

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 7 31 OCTOBER 2012 PAGES 678 TO 847

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 31 OCTOBER 2012]
 2 [09:05] CHAIRPERSON: Good morning. The
 3 Commission resumes. Before we proceed any further, I
 4 understand that the representatives of the parties have
 5 been told, but I don't think that those in attendance
 6 necessarily know that we will only be having one session
 7 this afternoon. So we will adjourn at 4 o'clock and we
 8 will then resume on Monday morning at 9 o'clock next week.
 9 I thought those in the public gallery might like to know
 10 that to plan their afternoons.
 11 There is also a notification in front of me which
 12 says, "Please switch off all cell phones or put them on
 13 silent." We had the problem yesterday that several cell
 14 phones went off during the course of the proceedings. It's
 15 very disturbing and it interferes with the proceedings and
 16 it's something that I hope will not happen today.
 17 I see that Captain Mohlaki is here to continue
 18 with his evidence, but I did understand from Mr Mpofo I
 19 think that there might be some preliminary matters, which I
 20 hope will not keep us busy for too long. Mr Mpofo?
 21 MR MPOFU: Thank you, Chairperson, very
 22 much for the opportunity. I want to raise three
 23 preliminary issues as briefly as possible.
 24 The first one, Chair, just maybe to start with
 25 the good news is just, is a continuation of what was said

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1 yesterday. Up to now six people have been released. The
 2 bad news is that since last night I've been listening to
 3 the most gory details of their brutal assaults and torture
 4 and it's a matter that we'll take up with the IPID.
 5 Obviously the Commission can't take it much further, but I
 6 think its only relevance here is the extent and impact that
 7 it's likely to have on the witnesses and other potential
 8 witnesses coming here. It's quite a serious matter, Chair.
 9 Without wanting to be too graphic, one of the persons I
 10 spoke to informed me of, and showed me of a situation where
 11 he was beaten up until he soiled himself and another one
 12 has almost lost hearing on his right ear, and the third one
 13 has visible scarring on his face, which he did not have
 14 when I last saw him on Tuesday. But these are matters that
 15 we are following up in the appropriate forums.
 16 The second issue –
 17 CHAIRPERSON: As you correctly said,
 18 these are matters which the IPID people will investigate
 19 and I'm sure that the representatives of the South African
 20 Police Service are aware that if these allegations are
 21 well-founded, they cannot assist their case as presented
 22 before this inquiry, and inferences might well be drawn, or
 23 have to be drawn against the Police if these allegations
 24 are well-founded and if they're indicative of an attempt to
 25 intimidate witnesses and prevent them from giving evidence

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1 before this inquiry. Allegations of this kind are
 2 obviously taken very seriously, but I'm sure regard being
 3 had to the people representing the South African Police
 4 Service, they're well aware of what I said, but I'm sure it
 5 doesn't do any harm for me to repeat it publicly.
 6 MR MPOFU: Thank you.
 7 CHAIRPERSON: Please proceed with your
 8 second point.
 9 MR MPOFU: Thank you very much, Chair,
 10 appreciated.
 11 Second issue, Chair, is also brief reference to
 12 the Masuhlo case. Chair, you remember that last week I
 13 think I reported to the Commission that our request for the
 14 extension of the Terms of Reference in respect of that case
 15 had been turned down, and Chair, on a closer scrutiny of
 16 the letter from the President, it turned out that there are
 17 two readings of it. One is that it's ambiguous, or the
 18 other one is that it is being referred to the Commission,
 19 and I'll just read one paragraph which drives me to that
 20 conclusion. In fact, let me read the whole thing. "1,
 21 Correspondence dated 5 October 2012 refers. 2, We advise
 22 that the President has considered your request to extend
 23 the Terms of Reference to incorporate the issues raised on
 24 behalf of your client. 3," which is the important part,
 25 "The Terms of Reference, whilst focussed on the tragic

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1 incidents at Marikana, permit the Commission to take
 2 account of all circumstances and incidents which may assist
 3 with the findings and determinations which it is enjoined
 4 to make. We are confident that to the extent that it is
 5 relevant in terms of the principles which the Commission
 6 must apply, the incidents to which you refer will be
 7 considered." Then the next sentence says, "The President
 8 is consequently not persuaded to extend the Terms of
 9 Reference in the manner that you propose," and extends
 10 sympathies and so on.
 11 Now as I say this, at best for us it says that it
 12 will be the Commission that must decide whether that
 13 incident is considered or not. We'll pass a copy of this
 14 letter to the evidence leaders and, Chair, just to save
 15 time, we don't expect you to make a ruling. If on Monday
 16 when we come back, we can just get some indication one way
 17 or the other of whatever the Commission's view is on this
 18 letter, once it has properly studied the letter. We'll –
 19 CHAIRPERSON: It sounds as if the letter
 20 repeats what I said at the first meeting that we had, the
 21 representative parties. I don't think you were present.
 22 MR MPOFU: No, I wasn't.
 23 CHAIRPERSON: I said that evidence of
 24 events before the 9th and evidence of events after the 16th
 25 would be received insofar as that evidence threw light on

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1 the issues that we primarily have to determine over that
2 period from the 9th to the 16th. The evidence that points
3 backwards, as it were, to illuminate – if one can put it
4 that way – what happened in the relevant period, will be
5 received and equally evidence that points forwards from
6 before the 9th. I think the key word in the passage you
7 read me is “evidence where relevant.” Whether evidence
8 relating to the death of the councillor has relevance is a
9 matter which I don’t know that I can necessarily pronounce
10 upon on Monday in abstracto, as it were, but when the
11 evidence is received, presumably you will wish to see that
12 evidence later on, we’ll have quite a lot of evidential
13 material before us and we will then be able to see whether
14 it is relevant and does indeed cast light backwards, as it
15 were, on the issues we have to investigate. But that’s a
16 preliminary response, but I hope that’s of assistance to
17 you.

18 MR MPOFU: Yes, it is of much assistance,
19 Chairperson. We’ll still pass the letter on. The trouble
20 I have is that the family, the Masuhlo family – and I was
21 just looking now, particularly her sister – has been coming
22 here every day and I just need to give some indication as
23 to whether she must continue coming here in, hoping that
24 her sister’s death will be considered. But given just that
25 preliminary view, I think it’s sufficient for me to give

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1 her advice for now and later we – I think then the ball
2 will be in our court as well as to how we introduce such
3 evidence and so on. Thank you, Chairperson.
4 The third and last issue, Chair, deals with the
5 perennial quagmire of funding. Once again when Mr Madlanga
6 gave us the update yesterday, and Chairman, you invited
7 parties to comment, we declined the opportunity to comment
8 because there was nothing more we thought that could be
9 said on that issue. As I say, I even declined the
10 temptation to rejoin the Chairman’s metaphor about shooting
11 a moving target, that the target had now been shot again
12 for the second time, but obviously what happened is that, I
13 think due to the public pressure that must have happened
14 out there after Mr Madlanga’s announcement, Legal Aid South
15 Africa saw it fit to release a media statement justifying
16 its decision, and it offered a new reason now, no longer
17 the old reason of we only help, or we don’t help those who
18 have survived, we only help those who have died, which was
19 commented upon earlier, and the new reason is that the
20 people that we represent supposedly don’t need any separate
21 representation because they are either members of the NUM
22 or AMCU, which is represented here.

23 Now once again I’m dealing with this not because,
24 obviously we need to meet with the Legal Aid South Africa
25 and explain maybe the dynamics of the case, but insofar as

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1 this might be adopted by other potential funders, I think
2 it’s important to put it in perspective that there are two
3 things. One is that Lonmin itself, I think around the 20
4 something of August, issued a statement for a different
5 reason, stating clearly that half, or more than half of the
6 people who were arrested and injured, were not its
7 employees, and I’ll think that that would have been enough
8 to make it clear that those people potentially cannot be
9 represented by either NUM or AMCU.

10 But the most important thing, Chair, is that our
11 understanding is that the unions have been cited here in
12 their “personal capacity” as potential causes of the so-
13 called inter-union rivalry of the disaster, and that was
14 illustrated two days ago, Chair, when we spoke about the
15 release of the arrested witnesses, when my learned friend
16 Mr Tip made it clear that his instructions were that those
17 people should not be released from custody. So quite
18 clearly, and Mr Tip obviously was acting on instructions,
19 so quite clearly it’s inconceivable that Mr Tip could
20 represent here the interests of the people that he was
21 saying should not be released, and also the interests of
22 the people who instructed him. So it’s quite clear, and
23 it’s something that we did anticipate, which is why – so
24 this reason of, this new reason of denying us funding is
25 actually worse than the first one, and –

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1 CHAIRPERSON: Sorry to interrupt you, but
2 it sounds from what you say, it’s clearly as if the
3 decision to refuse you legal aid may at least in part be
4 based upon what you say is a misapprehension as to the
5 correct facts.

6 MR MPOFU: Ja.

7 CHAIRPERSON: So clearly you’re going to
8 go back to the Legal Aid Board to seek to remove that
9 misapprehension.

10 MR MPOFU: Ja.

11 CHAIRPERSON: But as you correctly point
12 out, it’s not a matter over which we have any jurisdiction.
13 I haven’t got the power, either sitting alone or with my
14 two colleagues, to overrule the Legal Aid Board or order
15 them to grant you legal aid. What you do know is that the
16 evidence leaders acting on behalf of the Commission made
17 representations to the Legal Aid Board, which we in fact
18 dealt with in the document that was read yesterday.

19 MR MPOFU: Ja.

20 CHAIRPERSON: So further than that I
21 can’t take it. But anyway, I take it we should leave it
22 there for the moment and leave it to you to raise the
23 concerns that you’ve expressed, obviously with further
24 elaboration, before the chairman of the Legal Aid Board.

25 MR MPOFU: Yes, thank you, Chair. No,

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1 no, that I appreciate hundred percent, Chair. All I'm
2 saying is the only relevance perhaps to yourselves is the
3 potential impact of this kind of reasoning, which it might
4 have in depriving the Commission of the evidence which it
5 will be deprived of if we are unable to represent these
6 people. That's the only direct impact on this Commission
7 that it might have, because as I said the other day, at
8 some stage we're just going to run out of our own resources
9 to do this.

10 The second relevance perhaps, Chair, is that we
11 have written a letter to the Department of Justice
12 separately, raising this matter of funding and whatever
13 influence or, the Commission may have in – we haven't
14 received a response – in respect to government funding, we
15 are obviously approaching other non-governmental funding
16 sources and we don't need any assistance there, but insofar
17 as there's a potential of government funding, we thought
18 that to avoid the potential of us having to stop the
19 representation, which we think is essential for the
20 Commission, that whatever might be done by anybody, could
21 be done. Thank you, Chair.

22 CHAIRPERSON: Thank you, Mr Mpofo. Is
23 that the conclusion of the preliminary matters that you
24 wanted to raise?

25 MR MPOFU: Yes, thank you, Chairperson.

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1 CHAIRPERSON: Has anyone got any comments
2 to make in regard to those matters? Mr Semenya.

3 MR SEMENYA SC: Chair and Commissioners,
4 it is most unfortunate I think that apropos what Mr Mpofo
5 raises as the first issue, that these matters are not
6 raised with me and my team first to test their veracity
7 and, where appropriate, to be able to give counter-
8 evidence, if that is what he's tendered. It is certainly
9 prejudicial just to raise them as they are raised for the
10 first time, casting, as the Chair correctly points out, if
11 well-founded they have profound implications in the running
12 of this Commission.

13 The questions of arrest also, if they were
14 properly handled and we intervened, as we did, would not
15 have enjoyed this publicity. So we're almost having
16 shadows every time. There are allegations, very serious in
17 their, very grave in their degree, if correct, which are
18 just thrown like that. We would really appreciate it if we
19 could be given advance notice of this so that we can
20 investigate it and where there are appropriate answers, to
21 give them.

22 CHAIRPERSON: Thank you, Mr Semenya. You
23 noticed that I prefaced my comments by saying "if these
24 allegations were well-founded." Obviously I don't accept
25 that they necessarily are, and in any event, we've heard

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1 statements from the bar, not buttressed by evidence, which
2 may in any event not be directly relevant. So I can assure
3 you the Commission won't be influenced in its results by
4 anything which was said by Mr Mpofo.

5 But nevertheless, the further point that you make
6 is I think well-founded also. The point you make is well-
7 founded, and that is I would expect in future that if
8 statements of this kind are going to be made, that the
9 representatives of the party affected by the statements are
10 informed beforehand so that they're enabled to take
11 instructions, able possibly to give instructions or
12 directions themselves which would be of assistance. So
13 it's water under the bridge now, but in future if anyone
14 makes a statement of that kind without having previously
15 warned the representatives of the party affected, they can
16 be assured that certainly they will be reprimanded very
17 strongly. Beyond that I'm not sure I can go, but I can
18 possibly reprimand them in a way they won't enjoy. But
19 anyway, it's history. It's over. It's behind us. Let's
20 hope we don't have –

21 MR MPOFU: Yes, accepted, Chair, except I
22 have to point out that this is not the first time, the
23 record will show that I raised this two days ago. So the
24 suggestion that –

25 CHAIRPERSON: Let's not get involved -

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1 MR MPOFU: Okay.

2 CHAIRPERSON: The truth is what you did
3 say now were what you were told last night –

4 MR MPOFU: Detail, yes.

5 CHAIRPERSON: You gave details. You said
6 you yourself had seen marks and so on –

7 MR MPOFU: Ja, fair enough, ja.

8 CHAIRPERSON: And this is new matter
9 which Mr Semenya was entitled to know about before you
10 raised it here. As I say, it's water under the bridge, it
11 happened. I would agree with Mr Semenya, it shouldn't have
12 happened, but never mind, for the future we trust it won't
13 happen again. So can we now get on with the inquiry?
14 Unless someone else wants to say something about the
15 matters that were raised. Mr Madlanga, I see your witness
16 is here. Captain Mohlaki, I must remind you that you are
17 still under the oath that you took yesterday. Yes, Mr
18 Madlanga.

19 EXAMINATION BY MR MADLANGA SC (CONTD):

20 Thank you, Chairperson, Commissioners. Captain, let me, we
21 were dealing yesterday, we were dealing with inaccuracies
22 on the Google map. Let me take you one step back. You
23 testified that you arrived at the scene at 16:00, and the
24 impression I got was that that was a reference to scene 2.
25 Is it so that it is scene 2 that you arrived at, at 16:00?

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1 CAPTAIN MOHLAKI: Thank you, Chairperson,
 2 Commissioners. We arrived at 16:00 at scene 1. By then we
 3 were not aware that there was a scene 1 and scene 2, so we
 4 arrived at the scene 1 which they said it's Koppie 1, Big
 5 Koppie.
 6 MR MADLANGA SC: Yes, and what did you
 7 do? Did you do anything at scene 1 yourself? Because
 8 evidence that has been led before is to the effect that it
 9 is Warrant Officer Thamae who processed scene 1.
 10 [09:25] CAPTAIN MOHLAKI: Correct, Chair and
 11 Commissioners. When we arrived at scene 2 – at scene 1,
 12 with Warrant Officer Thamae, Constable Molefe, Warrant
 13 Officer Henderson, I decided that because we were informed
 14 that there is another shooting at another koppie, which
 15 was, we call it in the SAPS –
 16 [09:48] CHAIRPERSON: I understand there was an
 17 outage which affected the whole town. Let's hope it's of
 18 temporary duration and won't recur for the rest of the day.
 19 You were leading your witness, Mr Madlanga. Despite the
 20 outage, you're still under oath, Captain.
 21 MR MADLANGA SC: Thank you, Chairman.
 22 Captain Mohlaki, responding to my first question you said
 23 that when you got to scene 1 you were not aware that there
 24 had been a shooting at scene 2. When did you become aware
 25 that there had been a shooting at scene 2?

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1 CAPTAIN MOHLAKI: Thank you, Chair and
 2 Commissioners. When I arrived at scene 1 with my team of
 3 three members, we were looking for General Naidoo. Just to
 4 go back a little bit, when we were called from where we
 5 were standing to be on standby, General Naidoo called
 6 Captain Ngcobo from Detectives to inform us that they are
 7 looking for us to process the crime scene. Then when we
 8 arrived at the crime scene 1, that is where we wanted to
 9 locate where is General Naidoo. Then I was told that
 10 General Naidoo is at scene 2.
 11 MR MADLANGA SC: And what time was it
 12 when you were told that General Naidoo was at scene 2?
 13 CAPTAIN MOHLAKI: Thank you, Chair,
 14 Commissioners. It will be any time after 4 o'clock and 5
 15 past 4, afternoon.
 16 MR MADLANGA SC: Did you proceed to scene
 17 2? If so, at what time and at what time did you arrive
 18 there?
 19 CAPTAIN MOHLAKI: Thank you, Chair and
 20 Commissioners. Immediately when we received that message
 21 that General Naidoo is at scene 2, we immediately, myself
 22 and Constable Molefe and four detectives, we drove to scene
 23 2.
 24 CHAIRPERSON: Sergeant Molefe went with
 25 you, and how many detectives?

