

# 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 55    27 FEBRUARY 2013    PAGES 5878 TO 5961

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 27 FEBRUARY 2013]  
 2 [09:42] CHAIRPERSON: The Commission resumes. Mr  
 3 Magidiwana, you're still under oath. Mr Mpofo, you're  
 4 still leading the evidence.  
 5 MZOXOLO MAGIDIWANA (CONTD.): Yes, Sir.  
 6 EXAMINATION BY MR MPOFU (CONTD.): Good  
 7 morning, Mr Magidiwana.  
 8 MR MAGIDIWANA: Good morning, Sir.  
 9 MR MPOFU: Chairperson, before I resume,  
 10 we're just going to check, we had made an arrangement, the  
 11 witness's father will come from the Eastern Cape. He's  
 12 here for a few days, and I'm just checking to see if he's  
 13 around, and we had intended to make a request whether his  
 14 father could just sit behind him while he's around. I know  
 15 that –  
 16 CHAIRPERSON: I wouldn't have any  
 17 objection to that.  
 18 MR MPOFU: Thank you, Chairperson.  
 19 CHAIRPERSON: I take it his surname is  
 20 the same?  
 21 MR MPOFU: Yes.  
 22 CHAIRPERSON: Is Mr Magidiwana Senior  
 23 here?  
 24 MR MPOFU: Someone is going to check, he  
 25 might be coming later, thank you, Chairperson. I just

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1 wanted to get that, if he comes later we'll do it after  
 2 tea.  
 3 CHAIRPERSON: Yes, alright.  
 4 MR MPOFU: Thank you, Chairperson.  
 5 Right, Mr Magidiwana, we had gone up to paragraph 23 of  
 6 your statement, at the point at which you lost  
 7 consciousness as you were being put into an ambulance.  
 8 Remember that?  
 9 MR MAGIDIWANA: It is so, Sir.  
 10 MR MPOFU: Okay, please don't call me  
 11 Sir. You can reserve that for the Chairperson. Thank you.  
 12 Alright, according to your statement you say you woke up,  
 13 you came to, as it were, after a couple of weeks and you  
 14 were at that stage at Sunninghill Hospital?  
 15 MR MAGIDIWANA: It is so, Sir.  
 16 MR MPOFU: Okay, Sir. So can you just  
 17 tell the Commission how, just the number of hospitals that  
 18 you were taken to, just briefly?  
 19 MR MAGIDIWANA: I regained my  
 20 consciousness in Sunninghill Hospital in the ICU. I was  
 21 unable to speak by then.  
 22 MR MPOFU: Yes?  
 23 MR MAGIDIWANA: I could see and would  
 24 recognise a human being. The only thing was that I could  
 25 not speak. I was then from there transferred to Medicare.

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1 MR MPOFU: Yes?  
 2 MR MAGIDIWANA: At Medicare I would  
 3 consult, or go to the special doctors, and also at Milpark  
 4 in Ferncrest.  
 5 MR MPOFU: Right, and Medicare, is that  
 6 the Medicare in Rustenburg?  
 7 MR MAGIDIWANA: It is the one.  
 8 MR MPOFU: And on a lighter note, is it  
 9 true that the nurses realised that you were, the first time  
 10 they realised that you were able to speak is when you tried  
 11 to celebrate a goal on a soccer game?  
 12 MR MAGIDIWANA: Yes, that is true. What  
 13 I remember is that there were games that were being played  
 14 and there were people that tried to make me talk, but I was  
 15 unable to talk by then and they would make me blow some  
 16 other things, blow air in some other things, and what I  
 17 remember is that on that day Kaizer Chiefs was playing with  
 18 another team and when a goal was scored, it was then that I  
 19 jumped and said "Yes."  
 20 MR MPOFU: Okay, thank you, and just for  
 21 the sake of the Commission, we were told by the witness  
 22 that that is a particular game which was flooded with  
 23 hailstones, and we are just checking the date so we'll be  
 24 able to match what that date was.  
 25 CHAIRPERSON: The therapeutic power of

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1 watching sport on television, I suppose.  
 2 MR MPOFU: Absolutely, thank you,  
 3 Chairperson. Right, now, okay, more recently after your  
 4 discharge, you say you were eventually discharged in  
 5 November. Thereafter you've gone in and out of hospital.  
 6 Can you just tell the Commission briefly the other visits  
 7 after your discharge in November?  
 8 MR MAGIDIWANA: Since I got injured, I'm  
 9 a person who usually goes to the hospital and even now I  
 10 ask for permission to be present here because I was  
 11 supposed to go to the special doctor for check-up. [He's  
 12 pointing at the left side, saying that] I have to see a  
 13 special doctor for check-up there.  
 14 MR MPOFU: And were you admitted again  
 15 for a week towards the end of January?  
 16 MR MAGIDIWANA: It is so.  
 17 MR MPOFU: Right, now the next – or I'm  
 18 sorry, you've also testified that during your stay in  
 19 hospital, that is up to your release you were under police  
 20 guard.  
 21 MR MAGIDIWANA: I was under police guard  
 22 in Sunninghill Hospital and as well as at Medicare. Then  
 23 at the mining hospital, Wonderkop, it was then that I  
 24 parted ways with them.  
 25 MR MPOFU: And the Andrew Saffy Hospital,

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1 that's where you were discharged from. Is that correct?

2 MR MAGIDIWANA: It is so.

3 MR MPOFU: And it is also so that you

4 were then at that stage added on as accused number 273 in

5 the case of murder and attempted murder of the other, of 34

6 workers and a few other charges, which charges were

7 provisionally withdrawn. Were you then taken to court to

8 make an appearance and added on to the charge sheet?

9 MR MAGIDIWANA: I did appear in court.

10 MR MPOFU: Yes, and after that appearance

11 where you went just to be added on to the others, have you

12 since appeared with the other 200-and something last week,

13 where that case was remanded to October?

14 MR MAGIDIWANA: It is so.

15 MR MPOFU: And can you maybe tell the

16 Commission how do you feel about the fact that you were

17 charged for the murder of the other 34 people?

18 CHAIRPERSON: Mr Mpofo, I don't think

19 that answer is going to help us answer the questions that

20 have been included in the Terms of Reference. I understand

21 he's not satisfied about it, but I don't propose hearing

22 any evidence on it.

23 MR MPOFU: Well Chairperson, my

24 understanding of the Terms of Reference is that this issue

25 is covered, albeit indirectly, and is –

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1 CHAIRPERSON: The answer is obvious, he's

2 not satisfied with being charged, he's dissatisfied. You

3 don't need to lead evidence on that. It's not going to

4 help us to answer the specific questions as to what

5 happened on the day in question by being told he's

6 dissatisfied he's being charged with murder of the 34.

7 MR MPOFU: Ja. No, Chairperson –

8 CHAIRPERSON: I don't want to appear

9 unsympathetic, because I can understand how he feels, and I

10 –

11 MR MPOFU: Yes.

12 CHAIRPERSON: But really, if we're going

13 to have a lot of evidence of this kind then the unfortunate

14 predictions of yesterday that we may need another extension

15 may actually come true.

16 MR MPOFU: Well, Chairperson, with

17 respect, I just want to indicate that as far as I'm

18 concerned this is not just a casual chit-chat. It's a

19 matter that is covered by the Terms of Reference, namely

20 whether or not this Commission at the end of it will refer

21 certain matters to the, certain agencies and all that –

22 CHAIRPERSON: Yes, I understand that.

23 We're fully aware of the Terms of Reference. We will

24 comply with it. The fact that this gentleman is

25 dissatisfied with being charged is a factor which we can

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1 take notice of without his telling us, and that will be

2 borne in mind in regard to any references we may make in

3 terms of the Terms of Reference.

4 MR MPOFU: Anyway, okay Mr Magidiwana,

5 and in any event you, the issue is that those charges will

6 be hanging over your head until October. Is that correct?

7 MR MAGIDIWANA: It is so, Sir.

8 MR MPOFU: Then you deal in your

9 statement with – if I may just jump to the last paragraph,

10 29, just for the sake of sequence. There you say that you

11 are still in severe pain from the wounds on your legs,

12 abdomen and elbow, and your testicles, and that you have

13 been advised that there's a strong possibility that you may

14 never be able to father any children. Can you tell the

15 Commission briefly what the doctors have said in relation

16 to that?

17 MR MAGIDIWANA: It is so, Sir.

18 MR MPOFU: Okay, I won't ask you how you

19 feel about that. Now the next issue is that there has been

20 some suggestion - isn't it so? - by the police that at the

21 time of the shooting there was a gun which was found on you

22 or near you, it's not quite clear, but in your possession,

23 I think is a better way of explaining it.

24 MR MAGIDIWANA: You see, Sir, this issue

25 of firearm is really troubling me in my mind. It's really

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1 bothering me because since I was born I don't even know how

2 the firearm is used. But they have labelled false

3 accusations against me.

4 MR MPOFU: Have you ever handled a

5 firearm in your life?

6 MR MAGIDIWANA: Never.

7 MR MPOFU: Now you say in your statement,

8 going back to paragraph 27, that upon being asked many

9 times by the police, you have told them that at no stage

10 were you carrying a gun, as alleged by them, which you've

11 just repeated now.

12 MR MAGIDIWANA: I said so, Sir.

13 MR MPOFU: And before we go on with this

14 issue of this gun, can you tell the Commission what it is

15 that you were carrying on that day?

16 MR MAGIDIWANA: On that day I was

17 carrying a stick. It's a black one that we refer to as a

18 "ibungusa," like a knobkierie.

19 MR MPOFU: Yes, and when we play the

20 videos, there is a stage where we will see that knobkierie

21 being pulled away from you as you were lying down on the

22 ground. Do you remember that?

23 MR MAGIDIWANA: I remember it.

24 MR MPOFU: Were you carrying any other

25 weapon at all?

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1 MR MAGIDIWANA: No, there was no other  
 2 weapon.  
 3 MR MPOFU: And is it also so that in  
 4 another video that we played for you of the pile of weapons  
 5 that had been collected there, you were able to identify  
 6 your knobkierie?  
 7 MR MAGIDIWANA: I was able to identify  
 8 it. Even now, if all of them can be put here I can be able  
 9 to identify it and say here it is.  
 10 MR MPOFU: Right, now the investigating  
 11 officer of the case for the allegations about firearm is  
 12 one Captain Pule. Is that correct?  
 13 [10:02] MR MAGIDIWANA: It is so.  
 14 MR MPOFU: And we'll get to the  
 15 statement, but in a nutshell, Captain Pule's statement  
 16 suggests that he came to Sunninghill a couple of times and  
 17 found that you were still unconscious, but that at some  
 18 stage he asked you about the issue of the gun and you  
 19 denied any knowledge thereof. Is that so?  
 20 MR MAGIDIWANA: When a person denies, he  
 21 denies something he knows, but I told him that I know  
 22 nothing about that.  
 23 MR MPOFU: Okay, alright, can you then  
 24 tell the Commission in your own words about your dealings  
 25 with Captain Pule from the time he started referring to

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1 this issue, until the last time you saw him?  
 2 MR MAGIDIWANA: Captain Pule arrived on  
 3 the Thursday there at Medicare. There were three of them,  
 4 but he introduced the other one, who was a female. I was  
 5 able to see and kept his name, the one in fact who referred  
 6 to himself as Captain Pule. He arrived and asked about a  
 7 firearm. I told him I know nothing about that. He wanted  
 8 to go to my place of abode, saying he wants to see the kind  
 9 of weapons that I have at home. I gave him directions as  
 10 to how he should go there. When he came back later that  
 11 afternoon, he told me that he did not go there, but that he  
 12 will obtain a statement. I told him I will not be able to  
 13 give him a statement in the absence of my attorneys. I  
 14 tried to call them, but I could not get hold of them  
 15 telephonically. He then forced me, telling me he cannot  
 16 leave there before obtaining my statement. Then I made a  
 17 statement to him. He also lifted my fingerprints, saying  
 18 he was going to conduct investigations, but the thing he  
 19 said before leaving was, "The manner in which you are  
 20 talking, I also am a police officer, but that which you are  
 21 saying satisfies me." He says I must then be patient and  
 22 be strong and to stop crying always, and that one of the  
 23 days the truth will be revealed. He then left.  
 24 MR MPOFU: So from that interaction did  
 25 you get the impression that Captain Pule believed your

