRPERSON: "He told us not to wash for 12 seven days." 13 MR NTSEBEZA SC: Yes. 14 CHAIRPERSON: "Or to sleep with women or 15 ladies." I see there's a distinction between the two. 16 MR NTSEBEZA SC: "Ladies, you should not 17 sleep with ladies or women." 18 MR X: We were not to sleep with women 19 and not wash for seven days. 20 MR NTSEBEZA SC: I see there's a 21 distinction being made between women and ladies. 22 MR X: We were told not to sleep with 23 women, not even girls. 24 MR NTSEBEZA SC: That is you were not to 25 sleep with your wives or girlfriends?</p>
<p style="text-align: right;">Page 32616</p> <p>1 CHAIRPERSON: Okay so you'll have your 2 half an hour then you'll have some of AMCU's half hour. 3 [COMMISSION ADJOURNS COMMISSION RESUMES] 4 [12:06] CHAIRPERSON: The Commission resumes. Mr 5 Ntsebeza, I understand your going from now until 1 o'clock 6 and that will be the end of your cross-examination. Is 7 that correct? 8 MR NTSEBEZA SC: Yes, Mr Chairman. 9 CHAIRPERSON: There's some debate as to 10 whether you needed half an hour. You're relying on half an 11 hour from AMCU. There's some debate about whether you 12 actually needed it, but if AMCU got half an hour to spare I 13 gratefully accept the donation myself. 14 MR NTSEBEZA SC: Thank you, Mr Chairman. 15 CHAIRPERSON: Please tell the witness 16 he's still under oath. 17 MR X: [s.u.o. through interpreter] 18 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.): 19 Now you see over there in paragraph 10, this is what you 20 were saying there that the sangoma had given instructions. 21 What is important to me is the following where you say the 22 instructions were that you shouldn't wash your hands, you 23 shouldn't wash – no, no, you shouldn't wash for seven days. 24 I would like to – 25 CHAIRPERSON: I'm sorry, what passage are</p>	<p style="text-align: right;">Page 32618</p> <p>1 MR X: Yes, that is so. 2 MR NTSEBEZA SC: Now I want us to look at 3 the statement that you made in February of the year 4 following, the one known as the supplementary statement. 5 That would be LLL26, Mr Chairperson. If you could go there 6 to paragraph 16. This is the statement you made after 7 meeting Adv Mathibedi, not so? 8 MR X: Yes, Sir. 9 MR NTSEBEZA SC: Now it looks as though 10 in this statement there were added instructions. If you 11 could go to 16.5, you say the sangoma, "that you were 12 instructed to wait for the police to fire first before 13 launching an attack, to conduct yourselves in a manner that 14 would provoke the police, resulting in them firing at you 15 first, to approach the police in a crouching manner that 16 would make bullets fired by the police miss you because you 17 would be invisible, to defy any orders or instruction given 18 by the police" – 16.11, if you could look at that, "to make 19 clicking sounds with weapons to get [inaudible, speaking 20 simultaneously with interpreter]." You see that one in the 21 second statement? 22 MR X: Yes, Sir. 23 MR NTSEBEZA SC: Let us not waste time 24 here, because Mr Budlender traversed this part yesterday. 25 What I'm saying is in that statement that you had made in</p>

<p style="text-align: right;">Page 32619</p> <p>1 February of 2013, the first statement, the one known as the 2 original statement, you made a statement when everything 3 was still fresh in your memory as things that had just 4 happened. You agree with me there? 5 MR X: Yes, Sir. It's still fresh in my 6 memory, though I did not mention some. 7 MR NTSEBEZA SC: Yes, that's exactly 8 where I'm at. A person who was explaining what had just 9 happened a day before, saying it today, it is more clear 10 than when it is asked the year thereafter. You understand 11 that? It is [inaudible, speaking simultaneously with 12 interpreter] the day before that you have been asked to 13 explain the following day you will remember that, you'd 14 remember it better than when asked the same thing the 15 following year. You understand that? 16 MR X: Yes, Sir, I understand. 17 MR NTSEBEZA SC: If I would ask you 18 something today that happened yesterday you would be in a 19 better position because your mind would still be fresh 20 about the happening, not so? Is it so? 21 MR X: Yes, but I forgot some of the 22 things. 23 MR NTSEBEZA SC: Yes. I heard you say 24 so. Something that happened last year and you're to talk 25 about it this year, as you did in this statement, you were</p>	<p style="text-align: right;">Page 32621</p> <p>1 saying. 