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1 CAPTAIN MOHLAKI: Thank you, Chair. It
 2 was four detectives.
 3 MR MADLANGA SC: You say immediately, and
 4 you say you were driving, so I would imagine it didn't take
 5 you a long time because the two koppies are relatively
 6 close to each other, not so?
 7 CAPTAIN MOHLAKI: That's correct, Chair.
 8 I will estimate it at five to 10 minutes to drive to scene
 9 2.
 10 CHAIRPERSON: May I pose a question at
 11 this stage? When you got to scene 1 and were told that
 12 General Naidoo was at scene 2, could you still hear
 13 shooting taking place?
 14 CAPTAIN MOHLAKI: Thank you, Chair. Not
 15 at all –
 16 CHAIRPERSON: Sorry, Captain, forgive me.
 17 Every time we ask you a question you say thank you. It's
 18 very nice to receive the gratitude every time but it's not
 19 necessary. I think we can, you've said thank you. It will
 20 stand for all the other answers you give. You say when you
 21 got to scene 1, you asked where General Naidoo was and you
 22 were told he's at scene 2. You didn't hear any shooting?
 23 CAPTAIN MOHLAKI: Not at all. I never
 24 hear any shooting, Chair.
 25 CHAIRPERSON: Did you see teargas?

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1 CAPTAIN MOHLAKI: Not at all.
 2 CHAIRPERSON: So would it be a fair
 3 inference that whatever had happened at scene 2 was over,
 4 or did something happen thereafter, but which Mr Madlanga
 5 will ask you about, at scene 2 which is relevant to our
 6 inquiry?
 7 CAPTAIN MOHLAKI: I will say, Chair, when
 8 it comes to shooting, I don't think there was any shooting
 9 when I was at scene 1.
 10 CHAIRPERSON: Just to make it clear, I'm
 11 interested in whether you could hear any shooting taking
 12 place at scene 2 when you were at scene 1, or is it a fair
 13 inference that by the time you got to scene 1, whatever had
 14 happened at scene 2 was already over?
 15 CAPTAIN MOHLAKI: I will say when I
 16 arrived at scene 1, what was happening at scene 2 it was
 17 already happened.
 18 MR MADLANGA SC: And when you got to
 19 scene 2, did any shooting take place whilst you were there?
 20 CAPTAIN MOHLAKI: Not at all. While I
 21 was at scene 2, there was no shooting.
 22 MR MADLANGA SC: And when you were called
 23 and were advised that you were required at scene 1 to go
 24 and process the scene at scene 1, were you at forward
 25 holding area – did you say 1?

<p style="text-align: right;">Page 694</p> <p>1 CAPTAIN MOHLAKI: Ja, there was a holding 2 area where they are, I understand it was holding area 1. 3 MR MADLANGA SC: And that is where you 4 were when you were called and told you were required to go 5 and process a scene? 6 CAPTAIN MOHLAKI: That's correct, Chair 7 and Commissioners. 8 MR MADLANGA SC: You said you processed 9 the scene – that is scene 2 – from the time that you 10 arrived there until the afternoon of the following day. 11 Obviously it got dark at some point. What lighting, if 12 any, did you use whilst processing the scene? 13 CAPTAIN MOHLAKI: It was arranged with 14 the Lonmin that they can supply us with lights and around 7 15 there were two generators with lights that were installed 16 in our scene 2. 17 MR MADLANGA SC: And would you say this 18 provided you with enough light to process the scene? 19 CAPTAIN MOHLAKI: I won't guarantee that 20 because I need extra light. 21 MR MADLANGA SC: I'm not sure I follow 22 that response. Are you saying you sourced extra lights, or 23 are you saying you couldn't do your job because you needed 24 extra lights? I don't quite follow you. 25 CAPTAIN MOHLAKI: The generator was</p>	<p style="text-align: right;">Page 696</p> <p>1 wrong. Did I understand you correctly, Mr Semenya? 2 MR SEMENYA SC: In relation to B1, Chair. 3 CHAIRPERSON: Sorry, I misunderstand. 4 You're talking about the inaccuracies in the map prepared 5 by Lieutenant-Colonel Scott? 6 MR MADLANGA SC: Yes, which is what I 7 referred to and I said – 8 CHAIRPERSON: I'm sorry, I misunderstood. 9 MR MADLANGA SC: I said Google map, 10 Chair, and these are inaccuracies that are not what my 11 learned friend Mr Semenya was referring to. Thank you, 12 Chair. Now Captain, can you please indicate to the 13 Commissioners where is the inaccuracies are? 14 CAPTAIN MOHLAKI: Okay, thank you, Chair, 15 Commissioners. I will go to number U. I would like if you 16 can put it on, in record that number U must read U1 to U6. 17 It was not only one point. It was six points there. 18 MR MADLANGA SC: Do you have a pointer 19 there with you – 20 CAPTAIN MOHLAKI: Correct. 21 MR MADLANGA SC: - so that you can assist 22 us and point at the screen there, then we can try to relate 23 the spot at which you are pointing to our hard copies in 24 front of us? 25 CAPTAIN MOHLAKI: There's a U somewhere</p>
<p style="text-align: right;">Page 695</p> <p>1 supplying with the lights, but I have to use my alternative 2 light so that I can see some close-up. 3 MR MADLANGA SC: Would you say additional 4 rather than alternative? 5 CAPTAIN MOHLAKI: Or I've used the 6 alternative light because it's the name of the light that 7 I'm using. It's the name of the lights that I'm using, is 8 an alternative light. 9 CHAIRPERSON: Is it a kind of a torch? 10 CAPTAIN MOHLAKI: That's correct, Chair 11 and Commissioners. 12 MR MADLANGA SC: Thank you for the 13 edification, Captain. And did that alternative light and 14 the generators provide you with sufficient light for you to 15 do your job? 16 CAPTAIN MOHLAKI: That's correct, Chair 17 and Commissioners. 18 MR MADLANGA SC: Now let us go back to 19 the subject that we were dealing with yesterday, the 20 inaccuracies in the Google map B46. Could you – 21 CHAIRPERSON: It's not so much 22 inaccuracies. I understand the captain to, Mr Semenya to 23 say it was suggested that the Google map was inadequate in 24 the sense that there were extra things that weren't 25 recorded on it, not that everything that was recorded was</p>	<p style="text-align: right;">Page 697</p> <p>1 here. It was a cluster of cartridge case that I was, it 2 was marked A, U1 to U6. 3 MR MADLANGA SC: And the plotting or the 4 location, is that correct except for the numbering? 5 CAPTAIN MOHLAKI: Correct, Chair. 6 MR MADLANGA SC: Any other inaccuracies? 7 CAPTAIN MOHLAKI: Body J, it was – I just 8 want to put it in record that body J, next to body J there 9 was a body I that I see is missing here. There were two 10 dead bodies that were lying together. 11 MR MADLANGA SC: Please speak into the 12 microphone. 13 CAPTAIN MOHLAKI: Okay, thank you. There 14 were two bodies I and J lying next to each other, so I see 15 only J is indicated here. So I just wanted to put in 16 record that there was body I next to body J. 17 MR MADLANGA SC: I notice that close to J 18 on the Google map there is G, there is K, there is a green 19 icon, there is Z. Where exactly would you place the I? 20 Would it be between G and J or between J and the green 21 icon, or elsewhere? 22 CAPTAIN MOHLAKI: I will place it between 23 H and G – no, ja I will place it between G and J, but just 24 close to J. 25 MR MADLANGA SC: Any other inaccuracies?</p>

<p style="text-align: right;">Page 698</p> <p>1 CAPTAIN MOHLAKI: On the area between P 2 and R, I want to put it in record that there must be a 3 point Q1. 4 MR MADLANGA SC: Just please point again 5 to give us an idea. Just repeat what you said. 6 CAPTAIN MOHLAKI: Q1. 7 MR MADLANGA SC: Which indicates what? 8 CAPTAIN MOHLAKI: A rifle cartridge. 9 MR MADLANGA SC: I can't see that far. 10 You say that Q1 will be close to which letter? I want to 11 look at my hard copy in front of me. 12 CHAIRPERSON: Is Q1 underneath DB37? 13 CAPTAIN MOHLAKI: Not at all, Chair. It 14 must be close to, up on, next to P, between P and R. 15 CHAIRPERSON: Captain, there appear to be 16 two Rs. If you look, there's a, where we're looking at the 17 moment, just to the left of O is an, south-west of O 18 there's an R and above that is an X, and above that, 19 slightly north-west of X is an R. Now which R are you 20 talking about? Next to which R should Q1 be placed? 21 CAPTAIN MOHLAKI: Thank you, Chair. 22 Between P and R on top, next to that blue icon. 23 MR MADLANGA SC: And the second R, what 24 should that be? Is that correct? 25 CAPTAIN MOHLAKI: That second R is what's</p>	<p style="text-align: right;">Page 700</p> <p>1 MR MADLANGA SC: And the open patch 2 there, to the right there's the busy area. Then what I've 3 referred to as a patch, and then another bushy area to the 4 left. Is that so? 5 CAPTAIN MOHLAKI: That's correct, Chair 6 and Commissioners. 7 MR MADLANGA SC: And you are saying all 8 of these should have been clustered together as AA30 to 9 AA42? 10 CAPTAIN MOHLAKI: That's correct, Chair 11 and Commissioners. 12 MR MADLANGA SC: Is there anything else 13 that you would like to correct on this Google map? 14 CAPTAIN MOHLAKI: Nothing up to so far, 15 Chair and Commissioners. 16 MR MADLANGA SC: B47 is a sketch plan. 17 Is that the sketch plan that you said you drew yourself? 18 CAPTAIN MOHLAKI: That's correct, Chair 19 and Commissioners. 20 MR MADLANGA SC: And would you say that 21 on that sketch plan you placed everything that you 22 observed, you placed it as accurately and as reasonably 23 possible? 24 CAPTAIN MOHLAKI: Correct, Chair and 25 Commissioners.</p>
<p style="text-align: right;">Page 699</p> <p>1 misplaced there. It must be, it must not supposed to be 2 appearing there. 3 MR MADLANGA SC: Proceed. Are there any 4 other? 5 CAPTAIN MOHLAKI: AA30 to AA42, it was a 6 group of rifle cartridge case. They are also misplaced 7 there. I would just indicate the correct position. 8 MR MADLANGA SC: Just a minute. You 9 refer to AA30 to AA42, and you say those are misplaced. I 10 see AA30 to AA34. I do not see AA30 to AA42. 11 CAPTAIN MOHLAKI: Thank you. Let me just 12 explain myself. AA30 to AA34, you see it? 13 MR MADLANGA SC: Just a minute. Before 14 you proceed, just point again for people to get an idea. 15 CAPTAIN MOHLAKI: There's AA30 to AA34. 16 Just on top there it's AA35 to AA37. If you go towards 17 your western side, there's AA38 to AA42. They were 18 supposed to be plotted somewhere here. 19 MR MADLANGA SC: You seem to be pointing 20 at a bushy area. 21 CAPTAIN MOHLAKI: Here, this passage. 22 CHAIRPERSON: Pointing to an area below 23 AA30 to 34, beginning slightly south-west as it were, of 24 AA30 and extending along to a point more or less opposite 25 AA34, if I see correctly.</p>	<p style="text-align: right;">Page 701</p> <p>1 MR MADLANGA SC: Following the sketch 2 plan, four aerial photographs, BB48, 49, 50 to 51, are 3 those aerial photographs of Scene 2? 4 [10:08] CAPTAINAIN MOHLAKI: That is correct, 5 Chair and Commissioners. 6 MR MADLANGA SC: Just a second, Chair, 7 Commissioners. Sorry, sorry, Chair, I had promised my 8 learned friend, Mr Bruinders a document, and I just 9 established that he still doesn't have it. I will take 10 care of that. And I noticed on the aerial photographs that 11 you have the letters SNE and W, do those signify south, 12 north, east and west? 13 CAPTAIN MOHLAKI: That is correct, Chair 14 and Commissioners. 15 MR MADLANGA SC: And there is "N" also on 16 the sketch plan, B47, that indicates north obviously. 17 CAPTAINAIN MOHLAKI: That is correct, 18 Chair and Commissioners. 19 MR MADLANGA SC: You don't have the E, W 20 and S, but would it be correct, that is on B47, to say that 21 east would be on the right margin of the sketch plan? That 22 is E for East. 23 CAPTAINAIN MOHLAKI: That is correct. 24 Chair. 25 CHAIRPERSON: [Inaudible].</p>

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1 MR MADLANGA SC: Obviously, I was going
 2 to say, Chair, yes, and I was going to say Chair the rest
 3 falls in place, I was not going to take him through S and
 4 W. Thank you, Chair. Now, I will take you to B52, your
 5 key. We have already dealt with the aerial photographs.
 6 Let us go to bodies A and B. When one looks at B46, it
 7 looks like those bodies are on top of the rock, whereas on
 8 your sketch plan on the next page, it looks like they are
 9 right on the ground. What is the correct situation?
 10 CAPTAIN MOHLAKI: I don't understand,
 11 where do you refer, you are saying body A and B?
 12 MR MADLANGA SC: Body A and B, purely
 13 because of the colouring on the Google map, it looks as
 14 though, that is on the Google map B46, it looks as though
 15 they are on top of what looks like a rock, and I am saying,
 16 on your sketch, the next page, your dots representing
 17 bodies A and B, would appear to be right on the ground, do
 18 you understand me?
 19 CAPTAIN MOHLAKI: Correct, I understand.
 20 MR MADLANGA SC: Yes. Now my question
 21 is, what is the correct position, or did you find those two
 22 bodies on a rock, or right on the ground?
 23 CAPTAIN MOHLAKI: Were found right on the
 24 ground.
 25 MR MADLANGA SC: There is a reference by

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1 you, on your findings to traditional weapons, you indicate
 2 that at a few places. What exactly are you referring to,
 3 when you talk about traditional weapons?
 4 CAPTAIN MOHLAKI: The traditional weapons
 5 that I was referring to, it was self-made spears, that were
 6 lying on that area.
 7 MR MADLANGA SC: Self-made only?
 8 CAPTAIN MOHLAKI: It would be some axes
 9 that were lying there.
 10 MR MADLANGA SC: Any bush knives?
 11 CAPTAIN MOHLAKI: Not specifically on
 12 that point of where I've indicated with a green icon, but
 13 yes, on the other areas they were there.
 14 MR MADLANGA SC: Captain, I am not
 15 referring to any specific or particular spot now, I just
 16 want to get a sense of what you mean by traditional
 17 weapons. So does that concept include bush knives?
 18 CAPTAIN MOHLAKI: That's correct, now I
 19 understand you, Chair and Commissioners, that's correct.
 20 MR MADLANGA SC: Would it also include
 21 sticks and knobkieries?
 22 CAPTAIN MOHLAKI: That is correct, Chair
 23 and Commissioners.
 24 MR MADLANGA SC: Would it also include
 25 what we would refer to, more than 20 years ago when I was

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1 doing a lot of criminal matters, as "inculas," that's I-N-
 2 C-U-L-A-S, I don't what it is in Sesotho, Setswana, Sepedi,
 3 but –
 4 CHAIRPERSON: I-N-C-U?
 5 MR MADLANGA SC: I-N-C-U-L-A, and then an
 6 "S" for plural, Chairman. It's an "incula." But if I were
 7 to describe it, it's any piece of iron that has been
 8 sharpened and can be used to stab somebody with.
 9 CAPTAIN MOHLAKI: Yes, I did find a lot
 10 of that.
 11 MR MADLANGA SC: Okay, alright, now that
 12 –
 13 CHAIRPERSON: I am sure the interpreter
 14 is multi-lingual, will be able to tell us what the
 15 appropriate word is in Setswana and in Northern Sotho and
 16 in Zulu and Swazi, and whatever that Setswana, is that
 17 correct, Mr Interpreter?
 18 MR MAHLANGU: Yes.
 19 CHAIRPERSON: Can you interpret that word
 20 for us into some, at least to the other official languages?
 21 MR MAHLANGU: It is correct, in English
 22 it would only be interpreted as a sharpened piece of iron.
 23 It's mostly used in Xhosa. The Sotho's really don't use
 24 it, they refer to it as some sort of a spear. It's more
 25 appropriate in Xhosa, because it's a proper traditional

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1 Xhosa weapon, "incula." In English, it's any piece of iron
 2 that has been sharpened that would be used for stabbing a
 3 person.
 4 CHAIRPERSON: The witness has followed
 5 that. I take it what you want to know from him, is did he
 6 find implements of that kind on the scene?
 7 MR MADLANGA SC: At this stage it's more
 8 wood, that would be part of what he is referring to as
 9 traditional weapons.
 10 CAPTAIN MOHLAKI: Correct, Chair and
 11 Commissioners.
 12 MR MADLANGA SC: As the itemisation that
 13 you and I have just gone through left out any other types
 14 of traditional weapons?
 15 CAPTAIN MOHLAKI: Chair, I think you've
 16 covered almost all the traditional weapons that were there.
 17 MR MADLANGA SC: That's probably an
 18 indication that I also know traditional weapons.
 19 MR MAHLANGU: If I may also add, Chair,
 20 it is also used in Zulu, but in Zulu it's not a wood that
 21 they – it's not a piece of iron that they sharpen but it's
 22 a stick that is sharpened and hidden behind the shield, so
 23 that a person could at very close range then be stabbed,
 24 and it's called in Zulu, "ubogo."
 25 MR MADLANGA SC: Thank you, Mr Mahlangu.