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1 version that you were never involved with a gun, or in  
 2 possession of a gun?  
 3 MR MAGIDIWANA: He believed what I said,  
 4 even though he said three different things, or statements.  
 5 I told him that I know nothing about what he was saying.  
 6 MR MPOFU: Yes, okay. Now we'll then  
 7 move to the three statements that he was referring to, the  
 8 three different statements. Chairperson, with EEE2, I'm  
 9 now going to deal with EEE2.  
 10 CHAIRPERSON: Yes, I assumed so, yes.  
 11 MR MPOFU: Thank you, Chairperson. If  
 12 you go to page 1553 of EEE2 – Chairperson, Commissioners,  
 13 if you can bear with me for a second. Okay, I've just  
 14 misplaced some notes, but let's deal with the statement on  
 15 1553. The first statement there is a statement of a  
 16 Captain Ngqoko, N-G-Q-O-K-O, and Chair, I'm proposing to  
 17 just, these are just statements, maybe I should just read  
 18 them into the record.  
 19 CHAIRPERSON: I don't know how necessary  
 20 it is to read them into the record. Can you not just  
 21 briefly summarise them? I think they are before us, we can  
 22 read them and obviously people in the auditorium probably  
 23 aren't interested in all the details, but you can give them  
 24 the gist, it will save time.  
 25 MR MPOFU: Gist, okay, thank you,

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1 Chairperson. Okay, effectively the middle paragraph,  
 2 Captain Ngqoko says that he found about 12 people on the  
 3 ground, protesters, I suppose, and these were the people  
 4 who had been shot. Then he says he was approached by one  
 5 Colonel Mere, who showed him two firearms, and he says he  
 6 was told that these were obtained from two of the people on  
 7 the floor, as he put it, which I suppose means on the  
 8 ground. Then he says that the Colonel then pointed at the  
 9 two people from whom he had obtained the firearms, and then  
 10 he says he, that is Ngqoko, then interviewed one of the  
 11 people who had been pointed out to him, and that person  
 12 said he was Mzoxolo Magidiwana, and then he says the second  
 13 person had already died, and he says he then handed the  
 14 firearms to the Lieutenant-Colonel Mere. Then he said you  
 15 could not be taken to detention because you had serious  
 16 injuries and the paramedics were busy with you, and then  
 17 they took you to hospital. Alright, are you aware of that  
 18 statement?  
 19 MR MAGIDIWANA: No.  
 20 MR MPOFU: No, I mean had the statement  
 21 been shown to you or discussed with you?  
 22 MR MAGIDIWANA: My attorney told me about  
 23 it.  
 24 MR MPOFU: Okay, then the next statement  
 25 is on page 1555. That one is from a Warrant-Officer Dicks

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1 and it's in Afrikaans, and there's just one relevant  
 2 paragraph, which I'll read out. He says that, "Om ongeveer  
 3 16:00 het ons die skare begin spuit met water," and he's  
 4 talking about the 16th. Then he says, "Ek het gesien dat ?  
 5 swart man geklee in ? groen sweetpakbaadjie, ? vuurwapen,  
 6 pistool, en swart holster uit sy broek uittrek en dit  
 7 neergooi op die grond. Ek het gehardloop en die vuurwapen  
 8 en holster weggeskuif van hom af om die toneel te beveilig.  
 9 Luitenant-kolonel Mere het die vuurwapen en swart holster  
 10 toe gaan optel." Okay, and that statement has also been  
 11 discussed with you. Correct?

12 MR MAGIDIWANA: It is so.

13 MR MPOFU: Now the last one is on 1557,  
 14 which is the statement of Lieutenant-Colonel Mere, M-E-R-E.  
 15 Now on this one Mere effectively says that there was a male  
 16 person who was wearing grey trouser, black shoes, and a  
 17 green tracksuit, shooting at the TRT team of the police,  
 18 and later at the police Nyala, where he was a passenger.  
 19 Then he says he saw this person, "the male person about 50  
 20 metres away from the Nyala when I saw him falling on his  
 21 stomach, removing a holster and later a Z88 pistol with a  
 22 magazine from his body." Then he says he ordered, or  
 23 rather he says he kept this person on his sight all the  
 24 time, and then he says he ordered that Nyala to be stopped.  
 25 The Nyala was BHL093B, and then he noticed that this person

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1 had sustained a gun wound, and then he says the firearm was  
 2 removed by Warrant-Officer Dicks of Johannesburg, and  
 3 handed over to him, Mere, and he then gives the serial  
 4 number and he says he gave it to the LRC, which I suppose  
 5 he wanted to say the LCRC. I'm quite sure the LRC will  
 6 deny having been handed this. Now then he says that he  
 7 realised that it was a Z88 pistol and looked the same as  
 8 that issued by the police effectively. Then he went to  
 9 this person, that means the person he's been talking about.  
 10 The person introduced himself to him as Mr Mzoxolo  
 11 Magidiwana. Then he says he warned this person according  
 12 to this constitutional rights and arrested him for the  
 13 possession of unlicensed firearm. The Z88 had an emblem of  
 14 the SAPS.  
 15 [10:22] Then the next part he says he went - and I've  
 16 given the customary warning to Mr Ntsebeza on this one - he  
 17 says that he saw an African male person wearing a green  
 18 blanket, with a white T-shirt, and a grey trouser. This  
 19 person also fired rounds to the police Nyala with a  
 20 handgun, and he says he realised that he was the leader of  
 21 AMCU. I suppose I should have given the warning to Ms  
 22 Barnes as well. Then he says he saw the same person firing  
 23 to the direction of the TRT, and he says the same person  
 24 was also wounded and he died at the scene, but - sorry, the  
 25 but is mine - before he died this person introduced himself

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1 as Nkishane Thlakasa of AMCU, and he said he's one of the  
 2 leadership, and I think after that declaration then he  
 3 died.

4 Alright, now the first thing that I need to deal  
 5 with is whether this, assuming these are the three  
 6 statements that Captain Pule was saying are saying  
 7 different things, but the gist of the statements, except  
 8 for the one of Dicks where you're not identified, is that  
 9 you were in possession of this Z88 pistol with a SAPS  
 10 emblem. What do you say to that? The question was, what  
 11 do you say to that?

12 MR MAGIDIWANA: That is nonsense.

13 MR MPOFU: Right. Well, as if that is  
 14 not enough, if you go to 1561, page 1561, these are entries  
 15 into the occurrence book of SAPS, book of the police -

16 CHAIRPERSON: The investigation diary -

17 MR MPOFU: The investigation diary, thank  
 18 you, Chairperson. There the Z88 pistol which has a serial  
 19 number given by Mere, is said to have a magazine with 15  
 20 rounds, and I think we have been told before that that is  
 21 the capacity of that firearm. Can you see that?

22 MR MAGIDIWANA: I see it.

23 MR MPOFU: Yes, and before I explained it  
 24 to you a couple of days ago, did you know what a holster  
 25 is?

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1 MR MAGIDIWANA: I didn't know it. I  
 2 asked from my counsel as to what was that.

3 MR MPOFU: And just for the sake of  
 4 completion, of the people who were lying down, who had been  
 5 shot, together with you, who was the person who had the  
 6 green blanket and the white T-shirt?

7 MR MAGIDIWANA: It's Mambush.

8 MR MPOFU: And from your knowledge of  
 9 what happened there - and the evidence later will show  
 10 that you were actually lying next to Mr Noki - are you able  
 11 to say whether or not he would have had this conversation  
 12 that he was a leader of AMCU, with anybody?

13 MR MAGIDIWANA: No, away with that.

14 There's no such a thing, because Mambush had already died.

15 MR MPOFU: Did he speak to anybody after  
 16 the shooting?

17 MR NGALWANA: Sorry, Chairperson, before  
 18 he answers that question, perhaps I'm missing something.  
 19 When evidence was led regarding the person who was said to  
 20 have been interviewed by the police, who then died  
 21 afterwards, after having said that he was a leader of AMCU,  
 22 there was no name attached to it. Perhaps my learned  
 23 friend can -

24 CHAIRPERSON: Look at page 1558, para 3,  
 25 second-last line.

<p style="text-align: right;">Page 5894</p> <p>1 MR NGALWANA: Well, I see there, there's 2 another name mentioned, not a Noki – 3 CHAIRPERSON: No, I understand that, but 4 presumably the suggestion would be that, well either it was 5 somebody else, alternatively Mr Noki gave the wrong name. 6 But I don't see what's wrong with the question Mr Mpofo has 7 asked. 8 MR NGALWANA: What appears to be 9 incorrect, Chairperson, is my learned friend seems to 10 suggest that it was Mr Noki who said he was the leader of 11 AMCU – 12 CHAIRPERSON: Yes, Mr Mpofo has led 13 evidence indicating other, he referred to other evidence 14 which seems to indicate that this person so dressed was Mr 15 Noki, and on the basis of that evidence he then asked the 16 following question. Now I know that the person has 17 allegedly, according to this document, introduced himself 18 with another name. Now there are two possibilities. The 19 one is the original suggestion that it was Noki, is 20 incorrect. The other possibility is that if it was Noki, 21 that he gave the wrong name. But I don't think I can stop 22 Mr Mpofo leading the evidence in the way he's doing. It's 23 a matter that can be cleared up in cross-examination later, 24 so I disallow your objection. Carry on, Mr Mpofo. 25 MR MPOFU: Thank you, Chairperson. And</p>	<p style="text-align: right;">Page 5896</p> <p>1 CHAIRPERSON: The summary stops at 1576 – 2 MR MPOFU: At 1576 and then immediately 3 thereafter – 4 CHAIRPERSON: There appear to be two 5 statements, one is marked A5 – 6 MR MPOFU: Yes. 7 CHAIRPERSON: The second one, I think, is 8 marked A5 in the top right-hand corner. The other one, the 9 earlier one is not marked at all, or I don't know if it's 10 earlier, but earlier in the bundle, is not marked at all as 11 far as I can see. It is not dated. 12 MR MPOFU: Yes, yes, Chairperson, and 13 maybe just for the sake of completion, before I go to those 14 statements, if I may just quickly go through the statement 15 at 1551, Chair, which is also Captain Pule's statement. It 16 doesn't really say much, but it's just for sequence. If 17 you turn to page 1551 first, Mr Magidiwana, okay, I'm just 18 going to paraphrase. This is a statement of Captain Pule 19 taken on the 28th of August, 2012, wherein he basically says 20 that he came there and he visited at Sunninghill and you 21 were still in a serious condition, and with injuries from 22 the waist and you're still unable to talk or to walk, and 23 that your warning statement is still outstanding and the 24 nurses indicated that you will not be discharged soon. 25 Right, then we go to the unmarked statement, in other words</p>
<p style="text-align: right;">Page 5895</p> <p>1 perhaps my learned friend missed the question where I asked 2 the witness of the people who were lying there, who was the 3 only person with a white shirt and a green blanket. 4 CHAIRPERSON: I said you adduced evidence 5 which indicated – 6 MR MPOFU: Yes, thank you, Chairperson. 7 CHAIRPERSON: - that assume your case was 8 that this person must have been Noki because he's the only 9 one so dressed. 10 MR MPOFU: Thank you, Chair. 11 CHAIRPERSON: But I assume that matter 12 can be dealt with in cross-examination. 13 MR MPOFU: Yes, thank you very much, 14 Chairperson. Well, perhaps the police witnesses will clear 15 this all up, but from where you are standing, you have told 16 the Commission that you deny this and that even Captain 17 Pule said he believed you. Did he ever come back with the 18 fingerprint results that he took from you? That is now 19 Captain Pule. 20 MR MAGIDIWANA: Even now he has not come 21 back. 22 MR MPOFU: Now before we move away from 23 this, there is a – I just want to clear up some of the 24 statements that Captain Pule took from you. Chairperson, 25 the big numbering sort of stops –</p>	<p style="text-align: right;">Page 5897</p> <p>1 the one that is before A5. Now according to – or let me 2 put it this way. It says, "I don't deny the allegation put 3 against me. On 16-08-2012 I was at Wonderkop, Nkaneng, at 4 the hill, attending a meeting of Lonmin employees who were 5 on strike. I will further explain all before my lawyers." 6 Now the first part which I have discussed with you, we 7 don't know how it came about, maybe you can just assist the 8 Commission. Did you ever say that you did not deny the 9 allegation and, if you did, what allegation had been put to 10 you? 11 CHAIRPERSON: Before you ask the 12 question, would it not be helpful if we took the pages 13 after 1576 and marked them 1576A, B, C to – 14 MR MPOFU: That would be – 15 CHAIRPERSON: So when we refer to them – 16 MR MPOFU: Absolutely. 17 CHAIRPERSON: - then we know what we're 18 talking about. 19 MR MPOFU: Thank you, Chair. 20 CHAIRPERSON: So the first document then 21 is 1576A. Is that right? 22 MR MPOFU: A, yes. 23 CHAIRPERSON: 1576A. 24 MR MPOFU: The next one is B. 25 CHAIRPERSON: 1576B.</p>

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1 MR MPOFU: C, D.  
 2 CHAIRPERSON: Then A5 is 1576C –  
 3 MR MPOFU: To F.  
 4 CHAIRPERSON: I think that will make it  
 5 easier.  
 6 MR MPOFU: Thank you –  
 7 CHAIRPERSON: So I suggest you repeat the  
 8 question you asked when I put that to you, because I'm sure  
 9 the witness, like me, is unable to remember it, and then he  
 10 can then answer it.  
 11 MR MPOFU: Thank you, Chairperson. What  
 12 I read for you now comes from 1576B and the question I had  
 13 asked is regarding the first sentence of 1576B, which is,  
 14 "I don't deny the allegation put against me." What  
 15 allegation was that, and – or can you just assist the  
 16 Commission what that discussion, how that discussion went  
 17 about? I'm sorry, it's in the singular. It says, "I don't  
 18 deny the allegation put against me."  
 19 MR MAGIDIWANA: He asked me if I was  
 20 present on the mountain on the 16th, and I said yes, I was  
 21 present.  
 22 MR MPOFU: Okay, apart from that  
 23 allegation, was there any other thing that you said you  
 24 don't deny?  
 25 MR MAGIDIWANA: Can you repeat?