2 MR MAHLANGU: He said yes. 3 MR NTSEBEZA SC: Now I'm saying to you at 4 the time that you made this statement in 2013, in February, 5 when you were talking about things that happened in August 6 of 2012, those things were still fresh in your memory. You 7 agree with me there? 8 MR X: They were not all clear. 9 MR NTSEBEZA SC: I understand what you 10 say. You see, now you made a statement in February of the 11 year in which we are, that is 2014. Now you make additions 12 of things that you did not mention in the 2013 statement. 13 You agree with me there? 14 MR X: Things that I'd forgotten, yes, I 15 agree with you, Sir. 16 MR NTSEBEZA SC: I will tell you the 17 reason why there are more things added to your later 18 statement, but I want us to understand here at the time 19 that you added these other things that you said were 20 instructions from the sangoma, you added these things at a 21 time when the time that had lapsed was two years already. 22 Now I'm saying to you it is funny that something that 23 happened in 2012 you will remember it better in 2014 than 24 in 2013. What do you say to that? 25 MR X: Some other people's minds are</p>
<p style="text-align: right;">Page 32620</p> <p>1 talking about something that happened in 2012, the 2 statement that would contain more things about what 3 happened would be the one that you made last year than the 4 one made in this year. You understand me? Do you want me 5 to repeat the question? 6 MR X: I don't clearly understand you, 7 Sir. 8 MR NTSEBEZA SC: I'm saying in the 9 statement that you made in February 2013, there's a 10 statement you made in February of 2014, you understand me 11 there? 12 MR X: I understand you there. 13 MR NTSEBEZA SC: In the 2013 statement 14 there are few things that you say you were told by the 15 sangoma. You understand that one? 16 MR X: There are few that I caused to be 17 written. 18 MR NTSEBEZA SC: Don't jump around. 19 Let's take – 20 MR X: I say there are few that I put in 21 writing. It was – 22 MR NTSEBEZA SC: You are saying in the 23 2013 statement there are fewer things that you gave as 24 having been given instructions by the sangoma, so there is 25 no difference between what I'm saying and what you are</p>	<p style="text-align: right;">Page 32622</p> <p>1 slowly. 2 MR MAHLANGU: That's the word he used. 3 MR NTSEBEZA SC: The second thing I want 4 to correct, is something I said to you and I've got to 5 correct. It's not fitting with what you were saying in 6 that statement that Ngqoko did not understand Xhosa well. 7 I killed that one altogether, not so. Not so? 8 MR X: I hear you, Sir. 9 MR NTSEBEZA SC: Do you agree with me? 10 That's it. You can't hide the fact that Ngqoko did not 11 understand me because he was speaking Xhosa and I speak 12 isiMpondo. We can't speak about that anymore under oath. 13 I see you [inaudible, speaking simultaneously with 14 interpreter] your head. It doesn't come on record. 15 MR X: Yes, Sir, I'm listening. 16 MR NTSEBEZA SC: I would like you to say 17 I agree. 18 MR X: I agree. I agree. 19 MR NTSEBEZA SC: You see, these things 20 that you have added now, these are things which were 21 mentioned by the police before you came to give evidence 22 here. There are three of these things. You see the police 23 are saying this thing of hitting the weapons against each 24 other, it's a sign of aggression. It shows that this is a 25 sign of aggression by the people.</p>

<p style="text-align: right;">Page 32623</p> <p>1 The police are saying, the second thing they are 2 saying, the second thing is that the workers, or the 3 strikers came to them in a crouching position, it's also a 4 sign of aggression. 5 [12:26] They say the third thing, they say these people 6 amongst whom you are involved in yourself, that these 7 people were attacking the police and the police were then 8 forced to defend themselves. Do you hear that, Sir? 9 MR X: Yes, I'm listening, Sir. 10 MR NTSEBEZA SC: I say when you were 11 giving the statement to Adv Mathibedi during this year, 12 you're saying things that have been appearing in this case 13 all along, all of a sudden appears, that being the police 14 case before this Commission, and here you come and you say 15 these were instructions given to you by the sangoma and it 16 comes at the time that he had met you, here is my, what my 17 putting to you is the – no, no, no, what you're saying in 18 your second statement that these were instructions from the 19 sangoma is not so. You put it into the