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1 Captain, did you find any traditional weapons close to
2 bodies A and B, and perhaps because close to, may be a
3 relative term, say within four metres of the spot where you
4 found them, were there any traditional weapons?
5 CAPTAIN MOHLAKI: No, body A and body B,
6 there was no close traditional weapons that were found by
7 myself.
8 MR MADLANGA SC: Now the, on your sketch,
9 it seems as though there are two big rocks there, that is
10 next to where you found bodies A and B. Are there roughly
11 two rocks there? Big rocks.
12 CAPTAIN MOHLAKI: No, it's just a crack.
13 MR MADLANGA SC: Crack?
14 CAPTAIN MOHLAKI: Ja, if you check
15 towards body B, body B, yes, there's a crack, it's not two
16 separate big rocks there.
17 MR MADLANGA SC: Oh, thank you. Is that
18 rock flat and roughly level with the ground, or is it
19 raised?
20 CAPTAIN MOHLAKI: It is raised, not flat
21 on the ground.
22 MR MADLANGA SC: Does it slope towards
23 where bodies A and B were?
24 CAPTAIN MOHLAKI: That is correct, Chair
25 and Commissioners.

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1 MR MADLANGA SC: And on your observations
2 would you say it slopes gently or it slopes steeply?
3 CAPTAIN MOHLAKI: I would say it is a
4 steep slope.
5 MR MADLANGA SC: Were there any cartridge
6 cases on the ground, say within a distance of plus-minus
7 two metres, or even three from where bodies A and B lay?
8 CAPTAIN MOHLAKI: No, Chair, there was no
9 cartridge cases found there.
10 MR MADLANGA SC: Is there any other
11 observation of note that you would like to make, or tell
12 this Commission with regard to bodies A and B?
13 CAPTAIN MOHLAKI: What I observed with
14 body A and B, it was just bodies with a gun wound.
15 MR MADLANGA SC: Did you find or now show
16 us whether on the Google map or on your sketch where body C
17 was?
18 CAPTAIN MOHLAKI: On top there, on that
19 letter N, you go on your left, towards it, you will get the
20 body C.
21 MR MADLANGA SC: So roughly, it's on the
22 north-western side.
23 CAPTAIN MOHLAKI: Correct, Chair.
24 MR MADLANGA SC: Did you find any
25 cartridge cases in the vicinity of or close to body C,

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1 again say within three metres of body C?
2 CAPTAIN MOHLAKI: Not at all. No
3 cartridges were recovered around body C, or not close.
4 CHAIRPERSON: No, no, you weren't asked
5 about cartridges, you were asked about cartridge cases.
6 CAPTAIN MOHLAKI: Cartridge cases.
7 MR MADLANGA SC: Perhaps, let me before I
8 continue further, with regard to body C, let me just try to
9 establish the entire area that you searched whilst you were
10 processing this scene. Let's take, for instance, the
11 eastern side from the koppie itself, how far would you say
12 you searched to the east?
13 CAPTAIN MOHLAKI: I walked for about 150
14 metres.
15 MR MADLANGA SC: You walked, walking?
16 CAPTAIN MOHLAKI: Ja.
17 MR MADLANGA SC: 150?
18 CAPTAIN MOHLAKI: Yes, 1-5-0.
19 MR MADLANGA SC: And to the northern
20 side, how far did you search?
21 CAPTAIN MOHLAKI: For about 1570 metres.
22 MR MADLANGA SC: To the north up to that,
23 rather up to the point which you measured to be the 157 you
24 say, yes?
25 CAPTAIN MOHLAKI: That is correct.

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1 MR MADLANGA SC: Yes. Is there any
2 particular landmark that you can indicate, up to what point
3 landmark or next to what point or landmark did you stop
4 searching?
5 CAPTAIN MOHLAKI: Yes, I can indicate
6 that if you walk towards the north, there's a road that it
7 was used, it's used by people from Marikana going to the
8 informal settlement somewhere, that is where I stopped.
9 MR MADLANGA SC: Look at B48, is the road
10 that you are referring to showing there at all?
11 CAPTAIN MOHLAKI: B48 is which one?
12 MR MADLANGA SC: That is the very first
13 aerial photograph.
14 CAPTAIN MOHLAKI: Okay, I can see it,
15 that is correct.
16 MR MADLANGA SC: Can you try to describe,
17 so that the Commission and everybody else present can get
18 an idea of what you are referring to?
19 CAPTAIN MOHLAKI: If you check on top
20 there, on our right-hand side, on my right-hand side,
21 there's a gravel road, but you don't follow where that
22 vehicle is standing, you go this direction.
23 MR MADLANGA SC: Are you able to give an
24 indication on that very same aerial photograph, roughly
25 where body C would have been?

<p style="text-align: right;">Page 710</p> <p>1 CAPTAIN MOHLAKI: Body C will be 2 somewhere, somewhere here. 3 MR MADLANGA SC: And to the west, how far 4 did you search? 5 CAPTAIN MOHLAKI: 100 metres. 6 MR MADLANGA SC: And would now in 7 relation to how far you searched to the north and how far 8 you searched to the west, would body C be within the area – 9 or rather, say you referred to or rather you said you did 10 not find any cartridge cases – 11 CAPTAIN MOHLAKI: Yes. 12 MR MADLANGA SC: - close to body C. 13 CAPTAIN MOHLAKI: Correct. 14 MR MADLANGA SC: Did you search only one 15 side of where body C lay, or did you search all around 16 where body C lay? 17 CAPTAIN MOHLAKI: Maybe if I can explain 18 the searching that I used - 19 MR MADLANGA SC: No, no, just answer that 20 question. Did you search only on one side of where body C 21 lay, or did you search all around body C? 22 CAPTAIN MOHLAKI: I don't understand when 23 you are saying "all around body C." 24 CHAIRPERSON: Sorry, if you put a compass 25 in the ground where body C is, and you extend the edge of</p>	<p style="text-align: right;">Page 712</p> <p>1 deal with the measurements but I just want to quickly get 2 the measurement in relation to body C. How far was body C 3 from the koppie itself? 4 CAPTAIN MOHLAKI: Body C to edge of the 5 mountain is 107.7 metres. 6 CHAIRPERSON: By mountain I take it you 7 mean the koppie? 8 CAPTAIN MOHLAKI: Sorry Chair? 9 CHAIRPERSON: By mountain I take it you 10 mean the koppie? 11 CAPTAIN MOHLAKI: That's correct, Chair, 12 the koppie. 13 CHAIRPERSON: Mr Madlanga, I trust that 14 at some stage before this evidence-in-chief is over we will 15 be told the names of bodies A, B and C and any other bodies 16 that you refer to, so that if there are any questions about 17 the injuries it will be a simple matter, one hopes, to 18 refer to the post-mortem reports that have been handed in, 19 if the post-mortem reports handed in relate to these bodies 20 because I understand there are still some missing, is that 21 correct? But it will be helpful I think for us to know the 22 names of A, B and C and any other lettered bodies we're 23 going to refer to, so that we can immediately see what 24 injuries in fact were sustained by those bodies. 25 MR MADLANGA SC: Thank you, Chair. And</p>
<p style="text-align: right;">Page 711</p> <p>1 the compass so that it's about 100 metres away and you draw 2 a circle around like that, that area, that circular area, 3 with body C in the centre, and a radius of about 100 4 metres, that's the area that I think that Mr Madlanga is 5 referring to. 6 MR MADLANGA SC: Or perhaps just if I 7 were to just – 8 CHAIRPERSON: I am sorry. 9 MR MADLANGA SC: Thank you, Chair, thank 10 you, that's very useful. Let's take this bottle and let's 11 say it's body C, what I am trying to get at is, did you 12 search only this side of body C, or only this side of body 13 C, or only that side, or did you search all around body C? 14 [10:28] CAPTAIN MOHLAKI: Okay, I understand now. 15 I searched all over around body C. That is why I was 16 saying if you allow me to explain the searching, it was 17 going to be easy for us to understand because when I 18 searched towards north and I searched towards east and 19 west, somewhere north-west will be covered because if I go 20 this direction I cover this area and when I start to go 21 this direction I will cover this area. So that area of 22 north-west where the body was then, was positioned, it was 23 going to be covered. It was within the 150 to the north 24 and the 100 to the west, that's correct. 25 MR MADLANGA SC: You are still going to</p>	<p style="text-align: right;">Page 713</p> <p>1 to the south, how far did you search? 2 CAPTAIN MOHLAKI: 251.9 metres. 3 MR MADLANGA SC: And on that side was 4 there a landmark? 5 CAPTAIN MOHLAKI: That's correct, Chair 6 and commissioners. 7 MR MADLANGA SC: And did you search up to 8 that landmark and what was it? 9 CAPTAIN MOHLAKI: I searched up to the 10 road. When you cross over the road there is an electrical 11 station. 12 MR MADLANGA SC: An electrical station or 13 just one electrical pylon? 14 CAPTAIN MOHLAKI: If you pass that – 15 immediately on that pylon there's a road, a gravel road. 16 When you go that side it's an electrical station but I 17 searched up to that pylon. 18 MR MADLANGA SC: The distances that you 19 give, are they all measured from the koppie? 20 CAPTAIN MOHLAKI: That's correct, Chair 21 and commissioners. 22 MR MADLANGA SC: Chair, may I at this 23 stage, in the hope that – oh, my learned junior is going to 24 assist me and give me what he's referring to as the proper 25 document. I have a handwritten ones with the names and</p>

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1 letters, Chair, thank you.

2 CHAIRPERSON: If you give us a name it

3 might also be helpful if you can give the numbers of the

4 post-mortem reports in the bundle that were handed in so

5 that we can look at them easily.

6 MR MADLANGA SC: We'll give the names

7 later, Chair, but the letters and names are readily

8 available.

9 CHAIRPERSON: Before you whisper

10 instructions to your junior it might help to turn your

11 microphone off.

12 MR MADLANGA SC: Sorry about that,

13 Chairperson and commissioners. Let us go back to your key,

14 B52 commissioners, and we were dealing with body C and if I

15 may just give the name right away, it's Mr Thobile Mpumza,

16 T-H-O-B-I-L-E M-P-U-M-Z-A. And whilst at it, may I go back

17 to bodies A and B and those are Mr Anele, A-N-E-L-E,

18 Mdizeni, M-D-I-Z-E-N-I. And body B is Mr Thabiso Johannes

19 Thelejane, T-H-A-B-I-S-O, then Johannes and then T-H-E-L-E-

20 J-A-N-E. Did you look for cartridges next to body C?

21 CAPTAIN MOHLAKI: Yes I did, Chair.

22 MR MADLANGA SC: Where would you – or

23 rather which cartridge case or cases are closest to body C,

24 according to your findings?

25 CAPTAIN MOHLAKI: The closest cartridge

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1 case, it was cartridge case AA12.

2 MR MADLANGA SC: And what type of

3 cartridge case was that?

4 CAPTAIN MOHLAKI: It was a 9 millimetre

5 cartridge case.

6 MR MADLANGA SC: Yes. Chair,

7 commissioners, scene 2 legend B88 describes what the colour

8 coding stands for, thank you. So that is just one

9 cartridge case.

10 CAPTAIN MOHLAKI: That's correct, Chair

11 and commissioners.

12 MR MADLANGA SC: And the blue icon close

13 to that cartridge case indicates what? Oh, just a minute.

14 No – no, just a minute.

15 CHAIRPERSON: Mr Madlanga, it looks as if

16 the blue icon is either a 9 millimetre cartridge case or a

17 cartridge, actually, or a 19 millimetre.

18 MR MADLANGA SC: Yes, Chair, that's –

19 CHAIRPERSON: There isn't a reference on

20 this legend to cartridge cases, as far as I can see.

21 MR MADLANGA SC: Well, that's – yes, the

22 blue, yes – cases because elsewhere the blue does appear

23 and then there may be more than one at other places. I

24 wanted to –

25 CHAIRPERSON: Sorry to interrupt you –

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1 MR MADLANGA SC: Yes.

2 CHAIRPERSON: All I'm saying is the

3 legend refers to cartridges, it doesn't relate, it doesn't

4 refer to cartridge cases and it may be that it's intended

5 to refer to cartridge cases but all I'm saying to you, it

6 doesn't say that.

7 MR MADLANGA SC: Thank you, thank you

8 Chair. I'm sorry I did not follow that. Can you please

9 explain, can you please explain that? Are you referring

10 to, is the blue referring to cartridges or cartridge cases?

11 CAPTAIN MOHLAKI: It refers to cartridge

12 cases.

13 MR MADLANGA SC: And the white one close

14 to – oh, just a minute, just a minute. You have AA8 to 11,

15 what are those?

16 CAPTAIN MOHLAKI: AA8 to AA11 is shotgun

17 cartridge cases.

18 MR MADLANGA SC: So live ammunition there

19 was only one.

20 CAPTAIN MOHLAKI: That is a cartridge

21 case.

22 MR MADLANGA SC: I mean a cartridge case

23 for live ammunition, there was only one?

24 CAPTAIN MOHLAKI: That's correct, Chair

25 and commissioners.

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1 MR MADLANGA SC: Let us move to bodies D

2 and E and commissioners, the names are Mr Julius

3 Mangcotywa, M-A-N-G-C-O-T-Y-W-A and E is Raphael Janeveke

4 Liau. Janeveke J-A-N-E-V-E-K-E, Liau L-I-A-U. And I would

5 want to join those together with other bodies and perhaps

6 before we deal with those, let's go to F. What does F

7 indicate?

8 CAPTAIN MOHLAKI: F indicates a firearm,

9 a pistol.

10 MR MADLANGA SC: Where was this pistol?

11 Was it strapped onto the person of somebody or was it lying

12 loose on the ground, was it in a holster?

13 CAPTAIN MOHLAKI: It was lying on the

14 ground between, distance between body D and E and body G

15 and H and it was in the holster magazine in the firearm.

16 MR MADLANGA SC: And was it loaded?

17 CAPTAIN MOHLAKI: That's correct, Chair,

18 it was loaded.

19 MR MADLANGA SC: And how many cartridges

20 were in it?

21 CAPTAIN MOHLAKI: 15 cartridges.

22 MR MADLANGA SC: I take it that as a

23 policeman you would know the answer to this. How many

24 cartridges does a firearm of that type take?

25 CAPTAIN MOHLAKI: As far as I know it

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1 must be 15 cartridges.

2 MR MADLANGA SC: Chair, commissioners,

3 may I just give the names of other bodies to the

4 Commission? I went up to D and E.

5 CHAIRPERSON: Yes.

6 MR MADLANGA SC: Then G and H – no, no, I

7 think already gave G to the commissioners. No – no, G yes,

8 G is Thabiso Mosebetsane, T-H-A-B-I-S-O, Mosebetsane M-O-S-

9 E-B-E-T-S-A-N-E and H is Mafolisi Mabiya and I apologise

10 for the terrible pronunciation and this is M-A-F-O-L-I-S-I

11 and the surname M-A-B-I-Y-A and that's H. And the next one

12 is I and that's Ntandaso Nokamba, N-T-A-N-D-A-S-O surname

13 N-O-K-A-M-B-A and J is Fezile F-E-Z-I-L-E David Samphendu,

14 S-A-M-P-H-E-N-D-U.

15 CHAIRPERSON: Up to now when you've

16 mentioned people's names you've prefaced it by Mr. I take

17 it, it was an unintentional omission when you refer to

18 these people.