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1 MR MPOFU: Apart from that allegation of  
 2 whether or not you were at the koppie on the 16th, was there  
 3 any other allegation that you said you do not deny?  
 4 MR MAGIDIWANA: There is an allegation he  
 5 told me about.  
 6 MR MPOFU: Which one was it?  
 7 MR MAGIDIWANA: It's that of a firearm.  
 8 MR MPOFU: And on that allegation, what  
 9 was your response?  
 10 MR MAGIDIWANA: I said I know nothing  
 11 about a firearm.  
 12 MR MPOFU: Okay, now let's go to A5 –  
 13 sorry, 1576E. It starts at C, but I'm taking you to E.  
 14 Right, here the statement starts like this. "I deny the  
 15 allegation against me," and then you say, "On 16  
 16 September(?) I was at Wonderkop hill," I can't read this,  
 17 "where the mine employees were on strike and then on that  
 18 day the police started to surround us and I heard the sound  
 19 of a gunfire and they started to run into different  
 20 direction. I was shot on the left hip and I fell down.  
 21 The other bullets hit me on the other side of the body. I  
 22 sustained seven gunshots and on that day I was never in  
 23 possession of a firearm. I was only having a stick. That  
 24 is all."  
 25 [10:42] Okay, now once again what is confusing here is

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1 that both of these two statements that I've read to you are  
 2 not dated, so maybe Captain Pule one day will explain to us  
 3 –  
 4 CHAIRPERSON: That's not correct. I  
 5 think it's a fair assumption that the second statement is  
 6 dated the 4th of September. I think you see that from  
 7 1576C.  
 8 MR MPOFU: Thank you, Chair. The other  
 9 one is not, ja.  
 10 CHAIRPERSON: The other one, as far as I  
 11 can see, doesn't appear to be dated.  
 12 MR MPOFU: Yes, yes, so that's – yes, no,  
 13 maybe I should have said they're not both dated. The one  
 14 that is dated is the 1576C, and the point I really wanted  
 15 to make is maybe Captain Pule will then explain what the  
 16 sequence of the statement was and whether the one was a  
 17 correction of the other, or whatever the situation is, but  
 18 what is your reaction to the allegation about you holding a  
 19 firearm?  
 20 MR MAGIDIWANA: That thing is troubling  
 21 me.  
 22 CHAIRPERSON: Mr Mpofo, obviously the  
 23 matter will be taken up further, but I notice from page  
 24 1569 at the foot that the statement A4 was the  
 25 investigating officer's statement, and it appears to have

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1 been filed on the 28th of August, and that statement we see  
 2 at page 1551 and following, that's A4, I think, and then  
 3 the next statement that would have been filed, would have  
 4 been A5. The investigation diary, as far as I can see, we  
 5 haven't got the page which refers to the filing of A5, but  
 6 A5 is, as we've seen, the statement –  
 7 MR MPOFU: Of the 4th of the 9th.  
 8 CHAIRPERSON: Of the 4th of the 9th.  
 9 MR MPOFU: Correct.  
 10 CHAIRPERSON: Which is what you would  
 11 describe as the second statement -  
 12 MR MPOFU: Yes.  
 13 CHAIRPERSON: - where there's a denial of  
 14 the allegation of the firearm.  
 15 MR MPOFU: Yes.  
 16 CHAIRPERSON: So the other statement  
 17 which isn't marked with an A marking –  
 18 MR MPOFU: Yes.  
 19 CHAIRPERSON: - which is the marking for  
 20 statements that were filed in the docket, it's not marked  
 21 and wouldn't appear to have been filed because the next one  
 22 in the docket is A5, which we've seen.  
 23 MR MPOFU: That's correct, Chair.  
 24 CHAIRPERSON: So I think you've probably  
 25 done enough from this witness to raise certain points that

<p style="text-align: right;">Page 5902</p> <p>1 form the basis of cross-examination of the policemen, but I 2 don't know that we need spend much more time on it at this 3 stage. I don't want to stop you – 4 MR MPOFU: No, no – 5 CHAIRPERSON: - from making good points, 6 but I think you've made certain points which – 7 MR MPOFU: Thank you, Chair. 8 CHAIRPERSON: - read with the point I've 9 put to you, I think may – 10 MR MPOFU: Yes. 11 CHAIRPERSON: But my colleague Adv Hemraj 12 also wants to say something. 13 MR MPOFU: Thank you, Chair. 14 CHAIRPERSON: What Adv Hemraj pointed, 15 she points to page 1567 where we have, this is part of the 16 investigation diary. The investigation diary doesn't 17 appear to be filed in the right order, but we'll deal with 18 that later. 19 MR MPOFU: Yes. 20 CHAIRPERSON: But 1567, which is C, which 21 is the third page of the investigation diary, C3, contains 22 an entry by the officer I think, dated the 20th of August, 23 in which he says in subparagraph 5 – 24 MR MPOFU: 5, yes. 25 CHAIRPERSON: "Please obtain the</p>	<p style="text-align: right;">Page 5904</p> <p>1 still in a serious and weak condition. 2 CHAIRPERSON: Ja, ja. Anyway, the point 3 I'm making is I think you've put enough evidential material 4 – 5 MR MPOFU: Yes. 6 CHAIRPERSON: - on the table in relation 7 to the statement, and I don't know, obviously the matter 8 may be dealt with later in cross-examination and evidence 9 by other witnesses, but I think you can possibly move on to 10 another point with this witness. 11 MR MPOFU: Thank you, Chairperson. Thank 12 you very much. Right, Chairperson, if it's convenient to 13 take the break now, because the next thing I'm going to 14 deal with is a series of footage and then while we set that 15 up we could do the, take the break. 16 CHAIRPERSON: Yes, the Commission will 17 take the tea adjournment at this stage. 18 [COMMISSION ADJOURNS COMMISSION RESUMES] 19 [11:21] CHAIRPERSON: The Commission resumes. Mr 20 Magidiwana you're still under oath. Mr Mpofo, have you 21 found the video clips you want to show? 22 MR MPOFU: Sorry, Chair, sorry. 23 CHAIRPERSON: The video clips you want to 24 show. 25 MR MPOFU: Yes we have thank you very</p>
<p style="text-align: right;">Page 5903</p> <p>1 accused's warning statement." So the accused's warning 2 statement hadn't been filed then at least by the 20th of 3 August. 4 MR MPOFU: Well, no – well, yes. Well, 5 we know that there was a request, but that request was 6 unfulfillable. 7 CHAIRPERSON: Yes, I say it hadn't been 8 filed. That's all I say. 9 MR MPOFU: Yes. 10 CHAIRPERSON: It hadn't been filed. And 11 then there's the entry on the 28th which we see the 12 reference to A4, which as we've seen is the investigating 13 officer's statement - 14 MR MPOFU: Yes. 15 CHAIRPERSON: - which is A4, is dealt 16 with in the investigation diary and the entry dated the 28th 17 of August at the foot of page 1569 doesn't talk about the 18 filing of any statement – 19 MR MPOFU: Yes. 20 CHAIRPERSON: - by the accused, and on 21 the same entry, the second paragraph of that entry states 22 that the witness is still under medication, I think that's 23 doctor's medication, and is unable to walk or write. I 24 think that's the passage you referred to already. 25 MR MPOFU: Yes, and where it says he's</p>	<p style="text-align: right;">Page 5905</p> <p>1 much, Chairperson, thank you. Much appreciated. Mr 2 Chairperson, there's something that I wanted, Mr 3 Chairperson there's something that I forgot to place on the 4 record at the beginning this morning. 5 CHAIRPERSON: Do I correctly assume that 6 we now have Mr Magidiwana Senior with us? 7 MR MPOFU: Yes that is so, Chairperson, 8 except that his surname is not the same as the son but he 9 is here. 10 CHAIRPERSON: I see, thank you. 11 MR MPOFU: And he asked me to apologise, 12 Chairperson, he didn't know that he would be called up 13 today so he didn't bring his jacket. 14 CHAIRPERSON: He is following the example 15 of Counsel. You wanted to tell us something before you 16 show us the pictures and ask the witness further questions. 17 MR MPOFU: Yes Chairperson. I just 18 wanted to clear something out, some time ago I think, it 19 must been in October, I put a proposition to I think it was 20 Colonel Botha, if I'm not mistaken and the basis of that 21 proposition would have suggested that this witness was 22 arrested at scene two and I just wanted to make it so that 23 it's not used against him. The mistake was mine, at that 24 stage I had not even consulted with him, he was still in 25 hospital and I was working on the basis of the documents,</p>



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1 so I don't want to clear it. Maybe if it comes in the  
 2 cross examination then it might look like he's been  
 3 evasive. All the blame for that should be placed on me.  
 4 It was about this question about the gun if you remember,  
 5 Chairperson, where they were found ja. Right, Mr  
 6 Magidiwana, before we play some footage I just want to  
 7 clear up a few things that have been raised either with Mr  
 8 Phasha or yes I think with Mr Phasha specifically. Just so  
 9 that we could clear them up. One of those pertains to a  
 10 bit of the geography around the kraal. Is it so that as  
 11 the person who keeps your livestock there you are familiar  
 12 with that area around the kraal?

13 MR MAGIDIWANA: Yes.

14 MR MPOFU: Now if we go to - Chairperson  
 15 I'm referring to B15. I don't know if it can be called up  
 16 immediately, exhibit B15. Have you got it? Thank you.

17 COMMISSIONER HEMRAJ: For the purposes of  
 18 the technician, Chair, it's in Exhibit document 1 folder.

19 MR MPOFU: Okay in the meantime we can  
 20 use - I've got B, Mr Interpreter okay. Can you go to B16  
 21 then? We won't use the picture, we can achieve the same -  
 22 B16 that's a stats plan. Have you got it?

23 MR MAGIDIWANA: Yes I have.

24 MR MPOFU: Okay.

25 CHAIRPERSON: The picture is being shown

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1 to us but it's shown sideways. I suggest that attempts be  
 2 made to right it so we can see it without straining our  
 3 necks. Thank you. Enlarge, it would those of us suffering  
 4 from Presbyopia.

5 MR MPOFU: Thank you, thank you very  
 6 much. Alright, the question that was put by various  
 7 persons about why people didn't run towards the other  
 8 kraal. I just want you to confirm, look at the letter A,  
 9 the actual letter, not where it's pointing, is it correct  
 10 that where that letter is, is where the shack that you see  
 11 on B15, the shack that there's been a lot of evidence  
 12 about, the solitary shack opposite the kraal, the small  
 13 kraal.

14 MR MAGIDIWANA: Yes.

15 MR MPOFU: And if you look at it at B15  
 16 that shack it looks like it has two black stripes on top of  
 17 it.

18 MR MAGIDIWANA: Yes.

19 MR MPOFU: Now according to B16 the wire  
 20 fence that basically separates the kraal from that shack  
 21 runs right through towards - well it stops at the end of  
 22 the picture and is basically - would it be correct to say  
 23 that fencing is between the veld which is in the area of  
 24 the koppies and the residential settlement?

25 MR MAGIDIWANA: It is so.

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1 MR MPOFU: Okay. Then going again to  
 2 what I call the geography around those areas when you came  
 3 to the mountain or to the koppie in the morning and then  
 4 you went to lunch and then you came back which road did you  
 5 use?

6 MR MAGIDIWANA: The one that is, the path  
 7 from Marikana and leading to the informal settlement.

8 MR MPOFU: And is that the road that  
 9 passes directly opposite the kraal, the entrance of the  
 10 kraal?

11 MR MAGIDIWANA: Yes.

12 MR MPOFU: And the vast majority of the  
 13 people who were at koppie, who came from the Nkaneng side  
 14 which road did they use to get there?

15 MR MAGIDIWANA: They were walking on that  
 16 one.

17 MR MPOFU: And your evidence was that you  
 18 arrived quite early, were you able to observe most of the  
 19 people coming and sometimes even going?

20 MR MAGIDIWANA: I could see them.

21 MR MPOFU: And before the episode that we  
 22 spoke about where the Nyala closed off the road near the  
 23 kraal did you observe what happened to part of the crowd?

24 MR MAGIDIWANA: I saw.

25 MR MPOFU: What did they do?

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1 MR MAGIDIWANA: They walk on that road on  
 2 which we were going to pass through.

3 MR MPOFU: And where did they proceed to?  
 4 And I guess what I'm really asking you is when your group  
 5 according to you made that attempt which was blocked by  
 6 that Nyala were you the first people to use that road as an  
 7 escape route as it were?