statement because 20 you wanted to come in and wanted to put it in support of – 21 be in line with the police case as it has been known here. 22 What do you say to that, Sir? 23 MR X: I'm saying these were the 24 inyanga's instructions, Sir. 25 MR NTSEBEZA SC: When we are arguing</p>	<p style="text-align: right;">Page 32625</p> <p>1 crouching manner. All these things when Adv Mathibedi was 2 leading you, you said why you did those things was to 3 hasten, to make the muti work fast. You understand that? 4 MR X: I understand you, Sir. 5 MR MAHLANGU: To understand what is 6 "mtsotsa" as the Xhosa, I must admit, Chairperson, I'm lost 7 here, if I could get some assistance. 8 MR X: When there is a function that is 9 being conducted and there's singing going on the reason is 10 to encourage even a coward not to be scared, and in 11 hunting, when hunting for animals you do it for the dogs 12 that are following the spoor of the animal to hurry up. 13 MR NTSEBEZA SC: What do you mean by 14 that? 15 MR X: These are things I'm saying to 16 encourage the dogs, this is being done in order to 17 encourage the dogs to act fast. We were doing these things 18 for the police to be in a hurry. 19 MR NTSEBEZA SC: You see, the problem you 20 have, you keep on answering things that you have not been 21 asked. 22 MR X: I was just explaining to you. 23 It's okay, Sir. 24 MR NTSEBEZA SC: If I want your 25 explanation of something I will ask you to please just help</p>
<p style="text-align: right;">Page 32624</p> <p>1 [inaudible, speaking simultaneously with interpreter] what 2 you're saying in English as instructions, you just want the 3 Commission to believe that it supports the police case. 4 What do you say to that? 5 MR X: This was the inyanga's 6 instructions. The hitting of sticks against each other was 7 actually strengthening the muti. 8 MR NTSEBEZA SC: I understand that. I 9 understand. We can go to day 248, 31175 up to 31181, where 10 you are saying the things that you were doing was to hasten 11 the effect of the muti to work faster, that it had to work 12 fast. One other thing that you were told to, so that the 13 muti should work fast is to ululate. This appears in day 14 248, and that the crouching position you took, this is what 15 you said in your first evidence. These things that you are 16 saying that the muti has to work fast, which you mentioned 17 when giving evidence, is not on the same intending of your 18 statement, the one you made in 2013 and the one you made in 19 2014. You understand what I'm saying? 20 Let me repeat it. You are saying when you were 21 being led by Adv Mathibedi giving your evidence-in-chief 22 there were certain things that you people did. You did 23 those things because you wanted to hasten, to make the muti 24 work fast, firstly the hitting of the weapons against each 25 other, secondly is to ululate, thirdly is to come in a</p>	<p style="text-align: right;">Page 32626</p> <p>1 me here. You understand me? 2 MR X: I understand, Sir. 3 MR NTSEBEZA SC: Don't jump around 4 looking that way and that way, just answer the questions. 5 I'm saying to you do you remember at the time that Adv 6 Mathibedi was leading you, you came up with three things; 7 these things you mentioned you did because you wanted to 8 hasten, you wanted the muti to work fast. We agree there? 9 You agree with me? 10 MR X: I agree with you, Sir. 11 MR NTSEBEZA SC: These are the three 12 things that I've just explained to you, which I'm not going 13 to repeat now. You understand? 14 MR X: Yes, Sir. 15 MR NTSEBEZA SC: But what I'm saying is 16 the following. Those things that you mentioned when Adv 17 Mathibedi was leading you, that when you people wanted the 18 muti to work fast is to hit the sticks against each other, 19 to ululate, to crouch, those things are not contained in 20 your statements that you made in 2013 and 2014. That is 21 where I am. You understand what I'm saying? 22 MR X: Yes, I understand. 23 MR NTSEBEZA SC: That is why I'm saying I 24 will argue to the Commission that you were not telling the 25 truth when you said that you were given these three things</p>