19 MR MADLANGA SC: It definitely is, it

20 definitely is and my apologies, Chair. And the next one –

21 just hold, Chair. With regard to body K, at some stage

22 there was a confusion because there were two Mr Ngxande's

23 with the same initial and our feeling was that there must

24 be something wrong with that. I just want to clear that

25 with my junior and this is the next name. Chair, the next

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1 one is body K, Mr Mpumzeni Ngxande, M-P-U-M-Z-E-N-I and

2 Ngxande is N-G-X-A-N-D-E. And the next one is body L, Mr

3 Stelega Merrick Gadlela, Stelega S-T-E-L-E-G-A and Gadlela

4 G-A-D-L-E-L-A. And the next one is body M, Mr Henry

5 Mvuyisi M-V-U-Y-I-S-I Pato P-A-T-O M-V-U-Y-I-S-I. P-A-T-O,

6 Pato. Can you please indicate to the commissioners where

7 all these bodies were, that is D to M and at the inspection

8 – oh, sorry.

9 CHAIRPERSON: F isn't a body, I don't

10 think.

11 MR MADLANGA SC: Yes, yes, jumping F of

12 course because it's not a body. Thank you, thank you –

13 CHAIRPERSON: That's a mistake Mr

14 Marinovich made, I remember.

15 MR MADLANGA SC: Thank you, Chair, but at

16 least here we have already referred to it as a firearm but

17 thank you for the correction. Can you please indicate and

18 you can point to the screen behind you, where all these

19 bodies were and at the inspection in loco some of them were

20 lying between rocks. There would be a rock this side, a

21 rock that side and bodies would be - would have been,

22 according to your indication, between those rocks. In such

23 instances indicate which bodies were between rocks?

24 CAPTAIN MOHLAKI: Thank you, Chair and

25 commissioners. Body D and E, there was a rock on the

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1 northern side of the bodies. Body D, the head was facing

2 the rock. Body E, the head was opposite the rock. Then

3 that was the firearm which was marked point F. And body G

4 and body H, they were lying between the two rocks on their

5 sides.

6 [10:48] MR MADLANGA SC: And would you – I know

7 it may be a difficult question because there's a bit of

8 relativity to this – would you say those were small or

9 large rocks?

10 CAPTAIN MOHLAKI: I will say it's a large

11 rock because it can cover the body altogether.

12 MR MADLANGA SC: You are using the

13 singular – I thought you said between rocks. So is there,

14 what you've just described does that relate to both rocks

15 or are you talking only about one rock?

16 CAPTAIN MOHLAKI: I'm referring to both

17 rocks, Chair.

18 MR MADLANGA SC: Please continue.

19 CAPTAIN MOHLAKI: If you move, as you are

20 going to F there's a rock –

21 MR MADLANGA SC: Please, please repeat,

22 speak into the microphone.

23 CAPTAIN MOHLAKI: Alright. Sorry Chair,

24 can I put this, this side because if I concentrate here I

25 cannot see what I'm indicating this side. Thank you very

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1 much. If you go back as if you're going to the direction

2 of F there's a rock, actually between two rocks also.

3 MR MADLANGA SC: Small or large?

4 CAPTAIN MOHLAKI: I will say large. So

5 there's a passage between body G and H and F where you can

6 move. You are going towards body I and J. Then when you

7 go over this side, because as I have indicated there is a

8 rock here – if you go this side you are going to get body

9 K. Then when you move from K you come in this, on the open

10 veld here, you are going to that body L. Then body M is

11 between the rocks and also there are some trees, so it

12 won't be easy to see because you will see, you will think M

13 is just on top of the trees but it is in between the two

14 big rocks. And when you go to the western side there is a

15 yellow man with –

16 MR MADLANGA SC: No, no, just – I said up

17 to M.

18 CAPTAIN MOHLAKI: Oh, sorry for that.

19 Thank you.

20 MR MADLANGA SC: Thank you. Let me take

21 you to Mr Mpumza, body C, were there any traditional

22 weapons next to where he lay?

23 CAPTAIN MOHLAKI: That's correct, Chair,

24 there were some traditional weapons.

25 MR MADLANGA SC: And next to the other

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1 bodies D to M with the exclusion of the letter F which was
 2 not a body, did you find any traditional weapons?
 3 CAPTAIN MOHLAKI: That's correct, Chair
 4 and commissioners, there were some traditional weapons.
 5 MR MADLANGA SC: Next to each one of
 6 those bodies?
 7 CAPTAIN MOHLAKI: That's correct, Chair
 8 and commissioners.
 9 CHAIRPERSON: There were nine bodies, how
 10 many weapons? I said there were nine bodies, how many
 11 weapons did you find?
 12 CAPTAIN MOHLAKI: I never counted the
 13 weapons individually because they were just lying around.
 14 MR MADLANGA SC: Did you find any
 15 cartridge cases close to or in the vicinity of bodies D to
 16 M?
 17 CAPTAIN MOHLAKI: No cartridge cases were
 18 recovered around those bodies.
 19 MR MADLANGA SC: Not within three metres
 20 of those bodies?
 21 CAPTAIN MOHLAKI: Not at all, Chair and
 22 commissioners.
 23 MR MADLANGA SC: If I were to stretch it
 24 and say within four metres of the bodies?
 25 CAPTAIN MOHLAKI: Not at all, Chair and

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1 commissioners.
 2 MR MADLANGA SC: Now you were rushing to
 3 show us body N. Chair, commissioners, that is Mr M
 4 Mkonyane – my learned junior failed me here, he did not
 5 give me the full name. Can the commissioners just bear
 6 with me please? It's Mr Mkonjwa Mkhonyane and that's
 7 M-K-O-N-J-W-A and the surname M-K-H-O-N-Y-A-N-E. Can you
 8 show the commissioners where this body lay?
 9 CAPTAIN MOHLAKI: The body was lying
 10 somewhere here.
 11 MR MADLANGA SC: And –
 12 CHAIRPERSON: Are you now moving on to a
 13 different topic, Mr Madlanga? You've placed all the bodies
 14 on the scene.
 15 MR MADLANGA SC: Yes, yes. Let's just
 16 quickly -
 17 CHAIRPERSON: We'll take the adjournment
 18 at a point hereafter which you consider appropriate.
 19 MR MADLANGA SC: Thank you, Chair. Thank
 20 you, Chair. Can you just give us the distance of the
 21 closest cartridge case or cartridge cases, closest to body
 22 N, that is.
 23 CAPTAIN MOHLAKI: The closest cartridge
 24 cases were on that area of AA13 to AA24 and the measurement
 25 is 20.2 metres.

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1 MR MADLANGA SC: And what type of
 2 cartridge cases were those?
 3 CAPTAIN MOHLAKI: It was 9 millimetre
 4 cartridge cases.
 5 MR MADLANGA SC: I'm sorry, did you give
 6 the distance? If you did I've forgotten now. Did you give
 7 the – what was the distance?
 8 CAPTAIN MOHLAKI: The distance is 20.2
 9 metres.
 10 MR MADLANGA SC: And to the naked eye it
 11 looks like the closest are the cartridges marked AA28 to 29
 12 and AA25 to 27. What was that distance or what is that
 13 distance, do you know?
 14 CHAIRPERSON: - cartridges?
 15 MR MADLANGA SC: To body N, cartridge
 16 cases to body N, yes Chair.
 17 CAPTAIN MOHLAKI: I don't have them in my
 18 records now but the nearest cartridge cases were AA13 to
 19 24.
 20 MR MADLANGA SC: Alright, can you
 21 nonetheless just tell us what cartridge cases you found and
 22 which you have reflected on AA28 and AA25 to 27, what were
 23 those? What cartridge cases were those?
 24 CAPTAIN MOHLAKI: AA25 to AA27 are
 25 shotgun cartridge cases.

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1 MR MADLANGA SC: Just describe the
 2 shotgun cartridge cases. There are shotguns that fire
 3 pellets which can cause bodily harm, as I understand. I
 4 hope my colleagues will not say I'm testifying from where
 5 I'm sitting – and there are shotguns, as I understand, that
 6 fire rubber bullets. What shotgun cases, cartridge cases
 7 are you referring to here?
 8 CAPTAIN MOHLAKI: This is another topic
 9 because I'm not a ballistic expert on that. My
 10 understanding is shotgun cartridge cases can be used in any
 11 shotgun, it depends on that day which ammunition do you
 12 have – but that is just to give a background, I'm not
 13 saying that is the right way because really I don't know.
 14 MR MADLANGA SC: So far as you are
 15 concerned, everywhere where you refer to shotgun cartridge
 16 cases, that could be the shotgun for – that could be a
 17 cartridge case for what we loosely refer to as a rubber
 18 bullet or a shotgun cartridge case for a cartridge that
 19 fires pellets.
 20 CAPTAIN MOHLAKI: I don't have any idea
 21 when it comes to the differences of shotguns and pellets.
 22 MR MADLANGA SC: Chair, this would be an
 23 appropriate stage, thank you.
 24 CHAIRPERSON: Very well, the Commission
 25 will adjourn for 15 minutes.

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1 [INQUIRY ADJOURNS INQUIRY RESUMES]
 2 [11:25] CHAIRPERSON: The Commission resumes.
 3 MR MADLANGA SC: Thank you, Chair and
 4 Commissioners. Chair, may I ask to take the Commissioners
 5 back to body N. Chair, we were corrected and assisted by
 6 Mr Mpofo's team, and they said the name there should be Mr
 7 Makhosandile Mkhonjwa. Makhosandile, M-A-K-H-O-S-A-N-D-I-
 8 L-E, and Mkhonjwa, M-K-H-O-N-J-W-A. Thank you, Chair.
 9 CHAIRPERSON: Yes, thank you, it's
 10 important that people's names be correct, not only for the
 11 family but generally, I think, to help us.
 12 MR MADLANGA SC: That is so, Chair, and I
 13 apologise for the – and may I also just add, Chair, that we
 14 will look more closely at it, and we propose just preparing
 15 a little schedule, which will reflect the letters, the
 16 post-mortem numbers and then the names, and we hope that at
 17 that stage, everything will be exactly as it should be.
 18 CHAIRPERSON: That will be very helpful,
 19 and it will actually save a lot of time as well because
 20 then we don't have to have cross-examination about what
 21 wounds did body N have, because we will know objectively as
 22 it were, what the correct facts are.
 23 MR MADLANGA SC: Also I might add that my
 24 learned junior, Mr Mojapelo, has already prepared a
 25 schedule that actually sets out all the types of injuries

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1 that each one of these people, or rather of the deceased
 2 people, had. So we will just tweak it a little bit, and
 3 have it in an acceptable format, thank you.
 4 CHAIRPERSON: I don't know if this will
 5 be possible, but I think an attempt should be made to
 6 achieve agreement on what I am now going to talk about, and
 7 that is, it may be possible to get agreement on the
 8 distance from which the shots were fired, in the case of
 9 those who have bullet wounds, because if that can be the
 10 subject of agreement, it may eliminate a fair amount of
 11 cross-examination and save quite a lot of time. I haven't
 12 studied the post-mortem reports from that point of view
 13 myself but you know, sometimes there are powder marks, and
 14 that kind of thing, according to the books on forensic
 15 medicine, and it is possible to ascertain with a fair
 16 degree of accuracy from what distance a weapon was fired
 17 which inflicted a particular shotgun – a particular wound
 18 on, a firearm wound on a corpse. So if that could be the
 19 subject of agreement before, a matter actually canvassed
 20 before the Commission, that might save a lot of time m
 21 also.
 22 MR MADLANGA SC: Chair, we will, I guess
 23 the legal teams will have to engage each other and see if
 24 agreement can be reached on that. Thank you very much,
 25 Chair. Captain, can we now go to body O, and Chair,

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1 Commissioners, this is Mr Nkosinathi Xlabile, Nkosinathi,
 2 N-K-O-S-I-N-A-T-H-I, Xalabile, X-A-L-A-B-I-L-E. Can you
 3 indicate where you found this body?
 4 CAPTAIN MOHLAKI: Correct. Body O was
 5 found somewhere here, on the edge of this big rock, just
 6 on, next to the trees. If you look close to it on the
 7 photo, it will, the body will be as if he is trapped there.
 8 MR MADLANGA SC: It looks as if it's
 9 what?
 10 CAPTAIN MOHLAKI: Trapped on the tree.
 11 MR MADLANGA SC: Where exactly was it,
 12 was it on top of a – was it in the tree or was it on the
 13 ground?
 14 CAPTAIN MOHLAKI: On the ground.
 15 MR MADLANGA SC: Is that a clearing or is
 16 that a bushy spot of ground?
 17 CAPTAIN MOHLAKI: It is a bushy spot of
 18 ground.
 19 MR MADLANGA SC: You referred to the edge
 20 of a rock and on what you are indicating, you seem to be
 21 indicating the same rock, close to which you found Mr Anele
 22 Mdizeni and Mr Thabiso Thelejane, that is bodies A and B,
 23 is that the same rock?
 24 CAPTAIN MOHLAKI: That is correct, Chair
 25 and Commissioners.

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1 MR MADLANGA SC: And on your indication
 2 that seems to be the southern side of that rock.
 3 CAPTAIN MOHLAKI: That is correct, Chair
 4 and Commissioners.
 5 MR MADLANGA SC: Did you find any
 6 cartridges on top of that rock, close to body O?
 7 CHAIRPERSON: You mean cartridges or
 8 cartridge cases?
 9 MR MADLANGA SC: Cartridge cases, thank
 10 you very much, Mr Chairman.
 11 CAPTAIN MOHLAKI: Correct, Chair and
 12 Commissioners, I did recover some cartridge cases.
 13 MR MADLANGA SC: A total of how many?
 14 CAPTAIN MOHLAKI: On the 16th and the
 15 17th, on top of that rock, I recovered some, and on the 31st
 16 I also recovered one on top of there, so if I have to make
 17 my calculations, I will just look at some few minutes.
 18 MR MADLANGA SC: 16 and 17 August and 31,
 19 which month?
 20 CAPTAIN MOHLAKI: August 2012.
 21 MR MADLANGA SC: And your reference to 16
 22 and 17, would that be the one act of processing the scene
 23 which lasted from the 16th to the 17th?
 24 CAPTAIN MOHLAKI: That is correct, Chair
 25 and Commissioners.

<p style="text-align: right;">Page 730</p> <p>1 MR MADLANGA SC: And what's the total 2 number of cartridges you found on the 16th to the 17th, and 3 what types? I am still talking about close to body O, 4 close to body O only, on top of that rock. 5 CAPTAIN MOHLAKI: Thank you, the closest 6 cartridge case that was next to body O, it was, I mark it 7 Victor 1, V1. 8 MR MADLANGA SC: I will make a follow up 9 to that question even though that's not what I was asking. 10 How far was that cartridge case to body O? 11 CAPTAIN MOHLAKI: It was 2.8 metres. 12 MR MADLANGA SC: And what type of 13 cartridge case was it? 14 CAPTAIN MOHLAKI: It was a rifle 15 cartridge case. 16 MR MADLANGA SC: Now back to my original 17 question, which was to establish the total number of the 18 cartridge cases you found on top of that rock, close to 19 body O. 20 CAPTAIN MOHLAKI: 17, 1-7. 21 MR MADLANGA SC: And can you please give 22 the breakdown of the types? 23 CAPTAIN MOHLAKI: It was one 9 millimetre 24 cartridge case, and 16 rifle cartridge cases. 25 MR MADLANGA SC: And is that the total</p>	<p style="text-align: right;">Page 732</p> <p>1 found. Perhaps before you do that, did you find any other 2 firearms besides the one that you marked F? 3 CAPTAIN MOHLAKI: That is correct, Chair. 4 I did photograph two firearms, pistols. 5 MR MADLANGA SC: And where did you find 6 these? Where were they when you took photographs of them? 7 CAPTAIN MOHLAKI: There were two 8 constables, detective-constables who approached me, and 9 then indicated to me that they've arrested two suspects in 10 possession of unlicensed firearm and ammunition on that 11 point. Then they requested me that I must take photos of 12 those exhibits. 13 MR MADLANGA SC: These constables had the 14 firearms in their possession, they were carrying them. 15 CAPTAIN MOHLAKI: That is correct, Chair 16 and Commissioners. 17 MR MADLANGA SC: Now let us go to what I 18 said you should please do, can you please, I am at B53, 19 that is page 2 of your key to photos, page 2. Can you 20 start at BB1 and just go all the way down with all your 21 findings, also indicating whether on the Google map 22 preferably, except where there are inaccuracies and in that 23 regard you can indicate on your sketch. 24 CAPTAIN MOHLAKI: Thank you, Chair and 25 Commissioners. BB1 shows the position of the rifle</p>
<p style="text-align: right;">Page 731</p> <p>1 inclusive of everything you found on the 16th/17th and 31st 2 August? 3 CAPTAIN MOHLAKI: No, Chair, we have to 4 add one cartridge case, rifle cartridge case to make it 17. 5 MR MADLANGA SC: Oh, so the one rifle 6 cartridge case is what you found on the 31st? 7 CAPTAIN MOHLAKI: That is correct, Chair 8 and Commissioners. 9 CHAIRPERSON: I understand that you found 10 altogether 18 cartridge cases, 17 rifle cartridge cases, 16 11 during that long search extending from the 16th to the 17th, 12 and one subsequently on the 31st of October, and also in the 13 course of the long, almost like 23 hours I think it was, 14 search from the 16th to the 17th, you found one 9 millimetre 15 cartridge case, is that correct? 16 CAPTAIN MOHLAKI: That is correct, Chair 17 and Commissioners. 18 MR MADLANGA SC: This may, my next 19 exercise will seem repetitive because you have touched on 20 the positions of some cartridge cases but my focus then was 21 on the position of those cartridge cases in relation to 22 where each one of the bodies was found. Now I want you to 23 deal with the positions of the cartridge cases wherever 24 they might have been and anything else, even besides 25 cartridge cases that you might have found, or that you</p>	<p style="text-align: right;">Page 733</p> <p>1 cartridge. BB2 to BB5 shows the position of rifle 2 cartridge cases. 3 MR MAHLANGU: And BB1 where you say 4 cartridge, would that have been the full, full, what in 5 loose terms or colloquial would refer to as a bullet? 6 CAPTAIN MOHLAKI: The whole – 7 MR MAHLANGU: The case and the 8 projectile? 9 CAPTAIN MOHLAKI: That is correct. 10 Perhaps, let me just refer to B59, that is they show you 11 where you have the photographs or sketches. Mr Chairman, 12 Commissioners, there's an indication on what these things 13 are, so there is a reference to cartridge and one can see 14 that's the whole unit as it were at number 8, and cases at 15 9, that's the empty thing and so on and so on. 16 CHAIRPERSON: I think you used the 17 expression "projectile," to indicate the cartridge, 18 presumably consists of the case and what you call the 19 projectile. Probably we can stick to that terminology and 20 then we know what's being talked about. 21 MR MADLANGA SC: Thank you very much, 22 Chair. Now you've referred to, were you at – are you done 23 with BB2 to BB5 on page 2 of your key? 24 CAPTAIN MOHLAKI: Correct, Chair and 25 Commissioners.</p>