8 MR MAGIDIWANA: We were following the  
 9 others who had already left.

10 MR MPOFU: Okay. Alright we'll deal with  
 11 that as well, with the pictures and videos, I just wanted  
 12 to lay the basis, Chairperson. And given the evidence that  
 13 you've now given about the fencing and all that was there  
 14 any other way to access that road except the gap that you  
 15 say in your statement was the only gap left.

16 MR MAGIDIWANA: There was no other way.

17 MR MPOFU: Alright. Now the evidence is  
 18 that at least the group that you were part of I accept that  
 19 you say other people had already escaped but the group that  
 20 you were part of at first tried to - I'm trying to put this  
 21 neutrally, to move ahead of the Nyala or Nyala number four  
 22 which was pulling the wire. You remember that?

23 MR MAGIDIWANA: Yes.

24 MR MPOFU: And then what the police call  
 25 the second attempt was at the point at which the Nyala met

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1 up with the kraal and closed off the road. Do you remember  
 2 that?  
 3 MR MAGIDIWANA: I remember it.  
 4 MR MPOFU: And then the last and fatal  
 5 attempt was the one where after you had gone behind the  
 6 kraal, is that correct?  
 7 MR MAGIDIWANA: I remember it.  
 8 MR MPOFU: Okay. In all those efforts  
 9 what did you, now I'm asking you, intend to do?  
 10 MR MAGIDIWANA: I wanted to go to  
 11 Nkaneng.  
 12 MR MPOFU: Okay. And the police are  
 13 going to suggest that your intention in all those attempts  
 14 was to attack the police I suppose with your stick.  
 15 MR MAGIDIWANA: There is no such a thing.  
 16 MR MPOFU: Now can we go to the first  
 17 video? I'm going to need the great assistance of  
 18 MS.[inaudible] on this one. How we've identified is C120  
 19 from the SAPS hard drive but I don't know if that's formal  
 20 identification. It's the 15th of August.  
 21 CHAIRPERSON: Have we not seen it before,  
 22 because if we haven't then it must be given an exhibit  
 23 number.  
 24 MR MPOFU: I think we have Chair, we've  
 25 seen this one certainly.

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1 CHAIRPERSON: At some stage it must be  
 2 identified.  
 3 MR MPOFU: Yes thank.  
 4 CHAIRPERSON: It will be correct exhibit  
 5 identification.  
 6 MR MPOFU: Okay. When I say video one  
 7 and so on Chair it's for the sake of everybody, you can  
 8 ignore that. That is just my code with the people up there  
 9 but we will identify the videos themselves. Okay can you  
 10 do number one?  
 11 [11:41] [VIDEO RECORDING PLAYED]  
 12 MR MPOFU: Okay, I'm just going to make  
 13 certain observations from this video for your confirmation  
 14 and if any of them are contested then it will be played at  
 15 some other stage then. Were you able to hear the voiceover  
 16 from the person who probably took the video, suggest that  
 17 it was taken at quarter to 11, 10:45 in the morning of the  
 18 16th?  
 19 MR MAGIDIWANA: I heard him.  
 20 MR MPOFU: Now this is a matter that I  
 21 also dealt with, with Mr Phatsha, but at that stage I  
 22 wasn't sure where I got the idea of the time. Did you  
 23 observe that moving up and down of those people singing as  
 24 early as around that time?  
 25 MR MAGIDIWANA: I see them.

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1 MR MPOFU: And that process of singing  
 2 and moving up and down, how long did it carry on for?  
 3 MR MAGIDIWANA: They did that from the  
 4 morning until late.  
 5 MR MPOFU: And who was doing this? Was  
 6 it the same people?  
 7 MR MAGIDIWANA: It was different people  
 8 because not all the people were sitting in one and the same  
 9 place. The others who were sitting elsewhere would also  
 10 stand up and do likewise.  
 11 MR MPOFU: Okay, now one can also hear  
 12 the noise, the droning noise of the helicopters. Did you  
 13 observe around that time, 11-ish, that the helicopters were  
 14 already there?  
 15 MR MAGIDIWANA: Yes.  
 16 MR MPOFU: Then you can see a kind of a  
 17 line of the Nyalas which were pulling barbed wire trailers,  
 18 which had not been deployed. Did you observe that?  
 19 MR MAGIDIWANA: Yes.  
 20 MR MPOFU: And did you observe that some  
 21 of the policemen were – I wouldn't call it milling around,  
 22 but they were outside of the Nyalas?  
 23 MR MAGIDIWANA: Yes.  
 24 MR MPOFU: And more relevant to the issue  
 25 that we were discussing before the video, you see a number

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1 of people who seem to be arriving, walking and joining the  
 2 crowd.  
 3 MR MAGIDIWANA: It is so.  
 4 MR MPOFU: Which road were those people  
 5 using to arrive?  
 6 MR MAGIDIWANA: They were using, or  
 7 walking on the road on which we normally walk.  
 8 MR MPOFU: Yes Sir, I know I've asked you  
 9 this before, but which one is that?  
 10 MR MAGIDIWANA: It is the one from  
 11 Marikana and leading to Nkaneng.  
 12 MR MPOFU: Now you see that the, or the  
 13 other thing you can observe there is that there are two  
 14 copies. There's the big koppie and then there's koppie  
 15 number 2, which is the smaller one next to it, and you see  
 16 that they're all, they're both heavily populated with  
 17 people. Is that so?  
 18 MR MAGIDIWANA: It is so.  
 19 MR MPOFU: And even a group of people who  
 20 are standing on a big rock which seems to be behind the  
 21 crowd itself. Are you able to identify that place?  
 22 MR MAGIDIWANA: Yes.  
 23 MR MPOFU: Can you please rewind the  
 24 video to 2:52? Thank you. Forward.  
 25 [VIDEO RECORDING PLAYED]

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1 MR MPOFU: Okay, I think we'll – thank  
 2 you. Sorry, we passed that. You saw in this replay that  
 3 there was a crowd that were standing on a large rock at the  
 4 back?  
 5 MR MAGIDIWANA: Yes, I saw them.  
 6 MR MPOFU: Chairperson, we have not been  
 7 able to ascertain whether those people are standing at the  
 8 rock in the other koppie 2, but visible, so I'll leave that  
 9 issue maybe for another witness, but that's what it looks  
 10 like at this stage. Also were you able to observe that at  
 11 least as at that time there was quite a huge crowd of  
 12 people already?  
 13 MR MAGIDIWANA: Indeed, very much.  
 14 MR MPOFU: Are you able to say from when  
 15 the venue started filling up rapidly, from what time?  
 16 MR MAGIDIWANA: It started getting full  
 17 in the morning.  
 18 MR MPOFU: Now when you arrived, which  
 19 according to you was quite early, were there people already  
 20 at the koppie, and if there were, what were they doing?  
 21 MR MAGIDIWANA: There were people who  
 22 were warming themselves around a fire.  
 23 MR MPOFU: And at the end of this video,  
 24 are you able to see there's a place with ashes, or rather,  
 25 with ash in some kind of circle. Chairperson, it's close

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1 to the pylon which is next to one of the barb wire Nyalas.  
 2 MR MAGIDIWANA: I saw it.  
 3 MR MPOFU: Is that where the people were  
 4 sitting around the fire?  
 5 MR MAGIDIWANA: Yes.  
 6 MR MPOFU: What did you observe about  
 7 these people? What did they look like?  
 8 MR MAGIDIWANA: They were getting cold  
 9 and were dirty.  
 10 MR MPOFU: Did you get the impression  
 11 that they were coming from their homes?  
 12 MR MAGIDIWANA: It was clear that they  
 13 had slept there.  
 14 CHAIRPERSON: What time was this that  
 15 you're talking about when you saw them warming themselves  
 16 by the fire?  
 17 MR MAGIDIWANA: It was in the early  
 18 morning.  
 19 CHAIRPERSON: Thank you.  
 20 MR MPOFU: Thank you. You can also  
 21 observe on this video, and maybe also the next one, that as  
 22 the people were arriving they would find a place to sit.  
 23 Was there a particular pattern of where people could sit?  
 24 MR MAGIDIWANA: There was none.  
 25 MR MPOFU: And the people who were in

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1 front, or rather the people who were arriving seemed to be  
 2 sitting more nearer to the smaller koppie. Did you observe  
 3 that?  
 4 MR MAGIDIWANA: Can you repeat?  
 5 MR MPOFU: Did you observe that the  
 6 people who were arriving that you've identified who were  
 7 walking up that road, tended to sit next to the smaller  
 8 koppie?  
 9 MR MAGIDIWANA: People sat wherever they  
 10 wanted to sit.  
 11 MR MPOFU: Okay, alright, I think it will  
 12 be clearer maybe in the next video. Can you do number 2?  
 13 MS PILLAY: Chair, if I could just  
 14 indicate that the video that was just shown now by Mr Mpofu  
 15 has not been entered as an exhibit.  
 16 MR MPOFU: Okay.  
 17 MS PILLAY: So it would need to be marked  
 18 as EEE3.1.  
 19 MR MPOFU: 3.1.  
 20 CHAIRPERSON: That indicates that –  
 21 MR MPOFU: EEE3.1?  
 22 MS PILLAY: 3.1.  
 23 CHAIRPERSON: Thank you, Ms Pillay.  
 24 MR MPOFU: Thank you very much, Ms  
 25 Pillay. Can you do number 2, please?

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1 [VIDEO RECORDING PLAYED]  
 2 MR MPOFU: Sorry, can you pause?  
 3 Chairperson, I've just realised, although we haven't yet  
 4 got into the videos of the horrific scenes, it might well  
 5 be opportune to give the warning because I'm thinking that  
 6 even though people are not injured, maybe when people see  
 7 loved ones, even as they are still alive, it might be –  
 8 [12:01] CHAIRPERSON: Yes, Mr Mpofu tells me that  
 9 on the video that we are being shown there will be pictures  
 10 of some of the people who were killed on the 16th, and it  
 11 may be that even though these pictures will not be of them  
 12 after they had been shot, nevertheless seeing them may  
 13 bring back very sad, unhappy, and distressing memories to  
 14 their relatives and loved ones, and so before the video is  
 15 shown further I ask those who are responsible for showing  
 16 it to hold back for two minutes to enable members of the  
 17 family who wish to leave the auditorium, to do so.  
 18 MS PILLAY: Chair, if I may indicate for  
 19 the purposes of the record that the video now shown by Mr  
 20 Mpofu is exhibit CC5.  
 21 CHAIRPERSON: Thank you, Ms Pillay. CC5.  
 22 MR MPOFU: Okay, thank you very much,  
 23 Chairperson. You can continue.  
 24 [VIDEO RECORDING PLAYED]  
 25 MR MPOFU: Sorry, if you haven't reached,

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1 can you start at 2:40? If you haven't reached –  
 2 [VIDEO RECORDING PLAYED]  
 3 MR MPOFU: Alright, can you go closer to  
 4 the screen? Or well, you can't. Can you blow the picture  
 5 up? Can you see yourself in that frame from where you are  
 6 sitting, Mr Magidiwana?  
 7 MR MAGIDIWANA: I cannot see myself in  
 8 that picture.  
 9 MR MPOFU: Alright, can you move a little  
 10 bit to 2:44? Ja, okay, can you see yourself now?  
 11 MR MAGIDIWANA: I can see myself.  
 12 MR MPOFU: Chairperson, because of the  
 13 witness's mobility I'll just assist in identifying him now.  
 14 CHAIRPERSON: You've gone through this  
 15 video with him, have you?  
 16 MR MPOFU: I have, Chair.  
 17 CHAIRPERSON: So he'll know what he  
 18 pointed out to you previously.  
 19 MR MPOFU: Yes, Chairperson.  
 20 CHAIRPERSON: Okay, I take it there's no  
 21 objection from anybody.  
 22 MR NGALWANA: I don't know where he is.  
 23 I need to know where he says he is, Chairperson.  
 24 MR MPOFU: Ja, that's what I'm saying I'm  
 25 going to assist him –

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1 CHAIRPERSON: Mr Mpofo is very kindly  
 2 going to assist you, so be grateful to him when he does  
 3 that.  
 4 MR MPOFU: Okay, can we do it like this  
 5 maybe, Chairperson? Can I ask Mr Mahlangu to assist us?  
 6 Yes, if you can go to the screen, Sir, thank you. The  
 7 person who is wearing a green top and has a red blanket, is  
 8 Mr Mahlangu pointing at you there, Mr Magidiwana?  
 9 MR MAGIDIWANA: It's me.  
 10 CHAIRPERSON: I take it the copy of – oh  
 11 no, this hasn't been, this isn't in exhibit L, is it? So  
 12 we'll have to describe fairly particularly what is being  
 13 pointed out because there isn't a hardcopy document that we  
 14 can mark.  
 15 MR MPOFU: Yes, Chairperson.  
 16 CHAIRPERSON: More or less in the middle  
 17 of the front row, I would say slightly to the left of the  
 18 middle of the front row, there is a person who has on the  
 19 right of the picture what appears to be a red – what's it?  
 20 A red sweater or a red –  
 21 MR MAHLANGU: Blanket.  
 22 CHAIRPERSON: Red blanket. Then on the  
 23 other part of his body below, from his shoulders downwards  
 24 there is a green garment, I'm not quite sure how one can  
 25 describe it. Can you help me, Mr Mpofo?