<p style="text-align: right;">Page 32627</p> <p>1 to do by the sangoma when you wanted the muti to work fast. 2 You understand me now? 3 MR X: Yes, I understand you are saying 4 it. I disagree with you, Sir. 5 MR NTSEBEZA SC: By saying "I disagree 6 with that," how do you – 7 MR MAHLANGU: It wasn't clear what he 8 said. 9 MR X: Because you were not there when we 10 were consuming the muti. I'm saying what I am saying did 11 exist, it was there, as you are saying to me it's not true. 12 MR NTSEBEZA SC: We will argue that that 13 is how everything shows it, that's how it indicates. Is it 14 true that when you did these three things would have 15 resulted in the muti working fast, you were the only one 16 who believed in that, not that everybody who was there 17 believed in it? That was your only belief where you had 18 consumed this muti alone, it was that you [inaudible, 19 speaking simultaneously with interpreter] that it was in 20 your head. You believed that if you did all these things, 21 ululating and so on, that it would cause the muti to work 22 fast. What do you say to that? 23 MR X: I'm listening to what you're 24 saying. 25 MR NTSEBEZA SC: I didn't understand you.</p>	<p style="text-align: right;">Page 32629</p> <p>1 MR X: Yes, Sir. 2 MR NTSEBEZA SC: We now know that Mambush 3 was the person who was chosen, he was brave and fearless. 4 That was how he was elected. 5 MR X: Yes, Sir. 6 MR NTSEBEZA SC: It was believed that he 7 would adhere to the instructions given by the inyanga to 8 these that should be done. You see, where you say you were 9 told not to take off the clothes that you were wearing, or 10 not to change the clothes that you were wearing and not to 11 wash those clothes, not to change them until seven days 12 have passed, you remember that, not so? 13 [12:46] MR X: Yes I do remember that, Sir. 14 MR NTSEBEZA SC: There is something that 15 we are going to show again. What we are going to do to 16 save time I will only indicate certain places where he is 17 wearing – we will say there he is wearing such a shirt, 18 over there he is not wearing it anymore and there he is 19 wearing this and there he's not wearing it. All this being 20 an endeavour to – you were given instructions not to change 21 your clothing or to wash them. I thought there was no such 22 a thing or there was nobody who followed those instructions 23 even the Mambush that was elected did not do so. I'll give 24 you the chance of saying these things, whether you agree, 25 disagree, I just want before the end of this to know that</p>
<p style="text-align: right;">Page 32628</p> <p>1 I didn't hear you. 2 MR X: I say I'm listening to what you're 3 saying, Sir. 4 MR NTSEBEZA SC: I will [inaudible, 5 speaking simultaneously with interpreter] because I want to 6 take [inaudible, speaking simultaneously with interpreter] 7 from what you said in this statement at paragraph 19, 8 exhibit LLL26, if we could put up the paragraph. You see 9 over there at paragraph 19 you say the following - tell me, 10 a sangoma and a Magogo, does it refer to the same thing? 11 MR X: Yes, it's the same, it refers to 12 the same. 13 MR NTSEBEZA SC: I remember one time you 14 mentioned here that you wanted to meet your Magogo, and you 15 say there in paragraph 19 [inaudible, speaking 16 simultaneously with interpreter] "is a stubborn, fearless 17 and brave person to lead them." You remember that? 18 MR X: Yes, Sir. 19 MR NTSEBEZA SC: You remember it was said 20 some other rituals would be conducted on this man that 21 would be leading you? You remember that? 22 MR X: Yes, Sir. 23 MR NTSEBEZA SC: You said these other 24 rituals would be conducted on Mambush at a particular place 25 where sheep would be put in a hole. You remember that?</p>	<p style="text-align: right;">Page 32630</p> <p>1 we know this, do you understand? 2 MR X: I hear you, Sir. 3 MR NTSEBEZA SC: TTT4 where I'm – 4 MS LEWIS: Mr Chair, the first reference 5 is to exhibit TTT4 and then VTS01 to VOB. 6 CHAIRPERSON: It's already an exhibit. 7 MS LEWIS: Yes. 8 CHAIRPERSON: So I don't have to – 9 MS LEWIS: No. It's exhibit TTT4. 10 CHAIRPERSON: Is this the photograph or a 11 video? 12 MS LEWIS: It's a video. 13 CHAIRPERSON: At what point in the video, 14 what part of the video? 15 MS LEWIS: Two minutes and twenty four 16 seconds. 17 CHAIRPERSON: Oh this is the DVD. Two 18 minutes and how many seconds? 19 MS LEWIS: 24. 20 CHAIRPERSON: Yes. 21 MS LEWIS: And we could pause it there. 22 CHAIRPERSON: We're pausing it at 2:22 at 23 the moment. 24 MS LEWIS: I think that will be fine. 25 CHAIRPERSON: Now what do we see on this?</p>

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1 MR NTSEBEZA SC: You see the shirt he's
 2 wearing which has got brown –
 3 CHAIRPERSON: Some people's brown may be
 4 different to other people's brown, I can't see brown.