<p style="text-align: right;">Page 734</p> <p>1 MR MADLANGA SC: And proceed, please.</p> <p>2 CAPTAIN MOHLAKI: BB6, on this cluster of</p> <p>3 BB4 to BB8 shows the position of 9 millimetre cartridge</p> <p>4 case, with that blue icon.</p> <p>5 MR MADLANGA SC: And what was that blue</p> <p>6 icon? Or rather what does it represent?</p> <p>7 CAPTAIN MOHLAKI: Nine millimetre</p> <p>8 cartridge case.</p> <p>9 MR MADLANGA SC: Was it all by itself or</p> <p>10 was it in a cluster with other items perhaps, or not?</p> <p>11 CAPTAIN MOHLAKI: Yes, Chair, they were</p> <p>12 on this cluster of cartridges, of rifle cartridges.</p> <p>13 MR MADLANGA SC: And those are marked,</p> <p>14 what?</p> <p>15 CAPTAIN MOHLAKI: BBs.</p> <p>16 MR MADLANGA SC: Sorry?</p> <p>17 CAPTAIN MOHLAKI: The BB1 to BB8.</p> <p>18 MR MADLANGA SC: Okay. Those being what</p> <p>19 cartridge cases?</p> <p>20 CAPTAIN MOHLAKI: Ja, BB1 is a rifle</p> <p>21 cartridge, the whole bullet, BB1. Then BB2 to BB5 is rifle</p> <p>22 cartridge cases, BB6 is a nine millimetre cartridge case.</p> <p>23 MR MADLANGA SC: The next entry BB7 to</p> <p>24 BB35.</p> <p>25 CAPTAIN MOHLAKI: Is this clusters of</p>	<p style="text-align: right;">Page 736</p> <p>1 CAPTAIN MOHLAKI: It was on its own, on</p> <p>2 top here.</p> <p>3 MR MADLANGA SC: You earlier testified</p> <p>4 that on top of that rock, you found a number of cartridges</p> <p>5 on the 16th, 17th and 31st. Where, in relation to those</p> <p>6 cartridges, would P have been?</p> <p>7 CAPTAIN MOHLAKI: If P is on top here, of</p> <p>8 the rocks, you'll have a measurement between P and Q and</p> <p>9 this cluster of rifle cartridges, because this group of</p> <p>10 rifle cartridges were clustered here, but P, it was just on</p> <p>11 its own on top.</p> <p>12 MR MADLANGA SC: A metre away, two metres</p> <p>13 away, five, six, seven metres away, roughly, on your</p> <p>14 recollection, even if it is not -</p> <p>15 CAPTAIN MOHLAKI: I will estimate plus</p> <p>16 minus four metres.</p> <p>17 MR MADLANGA SC: The next entry, Q1, R, S</p> <p>18 and X?</p> <p>19 CAPTAIN MOHLAKI: This was the cluster of</p> <p>20 rifle cartridges, also on top of the rock.</p> <p>21 MR MADLANGA SC: Did you say cartridges?</p> <p>22 CAPTAIN MOHLAKI: Cartridge cases.</p> <p>23 MR MADLANGA SC: T1 to T3?</p> <p>24 CAPTAIN MOHLAKI: T1 to T3, there was</p> <p>25 just - this big rock has got a slope that is going down</p>
<p style="text-align: right;">Page 735</p> <p>1 rifle position of rifle cartridge cases.</p> <p>2 MR MADLANGA SC: 36, BB36?</p> <p>3 CAPTAIN MOHLAKI: BB36 was around this</p> <p>4 cluster of BB1 to 3, to BB48, it was a position of a</p> <p>5 fragment.</p> <p>6 MR MADLANGA SC: Can you please indicate</p> <p>7 or describe what a fragment is?</p> <p>8 CAPTAIN MOHLAKI: Fragments, I would say</p> <p>9 is a bullet that maybe is damaged by hitting something.</p> <p>10 You cannot maybe identify it correctly that is a bullet or</p> <p>11 it is a bullet cover, so it falls under the group of</p> <p>12 fragment.</p> <p>13 [11:46] MR MADLANGA SC: And the next entry?</p> <p>14 CAPTAIN MOHLAKI: It's T, on top of the</p> <p>15 rock.</p> <p>16 MR MADLANGA SC: No, please go down, or</p> <p>17 are you done with 37 to 41?</p> <p>18 CAPTAIN MOHLAKI: 41, oh. 37 to 41 is</p> <p>19 the position of rifle cartridge cases. On this cluster</p> <p>20 with the big icon.</p> <p>21 MR MADLANGA SC: And P?</p> <p>22 CAPTAIN MOHLAKI: P shows the position of</p> <p>23 9 millimetre cartridge case on top of the rock.</p> <p>24 MR MADLANGA SC: Was it all by itself, or</p> <p>25 was it in a cluster?</p>	<p style="text-align: right;">Page 737</p> <p>1 towards O, so it started, the T1 to T3, they were just</p> <p>2 going towards the body O.</p> <p>3 MR MADLANGA SC: Is it so that you have</p> <p>4 certain measurements at B58 - you have certain measurements</p> <p>5 that you made and which you reflect in this slide, is that</p> <p>6 not so?</p> <p>7 CAPTAIN MOHLAKI: Concerning which</p> <p>8 measurement between which one and one?</p> <p>9 MR MADLANGA SC: No, no, you made certain</p> <p>10 measurements.</p> <p>11 CAPTAIN MOHLAKI: Oh, that's correct,</p> <p>12 that's correct, Chair and Commissioners.</p> <p>13 MR MADLANGA SC: Thank you. Now, entry</p> <p>14 U1 to U6, what does that depict?</p> <p>15 CAPTAIN MOHLAKI: It also shows the</p> <p>16 position of rifle cartridge cases that were clustered.</p> <p>17 MR MADLANGA SC: The next entry?</p> <p>18 CAPTAIN MOHLAKI: Is V1 to V3. There</p> <p>19 were a cluster rifle cartridges that were closer to body O.</p> <p>20 MR MADLANGA SC: You said cartridges, is</p> <p>21 that what they were?</p> <p>22 CAPTAIN MOHLAKI: Ja, V1 to V3, were</p> <p>23 rifle cartridge cases.</p> <p>24 MR MADLANGA SC: And Y1 to Y9?</p> <p>25 CAPTAIN MOHLAKI: Y1 to Y9 is the shotgun</p>

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1 cartridge cases that were lying one this – I name it
 2 temporary medical centre and the holding area, because it
 3 was a slight area, that when I arrived at the scene, people
 4 who were injured were treated around here, and those who
 5 were allegedly arrested, they were also lying on this area,
 6 that is where I recover Y1 to Y9 shotgun cartridge cases.
 7 MR MADLANGA SC: Thank you. And Z?
 8 CAPTAIN MOHLAKI: Z is the bullet that I
 9 recovered close to body I and J, body K and body L.
 10 MR MADLANGA SC: From the earlier
 11 description, this refers to a cartridge case and projectile
 12 still intact.
 13 CAPTAIN MOHLAKI: Not at all. I'm
 14 referring to that head, is a bullet.
 15 MR MADLANGA SC: So the projectile, the
 16 actual projectile?
 17 CAPTAIN MOHLAKI: Okay, if you mention it
 18 as a projectile, yes that one, but I'm referring to that as
 19 a bullet.
 20 MR MADLANGA SC: AA1 to AA11?
 21 CAPTAIN MOHLAKI: AA1 to AA11 is this
 22 white icon where I recover shotgun cartridge cases, around
 23 here.
 24 MR MADLANGA SC: And AA12?
 25 CAPTAIN MOHLAKI: AA12 was a 9-Millimetre

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1 cartridge case that was in this cluster of AA1 to AA11,
 2 which were shotgun cartridge cases.
 3 MR MADLANGA SC: And AA13 to AA24?
 4 CAPTAIN MOHLAKI: AA13 to AA24, it was a
 5 cluster of 9-millimetre cartridge cases.
 6 MR MADLANGA SC: Where there any
 7 cartridges of different type close to them or not?
 8 CAPTAIN MOHLAKI: Not at all, Chair and
 9 Commissioners.
 10 MR MADLANGA SC: AA25 to AA27?
 11 CAPTAIN MOHLAKI: It was just a cluster
 12 of shotgun cartridge cases.
 13 MR MADLANGA SC: Now, your sketch refers
 14 to AA25 to 29, which is not the same as what the Google map
 15 indicates, can you just explain that?
 16 CAPTAIN MOHLAKI: AA25 to AA28, these two
 17 icons, they are representing two different shotgun –
 18 ammunition types, so this white one, it was for shotgun,
 19 and this blue one, it was for 9-Millimetre, but they were
 20 in the same cluster.
 21 MR MADLANGA SC: Continue.
 22 CAPTAIN MOHLAKI: AA30 to AA42 were the
 23 rifle cartridge cases that were running, starting somewhere
 24 here on this passage.
 25 MR MADLANGA SC: Yes, continue.

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1 CAPTAIN MOHLAKI: So we have to go to the
 2 slide of sketch plan. CC1 is the exhibit that was
 3 recovered with IPID members on the 31st of August 2012. So
 4 it was a bullet.
 5 MR MADLANGA SC: Yes, continue.
 6 CAPTAIN MOHLAKI: And just next to the
 7 bullet, there was on top of the rock, there a blood shot, a
 8 possible blood that I shot on that day.
 9 MR MADLANGA SC: Yes?
 10 CAPTAIN MOHLAKI: And the CC2, it was at
 11 the edge of that big rock, of that P, Q1, RS, just on the
 12 edge, it was a rifle cartridge case.
 13 MR MADLANGA SC: And these two you found
 14 when you revisited the scene with members of IPID?
 15 CAPTAIN MOHLAKI: Ja, actually the
 16 members of IPID called me, that they've got information
 17 that there are some cartridges at the crime scene, then I
 18 met them at the scene.
 19 MR MADLANGA SC: And you found CC1, AC,
 20 BCC, and CC2 on that day?
 21 CAPTAIN MOHLAKI: That's correct, Chair
 22 and Commissioners.
 23 MR MADLANGA SC: And M5?
 24 CAPTAIN MOHLAKI: M5, I visited the scene
 25 of Pretoria SSN, ballistic section. So it was trapped on

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1 the tree. So I have to remove it from the tree.
 2 MR MADLANGA SC: It was brought to your
 3 attention by the ballistics experts?
 4 CAPTAIN MOHLAKI: That's correct, Chair
 5 and Commissioner.
 6 MR MADLANGA SC: You may already have
 7 given evidence on this, isn't there something that you
 8 found on the 1st of October 2012, when the Commission was
 9 conducting an inspection in loco at scene 2?
 10 CAPTAIN MOHLAKI: Yes, we did recover
 11 something.
 12 MR MADLANGA SC: And what was it and
 13 where is it depicted?
 14 CAPTAIN MOHLAKI: Where I've marked CC3.
 15 MR MADLANGA SC: On the sketch not on the
 16 Google map?
 17 CAPTAIN MOHLAKI: No, not on the Google
 18 map on the sketch.
 19 MR MADLANGA SC: Now, let's go to – did
 20 you say what it was?
 21 CAPTAIN MOHLAKI: It was a 9-Millimetre
 22 cartridge case.
 23 MR MADLANGA SC: Next page after your
 24 key, you have certain totals there. I will not ask you to
 25 go through them. Do you confirm the totals that you give

Page 742

1 there? The correctness thereof, that is?

2 CAPTAIN MOHLAKI: Maybe I have to

3 explain, Chair and Commissioner, if you take it from top,

4 I'm saying exhibit collected on 2012.08.16 to 2012.08.17,

5 then immediately after, then there is an additional

6 collection of exhibits, then I specify the date. So, for

7 example, if on number 1, I say total is 67, it doesn't

8 include the one that I've collected on the 31st of August,

9 but roughly we can add it, if the Commission and the Chair

10 allow me to do that?

11 MR MADLANGA SC: Okay, I think we can all

12 do that exercise, unless perhaps the Commission and other

13 colleagues here, might want to take you though that

14 document. Then you skip the next page, and go to the page

15 thereafter, B58, there you have measurements, do you

16 confirm the correctness of what you have there?

17 CAPTAIN MOHLAKI: That's correct, Chair

18 and Commissioners.

19 MR MADLANGA SC: And, according to that,

20 what was the distance between body N and the closest

21 cartridge case or cases?

22 CAPTAIN MOHLAKI: Body N, the closest

23 cartridge was AA –

24 MR MADLANGA SC: Cartridge case, not

25 cartridge.

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1 CAPTAIN MOHLAKI: Cartridge case, oh

2 correct, thanks, thanks for the correction. The closest

3 body – the closest cartridge case to body N was 20.2

4 metres, AA13.

5 MR MADLANGA SC: Mr Chairman,

6 Commissioners, the pages that follow after the measurements

7 and B59, which we've already had a look at, are photographs

8 of the bodies. Chair, we just skip –

9 CHAIRPERSON: Is it necessary for us to

10 see –

11 MR MADLANGA SC: I was going to say we

12 can just –

13 CHAIRPERSON: If they're exhibited on the

14 screen, they may be the bodies of loved ones of some of the

15 people in the auditorium, and it may cause them a lot of

16 stress and a lot of unhappiness.

17 MR MADLANGA SC: Yes. I actually wanted

18 to suggest, Chair, that we can just skip all of those, yes.

19 Then can we go to the slide where you have traditional

20 weapons on top of a blanket. That's B81, Commissioners.

21 Where did you find these, and when you found them were they

22 in this collection?

23 CAPTAIN MOHLAKI: I did find at the crime

24 scene. They were in this position.

25 MR MADLANGA SC: And can you indicate

Page 744

1 where they were on the Google map?

2 CAPTAIN MOHLAKI: That's correct. I'm

3 going to a Google map.

4 MR MADLANGA SC: Mr Chairman,

5 Commissioners, I'll try not to have him go back there

6 again. Sorry, I didn't know that he would have to flip one

7 by one, like this was done, and I apologise to those

8 members of the public.

9 CAPTAIN MOHLAKI: Can I proceed?

10 MR MADLANGA SC: Yes, now that you are

11 there, where was it?

12 CAPTAIN MOHLAKI: They were lying on this

13 area.

14 MR MADLANGA SC: And you've marked them

15 what?

16 CAPTAIN MOHLAKI: No, they were not

17 marked anything, because I was told that the police, they

18 were the one who picked them were they were lying and they

19 were brought on that area.

20 MR MADLANGA SC: Can you now please put

21 your hand over the – yes, yes, and flip back to just after

22 that blanket. Yes, B82, That is the next stage, yes, yes,

23 and can you describe what this about?