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1 MR MPOFU: Yes, Chairperson, it's a  
 2 sweater, or a tracksuit top, but I think I'll be happy with  
 3 sweater, a green sweater, yes.  
 4 CHAIRPERSON: Perhaps we should say a  
 5 top. A top is sort of a neutral description –  
 6 MR MPOFU: Correct.  
 7 CHAIRPERSON: So you agree with my  
 8 description that it's more or less in the middle, just to  
 9 the left of the middle, the right-hand side of the person  
 10 as seen on – his left side, but right-hand side as seen on  
 11 the photograph, there is a red blanket and then to the left  
 12 of that is a garment from his shoulders downwards which is  
 13 green and which can be described as a top.  
 14 MR MPOFU: Thank you, Chairperson. And  
 15 Mr Magidiwana, would it be correct to say just from my  
 16 observation there are about two people in front of you,  
 17 would then that suggest that you were somewhere in the  
 18 second or third row? This will be clearer in another video  
 19 anyway, so I'll just, you can just tell us where you were  
 20 sitting rather than even depending on the picture.  
 21 CHAIRPERSON: Does he identify himself as  
 22 the person who's being identified by you?  
 23 MR MPOFU: Thank you, yes. Are you the  
 24 person who was pointed by Mr Mahlangu and that the  
 25 Chairperson and I have been describing? Is that you, Mr

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1 Magidiwana?  
 2 MR MAGIDIWANA: It's me.  
 3 MR MPOFU: Thank you. Can we continue  
 4 with the video? Thank you.  
 5 [VIDEO RECORDING PLAYED]  
 6 MR MPOFU: Thank you. Okay, again I'll  
 7 make some observations and you can confirm. If there's an  
 8 objection then we'll ask it in a different manner. That  
 9 video features Mr Mathunjwa and some of the leaders at the  
 10 koppie. Is that correct?  
 11 MR MAGIDIWANA: It is so.  
 12 MR MPOFU: And it's common cause that it  
 13 was taken during Mr Mathunjwa's first visit at the koppie.  
 14 Would you go along with that?  
 15 MR MAGIDIWANA: I agree.  
 16 MR MPOFU: Okay, now once again did you  
 17 observe that there were police who were outside the  
 18 vehicles, but not far from them?  
 19 MR MAGIDIWANA: Yes.  
 20 MR MPOFU: And did you observe that a  
 21 large number of what I will call protesters, kept on  
 22 arriving and moving behind those who were seated?  
 23 MR MAGIDIWANA: Yes.  
 24 MR MPOFU: And people can be observed  
 25 taking seats at different points of the crowd.

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1 MR MAGIDIWANA: It is so.  
 2 MR MPOFU: And that on the side which is  
 3 closer to the kraal there's a growing number, a thinning  
 4 out kind of line of people which was forming up. I'll show  
 5 that part again. Do you remember that?  
 6 MR MAGIDIWANA: It is so.  
 7 MR MPOFU: Sorry, Chair, I'm reading at  
 8 the wrong place. My next question was going to be out of  
 9 order. Did you see, or rather did you observe that they  
 10 are singing a song, one of the Xhosa folk songs, "Ohingwe?"  
 11 MR MAGIDIWANA: I heard.  
 12 MR MPOFU: And while that song is  
 13 continuing, the rhythm is matched by a clicking of sounds,  
 14 which we all accept would be the clicking of the weapons  
 15 that the people were holding.  
 16 MR MAGIDIWANA: Yes.  
 17 MR MPOFU: And you saw that there was  
 18 some interactions between Mr Mathunjwa and the leaders,  
 19 including Mr Noki who's visible, identifiable by his green  
 20 blanket, and that Mr Mathunjwa's vehicle can be observed  
 21 parked in front of the crowd?  
 22 MR MAGIDIWANA: I saw it.  
 23 MR MPOFU: And right alongside Mr  
 24 Mathunjwa's vehicle you can see that patch of ash and burnt  
 25 grass?

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1 MR MAGIDIWANA: It's visible.  
 2 MR MPOFU: And once again the crowd is  
 3 quite a huge crowd and growing in number, as you can see a  
 4 number of arrivals.  
 5 MR MAGIDIWANA: It is so.  
 6 MR MPOFU: And the group that had been  
 7 standing on the big rock behind is no longer there, is no  
 8 longer standing there.  
 9 MR MAGIDIWANA: I never noticed that one.  
 10 MR MPOFU: Okay, if it's becomes  
 11 important we'll play it again, but I don't think it is.  
 12 Can you just, before we move to the next one, can you  
 13 assist the Commission, but your understanding of this  
 14 action of the clicking of the weapons while people were  
 15 singing, what did you observe about that?  
 16 MR MAGIDIWANA: When a person is tired of  
 17 clapping hands, whenever a person would be tired of  
 18 clapping hands, he would then clap with the weapons  
 19 together.  
 20 MR MPOFU: Yes, well it has been  
 21 suggested, at least two versions of that have been given,  
 22 one by Mr Mathunjwa, which is closer to what you are  
 23 saying, but there has also been a version that suggested  
 24 that the clicking of the weapons was a sign of aggression.  
 25 Can you comment on that? Is that what you observed?

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1 [12:21] MR MAGIDIWANA: That person is the one  
 2 who could know about that. I know nothing about that.  
 3 MR MPOFU: Well, I'm asking you because  
 4 you were there and maybe you can assist us. When you  
 5 observed people clicking their weapons, did you observe  
 6 that that was accompanied by any aggression?  
 7 MR MAGIDIWANA: The reason why I am  
 8 saying I don't know is because even at the arrival of Mr  
 9 Mathunjwa, that very same thing was done. Even if a person  
 10 would be singing he would be doing it on his own.  
 11 MR MPOFU: And in your observation was Mr  
 12 Mathunjwa welcomed with any aggression?  
 13 MR MAGIDIWANA: People were happy.  
 14 MR MPOFU: And they were clicking their  
 15 weapons?  
 16 MR MAGIDIWANA: Yes, those who were  
 17 clicking their weapons and the others would clap their  
 18 hands.  
 19 MR MPOFU: Thank you very much, can you  
 20 play video 3?  
 21 [VIDEO RECORDING PLAYED]  
 22 MR MPOFU: Can you pause? Can you see  
 23 yourself in the third row there?  
 24 MR MAGIDIWANA: I can see myself.  
 25 CHAIRPERSON: I suppose it's best to

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1 describe him where you can see him on the picture, for  
 2 reasons we discussed earlier. Sorry, Mr Mpofo, inasmuch as  
 3 we've got a hard copy, it's desirable I think to describe  
 4 him as he is to be seen on the footage.  
 5 MR MPOFU: Yes, thank you, Chair.  
 6 CHAIRPERSON: I did the last one; would  
 7 you like to do this one?  
 8 MR MPOFU: Thank you, Chairperson.  
 9 Before that, can you just rewind a little bit, but with Mr  
 10 Magidiwana still visible? Okay.  
 11 MR NGALWANA: Sorry Chairperson, just for  
 12 ease of reference, shall I take it this is a continuation  
 13 of CC5, as was the last one that shows Mr Mathunjwa?  
 14 Because I've lost track.  
 15 MS PILLAY: Chair, it's not. It's  
 16 actually either CC10, 11 or 12. We're just trying to  
 17 figure out which one of the three it is.  
 18 MR MPOFU: Okay, thank you. It will be  
 19 identified. –  
 20 CHAIRPERSON: We'll be told in due course  
 21 what it is. Which one is the witness?  
 22 MR MPOFU: In the green top, Chairperson,  
 23 on the, what seems to be the third row. On the first row  
 24 there's somebody holding a banner that's written "tina funa  
 25 lo R12 500."

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1 CHAIRPERSON: There's a gentleman in a,  
 2 what looks like a blue top of some sorts, possibly a jacket  
 3 –  
 4 MR MPOFU: Yes.  
 5 CHAIRPERSON: Anorak or something,  
 6 holding this sign which contains the reference to 12 500,  
 7 and immediately on his left, to the right of him on the  
 8 picture there is the witness with a green top and probably  
 9 accurate to say that his right elbow is more or less in  
 10 line with the left elbow of the gentleman holding the R12  
 11 500 poster. Is that correct?  
 12 MR MPOFU: No, Chairperson, sorry. I can  
 13 see how one can make that mistake. The gentleman holding  
 14 the R12 500 is the one in front who has the –  
 15 CHAIRPERSON: I see.  
 16 MR MPOFU: - black and white striped –  
 17 CHAIRPERSON: I see, so I'm sorry. It –  
 18 MR MPOFU: That's what I would call the  
 19 first row.  
 20 CHAIRPERSON: That's the first row.  
 21 MR MPOFU: And then the gentleman you  
 22 identified would be the second row, and the witness behind  
 23 that.  
 24 CHAIRPERSON: Yes, and the gentleman in  
 25 the second row, the pole to which the poster is attached

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1 runs in front of his hands, but if one looks closely one  
 2 can see that I was wrong; he's not holding it, he's just in  
 3 front of it.  
 4 MR MPOFU: Yes. And on this picture, Mr  
 5 Magidiwana, we can read the white writing on your top and  
 6 it's "Uzzi." Is that correct? U-Z-Z-I.  
 7 MR MAGIDIWANA: It is so.  
 8 MR MPOFU: And we can see also the tip of  
 9 your red blanket, or towel, appearing behind the person in  
 10 front of you, who seems to be on the second row.  
 11 MR MAGIDIWANA: It is so.  
 12 MR MPOFU: Okay, I'm going to ask you a  
 13 few questions just about this frame. These people who are  
 14 now sitting in front of you, is it correct that some of  
 15 them were not there when we saw you for the first time  
 16 earlier?  
 17 MR MAGIDIWANA: They had not yet arrived.  
 18 MR MPOFU: Well, I don't expect if you  
 19 remember an exact time, but would you be able to say at  
 20 what stage those rows in front of you started filling up?  
 21 MR MAGIDIWANA: When Mr Mathunjwa  
 22 addressed the crowd, people all wanted to come closer and  
 23 sit in front.  
 24 MR MPOFU: Thank you, and did anyone stop  
 25 them and say no, no, you can't sit here, this is for Mr

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1 Magidiwana?  
 2 MR MAGIDIWANA: No, there was no such a  
 3 person.  
 4 MR MPOFU: And then I'm not sure if you  
 5 can see this, but in front of you but behind the pole that  
 6 is used for the poster, you can see a stick which fits the  
 7 description of "ibungusa" that you spoke about. Are you  
 8 able to identify whether that was where you put your stick,  
 9 or is it another one?  
 10 MR MAGIDIWANA: Yes.  
 11 CHAIRPERSON: Yes what? Is that your  
 12 knobkierie which you had with you, which you put in front  
 13 of you? Is that correct?  
 14 MR MAGIDIWANA: Yes.  
 15 MR MPOFU: Okay, alright, can you play  
 16 the rest of the video? Thank you.  
 17 [VIDEO RECORDING PLAYED]  
 18 MR MPOFU: Thank you very much. Yes,  
 19 that's for A. Ja, we saw that yesterday, that's the  
 20 bishop. Chairperson, the next video we'll require the  
 21 warning maybe to be repeated because we're now getting into  
 22 –  
 23 CHAIRPERSON: Mr Mpofo says that the next  
 24 video will show pictures of people who were killed on the  
 25 16th. Their relations and loved ones who see those pictures

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1 may well find them very distressing. I'm giving them an  
 2 opportunity to leave the auditorium and I ask those who are  
 3 showing the videos not to do so until two minutes have  
 4 elapsed after the interpreter has interpreted what I've  
 5 just said.  
 6 MR MPOFU: I think this one is exhibit  
 7 AA7, subject to correction by Ms Pillay.  
 8 MS PILLAY: Chair, if we could just deal  
 9 with the previous video first. We've now established that  
 10 it actually wasn't marked as an exhibit, so the previous  
 11 video, which is SAPS external hard  
 12 drive\videos\20120816\107, that will be marked as EEE3.2.  
 13 MR MPOFU: Okay, thank you. 4B.  
 14 [VIDEO RECORDING PLAYED]  
 15 MR MPOFU: Mr Magidiwana, on that clip,  
 16 if you can confirm, you appeared there three times, once  
 17 with a group that seems to be walking down the road, the  
 18 second time between the two Nyalas when there was shooting  
 19 through that gap by the police, and then when they did the  
 20 backdrop you appeared in the crowd. Would you agree with  
 21 that?  
 22 MR MAGIDIWANA: I saw it.  
 23 MR MPOFU: And just for cross-reference,  
 24 it might not be the exact picture, but the position that  
 25 you were in the second time that I mentioned, if you go to

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1 L206, exhibit L, slide 206, the person who's identified  
2 there as number 1, who a couple of days ago was incorrectly  
3 identified as Mr Noki, is that you?  
4 MR MAGIDIWANA: It's me.  
5 MR MPOFU: And what are you holding?  
6 MR MAGIDIWANA: I am carrying a stick.  
7 MR MPOFU: Were you carrying anything  
8 else?  
9 MR MAGIDIWANA: There was nothing else.  
10 MR MPOFU: Now if you can just – I'm  
11 sorry, can you play the video again? Thank you.  
12 [VIDEO RECORDING PLAYED]  
13 [12:41] MR MPOFU: Thank you. The first part  
14 where we see you walking with other people, can you explain  
15 to the Commission, you've already testified about your  
16 various movements in the area of the kraal but at what  
17 stage was that, the first picture where we see you?  
18 MR MAGIDIWANA: It was at the time we had  
19 left the koppie and on our way to Nkaneng. It was when the  
20 Nyalas started deploying the barbed wire, but the others  
21 had already gone through. When we reached that place, then  
22 the Nyala increased the speed. It closed there near the  
23 kraal. We then turned around the kraal. It was when we  
24 reached that place that we were pointed at with objects, or  
25 things that had holes, and were shot at.