 5 MR NTSEBEZA SC: No, no, no I've just
 6 been brought to – my attention has been drawn to the fact
 7 that I should have said it's a white, grey sweatshirt with
 8 a white, pink checked sleeveless jacket over it and a light
 9 coloured shirt tied around his waist.
 10 MR NTSEBEZA SC: Look at the smaller
 11 screen which is much more clear.
 12 MR X: We do have the same –
 13 MR NTSEBEZA SC: Do you see Mambush?
 14 MR X: Yes I do.
 15 MR NTSEBEZA SC: I also don't see the
 16 well known green jacket that he was always wearing, he came
 17 to be known - in the green blanket.
 18 MR X: Yes, Sir.
 19 MS LEWIS: And can I then asked for us to
 20 go to 10:27 to 10:29.
 21 CHAIRPERSON: Of the same video?
 22 MS LEWIS: Of the same clip and just to
 23 play that clip and to play it through in slow motion.
 24 [VIDEO IS SHOWN]
 25 MR NTSEBEZA SC: Do you see today, this

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1 is the 14th?
 2 MR X: I understand that, Sir.
 3 MR NTSEBEZA SC: The one that we have
 4 just seen this was the 13th, today is the 14th on that. Do
 5 you see he's wearing his green blanket today?
 6 MR X: Yes, Sir.
 7 MR NTSEBEZA SC: And the shirt he's
 8 wearing you see it has got arms, darkish shirt, the arms on
 9 the side, sleeves, the sleeves are brown and as you can
 10 see, look at him, in front the shirt that appears there
 11 there's some darkish colour and the middle that is some
 12 beige and grey. In other words what he's wearing in this
 13 picture is different from what he was wearing on the 13th.
 14 Do you see that?
 15 MR X: I see the blanket – when you look
 16 at the shirt, it's the blanket that is different there.
 17 MR NTSEBEZA SC: We're just giving you
 18 the chance to comment.
 19 MR X: Yes all right.
 20 MR NTSEBEZA SC: You see there's also a
 21 zip there in the front is what you see, that other one also
 22 had a zip with the jacket. Do you see it?
 23 MR X: Yes it's a jacket, the other one
 24 was also a jacket.
 25 MR NTSEBEZA SC: That other one was pure

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1 white, the one he was wearing yesterday. Mahlangu is doing
 2 that.
 3 MR MAHLANGU: Chair, I think it's correct
 4 to say the jacket that he's wearing on the 13th is pure
 5 white.
 6 CHAIRPERSON: It's a light colour. It
 7 doesn't – lighter than what we see on the present -
 8 MR NTSEBEZA SC: Mr Chairman, I'm
 9 comparing, this one has got a dark tinge, the one we had on
 10 the 13th was plain, there was no tinges of brown or black.
 11 It's obviously relevant, it's going to be there, we're
 12 giving the witness an opportunity to make comment. If he
 13 disagrees so be it. Look at the jeans he's wearing.
 14 MR X: I don't agree.
 15 MR NTSEBEZA SC: Just play this thing a
 16 little bit more.