24 CAPTAIN MOHLAKI: It is a firearm pistol

25 that I indicted earlier that I marked point F, surrounded

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1 by some weapons.

2 MR MADLANGA SC: And B83, the next page

3 that depicts the same scene, not so?

4 [12:06] CHAIRPERSON: Can I just ask a question

5 about B82, while we're about it. Is that the pistol that

6 you said that takes 15 cartridges and had 15, so it hadn't

7 been fired?

8 CAPTAIN MOHLAKI: That's correct, Chair

9 and Commissioners.

10 CHAIRPERSON: Then there's two other

11 pistols which you photographed, they were found, according

12 to what you were told they were found in possession of

13 people who were arrested. Is that correct?

14 CAPTAIN MOHLAKI: That's correct, Chair

15 and Commissioners.

16 CHAIRPERSON: And there was also

17 ammunition in the pistols?

18 CAPTAIN MOHLAKI: That's correct,

19 Chairperson.

20 CHAIRPERSON: Were you able to ascertain

21 whether those pistols had been fired or were, they had

22 clearly not been fired because they were full, you know, or

23 are you not able to say?

24 CAPTAIN MOHLAKI: Let me explain the

25 position of the firearm. I recover one pistol, there was

Page 746

1 only two rounds, cartridges, and the other one there were
2 six. So I took them to Pretoria FSL for testing.
3 Unfortunately I don't have any feedback if it was, but this
4 is what I did.

5 CHAIRPERSON: Has that information come
6 back to you yet so that you can give it to us in due
7 course, or is it still awaited?

8 CAPTAIN MOHLAKI: I understand where the,
9 our norm or procedure, when I took the exhibit to Forensic
10 I state on my report that when they're finished with their
11 investigation they must just direct that, the reports to
12 the relevant – officer. In this case I indicated that they
13 must refer the – back to IPID.

14 MR MADLANGA SC: - in due course.

15 CHAIRPERSON: - tell us about those
16 pistols found in possession of arrested people. Is that
17 correct?

18 CAPTAIN MOHLAKI: That's correct –

19 CHAIRPERSON: - tell us that this pistol
20 was obviously not fired at B as far as you can see?

21 CAPTAIN MOHLAKI: No –

22 CHAIRPERSON: - cartridges, it had 15
23 cartridges in it and unless it was reloaded at some stage
24 during the proceedings then it wasn't fired. Is that
25 right?

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1 CAPTAIN MOHLAKI: No, let me explain
2 myself again. This, or this one that is appearing on the
3 screen, it was 15 rounds, it was loaded, no problem with
4 it. But the two that were brought to me to –

5 CHAIRPERSON: - misunderstand each other.
6 The two that were brought to you, you can't tell us whether
7 they were fired. That we may or may not be able to
8 discover later when we get the information from the people
9 to whom you sent it.

10 CAPTAIN MOHLAKI: That is correct.

11 CHAIRPERSON: But as the one we see on
12 the picture is concerned, that wasn't fired. Is that
13 right?

14 CAPTAIN MOHLAKI: The rounds were 15, but
15 I cannot say it was fired, yes or no.

16 CHAIRPERSON: Well, if it only holds 15
17 and it had 15, then what rounds were fired?

18 CAPTAIN MOHLAKI: I don't know, because
19 the magazine can reload. You can shoot and load.

20 CHAIRPERSON: I see. I see, okay.

21 CAPTAIN MOHLAKI: It's possible.

22 CHAIRPERSON: Okay, so you can't give us
23 that information either.

24 CAPTAIN MOHLAKI: That's correct, Chair
25 and Commissioners.

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1 CHAIRPERSON: Thank you. I'm sorry to –
2 MR MADLANGA SC: And are you able to tell
3 how many cartridges each of the other two pistols take,
4 that is the two that were shown to you by the two
5 constables?

6 CAPTAIN MOHLAKI: It must be 15, 15.

7 MR MADLANGA SC: Continue after the two
8 photographs that depict the firearm. The next two show
9 what you've referred to as the traditional weapons. Where
10 did you find the first one, the first lot after the
11 firearm?

12 CAPTAIN MOHLAKI: Okay, this was lying on
13 the big rock, if you are going towards the direction of
14 body M.

15 MR MADLANGA SC: And the next page where
16 there's an X and the two other items?

17 CAPTAIN MOHLAKI: They were lying just on
18 that Google map, on the area that I indicated it was used
19 as a temporary medical centre and holding area.

20 MR MADLANGA SC: The next picture shows
21 what looks like an armoured vehicle. What is that?

22 CAPTAIN MOHLAKI: B86, Commissioners.
23 While I was busy at the scene, Brigadier Calitz indicated
24 to me that I must locate Lieutenant-Colonel Pitsi because
25 in his group one of the Nyala has got some bullet marks

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1 that he need me to photograph.
2 MR MADLANGA SC: And did you locate
3 Colonel Pitsi and that Nyala?

4 CAPTAIN MOHLAKI: That's correct, Chair
5 and Commissioners.

6 MR MADLANGA SC: Did you find anything on
7 the Nyala, or were you shown anything on it?

8 CAPTAIN MOHLAKI: I was shown by the
9 driver of the Nyala.

10 MR MADLANGA SC: What did he or she show
11 you and then can you indicate that to us in the
12 photographs?

13 CAPTAIN MOHLAKI: That's correct, Chair
14 and Commissioners. He indicated to me that when he inspect
15 the vehicle in the morning, this mark was not there, this
16 mark was not there.

17 MR MADLANGA SC: Yes, is that all?

18 CHAIRPERSON: The mark you indicate, is
19 that the semi-circular or half-moon mark? It's really
20 semi-circular, about half a circle, which is at the top of
21 the screen as we see it at the moment. Is that correct?

22 CAPTAIN MOHLAKI: That's correct, Chair.
23 MR MADLANGA SC: Is this the windshield
24 of the Nyala, or what is this?

25 CAPTAIN MOHLAKI: That's correct, it's

Page 750

1 the windshield of the Nyala.

2 MR MADLANGA SC: And the next page, what

3 is that supposed to –

4 CHAIRPERSON: Can you identify that mark

5 for us? Is it a bullet mark or a mark caused possibly by

6 stone or, can you tell us anything about that mark?

7 CAPTAIN MOHLAKI: I requested them that

8 we must just check with the Ballistic guys because for me

9 it was as if it may be a bullet mark, but I'm not certain.

10 MR MADLANGA SC: And do you want to speak

11 to what we see on the next photograph, B87?

12 MS HEMRAJ SC: Sorry, before you go

13 there, can you tell us where this Nyala was at the time you

14 inspected it?

15 CAPTAIN MOHLAKI: Sorry?

16 COMMISSIONER HEMRAJ: Tell us where this

17 Nyala was at the time you inspected it for this mark.

18 CAPTAIN MOHLAKI: On the day of the

19 incident, on the 16th it was at the scene, scene 2, when I

20 identified it, but when I took this photograph it was

21 parked at the JOC.

22 COMMISSIONER HEMRAJ: On the day in

23 question at scene 2, can you tell us where on scene 2 it

24 was?

25 CAPTAIN MOHLAKI: It was just making some

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1 movement, then when I locate Colonel Pitsi he indicated to

2 me that is the Nyala, then I went and inspect it. Then we

3 managed to videograph it on the, Constable Molefe, he

4 managed to videograph it.

5 COMMISSIONER HEMRAJ: Thank you.

6 CHAIRPERSON: Mr Madlanga, can I assume

7 that we're going to see Constable Molefe's video, or aren't

8 we? Did the camera not work, or was the battery not

9 operative or what happened there? Do you know?

10 MR MADLANGA SC: This, Chairman, we've

11 not looked into that at all, no. It's something –

12 CHAIRPERSON: So that's a surprise that

13 awaits us –

14 MR MADLANGA SC: It's something we'll

15 apply our minds to, yes. You mentioned something about the

16 following day. Did you inspect the vehicle on, or rather

17 at the scene and then take photographs the following day?

18 Is that what you are saying?

19 CAPTAIN MOHLAKI: Not at all. At the

20 crime scene I did manage to identify it and we videographed

21 it, but because of the information of they're burning some

22 informal settlement, they have to withdraw. Then the – I

23 have to refer to my diary, I think three days later I

24 located the Nyala at JOC Lonmin where I photographed it.

25 MR MADLANGA SC: Who did you say the

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1 driver was?

2 CAPTAIN MOHLAKI: Yes, Chair –

3 MR MADLANGA SC: - on the date of

4 incident that took place at scene 2.

5 CAPTAIN MOHLAKI: Colonel Pitsi is the

6 one who showed me the Nyala, not the driver. I met with

7 the driver at JOC, but I'm not sure if the driver that I

8 met at JOC on the 22nd is the same driver who was driving it

9 during the incident.

10 CHAIRPERSON: It sounds if you can't tell

11 us who the driver was on the 16th of August. Is that

12 correct?

13 CAPTAIN MOHLAKI: When I interviewed the

14 driver at the JOC, he indicated to me that he was the one

15 who was driving it, but I cannot confirm because on the 16th

16 I never met and talk with him. I only talk with Colonel

17 Pitsi.

18 MR MADLANGA SC: May the Commissioners

19 please just bear with me. Can we now go to the next page,

20 B86. What is it that you are seeking to depict there?

21 CHAIRPERSON: 86 we've looked at. That's

22 the Nyala with the mark. B87 is something else.

23 MR MADLANGA SC: 87, B87. I thought I

24 said B87. Sorry, Chair. Sorry, Mr Chairman.

25 CAPTAIN MOHLAKI: Okay, the same driver

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1 indicated to me that this mark here and this mark here and

2 this mark, when he inspect the Nyala, was not there.

3 MR MADLANGA SC: And who is the person

4 that you are talking about? Who is it that said all these

5 things?

6 CAPTAIN MOHLAKI: It was Constable

7 Dlamini.

8 MR MADLANGA SC: And he said the marks

9 that you are indicating were not there when? When he was

10 inspecting it when exactly?

11 CAPTAIN MOHLAKI: The way I interview

12 him, he was explaining to me that on the day of the 16th

13 this mark, when he was inspecting the vehicle in the

14 morning, were not there. So that is why I'm saying I

15 cannot confirm, but I've got that feeling that it's the

16 same driver who was driving the Nyala on the 16th because

17 the incident happened, I saw the Nyala around 19:00 and he

18 was referring to me that on the 16th in the morning when he

19 inspect the Nyala there was not these marks, and after the

20 incident I never communicated with him directly. I

21 communicated this with Colonel Pitsi. Then I met the

22 Constable Dlamini at Lonmin on the 22nd to photograph it.

23 That is when he explained to me that on the 16th those marks

24 were not there when he inspect the Nyala. So I just

25 presumed the possibility of him driving that Nyala on the

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1 16th is there, but I cannot confirm.
 2 MR MADLANGA SC: So you yourself only saw
 3 those marks for the first time at Lonmin a few days after
 4 the 16th, the marks that you're indicating on this picture?
 5 CAPTAIN MOHLAKI: Not at all. I saw them
 6 on the 16th during the night, but Colonel Pitsi is the one
 7 who indicated that to me and we only videographed them.
 8 Then on the 22nd I met the driver, then I interviewed the
 9 driver to indicate to me the – because now I want to take
 10 photos, not video. That is when he indicated to me that in
 11 the morning the Nyala, of the 16th, the Nyala was not having
 12 these marks.
 13 CHAIRPERSON: What exactly do we see on
 14 this picture, or what is it that has these marks on it?
 15 CAPTAIN MOHLAKI: Allow me, Chair, to
 16 come and show you maybe on this, maybe it will be easy, or
 17 indicate the –
 18 CHAIRPERSON: Just tell me in one, what
 19 is it that we see on the picture? We see something with
 20 green –
 21 CAPTAIN MOHLAKI: Ja, he showed me those
 22 small marks there.
 23 MR MADLANGA SC: Please use your pointer
 24 and indicate the –
 25 CHAIRPERSON: No, I can see the marks but

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1 –
 2 CAPTAIN MOHLAKI: You won't be able to
 3 see –
 4 CHAIRPERSON: I'm sorry, Captain, I can
 5 see the marks –
 6 CAPTAIN MOHLAKI: You won't be able, and
 7 this pointer doesn't work there.
 8 CHAIRPERSON: No, I understand. No, I
 9 can see the marks, but what is it that we can see on the
 10 picture? What part of the vehicle?
 11 CAPTAIN MOHLAKI: Okay, it's the left
 12 corner of the Nyala, front portion.
 13 MR MADLANGA SC: Do you perhaps know the
 14 first name of Constable Dlamini?
 15 CAPTAIN MOHLAKI: I'm not sure if I know
 16 the first name, but I'm having, I was having his force
 17 number, rank, surname and where he's stationed.
 18 MR MADLANGA SC: No, that's fine. We
 19 will get hold of him.
 20 CHAIRPERSON: Do we have the number of
 21 the Nyala so that we can possibly trace the log of the
 22 Nyala – do you have it in your diary perhaps?
 23 CAPTAIN MOHLAKI: Yes, I do, the
 24 registration number. Okay, it's Bravo Hotel Lima, BHL093
 25 Bravo. I repeat, Bravo Hotel Lima 093 Bravo. That is the

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1 number plate.
 2 CHAIRPERSON: Thank you.
 3 MR MADLANGA SC: Mr Chairman,
 4 Commissioners, that is the evidence of the witness. Thank
 5 you.
 6 CHAIRPERSON: I'd like to ask you one
 7 question, Captain. Constable Molefe, who had a video
 8 camera, did he accompany you to scene 1 when you went
 9 initially?
 10 CAPTAIN MOHLAKI: Yes, we were together
 11 at scene 1.
 12 CHAIRPERSON: Did he use his video camera
 13 at all at scene 1?
 14 CAPTAIN MOHLAKI: Not at all, Chair.
 15 CHAIRPERSON: Did he then go with you to
 16 scene 2?
 17 CAPTAIN MOHLAKI: That's correct, Chair
 18 and Commissioners.
 19 CHAIRPERSON: Did he use his video camera
 20 at all at scene 2 in the initial stages before you started
 21 processing the scene?
 22 CAPTAIN MOHLAKI: That's correct, Chair
 23 and Commissioners.
 24 CHAIRPERSON: Have you seen the video
 25 film that he took?

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1 CAPTAIN MOHLAKI: Sorry?
 2 CHAIRPERSON: Have you seen the video
 3 film that he took at the initial stages at scene 2?
 4 CAPTAIN MOHLAKI: That's correct, Chair.
 5 CHAIRPERSON: So it is available?
 6 CAPTAIN MOHLAKI: That's correct.
 7 CHAIRPERSON: And there was no problem
 8 with his video camera, it was working properly, was it?
 9 CAPTAIN MOHLAKI: Unfortunately, he told
 10 me that the time, he's got a problem with the time. Then I
 11 advised Constable Molefe that we have to book that camera
 12 to SAP13 so that when there's a need, or there's a
 13 confusion about time, we can draw it then anybody can see
 14 if there's a problem with time or not.
 15 CHAIRPERSON: Yes, apart from the timing
 16 problem, which presumably can be sorted out by checking the
 17 camera against a watch that's correct, apart from that it
 18 was working properly, was it?
 19 CAPTAIN MOHLAKI: It was working, Chair.
 20 CHAIRPERSON: Ja, thank you.
 21 [12:26] COMMISSIONER HEMRAJ: Captain, when you
 22 were in the holding area right at the beginning of the
 23 incident and you were called to attend scene 1, what time
 24 were you summoned to come to scene 1?
 25 CAPTAIN MOHLAKI: I never recorded the

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1 time because the communication was not directed direct to
 2 me. It was my members and the members of detective under
 3 the supervision of Captain Ngcobo. The communication
 4 received, the call was received by Captain Ngcobo and
 5 Captain Ngcobo is the one who informed me that we are
 6 called at the scene to process, but I never recorded that
 7 exact time.

8 COMMISSIONER HEMRAJ: Alright, you told
 9 us you arrived at scene 1 at five minutes past four in the
 10 afternoon.

11 CAPTAIN MOHLAKI: Sorry?

12 COMMISSIONER HEMRAJ: You arrived at
 13 scene 1 at five minutes past four in the afternoon.

14 CAPTAIN MOHLAKI: Around four o'clock,
 15 scene 1.

16 COMMISSIONER HEMRAJ: How long would it
 17 have taken you to get from the holding area to scene 1?

18 CAPTAIN MOHLAKI: It's not a distance but
 19 because we struggled to get there – because when I checked
 20 my measurement from scene 2 to where we were held, it was
 21 1.8 kilos, kilometres. Then we just struggled to get to
 22 the scene because it was the first time most of us, if not
 23 all of us, to visit that area so we have to struggle to get
 24 to that scene. So – but I will estimate maybe 20 minutes,
 25 15 minutes, 20 minutes.