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1 MR MPOFU: Yes, okay thank you. So do I  
2 understand that that first frame that we saw was before the  
3 Nyala closed against the kraal?  
4 MR MAGIDIWANA: There are two parts, or  
5 episodes that appear there.  
6 MR MPOFU: Yes, that is true. We are  
7 still dealing with the first one where you are walking with  
8 a group of people, not where the Nyalas are visible.  
9 MR MAGIDIWANA: That is where they  
10 closed, it closed.  
11 MR MPOFU: And the road, or well it looks  
12 like from the thing you are walking on, on a road. Is that  
13 the road that goes, if it was not for the blockage, that  
14 would have gone past the kraal?  
15 MR MAGIDIWANA: We were going to go past  
16 it.  
17 MR MPOFU: And do I understand your  
18 evidence to be saying that other people went through and  
19 passed the kraal into the settlement, but this group was  
20 blocked by that Nyala?  
21 MR MAGIDIWANA: It is so.  
22 MR MPOFU: And in this group, is it so  
23 that there were some of the leaders at the koppie, of the  
24 activities at the koppie?  
25 MR MAGIDIWANA: The group in which I was,

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1 it was the people who were talking in the mountain.  
2 MR MPOFU: Yes, and if we then accept  
3 that this is before you were blocked off, would you – yes,  
4 I think, I'm sorry, Chairperson, I know this is going to  
5 take time but I want to go through it step by step. Can  
6 you please go back to the beginning? I want you to pause  
7 at – I'll shout when you must pause, as the people are  
8 walking through. It's 008, thereabouts. Okay, stop.  
9 Please rewind a little bit, it's where the people are  
10 walking. Ja.  
11 [VIDEO RECORDING PLAYED]  
12 MR MPOFU: In that frame, Mr Magidiwana,  
13 at least this one we can describe it while you are looking  
14 at it. Can you see that there's tower that is visible  
15 directly behind that, the crowd?  
16 MR MAGIDIWANA: Yes, I can see it.  
17 MR MPOFU: Yes, and is that part of the  
18 mine buildings?  
19 MR MAGIDIWANA: Yes.  
20 MR MPOFU: Right, now where the crowd is,  
21 which side are you facing? Where are you facing in  
22 relation to the residential area or mountain?  
23 MR MAGIDIWANA: I was facing Nkaneng.  
24 MR MPOFU: And are you the fourth or  
25 fifth person from the right on that picture? On the left,

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1 sorry.  
2 MR MAGIDIWANA: It could be so.  
3 MR MPOFU: The picture is a bit cloudy.  
4 Maybe Mr Mahlangu could assist us again. Is that you that  
5 Mr Mahlangu is pointing at?  
6 MR MAGIDIWANA: That's me.  
7 MR MPOFU: Chairperson, it's the same  
8 red, rather green top with a red blanket or towel over it,  
9 and are you holding your stick in the middle of the stick?  
10 MR MAGIDIWANA: It is so.  
11 CHAIRPERSON: Can this picture not  
12 perhaps be blown up a bit so we can see –  
13 MR MPOFU: Yes, is it possible to zoom?  
14 It doesn't look like it's possible, Chairperson. The  
15 indication is that it cannot be done. We'll maybe try it  
16 on the laptop. Okay, and although the picture is a little  
17 bit misty, on the extreme right of the front row, can you  
18 see Mr Noki with his green blanket there? Mr Mahlangu will  
19 point him.  
20 MR MAGIDIWANA: Yes, that's him.  
21 MR MPOFU: Now it will be become clearer  
22 later when I show you other pictures, but can you remember  
23 that that spot is where two of those pathways meet? In  
24 other words, there's the main road that you've been  
25 describing to all of us, and there's another smaller side

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1 road that comes to it, as it were. Is that the spot where  
 2 you were at that stage?  
 3 MR MAGIDIWANA: Yes, that's the place.  
 4 MR MPOFU: And where you were coming from  
 5 at that stage, is it from the bigger road or the smaller  
 6 one?  
 7 MR MAGIDIWANA: The smaller one.  
 8 MR MPOFU: Thank you, and is it correct  
 9 that those two roads literally meet up in front of the  
 10 kraal?  
 11 MR MAGIDIWANA: It is so.  
 12 MR MPOFU: Okay, and I'm sure the  
 13 objective evidence will show that near where those roads  
 14 meet is where the Nyala, the last Nyala closed off the  
 15 road. Is that how you remember it?  
 16 MR MAGIDIWANA: That is where it closed.  
 17 MR MPOFU: Was that group attacking the  
 18 police?  
 19 MR MAGIDIWANA: No.  
 20 MR MPOFU: And before we move on, Mr  
 21 Magidiwana, you've now said that you know there were a  
 22 group of people who had already gone through and so on, and  
 23 you were in this group and they were, some of the leaders  
 24 were here. Can you just take us a little bit back from the  
 25 time that there were, you noticed the dragging of the

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1 barbed wire, some people started to move, how did you end  
 2 up in this particular group?  
 3 MR MAGIDIWANA: Because I was walking  
 4 with a second group, the group which had people who were  
 5 talking.  
 6 MR MPOFU: Yes, I suppose if the  
 7 translation –  
 8 MR HANABE: People who were speaking  
 9 initially –  
 10 MR MPOFU: People who had been addressing  
 11 there at the koppie.  
 12 MR HANABE: Yes, exactly.  
 13 MR MPOFU: And why did you go with that  
 14 group?  
 15 MR MAGIDIWANA: The reason was that there  
 16 was singing, and further they said, "Let us not run away,  
 17 because we did nothing wrong."  
 18 MR MPOFU: No, I'm sorry –  
 19 MR HANABE: "We must stop running,  
 20 because we did nothing wrong."  
 21 MR MPOFU: Yes.  
 22 MR HANABE: Sorry.  
 23 MR MPOFU: Okay, yes. Thank you, Chair,  
 24 I think that's more correct, not run because we have done  
 25 nothing wrong. Okay, and –

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1 CHAIRPERSON: Is the correct  
 2 interpretation, "We must not run, because we've done  
 3 nothing wrong?"  
 4 MR MPOFU: Yes, correct, Chair.  
 5 CHAIRPERSON: Mr Mpofo, is this perhaps a  
 6 convenient stage to take the lunch adjournment?  
 7 MR MPOFU: It is, Chair, yes, although  
 8 we'll still be on this slide, but it's a natural break.  
 9 Thanks.  
 10 CHAIRPERSON: We will adjourn now until  
 11 half past 1.  
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 13 [13:38] CHAIRPERSON: The Commission will resume.  
 14 I want to announce that a meeting is going to take place  
 15 this afternoon. The parties are going to meet to discuss  
 16 ways of shortening the proceedings, particularly in  
 17 relation to cross-examination, and secondly there's going  
 18 to be a meeting between the evidence leaders and the Human  
 19 Rights Commission and the Commission itself to discuss  
 20 certain points raised by the Human Rights Commission. I'm  
 21 not quite sure when we will be ready to have the Human  
 22 Rights Commission meeting. It depends on the availability  
 23 of various people who are not here at the moment, so we  
 24 will proceed until I'm informed that we're able to hold  
 25 those meetings. I'm not quite sure when we'll adjourn this

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1 afternoon, but I'm explaining that it will be before 4, and  
 2 I would think substantially before 4, but I cannot say any  
 3 more at this stage because I don't know when the people to  
 4 whom I've referred will arrive.  
 5 MR MPOFU: Chairperson, I must apologise,  
 6 the witness has just been notified, but he's movements are  
 7 too slow. I'm not sure if maybe –  
 8 CHAIRPERSON: We need him, even though  
 9 we're going to be seeing videos, I understand.  
 10 MR MPOFU: Yes.  
 11 CHAIRPERSON: But I take it he has to see  
 12 them, so we can't just see the videos in the meanwhile  
 13 before he comes because that's not going to be helpful;  
 14 we'd have to show them again when he arrives.  
 15 MR MPOFU: Yes, yes.  
 16 CHAIRPERSON: But should we adjourn for a  
 17 short while?  
 18 MR MPOFU: Yes, thank you, Chairperson.  
 19 Sorry about that.  
 20 CHAIRPERSON: The Commission will adjourn  
 21 until we're informed that we can proceed.  
 22 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 23 [13:46] CHAIRPERSON: The Commission finally  
 24 resumes. You're still under oath, Mr Magidiwana. Mr  
 25 Mpofo.



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1 MZOXOLO MAGIDIWANA (CONTD.):  
 2 EXAMINATION BY MR MPOFU (CONTD.): Thank  
 3 you, Chairperson. I must apologise for that waste of time.  
 4 Thank you, and I'll make sure it doesn't happen again,  
 5 Chairperson. Right, Mr Magidiwana, we're going to spend  
 6 some time on this video, so fortunately it's a short one,  
 7 so I'm going to play it again now. Yes, if the video  
 8 warning could be renewed, just in case, Chairperson?  
 9 CHAIRPERSON: I'm informed by Mr Mpofo  
 10 that the video that's now going to be shown is going to  
 11 contain pictures of scenes which may well cause distress to  
 12 members of the families and loves ones of those who died on  
 13 the 16th of August, and so I ask those who are going to show  
 14 the video clips to us to wait for two minutes until after  
 15 what I'm now saying is interpreted to enable members of the  
 16 families who wish not to be distressed in the way I've  
 17 indicated, to leave the auditorium.  
 18 MR MPOFU: Okay, thank you very much,  
 19 Chairperson. I wonder if we still have that frame that we  
 20 had before lunch, which was the group of people walking, in  
 21 exhibit AA7. Yes. Thank you. Mr Magidiwana, just before  
 22 we take it off from where we left it, from this slide the  
 23 two, at least two of the people next to you from the left,  
 24 if we accept that you are the fourth person from the left,  
 25 two of those people are also holding sticks. Would you

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1 agree with that?  
 2 MR MAGIDIWANA: It is so.  
 3 MR MPOFU: And from that frame at least,  
 4 or from that whole movement, which includes that frame, I  
 5 won't put it as far as to say there are no spears or  
 6 pangas, but would you agree that none are visible on the  
 7 movement that we have seen?  
 8 MR MAGIDIWANA: I also don't see any.  
 9 MR NGALWANA: Chairperson, I don't want  
 10 to be unduly technical, but can my learned friend be  
 11 reminded to ask questions as questions should be asked in  
 12 chief, and not ask suggestive questions?  
 13 CHAIRPERSON: Well, he's just telling  
 14 people – and he indicate that if there's any objection that  
 15 he would assist, but he said he was for convenience sake  
 16 leading through things that he thought were common cause  
 17 that could be seen. I personally don't know if it's  
 18 necessary for him to get the witness to tell us what the  
 19 witness sees, because we're all capable of seeing for  
 20 ourselves but probably it's quicker to do it the way he's  
 21 doing it, but he's heard what you have to say; he's heard  
 22 what I have to say, and he will now continue.  
 23 MR MPOFU: Thank you, Chairperson. I'm  
 24 very mindful when it comes to what I would call  
 25 controversial or disputed stuff, that I will not do so, but

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1 I do hope that my learned colleagues will bear with me.  
 2 This would be the quickest way is to describe at least what  
 3 can be seen on the video. If it's contested, obviously  
 4 then we can – I mean I could say to the witness from that  
 5 frame did you see any pangas –  
 6 CHAIRPERSON: You don't have to make a  
 7 speech. I've already disallowed the objection and said you  
 8 can carry on, so you don't have to deliver a comparing  
 9 judgment, saying why –  
 10 MR MPOFU: Well, it's for the future,  
 11 Chairperson, otherwise I'll be getting many speeches and  
 12 objection. If I cover it for the rest of this witness then  
 13 I think it's better, it saves time for everyone. Thank  
 14 you. Now we were still before, before this issue of the  
 15 pangas, we were still dealing with the reasons why you were  
 16 with that group, before lunch, and I think your last answer  
 17 was something to the effect that somebody had said that you  
 18 should walk, or rather not run because you had done nothing  
 19 wrong. Remember that part?  
 20 MR MAGIDIWANA: I remember that, yes.  
 21 MR MPOFU: And you had also testified  
 22 that in that group were some of the people who had been  
 23 speaking, or addressing people at the, near the koppie.  
 24 MR MAGIDIWANA: It is so.  
 25 MR MPOFU: And I know you were quite in