 17 CHAIRPERSON: All right let's do that.
 18 Thank you for your answer.
 19 MR NTSEBEZA SC: Blow it up.
 20 CHAIRPERSON: No, no, no blowing up isn't
 21 a good idea. You want to zoom in and back –
 22 MR NTSEBEZA SC: It's the language, I'm
 23 thinking in Xhosa. Do you see the pants he's wearing, it's
 24 the same one he was wearing that he was wearing on that
 25 date. This is darkish, it's dark in colour. Do you agree

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1 with me?
 2 MR X: Yes, I do.
 3 MR NTSEBEZA SC: We now want to show
 4 another video. The lady next to me will tell you.
 5 MS LEWIS: Mr Chair, could we please have
 6 on the screen a video from the SAPS hard drive?
 7 CHAIRPERSON: It's already an exhibit.
 8 MS LEWIS: I don't think it is. I'm not
 9 certain.
 10 CHAIRPERSON: Well let's provisionally
 11 mark it AAAA42. How do you describe it?
 12 MS LEWIS: It's in the videos folder from
 13 the 15th and it's clip 034, 034.
 14 CHAIRPERSON: So it's a video from the –
 15 this is SAPS video clips is it?
 16 MS LEWIS: Yes that's correct.
 17 CHAIRPERSON: And it's a clip from 15th of
 18 August 2012 and it's clip 034.
 19 MS LEWIS: That's correct, Mr Chair. And
 20 then if we could go to one minute and twenty one seconds.
 21 MR NTSEBEZA SC: Do you see the hand?
 22 MR X: I can see, Sir.
 23 MR NTSEBEZA SC: It's a T shirt where the
 24 sleeves are rolled up. There's one arm not of a dark
 25 colour, something about the shirt, below the shirt,

<p style="text-align: right;">Page 32635</p> <p>1 underneath the one he's wearing and again – do you see what 2 I'm taking about? 3 MR X: The T shirt he's wearing, these 4 colours, everybody is clear on this video, everybody 5 appears clear on this video, 6 MR NTSEBEZA SC: The dark appearing from 7 where I observe it is something that he's wearing beneath 8 the white one appearing there. 9 MR X: Yes, Sir. 10 MR NTSEBEZA SC: The jeans are the same 11 faded black. Let's play the video and stop at 1.36. 1.33 12 to 1.36, play it in slow motion. 13 CHAIRPERSON: How much longer do you 14 need, Mr Ntsebeza? 15 MR NTSEBEZA SC: I'm finishing, Mr 16 Chairman. 17 CHAIRPERSON: There's one other thing you 18 might want to look at before you finish is L167. 19 MR NTSEBEZA SC: Ja we are trying to get 20 there. Well, Mr Chairman, let's play the video in the 21 meantime. 22 CHAIRPERSON: The 1.34 seconds. This is 23 on what day? 24 MR NTSEBEZA SC: This is the 15th. 25 CHAIRPERSON: This is the 15th yes and</p>	<p style="text-align: right;">Page 32637</p> <p>1 [13:06] MR NTSEBEZA SC: It looks off-white in 2 colour. Next video. 3 MS LEWIS: Mr Chair, the next video is 4 also from the SAPS hard drive. In fact I believe that this 5 is an exhibit. I think it's EEE13. 6 CHAIRPERSON: Alright, then I don't have 7 to mark it. Where do we look on the video? 8 MS LEWIS: EEE13 at 35 seconds into the 9 video. 10 CHAIRPERSON: Which day is this? 11 MS LEWIS: This is from the 16th. 12 CHAIRPERSON: You want 35 seconds, I 13 think you said. 14 MS LEWIS: Yes, I think if we could just 15 play through to about 37 seconds and pause. 16 MR NTSEBEZA SC: Are you still saying 17 he's wearing the same [inaudible, speaking simultaneously 18 with interpreter] that he was wearing from the 13th? 19 MR MATHIBEDI SC: Sorry, Chairperson, the 20 witness is answering, if he could be given an opportunity 21 to answer without any interference it will be helpful. 22 CHAIRPERSON: What is your answer, Mr X? 23 MR X: The articles are the same – 24 MR NTSEBEZA SC: I'm asking about the 25 shirt –</p>