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1 COMMISSIONER HEMRAJ: Sorry, just let me
 2 understand this. 20 minutes to get from the holding area
 3 to scene 1?

4 CAPTAIN MOHLAKI: Correct, Chair and
 5 commissioners.

6 COMMISSIONER HEMRAJ: And you've told us
 7 that when you arrived at scene 1 you didn't hear any
 8 shooting thereafter.

9 CAPTAIN MOHLAKI: That's correct, Chair
 10 and commissioners.

11 COMMISSIONER HEMRAJ: Thank you, Captain.

12 CHAIRPERSON: Mr Semenya, would you like
 13 to ask any questions in cross-examination?

14 MR SEMENYA SC: Chair, subject to your
 15 direction, is it possible that we come almost last in our
 16 questioning?

17 CHAIRPERSON: No, certainly. If you wish
 18 to reserve your cross-examination – if you would prefer to
 19 reserve your cross-examination at this stage and cross-
 20 examine later after some or all of your colleagues have
 21 cross-examined, then you may do so.

22 MR SEMENYA SC: That's our preference,
 23 Chair.

24 CHAIRPERSON: Right. Mr Burger, do you
 25 have a similar preference or would you like to cross-

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1 examine now?

2 MR BURGER SC: Sir, my learned friend Mr
 3 Madlanga has spoken to me and we should really come at the
 4 end. This is not our debate. I wonder whether my
 5 colleagues to the left may want preference on –

6 CHAIRPERSON: Yes, after you is Mr Tip
 7 and after him is Mr Bruinders, after him Mr Bizos and then
 8 Mr Mpfu and I don't know whether Mr Ntsebeza, who is not
 9 available today, has got someone standing in for him – but
 10 anyway we'll get there when we get there. You want to
 11 reserve cross-examination as well, then I'll ask Mr Tip if
 12 he'd like to cross-examine now.

13 MR TIP SC: We're in the same position,
 14 Mr Chair, we think that the others should go first and I
 15 understand that they would prefer to.

16 CHAIRPERSON: Mr Bruinders, would you
 17 like to cross-examine now?

18 MR BRUINDERS SC: It's a bit like an
 19 auction, isn't it Mr Chair?

20 CHAIRPERSON: No, it's the opposite,
 21 people are declining, they're not bidding.

22 MR BRUINDERS SC: We do, we do though
 23 need to take a couple of instructions arising out of some
 24 of the matters.

25 CHAIRPERSON: Okay, let me ask Mr Bizos

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1 if he'd like to cross-examine now. Let the advocate who is
 2 ready commence with his cross-examination and you can come
 3 later.

4 CROSS-EXAMINATION BY MR BIZOS SC: Thank
 5 you. Captain, let's start at the beginning. You were
 6 called to a briefing session early in the morning of the
 7 16th.

8 CAPTAIN MOHLAKI: Correct, Chairperson.

9 MR BIZOS SC: You went to it.

10 CAPTAIN MOHLAKI: Correct.

11 MR BIZOS SC: What time did you get
 12 there?

13 CAPTAIN MOHLAKI: 06:05.

14 MR BIZOS SC: I'm glad that you keep a
 15 diary, it may become helpful later in our questioning you.
 16 Who all was at the briefing? First of all, who was the
 17 director, or who was the speaker or who was the Captain, if
 18 that was his rank, that really called you together?

19 CAPTAIN MOHLAKI: Myself, I was informed
 20 by Colonel Botha that I have to attend the briefing but at
 21 the briefing itself there were General – the surname, I'm
 22 struggling to pronounce the surname of the General –
 23 Addandal or what.

24 MR BIZOS SC: If you don't get it quite
 25 right, we'll guess. Just give us the name as you remember

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1 it.

2 CAPTAIN MOHLAKI: There was General

3 Addandal –

4 CHAIRPERSON: It sounds like General

5 Annandale. I think he's a Major-General Annandale.

6 CAPTAIN MOHLAKI: That's correct, Chair.

7 MR BIZOS SC: Yes, General Annandale,

8 yes?

9 CAPTAIN MOHLAKI: Brigadier Van Zyl.

10 MR BIZOS SC: Yes?

11 CAPTAIN MOHLAKI: Brigadier Calitz.

12 MR BIZOS SC: Yes?

13 CAPTAIN MOHLAKI: Lieutenant-Colonel

14 Scott.

15 MR BIZOS SC: Yes?

16 CAPTAIN MOHLAKI: And about all the

17 section leaders of different units represented.

18 MR BIZOS SC: So it was a full house of

19 senior police officers.

20 CAPTAIN MOHLAKI: I will agree with you

21 on that, Chairperson.

22 MR BIZOS SC: Yes. Did each one of them

23 speak during this briefing because I understand it lasted a

24 couple of hours?

25 CAPTAIN MOHLAKI: Ja, it was a normal

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1 process of, we give the strength, Colonel Scott will write

2 on the board – for example LCRC how many are you, we are

3 four, mounted unit, all the reps that were there and they,

4 General Annandale just briefed us on the duties of the day.

5 Then I was –

6 MR BIZOS SC: That's what we would like

7 to hear about. Would you please try and remember what

8 General Annandale told - how many policemen were there

9 first of all, how large was the audience?

10 CAPTAIN MOHLAKI: I don't have a total

11 number Chair, but –

12 MR BIZOS SC: More or less.

13 CAPTAIN MOHLAKI: Ja, I'm coming. I

14 still remember there were some members from other provinces

15 that they were reported, they are still driving, because it

16 was initial stage so most of the members were travelling

17 home and coming to Lonmin. So on that day we were just

18 given the numbers and you indicate if your members are

19 already arrived, yes or no. So some indicated that they

20 are still coming, some indicated that they are there.

21 MR BIZOS SC: Make an allowance for

22 latecomers, how many policemen were there that the generals

23 and the brigadiers and the colonels addressed?

24 CAPTAIN MOHLAKI: Oh, in our briefing I

25 will estimate about 20 to 30.

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1 MR BIZOS SC: People who spoke?

2 CAPTAIN MOHLAKI: In the briefing?

3 MR BIZOS SC: In the briefing?

4 CAPTAIN MOHLAKI: That's correct.

5 CHAIRPERSON: Is that people who spoke or

6 people who were there to hear the briefing?

7 CAPTAIN MOHLAKI: They were group leaders

8 of different sections.

9 CHAIRPERSON: I understand, but how many

10 people attended the briefing? How many people were in what

11 one can describe as the audience, who were being briefed?

12 CAPTAIN MOHLAKI: It's two-way. They

13 were briefed and they were submitting their strength. We

14 were submitting the strength. After submitting the

15 strength they will brief, they brief us what is the plan

16 for today on that briefing.

17 MR BIZOS SC: In all, how many people

18 were in the area where the meeting or the briefing took

19 place? How many people were there?

20 CAPTAIN MOHLAKI: That is why I'm

21 estimating 20 to 25 or 30. I never counted because there

22 was movement of in, out, in, going to verify something,

23 coming in, out.

24 MR BIZOS SC: 20, 25 leaders and a lot of

25 non-leaders, or was it just a meeting of leaders?

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1 CAPTAIN MOHLAKI: They were – the meeting

2 between the top, maybe let me say top officers or senior

3 officers with the group leaders because some of the group

4 leaders were captains, some were lieutenant-colonels, some

5 were full colonels.

6 MR BIZOS SC: There were no constables or

7 sergeants or warrant officers?

8 CAPTAIN MOHLAKI: If I remember well,

9 because there was a radio that was supposed to be operated

10 there, I did identify a constable coming in and out but he

11 was just in that room, not as a part of briefing.

12 MR BIZOS SC: I still don't have a clear

13 answer from you. In all, irrespective of rank, how many

14 people were there at this meeting?

15 CAPTAIN MOHLAKI: I estimate between 25 –

16 20, 25, 30.

17 MR BIZOS SC: Thank you for that. Now,

18 try and remember what did they say about a crime scene?

19 What crime did they expect to be committed that made it

20 necessary for the leaders to gather? What crime was

21 expected to be committed?

22 CAPTAIN MOHLAKI: On that day the

23 briefing was, you LCRC members, you'll be on standby

24 because there is an information or agreement that was

25 reached during the negotiations that the people will be

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1 gathering at the koppie, they will be coming in and handing
 2 in their traditional weapons and possible unlawful
 3 ammunition or arms that will be in possess and they will
 4 withdraw. From there they are going to call us with those
 5 group of detectives to come and document those weapons that
 6 were left at the koppie.

7 MR BIZOS SC: Did any of the leaders
 8 suggest that there may be violence committed, either by the
 9 people on the koppie or by the police?

10 CAPTAIN MOHLAKI: No, I never heard that
 11 information, sir.

12 MR BIZOS SC: So that, according to you,
 13 the police were not expecting any trouble, if what you're
 14 telling us is correct.

15 CAPTAIN MOHLAKI: I'm not saying they
 16 were not expecting it may be any trouble, but I'm
 17 responding to the question of I got information that there
 18 may be. That is my answer. No, I never heard that
 19 information.

20 MR BIZOS SC: You were not expecting any
 21 trouble?

22 CAPTAIN MOHLAKI: If I receive
 23 information that they are saying they are going to hand
 24 over their traditional weapons and withdraw and it's the
 25 information that is in my disposal, I won't expect anything

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1 wrong with that.

2 MR BIZOS SC: Was an officer who has the
 3 name of Captain Kidd – I don't know if it's his real name
 4 or whether it's a literary name but it's the name that I
 5 have – was he there?

6 CAPTAIN MOHLAKI: I won't know if he was
 7 there or not because I was not recording the names of the
 8 people who were attending that morning briefing.

9 MR BIZOS SC: Did you not, or did anyone,
 10 or you don't know Captain, did anyone say that there were
 11 armed people that may not disperse and that they may have
 12 to force them to disperse? Did anyone say that?

13 CAPTAIN MOHLAKI: Not at all, Chair and
 14 commissioners.

15 MR BIZOS SC: Nobody referred to the
 16 people on the koppie as criminals?

17 CAPTAIN MOHLAKI: Not at all, Chair and
 18 commissioners.

19 MR BIZOS SC: Nobody referred to that two
 20 policemen had been killed by these criminals?

21 CAPTAIN MOHLAKI: No-one indicated to me
 22 on that briefing, sir.

23 MR BIZOS SC: Did anybody say that this
 24 business of gathering on the koppie was going to be put to
 25 an end on that day?

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1 CAPTAIN MOHLAKI: Not at all, Chair.

2 MR BIZOS SC: Was there anyone there not
 3 wearing ordinary police uniform but a sort of a – what do
 4 they call it – camouflage uniform and a beret? Was there
 5 any such person there?

6 CAPTAIN MOHLAKI: Ja, I did manage to see
 7 members who were wearing camouflage.

8 MR BIZOS SC: And berets?

9 CAPTAIN MOHLAKI: That's correct.

10 MR BIZOS SC: Are they a very special
 11 unit?

12 CAPTAIN MOHLAKI: To my understanding,
 13 yes, they have got the division that they are falling on.

14 MR BIZOS SC: Why are they called a
 15 special unit?

16 CAPTAIN MOHLAKI: I don't know if they
 17 are called a special unit but I know they are calling TRT
 18 and special task force.

19 MR BIZOS SC: Did anyone in that uniform
 20 and a beret address the gathering?

21 CAPTAIN MOHLAKI: In my presence, no.

22 MR BIZOS SC: Why would the meeting have
 23 lasted over two hours if it was only to inform you that you
 24 must be there in order to record the arms that had been
 25 surrendered?

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1 CAPTAIN MOHLAKI: I don't know about the
 2 time frame. What I said, I arrived and immediately after
 3 the briefing, myself, I withdrew to go and brief my
 4 members, not the dispersing of the gathering of the
 5 commanders in the JOC.

6 MR BIZOS SC: You spoke about scene 1.
 7 So that we can all speak about the same place, is that near
 8 what we call the kraal?

9 CAPTAIN MOHLAKI: That's correct, Chair.

10 MR BIZOS SC: Is that what you understand
 11 by scene 1?

12 CAPTAIN MOHLAKI: Yes. For now, yes, I
 13 understand.

14 MR BIZOS SC: How far away from the kraal
 15 did you go as soon as you finished with the briefing
 16 session?

17 CAPTAIN MOHLAKI: Do you mean with the
 18 kilometres travelled or the time you can spend travelling
 19 to the scene?

20 MR BIZOS SC: Distance I'm interested in.

21 CAPTAIN MOHLAKI: I will estimate,
 22 because I never took the distance, I will estimate anything
 23 between maybe five and eight, I'm not sure. I'm not good
 24 in estimation, that is why I usually use the measuring tape
 25 but I will estimate five to eight kilometres.

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1 MR BIZOS SC: Yes, and when did you go to
2 that place of retreat, so to speak?
3 CAPTAIN MOHLAKI: I left the JOC around
4 nine o'clock after briefing my members and around that time
5 we went to that holding area.
6 MR BIZOS SC: The holding area. And when
7 did you leave that holding area?
8 [12:46] CAPTAIN MOHLAKI: Unfortunately I never
9 recorded the time because the time because Captain Ngcobo
10 just informed me that that they are calling us to come and
11 process the crime scene but what I can recall is that
12 around four o'clock we were at that scene that we are
13 saying we must refer it as Scene 1, next to the kraal.
14 MR BIZOS SC: What time did you start off
15 driving to the – to Scene 1? Where were you at about
16 quarter to four, for instance?
17 CAPTAIN MOHLAKI: I must be maybe at the
18 area of hold – that we were still at that holding area.
19 MR BIZOS SC: How long does it take to
20 come from the holding area to the Scene 1?
21 CAPTAIN MOHLAKI: I never recorded the
22 time, but it's not so far, it's close but we just struggled
23 to, because when I make my measurement, it gives me 1.8
24 kilometres from where we were to Scene 2, not Scene 1, to
25 Scene 2.

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1 MR BIZOS SC: I am not talking about
2 Scene 2 yet, I am talking about Scene 1, the place you left
3 to Scene 1, how far was that?
4 CAPTAIN MOHLAKI: I understand, so I say
5 the measurement that I am having, I am – is the only
6 measurement from where I was to Scene 2, but Scene 1 I
7 never made a measurement.
8 CHAIRPERSON: Sorry, Mr Bizos, can you
9 estimate the distance between Scene 1 and Scene 2?
10 CAPTAIN MOHLAKI: Scene 1 and Scene 2,
11 the distance was, the one that I measured was 500 metres.
12 CHAIRPERSON: Well, if it's 500 metres
13 from Scene 1 to Scene 2, and it's 1.8 kilometres from the
14 holding area to Scene 2, then it sounds s if the distance
15 from the holding area to Scene 1 is about 1.3 kilometres.
16 Is that right?
17 CAPTAIN MOHLAKI: Ja, possibly.
18 MR BIZOS SC: Will you accept that at
19 quarter to four, you must have been very near Scene 1, if
20 not there already?
21 CAPTAIN MOHLAKI: No, I won't confirm
22 that, Chair.
23 MR BIZOS SC: Why not?
24 CAPTAIN MOHLAKI: Because I've never
25 recorded it and I've never checked if it's quarter to four,

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1 I am at the Scene 2, the one of the kraal.
2 MR BIZOS SC: The Chairman has asked you
3 and you clarified that, at most it's 1.3 kilometres from
4 one area to the other, you had to be there by - you say
5 that you were there at about four o'clock, where were you
6 15 minutes earlier?
7 CAPTAIN MOHLAKI: Sorry, I will say, I
8 was at around four o'clock, I was at that Scene 1.
9 MR BIZOS SC: Yes.
10 CAPTAIN MOHLAKI: But I don't know what
11 time did we left that side, but I know as we are saying, we
12 are agreeing that the measurement, it may be 1.3 kilometres
13 and I was driving, I was not walking.
14 MR BIZOS SC: But at quarter to four, or
15 ten to four, you were very near Scene 1.
16 CAPTAIN MOHLAKI: If I was already in my
17 movement, yes, that means it may be, but I am not sure.
18 MR BIZOS SC: Even if it's – you were 1.3
19 kilometres away is your hearing alright?
20 CAPTAIN MOHLAKI: 100% Chair.
21 MR BIZOS SC: Thank you, did you hear a
22 barrage of shots as you were approaching Scene 1?
23 CAPTAIN MOHLAKI: No, I never hear any
24 shooting.
25 MR BIZOS SC: When you arrived at or near

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1 Scene 1, did they tell you that there was shooting, and 15
2 people, 14 or 15 people were lying dead at Scene 1?
3 CAPTAIN MOHLAKI: I did observe that,
4 because when we arrived the paramedics and the police were
5 moving around the scene and the bodies.
6 MR BIZOS SC: And you didn't hear any
7 shots?
8 CAPTAIN MOHLAKI: Not at all.
9 MR BIZOS SC: Oh, very well. Did you ask
10 what happened? Why are there dead people? I thought we
11 were coming to count traditional weapons, what are 14 or 15
12 bodies doing on the ground?
13 CAPTAIN MOHLAKI: That's true, I just
14 asked myself, now what happened, then because I have to
15 locate where is Brigadier Naidoo, who must explain to me
16 now what happened.
17 MR BIZOS SC: Well, did you need to go so
18 high, maybe he was still busy somewhere else, helping in
19 killing the other people nearby. Did you ask anybody –
20 CHAIRPERSON: Sorry, that's inappropriate
21 comment, Mr Bizos.
22 MR BIZOS SC: Well, because we have
23 evidence that he was actually at the klein koppie, this is
24 why I was –
25 CHAIRPERSON: The suggestion is that he

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1 was involved, helping killing people. I don't think that's
 2 worthy of you, I think you should withdraw that,
 3 reformulate the question.
 4 MR BIZOS SC: Yes, I will withdraw that,
 5 Mr Chairman. I withdraw it. Why was it necessary for you
 6 to seek out Brigadier Naidoo? Why didn't you ask the
 7 person that apparently who must have been in charge?
 8 CAPTAIN MOHLAKI: To my understanding and
 9 in the morning briefing, General Naidoo was in charge, that
 10 is why I was looking for General Naidoo.
 11 MR BIZOS SC: Well, you got to Scene 1,
 12 who directed you to Scene 2?
 13 CAPTAIN MOHLAKI: No one directed us to
 14 Scene 2. Captain Ngcobo called General Naidoo on the cell
 15 phone, and General Naidoo is the one who informed us that I
 16 am at the small koppie, that is when we worked that site.
 17 MR BIZOS SC: Did you see General Naidoo
 18 there?
 19 CAPTAIN MOHLAKI: That is correct, Chair.
 20 MR BIZOS SC: Did you get there in time
 21 to hear any shooting there?
 22 CAPTAIN MOHLAKI: Not at all.
 23 MR BIZOS SC: Was it the same scene that
 24 people were dead, lying on the ground at the klein koppie?
 25 CAPTAIN MOHLAKI: That is correct, Chair.