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1 front, but were you able to tell the size of the group that  
 2 was following your group that was in front?  
 3 MR MAGIDIWANA: It's quite a number.  
 4 MR MPOFU: If we go to slide 200 – okay,  
 5 sorry, I'm going to look for that very same slide, but  
 6 which one that doesn't have the arrow. Can you go to slide  
 7 212? Can you see that slide? You see the – and I know the  
 8 people are quite tiny there, but can you see where it looks  
 9 like there's a group of people, where the crowd is kind of  
 10 thick?  
 11 MR MAGIDIWANA: The question again is?  
 12 MR MPOFU: Can you see the place in that  
 13 slide where it would seem that there's a crowd of people,  
 14 where there's a thicker kind of crowd?  
 15 MR MAGIDIWANA: Yes.  
 16 MR MPOFU: And the part of the crowd that  
 17 is nearest to the kraal, behind it there are people, as it  
 18 were. Can you see that?  
 19 MR MAGIDIWANA: It is so.  
 20 MR MPOFU: Now would those be the people  
 21 who were following behind your group?  
 22 MR MAGIDIWANA: It is so.  
 23 MR MPOFU: The group in front, according  
 24 to the video, shortly thereafter we see, or rather, shortly  
 25 after seeing the people walking, we then see the police

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1 kind of forming up a line. If you can show that part,  
 2 please. Yes, if you can go back to AA7. The video that  
 3 you played just now with the people walking. Yes, if you  
 4 can continue from that frame.  
 5 [VIDEO RECORDING PLAYED]  
 6 MR MPOFU: Okay, stop. Okay, just rewind  
 7 a little bit. Okay, in any event, do you see the group of  
 8 police forming and one of them indicating with his hands,  
 9 waving his hands on both sides?  
 10 MR MAGIDIWANA: I saw them.  
 11 MR MPOFU: Now according to your evidence  
 12 you then went behind the kraal, after that point of you  
 13 walking with that group. Is that correct?  
 14 MR MAGIDIWANA: It is so.  
 15 MR MPOFU: Now I want you to please watch  
 16 carefully. You'll see that in the next frame there are  
 17 three people who walk in the gap between the two Nyalas,  
 18 that's three people, including Mr Noki, who walk and then  
 19 they are obscured by the one Nyala, and then there's a kind  
 20 of second group where you are, which walks, and is also  
 21 then obscured, and then hopefully we'll be able to pause at  
 22 the right place. There are two people who then behind  
 23 those two groups face the Nyala, from which some shooting  
 24 is already happening, and they may or may not be aiming  
 25 firearms at it, but they are at least facing and making

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1 movements. The key thing is that one of them is wearing a  
 2 green top and I want you to concentrate on that person.  
 3 [VIDEO RECORDING PLAYED]  
 4 MR MPOFU: Okay, do you see that there's  
 5 somebody wearing a green top who is holding a red towel or  
 6 blanket on the side?  
 7 MR MAGIDIWANA: I see that person, yes.  
 8 MR MPOFU: Yes, is that you?  
 9 MR MAGIDIWANA: No, that's not me.  
 10 MR MPOFU: And have you seen that you  
 11 have already gone past the Nyala at the back or the front,  
 12 at least towards the side that you were going?  
 13 MR MAGIDIWANA: That is correct.  
 14 MR MPOFU: Okay, and you see that there's  
 15 another person who's also facing the gap, as it were, and I  
 16 don't want to take a chance, but wearing a brownish, a  
 17 darker top, let's call it like that.  
 18 MR MAGIDIWANA: It's the person on the  
 19 left-hand side?  
 20 MR MPOFU: Yes, who's also facing the  
 21 gap, as it were.  
 22 MR MAHLANGU: The question is, is the  
 23 person on the left-hand side of the photo?  
 24 MR MPOFU: Yes, the one on the left-hand  
 25 side, also facing the gap, like the one in the green top.

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1 MR MAGIDIWANA: I can see that person.  
 2 MR MPOFU: Okay, can you continue?  
 3 [VIDEO RECORDING PLAYED]  
 4 MR MPOFU: And did you observe the police  
 5 dragging the body of a person wearing a green top with  
 6 yellow stripes on the side?  
 7 MR MAGIDIWANA: I saw that, yes.  
 8 MR MPOFU: Is that you, and did your  
 9 green top have those yellow stripes on the side?  
 10 MR MAGIDIWANA: No, that's not me.  
 11 [14:06] MR MPOFU: And also on that same video  
 12 one can observe a number of people who are jumping from the  
 13 back of the kraal. Did you see that? In other words, from  
 14 the inside of the kraal, jumping out and running away.  
 15 MR MAGIDIWANA: I saw them.  
 16 MR MPOFU: And you also saw a number of  
 17 policemen who came on about six horses, on horseback. Did  
 18 you see that?  
 19 CHAIRPERSON: In the – what you want –  
 20 because I didn't see people jumping over the kraal. I'm  
 21 not saying it's not there, but I didn't see it.  
 22 MR MPOFU: It's quite a short one, Chair.  
 23 We can just play it. Can you please do AA7 again from the  
 24 beginning? Okay.  
 25 [VIDEO RECORDING PLAYED]

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1 CHAIRPERSON: Yes, in fact I saw at least  
 2 one person jumping over the fence of the kraal, and the  
 3 others were coming from that direction.  
 4 MR MPOFU: Yes. Mr Magidiwana, Chair,  
 5 just to confirm, you see that there's a group of people  
 6 running, but at least one of them is visibly jumping from  
 7 inside the kraal and running with the rest of them.  
 8 MR MAGIDIWANA: I can see that person,  
 9 yes.  
 10 MR MPOFU: And can you see that those  
 11 people are carrying sticks? Okay, even I can't see all of  
 12 them, but you can see some of them are carrying sticks?  
 13 MR MAGIDIWANA: Yes.  
 14 MR MPOFU: Okay, and shortly after that  
 15 frame then appears the camouflaged vehicle of what you, or  
 16 at least some of the protesters referred to as the  
 17 soldiers.  
 18 MR MAGIDIWANA: I can see it.  
 19 MR MPOFU: And in that sequence that we  
 20 saw, the one next to the kraal, is it so that the first  
 21 shot came from the police, even before those two gentlemen?  
 22 MR NGALWANA: No, no, that's absolutely  
 23 not clear from the video that we've seen.  
 24 MR MPOFU: Okay, then we can play it.  
 25 I'm referring to the people who are shooting through the

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1 Nyalas.  
 2 [VIDEO RECORDING PLAYED]  
 3 MR MPOFU: Okay, now that we've played,  
 4 would you be able to confirm that several shots were shot  
 5 from between the Nyalas even before you appeared and then  
 6 disappeared from that frame?  
 7 MR MAGIDIWANA: Yes, they were shooting.  
 8 CHAIRPERSON: Whether what was being  
 9 shot, of course, was sharp ammunition or stun grenades or  
 10 rubber bullets, is a matter that the witness can't tell us  
 11 about.  
 12 MR MPOFU: - that's why I just said  
 13 "shots", Chair.  
 14 CHAIRPERSON: Ja, alright.  
 15 MR MPOFU: My attorney tells me that you  
 16 are experiencing some exhaustion. If you do want to take a  
 17 break, can you just indicate? The Commission, I'm sure,  
 18 will oblige, but are you still fine now?  
 19 MR MAGIDIWANA: I'm presently alright.  
 20 We can go on.  
 21 CHAIRPERSON: I may indicate that I've  
 22 been asked by the evidence leaders to take an adjournment  
 23 at half past 2 so that the meeting of the parties can take  
 24 place. I hadn't mentioned it earlier because I didn't know  
 25 when it would be. So we'll continue, if everything else is

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1 in order, until half past 2 and take the adjournment at  
 2 that stage for the day as far as the hearing of the  
 3 Commission is concerned, to be followed by the two meetings  
 4 to which I've referred, the first of which will be between  
 5 the parties.  
 6 MR MPOFU: Thank you then, Chairperson,  
 7 then I'm sure we'll be able to manage for the next 15, 20  
 8 minutes. Yes, just to round off this video, Mr Magidiwana,  
 9 and I'm sorry because I keep on taking you back but I just  
 10 wanted to round off the issue of why you chose, if you did,  
 11 to go with this particular group of protesters.  
 12 CHAIRPERSON: I must confess, I'd thought  
 13 you'd asked that question beforehand and been given an  
 14 answer already. Perhaps you can withdraw the question and  
 15 carry on to the next point.  
 16 MR MPOFU: Yes, I'd like it to be  
 17 answered again, Chair. If I did –  
 18 CHAIRPERSON: You might get a different  
 19 answer from the one you got last time. You've asked the  
 20 question; you got an answer. If you ask the question again  
 21 I can only infer, unless I'm being unkind, that you're  
 22 hoping to get a different answer. I don't propose to allow  
 23 that. Please proceed to the next point.  
 24 MR MPOFU: Alright, well, among the  
 25 answers you gave when we were dealing with that topic –

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1 CHAIRPERSON: No, no, no, Mr Mpofo, I  
 2 said you've asked the question on that point, you got an  
 3 answer; I don't want you to deal further with that point.  
 4 You must proceed to the next point. That's my ruling –  
 5 MR MPOFU: No, Chairperson, that's why –  
 6 CHAIRPERSON: That's my ruling.  
 7 MR MPOFU: No, no, no, no, no,  
 8 Chairperson, I am moving to another point –  
 9 CHAIRPERSON: Okay, move to another point  
 10 –  
 11 MR MPOFU: I'm only refreshing it on the  
 12 answer that he gave. Of course I must be entitled to ask  
 13 another question arising from his answer.  
 14 CHAIRPERSON: Let me hear the question  
 15 first before I rule.  
 16 MR MPOFU: Yes, thank you. Among the  
 17 answers that you gave when we were dealing with that topic  
 18 was the fact that somebody had said something to the effect  
 19 that you should not run because you had done nothing wrong.  
 20 Are you able to tell the Commission who that person is? Is  
 21 it somebody that you can identify?  
 22 CHAIRPERSON: I will obviously allow that  
 23 question.  
 24 MR MPOFU: Sorry, Chairperson?  
 25 CHAIRPERSON: I will obviously allow that

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1 question.  
 2 MR MPOFU: Thank you very much,  
 3 Chairperson. I'm indebted to the Chairperson.  
 4 MR MAGIDIWANA: I remember who it was.  
 5 MR MPOFU: Who was it?  
 6 MR MAGIDIWANA: It was Mambush.  
 7 MR MPOFU: Thank you. I think we can  
 8 move to the next footage. Sorry, Chairperson. No, the  
 9 Chairperson, as I understand it, the Chairperson was only  
 10 concerned about the issue of the people jumping, not the  
 11 people on horseback. Yes, ja, that was –  
 12 CHAIRPERSON: When it was replayed I saw  
 13 at least one person jumping and the others were coming from  
 14 the same direction.  
 15 MR MPOFU: Yes, thank you, Chairperson.  
 16 No, we can move to the next video.  
 17 MS PILLAY: May I just inquire if this is  
 18 the UU, those –  
 19 MR MPOFU: No, this is, I think UU3,  
 20 which is – well, it may or it may not be U in this, it's  
 21 number 5 in our series of the - it's Reuters, Ms Pillay.  
 22 [VIDEO RECORDING PLAYED]  
 23 MR MPOFU: Mr Magidiwana, I will ask you  
 24 other questions about, on this video, but I just want at  
 25 this stage, can you identify yourself as the person who has

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1 fallen down and is at the front of the frame, who is moving  
 2 a little bit?  
 3 MR MAGIDIWANA: I can see who that person  
 4 is.  
 5 MR MPOFU: Who is it?  
 6 MR MAGIDIWANA: That's me.  
 7 MR MPOFU: Okay, please continue.  
 8 [VIDEO RECORDING PLAYED]  
 9 MR MPOFU: Okay, once again I'll deal  
 10 with this video in the same way until, or unless there's an  
 11 objection.  
 12 MR NGALWANA: Chair, sorry to interrupt.  
 13 There's something I didn't quite see clearly on the clip,  
 14 the –  
 15 MR MPOFU: It's a short one. Maybe we  
 16 can play it again.  
 17 MR NGALWANA: Well, not the entire clip.  
 18 There's at the stage when the witness seems to be moving.  
 19 I just wanted, I didn't see that clearly.  
 20 CHAIRPERSON: Play it again, Sam.  
 21 MR MPOFU: Yes.  
 22 MR NGALWANA: May I also ask an  
 23 indication of what this clip is, what it's called? Is it  
 24 AAA7?  
 25 MR MPOFU: I think subject to correction