<p style="text-align: right;">Page 32636</p> <p>1 what I referred to you is the 16th. This one 2 MR NTSEBEZA SC: We'll get to it – 3 CHAIRPERSON: Do we just look at 1.34 or 4 do you want to go on a little bit, pause and it will become 5 clearer. 6 MR NTSEBEZA SC: 1.33 to 1.36 and we 7 pause. 8 [VIDEO IS SHOWN] 9 It doesn't look as though he's wearing the shirt 10 that he had the day before. 11 MR X: It's the same that he was still 12 wearing yesterday. 13 MR NTSEBEZA SC: All right. You see what 14 you see and I see what I'm seeing but that will be clear. 15 Do you see the blanket it's fastened on the right-hand 16 side. Do you see it? 17 MR X: Yes. 18 MR NTSEBEZA SC: Mr Chair, can I ask the 19 video to be played at 306, let's start from 306 to 310, 306 20 to 309 pause and then go onto 310. 21 [VIDEO IS SHOWN] 22 MR NTSEBEZA SC: Pause there. The colour 23 there, of the shirt, do you see the colour of the shirt? 24 MR X: Yes it's fine. It doesn't have 25 that – it's not hooded. It's the same.</p>	<p style="text-align: right;">Page 32638</p> <p>1 MR MATHIBEDI SC: Sorry, Chairperson – 2 CHAIRPERSON: The witness must – 3 MR X: I agree with you – 4 CHAIRPERSON: The witness must be given a 5 chance to answer. What is your answer? Go back to the 6 beginning of the answer and repeat it. 7 MR NTSEBEZA SC: I'm asking you about the 8 shirt appearing there, are you saying this is the shirt 9 that he was wearing on the first day of the photos that 10 we're showing here? Are you still saying that, explaining 11 that? 12 MR X: I'm explaining for the trousers, 13 Chairperson. 14 MR NTSEBEZA SC: I asked you not jumping 15 around, asking you to go there and you go to a different 16 place. Are you in a hurry for the trousers? Can you see 17 that is a blue jeans and not of a darker colour? 18 MR X: The colours are not the same. 19 Some are brighter. 20 MR NTSEBEZA SC: Let's go to the shirt. 21 There's something written on the shirt there. Would you 22 say it's the same that he was wearing on the first day, the 23 second, and so on? I see you looking down. Is it the same 24 or not? 25 MR X: It's not the same.</p>

<p style="text-align: right;">Page 32639</p> <p>1 MR NTSEBEZA SC: There it is. You want 2 somebody to hit you with a hammer before you come to the 3 right place? 4 CHAIRPERSON: No, no, Mr Ntsebeza – 5 MR MATHIBEDI SC: No, Mr Chairman – 6 CHAIRPERSON: - these comments are not 7 appropriate. 8 MR NTSEBEZA SC: Withdrawn, Mr Chairman. 9 CHAIRPERSON: Your time has run out 10 anyway, so is this the climax of your cross-examination? 11 MR NTSEBEZA SC: You'll see in the other 12 photos he had his blanket, not a [inaudible, speaking 13 simultaneously with interpreter] on the right-hand side of 14 his – but you see over there it's open? You see it over 15 his shoulders. You hear that? You see it? 16 MR X: I can see it, yes. 17 CHAIRPERSON: It's still the same garment 18 of course. 19 MR NTSEBEZA SC: Yes. 20 CHAIRPERSON: Is that the end of your 21 cross-examination, Mr Ntsebeza? 22 MR NTSEBEZA SC: Mr Chairman, just let me 23 check with my – I thank you because from the beginning we 24 spoke Xhosa, we understood each other, there was no 25 misunderstanding between us. Thank you, Mr Chairman.</p>	
<p style="text-align: right;">Page 32640</p> <p>1 CHAIRPERSON: Thank you. We will now 2 adjourn until Monday morning, 9 o'clock. 3 [COMMISSION ADJOURNED] 4 . 5 . 6 . 7 . 8 . 9 . 10 . 11 . 12 . 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>	

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