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1 by Ms Pillay, it's exhibit UU3.  
 2 MS PILLAY: That's correct, Chair, it's  
 3 UU3.  
 4 [VIDEO RECORDING PLAYED]  
 5 MR MAGIDIWANA: I saw it.  
 6 MR NGALWANA: Thank you for the  
 7 indulgence.  
 8 MR MPOFU: Yes, thank you. Among the  
 9 things that appear on this video, which we observed when  
 10 you and I were watching it, is that there's, after the  
 11 shooting had commenced there were shoutings of "Cease fire;  
 12 cease fire; cease fire," for no less than a minimum of 10  
 13 times.  
 14 MR MAGIDIWANA: I remember that, yes.  
 15 MR MPOFU: And also that there were  
 16 single shots which were audible at least after the "cease  
 17 fire" calls, which were not less than about 12.  
 18 CHAIRPERSON: 12 shots or 12 "cease fire"  
 19 –  
 20 MR MPOFU: 12.  
 21 CHAIRPERSON: 12 shots or 12 "cease fire"  
 22 calls?  
 23 MR MPOFU: No, no, 12 shots, Chairperson.  
 24 CHAIRPERSON: Okay, do we need this  
 25 witness to testify on this? If necessary, there's a debate

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1 about it, we can look at the video ourselves. We don't  
 2 need him to tell us what he sees and hears. We can curtail  
 3 proceedings, unless there's a point you want to make  
 4 through him about this point, in which case you must carry  
 5 on.  
 6 MR MPOFU: Well, there is, Chair, and  
 7 apart from that, since the witness is in this picture, I  
 8 think he would be the best person to confirm. He might  
 9 have heard something or seen something. There's no better  
 10 person in the world, Chair.  
 11 CHAIRPERSON: Or objective one. I  
 12 understand what you mean.  
 13 MR NGALWANA: Well, Chairperson, with  
 14 respect, I don't. A person in that position that he can  
 15 testify to how many shots were fired, I'm quite certain  
 16 that he can't do that.  
 17 CHAIRPERSON: Well, it's not a matter for  
 18 argument. I've already made my point. We can see and hear  
 19 it as well, but Mr Mpofo says there's a point he wants to  
 20 make from the witness. So let's let him do it.  
 21 MR MPOFU: Thank you, Chairperson.  
 22 CHAIRPERSON: And perhaps you shouldn't  
 23 tell him how many times, but perhaps – you've done it  
 24 already, but don't do it again.  
 25 MR MPOFU: Sorry, Chairperson, I didn't

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1 get that.  
 2 CHAIRPERSON: You don't have to tell him  
 3 how many times there were shots. You've done it already,  
 4 but don't do it again.  
 5 MR MPOFU: Well, Chairperson, okay. I  
 6 will do it on the basis that I thought was agreed, but  
 7 that's fine.  
 8 CHAIRPERSON: But you said if there's an  
 9 objection that it wouldn't be –  
 10 MR MPOFU: Yes, that it would be –  
 11 CHAIRPERSON: There is an objection, so  
 12 on the basis of the ground rules you've set yourself you  
 13 can't do that. So let's carry on.  
 14 MR MPOFU: Thank you. Okay, let me ask  
 15 you like that. When you and the other people there were  
 16 shot with that volley of shots, had you already reached the  
 17 road? I think I'll start asking you open questions.  
 18 [14:26] MR MAGIDIWANA: It was before I reached  
 19 the road.  
 20 MR MPOFU: What, if anything, did the  
 21 police command or ask you to do? "You," meaning him.  
 22 MR MAHLANGU: I'm sorry, Sir, the pronoun  
 23 "you" can be confusing sometimes.  
 24 MR MAGIDIWANA: Nothing.  
 25 MR MPOFU: Were you not asked about your

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1 towel?

2 MR NGALWANA: No, no, no, no –

3 CHAIRPERSON: No, he says he wasn't asked

4 anything, to do anything. So you've got that answer. You

5 can't now say were you not asked about something. The

6 answer was the police commander did not ask me to do

7 anything. That's the answer by which you are bound.

8 Please proceed.

9 MR MPOFU: Well, Chairperson, I don't

10 understand this. If, I'm asking a different question –

11 CHAIRPERSON: Basic principle of

12 evidence-in-chief is you can't cross-examine your own

13 witness, and when your own witness has given you an answer,

14 you can't do anything which seeks to challenge the answer

15 he gave. That's the position; that's my ruling. Please

16 carry on.

17 MR MPOFU: Yes, but the other basic

18 question, Chair, is that I must finish my question because

19 I might be asking about being asked by somebody else. I

20 don't understand why I get interrupted when I have not even

21 finished my question.

22 CHAIRPERSON: You started by saying, "Did

23 he not tell you," which clearly was a reference to the

24 police commander –

25 MR MPOFU: No, I did not say that. I

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1 said, "Were you not asked about," and then I was

2 interrupted.

3 CHAIRPERSON: Well, even "Were you not

4 asked about" is in itself a leading question, so I suggest

5 you reformulate the question you want to ask in a non-

6 leading fashion.

7 MR MPOFU: Can you describe to the

8 Commission the movements that you were making, which are

9 visible on this video, and – okay, I won't deal with the

10 next video, but on this one at least.

11 MR MAHLANGU: The movements here, meaning

12 the way in which they were moving?

13 MR MPOFU: Sorry, again it's the

14 singular. The movement which he was making whilst he was

15 on the ground.

16 MR MAHLANGU: Thank you.

17 MR MAGIDIWANA: I was not running, but –

18 CHAIRPERSON: I think counsel –

19 MR MAGIDIWANA: - when the shooting

20 started then I started running.

21 CHAIRPERSON: I think counsel wants to

22 ask you about when you were lying down after the shots,

23 where your body was moving and your one arm was moving, I

24 think that's what he wants to ask you about. Have a go and

25 ask him the question again and let's see if the witness

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1 understands it this time.

2 MR MPOFU: Yes, I'm sorry, Mr

3 Interpreter. You remember that after you fell down, on the

4 picture we see you moving your arms or your hands?

5 CHAIRPERSON: I think the body, but – his

6 body was moving too.

7 MR MAGIDIWANA: Chairperson, it was after

8 I was told to remove the towel that I had and then I was

9 hit [he indicates on the left arm].

10 MR MPOFU: Elbow.

11 MR MAGIDIWANA: Where he says "hit," I

12 was actually shot at, the left-hand side –

13 MR MPOFU: No, I'm sorry, the witness did

14 not point to his hand –

15 MR MAHLANGU: I'm sorry, the arm.

16 Actually I indicate he points in the region of the –

17 MR MPOFU: Elbow.

18 MR MAHLANGU: The elbow.

19 CHAIRPERSON: Yes, the interpreter

20 indicated, I think he used "the left-hand side" and he

21 indicated his elbow.

22 MR MPOFU: Near the elbow, thank you,

23 Chairperson. Thank you, Mr Mahlangu. Alright, you said

24 you were asked to remove the towel. What did you then do

25 about that request?

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1 MR MAGIDIWANA: I did; I removed it.

2 MR MPOFU: And then yesterday you

3 testified about further shots that were fired at you after

4 you had fallen down. Can you in your own words then tell

5 the Commission what happened from the time that we see you

6 having just fallen and moving a little bit, and what then

7 happened to you? Oh, sorry, and I'm excluding from that

8 account the shots that you have already spoken about,

9 including the one on the elbow.

10 MR MAGIDIWANA: There were these people

11 behind me who were also alive. They were also shot at [he

12 uses the word "hit"] whilst they were lying on the ground.

13 MR MPOFU: Yes.

14 MR MAGIDIWANA: When they came back

15 towards me, as I was saying yesterday, they were accusing

16 me of things that I did not know. I was then again shot

17 [indicates on his left-hand side, showing on the ribcage]

18 and again, Mr Chairperson, on the thigh [indicates on the

19 right-hand side], whilst this person was asking me

20 questions, asking about the traditional doctor, "inyanga,"

21 asking about a firearm. I said to him I am not aware of

22 those things. He then said to me, "You are telling a lie,"

23 and then I was shot on my private parts, again on my

24 testicle. One person came to this policeman who was

25 shooting and said, "Look, leave what you are doing; this is

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1 but a child," which was when I heard the happiness and they  
 2 were happy and saying, "Their boss is dead," and that is  
 3 when I realised that Mambush had been killed. I said to  
 4 one of them, "Let him finish me up." He said to me, "No,  
 5 get away. It doesn't matter; you are going to die, you are  
 6 at any rate going to die on the way." Even those people  
 7 who wanted to take photographs of me kept on asking, "Are  
 8 you still alive?" The ambulance later arrived. It was the  
 9 last time I became aware of my whereabouts.

10 MR MPOFU: Okay, on the footage that we  
 11 have just seen, were you able to hear one of the people  
 12 saying the words, "We'll shoot you?"

13 MR NGALWANA: Chairperson, is the  
 14 question whether he heard it, or whether on the footage it  
 15 is audible?

16 CHAIRPERSON: I understood him to say  
 17 whether he could hear it on the footage. If I heard  
 18 incorrectly, he'll correct me.

19 MR MPOFU: Yes, that's what I said,  
 20 Chair. Sorry, after that answer I'm told that it's time  
 21 for the meeting.

22 MR MAHLANGU: If the question again could  
 23 be clarified, Sir?

24 CHAIRPERSON: You were busy dealing with  
 25 the point.

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1 MR MPOFU: Yes.

2 CHAIRPERSON: I thought you could settle  
 3 the point before we adjourn.

4 MR MPOFU: Thank you, Chairperson.

5 CHAIRPERSON: Because otherwise if it's  
 6 left hanging in the air we have to start it all again  
 7 tomorrow.

8 MR MPOFU: Yes.

9 CHAIRPERSON: I'm sure those who are  
 10 going to have the meeting will be patient with us till this  
 11 point is disposed of.

12 MR MAHLANGU: The last question again,  
 13 Sir, was?

14 MR MPOFU: No, the question was whether  
 15 the witness did hear the person, the voice –

16 MR MAHLANGU: Yes.

17 MR MPOFU: - let's say, during the  
 18 shooting, that said, "We'll shoot you."

19 CHAIRPERSON: I think you said earlier on  
 20 the footage, he already said the person said that, so  
 21 obviously he heard it.

22 MR MPOFU: Yes.

23 CHAIRPERSON: So what you're asking now,  
 24 I understand, is whether that voice could be heard on the  
 25 footage –

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1 MR MPOFU: Could be heard on the footage.

2 CHAIRPERSON: Whether you're simply  
 3 referring to the voice, or the voice saying those things,  
 4 isn't clear and perhaps you can clarify that.

5 MR MPOFU: Yes, thank you, Chair. Well,  
 6 to be honest, Chair, that's exactly what I was saying. In  
 7 other words, what I understand Mr Ngalwana to be asking is  
 8 whether I'm asking whether he heard it on the 16th, and I  
 9 can assure him that's not what I was asking.

10 CHAIRPERSON: Mr Mpofu, the point, as I  
 11 understand you, is never mind what he heard or didn't hear  
 12 on the 16th; you're concerned now with whether he was able  
 13 to hear something on the footage which, once our attention  
 14 is drawn to it, we may be able to hear ourselves,  
 15 particularly if the volume is turned up –

16 MR MPOFU: That's correct, Chair.

17 CHAIRPERSON: - something like that.

18 Alright, that's the question. Let's deal with that point  
 19 and then I think that's probably an appropriate stage to  
 20 take the adjournment.

21 MR MAGIDIWANA: Many of the things that  
 22 happened, that were done by the police, are not shown on  
 23 the videos.

24 MR MPOFU: Okay, we'll deal with those  
 25 things that are not shown on the videos tomorrow morning.

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1 Thank you, Chairperson.

2 CHAIRPERSON: The question you were asked  
 3 was when we were watching the video, particularly the last  
 4 section where you are seen lying on the ground, moving  
 5 slightly, moving your arm out, did you hear the voice of  
 6 someone on the video talking about shooting you? I take it  
 7 that's your question, Mr Mpofu.

8 MR MPOFU: Sorry, I missed the answer.

9 Yes, it is my question.

10 CHAIRPERSON: Okay, we haven't got the  
 11 answer as yet, and now we've got the question, let's hear  
 12 the answer.

13 MR MAHLANGU: I haven't received the  
 14 answer as yet.

15 MR MAGIDIWANA: They were shooting. They  
 16 did not say they were going to shoot us.

17 MR MPOFU: Okay, Chair, we'll –

18 CHAIRPERSON: That seems to dispose of  
 19 that point.

20 MR MPOFU: - continue –

21 CHAIRPERSON: And on that basis we'll  
 22 adjourn until tomorrow morning at 9:30.

23 [COMMISSION ADJOURNED]

24 .

25 .

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