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1 MR BIZOS SC: What were you asked to do?
 2 CAPTAIN MOHLAKI: General Naidoo just
 3 indicated to me that this is a crime scene.
 4 MR BIZOS SC: Is what?
 5 MR MADLANGA SC: A crime scene.
 6 MR BIZOS SC: A crime scene? What crimes
 7 were committed, according to General Naidoo?
 8 CAPTAIN MOHLAKI: Because where I meet
 9 General Naidoo, there was some bodies, injured people, some
 10 they were saying they were arrested, and some were dead
 11 bodies, so I can see that if somebody is dead, that must be
 12 a crime scene.
 13 MR BIZOS SC: Did you ask General Naidoo
 14 what happened?
 15 CAPTAIN MOHLAKI: I never got that chance
 16 to ask him, because he just indicated to me, this is a
 17 crime scene. We know what to do. And he also informed me
 18 that there is a possibility of the IPID will come and
 19 investigate the scene – the case.
 20 MR BIZOS SC: Who will come?
 21 CAPTAIN MOHLAKI: They will come and
 22 investigate the case.
 23 MR BIZOS SC: Who will come?
 24 CAPTAIN MOHLAKI: IPID, Independent
 25 Police Investigation Directorate.

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1 MR BIZOS SC: Were they there?
 2 CAPTAIN MOHLAKI: No yet.
 3 MR BIZOS SC: Did they come?
 4 CAPTAIN MOHLAKI: I saw Mr Motaung of
 5 IPID around eight o'clock in crime scene, in crime scene 2.
 6 MR BIZOS SC: And what did you do for the
 7 couple of hours that you were there?
 8 CAPTAIN MOHLAKI: Immediately when I see
 9 that the police and the paramedics are moving around the
 10 crime scene, I requested Constable Moleswe, that Constable
 11 Moleswe, if you can see you won't be able to make a proper
 12 walk through, so the best thing to do you have to record
 13 the video as the scene as it is, but mind you, if you see
 14 something that it may help us, you must just videograph it,
 15 even if you have not yet make a proper walk through.
 16 MR BIZOS SC: Did you make a video?
 17 CAPTAIN MOHLAKI: Constable Moleswe did
 18 make a video.
 19 MR BIZOS SC: Of what did he make a –
 20 what did he photograph or video?
 21 CAPTAIN MOHLAKI: He videographed the
 22 movement of the police, the movement of the paramedics
 23 around the medical, temporary medical centre, and some of
 24 the bodies that he managed to saw them, when he was walking
 25 with a video camera.

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1 MR BIZOS SC: You stayed there overnight,
 2 if I understood you correctly.
 3 CAPTAIN MOHLAKI: That is correct, Chair.
 4 MR BIZOS SC: And if I may say so, with
 5 respect you appear to have gathered very useful information
 6 which must be available on the video.
 7 CAPTAIN MOHLAKI: Not all of them will
 8 appear to explain that, the cartridges were recovered to
 9 early hours of the 17th, and the day of the 17th, so most of
 10 the videos that were recorded by Constable Moleswe, will
 11 cover the movement of paramedics, police, and some of the
 12 bodies, dead bodies.
 13 MR BIZOS SC: Although you do not give an
 14 indication in your statement that you are a detective, I
 15 don't suppose that you could become a captain without being
 16 quite a good detective in order to know what material to
 17 gather.
 18 CAPTAIN MOHLAKI: To respond on that, I
 19 am falling under the National Commissioner from the
 20 National – it is a long, actually SAPS is a big
 21 organisation, with aim of achieving one goal, common
 22 purpose, under the SAPS there are divisions, so myself I am
 23 falling under the division of forensic.
 24 MR BIZOS SC: Yes, I know that. What I
 25 am asking you is that you can't be good in your branch of

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1 the service without having detective instincts and
 2 detective experience and be guided what I have to look for,
 3 surely that must be part of your experience and your
 4 training.
 5 MR MADLANGA SC: Mr Chairman,
 6 Commissioners, I have no idea what the detective instinct
 7 is, perhaps my learned friend –
 8 CHAIRPERSON: Not being asked a question,
 9 Mr Madlanga, that –
 10 MR MADLANGA SC: Chair, this speaks to
 11 the fairness of the question and if it is not clear –
 12 CHAIRPERSON: Okay, I take it. Mr Bizos,
 13 the point taken is your question isn't as clear as you are
 14 capable of making it, the suggestion is that you formulate
 15 it with more precision.
 16 MR BIZOS SC: Yes. You knew what
 17 evidence would be relevant in relation to the commission of
 18 a crime, in order to choose what evidence you will gather,
 19 what evidence you will note where it was found, and you
 20 would know that the space between a dead body and where the
 21 cartridges were, are important factors.
 22 CAPTAIN MOHLAKI: That's correct, you are
 23 correct on that statement.
 24 MR BIZOS SC: That's what I meant, I will
 25 develop the reason. I didn't realise it.

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1 CHAIRPERSON: Mr Bizos, I am just
 2 indicating to you, it's just before one o'clock. If you
 3 want me to take the adjournment now, I will. I you would
 4 like to carry on a little bit longer to round off the point
 5 you are busy with –
 6 MR BIZOS SC: No.
 7 CHAIRPERSON: - please go ahead.
 8 MR BIZOS SC: It's as good as any other
 9 time.
 10 CHAIRPERSON: The Commission will adjourn
 11 until 2 p.m.
 12 [INQUIRY ADJOURNS INQUIRY RESUMES]
 13 [14:00] CHAIRPERSON: The Commission resumes.
 14 Captain, you're still under oath. Mr Bizos, you are cross-
 15 examining.
 16 CROSS-EXAMINATION BY MR BIZOS SC (CONTD):
 17 Yes, Mr Chair. We are apologising to Brigadier - to
 18 General Naidoo. It was an unfortunate slip of the tongue.
 19 What I wanted to put or to say, he may have been at another
 20 place where people had been killed but –
 21 CHAIRPERSON: I must say I didn't think
 22 that you meant it because I think I know you well enough,
 23 you're not likely to say things of that kind. Initially I
 24 said it wasn't worthy of you but what I really meant was
 25 that you hadn't done it intentionally and what you said

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1 wasn't worthy of you, but anyway –
 2 MR BIZOS SC: I knew that he was at the
 3 klein koppie, I knew that people died there and instead of
 4 saying he may have been at a place where other people had
 5 been killed, it slipped out. I unequivocally apologise.
 6 Thank you. Captain, did you go to Potchefstroom?
 7 CAPTAIN MOHLAKI: Correct.
 8 MR BIZOS SC: Were you there for the nine
 9 days?
 10 CAPTAIN MOHLAKI: Not true.
 11 MR BIZOS SC: You were there some of the
 12 time?
 13 CAPTAIN MOHLAKI: Not true.
 14 MR BIZOS SC: Well, please explain –
 15 CHAIRPERSON: What's not true? You say
 16 you went to Potchefstroom -nine days, the answer to that
 17 one is no. How many days were you there?
 18 CAPTAIN MOHLAKI: Okay, let me explain my
 19 visit to Potchefstroom.
 20 CHAIRPERSON: Yes.
 21 CAPTAIN MOHLAKI: I was called by Colonel
 22 Botha, that General Naidoo wants to see me at Potchefstroom
 23 on that meeting.
 24 MR BIZOS SC: Yes.
 25 CAPTAIN MOHLAKI: When I arrived there I

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1 met with General Naidoo. Then he indicated to me that he
 2 wants to know all the exhibits that were collected at the
 3 scene, so I give that number, then I withdraw. I came back
 4 to Rustenburg. That was my visit at Potchefstroom.
 5 MR BIZOS SC: Oh, I see. I see, you
 6 didn't attend a meeting?
 7 CAPTAIN MOHLAKI: No, it was not a formal
 8 meeting because I just met with General Naidoo and he asked
 9 me the exhibits, the information note that I prepared to
 10 him, and I withdraw.
 11 MR BIZOS SC: Right, I accept that.
 12 Thank you for that. Now I'm not going to ask you to
 13 express an opinion on it because it's for the Commission to
 14 decide but with your experience, the evidence that you have
 15 collected, appears on the whole to be that there was a
 16 considerable distance between the dead bodies and where the
 17 cartridges were. You've got a whole list of distances.
 18 You're absolutely sure that that evidence is correct?
 19 CAPTAIN MOHLAKI: I'm sure that is
 20 correct.
 21 MR BIZOS SC: Yes. Now did anybody since
 22 these unhappy events occurred, investigating the killings,
 23 come to you and ask you for your statement?
 24 CAPTAIN MOHLAKI: Not yet. The only
 25 people I met, it was members from IPID. They were asking

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1 me how far am I with my final product of the whole incident
2 that happened at scene 2.

3 MR BIZOS SC: Now you are aware that some
4 members of the police force that you belong to say that
5 these killings were in self-defence in order to save their
6 lives, you're aware of that?

7 CAPTAIN MOHLAKI: I'm not aware.

8 MR BIZOS SC: You must be the only one in
9 South Africa that is
10 not aware of this.

11 CAPTAIN MOHLAKI: Maybe I don't
12 understand your question. You are –

13 MR BIZOS SC: Let me –

14 CAPTAIN MOHLAKI: - saying that somebody
15 told me or it's just in the mind of the people. I don't
16 understand.

17 MR BIZOS SC: Listen carefully, please.
18 Do you know that the police say that they killed people in
19 self-defence?

20 CAPTAIN MOHLAKI: No, I don't know that.

21 MR BIZOS SC: You don't read the papers?

22 CAPTAIN MOHLAKI: Yes, I read the papers.

23 MR BIZOS SC: You haven't seen that the
24 police say in public statements, senior police officers in
25 public statements say that the police did no wrong. The

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1 Commissioner has said so, the Minister has said so. You
2 are a policeman and you don't know, you haven't heard of
3 this defence of self-defence by the police?

4 CAPTAIN MOHLAKI: What I can explain is
5 that they are saying, according to them here, they were
6 attacked and they were defending themselves.

7 MR BIZOS SC: Well, it's the same thing
8 in different words, would you not agree?

9 CAPTAIN MOHLAKI: Is it the same thing in
10 different words?

11 MR BIZOS SC: You don't think so?

12 CAPTAIN MOHLAKI: Maybe, I'm not sure.

13 MR BIZOS SC: Let's take it on the basis
14 of you – that you have heard that they killed people in
15 order to defend themselves, is that fair enough?

16 CAPTAIN MOHLAKI: I think it's not fair
17 enough, especially when you use the words "they, they say
18 they killed" as if they were intentional to kill, because
19 what I understand they're saying –

20 MR BIZOS SC: Well, is that your
21 objection? Then let me soften it and disabuse you. Are
22 you aware of the fact that the police say that they've done
23 no wrong because they defended themselves in killing
24 people?

25 CAPTAIN MOHLAKI: That's correct.

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1 MR BIZOS SC: That's correct. Has
2 anybody who is investigating this case come to you and said
3 please give us your evidence and a detailed statement in
4 order that we may use it in support of our defence? Has
5 anybody come to you to ask you for that?

6 CAPTAIN MOHLAKI: Yes, the IPID members
7 they did come to me and they said how far am I with my
8 statement and my documents.

9 MR BIZOS SC: How long ago was that?

10 CAPTAIN MOHLAKI: Even if I'm not
11 mistaken, this – today is Wednesday, Monday they did ask me
12 how far am I.

13 MR BIZOS SC: I just want to get a name
14 from – do you know a detective by the name of, if we read
15 the writing correctly, Obed Mekwe. Do you know him?

16 CAPTAIN MOHLAKI: No, I don't remember
17 that name. I don't know a person of that –

18 MR BIZOS SC: You don't remember. On
19 page 362 is where the name appears on the –

20 CHAIRPERSON: Of what document?

21 MR BIZOS SC: SAPS file.

22 CHAIRPERSON: Of SAPS file.

23 MR BIZOS SC: From which it appears that
24 a charge of murder has been laid against the members of the
25 police force for the people that were killed at Marikana.

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1 It's 366, Mr Chairman, it's 366. A complaint of murder was
2 – the writing scrawl, Mr Chairman –

3 MR BURGER SC: Chair, if I may assist my
4 learned friend, Obed Mekwe is a Lonmin employee. That's
5 the person my learned friend refers to.

6 MR BIZOS SC: Is he one of the employees?
7 Well, I don't – I have no explanation for that. I have a
8 document here which says that a charge of murder is being
9 investigated by Mr Obed Mekwe. You know nothing about
10 that?

11 CAPTAIN MOHLAKI: Not at all, I don't
12 know nothing.

13 CHAIRPERSON: Sorry to interrupt you.
14 You say you do read the newspapers?

15 CAPTAIN MOHLAKI: That's correct, Chair.

16 CHAIRPERSON: And you do watch television
17 news broadcasts?

18 CAPTAIN MOHLAKI: That's correct, Chair.

19 CHAIRPERSON: One of the things that I
20 think is fairly notorious is that charges of murder were
21 laid, people went publicly – I'm not sure if they were
22 accompanied by the media but they went publicly to the
23 police station and laid charges of murder against the
24 police. I think one can take judicial notice of that.
25 Were you aware of that at all? Did you not read that in

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1 the newspapers or see it on television?

2 CAPTAIN MOHLAKI: Okay, I still remember

3 there was, in the media where they were saying Julius

4 Malema was at the police station to open a murder case.

5 That one yes, I do remember, but not Obed.

6 CHAIRPERSON: I don't think Mr Bizos

7 minds who laid the charge, I think Mr Bizos's point is that

8 there was a charge of murder laid. Am I correct, Mr Bizos?

9 MR BIZOS SC: We have on the computer

10 that the charge of murder was laid. Did somebody come to

11 you and say where is the evidence that this was done in

12 self-defence on the evidence that you've gathered? Has

13 nobody come to you?

14 CAPTAIN MOHLAKI: Not at all.

15 MR BIZOS SC: I'm sorry for the delays

16 but the handwriting's poor and –

17 CHAIRPERSON: While you're trying to

18 decipher the handwriting, the witness conceded that despite

19 his earlier statement that he didn't know there was a

20 charge of murder, he had seen in the media that Julius

21 Malema had laid a charge of murder. So he was aware of the

22 fact that there was a charge of murder. That's the point

23 you missed while you were trying to read the handwriting.

24 You might like to proceed.

25 MR BIZOS SC: You say that you – Marikana

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1 case 138/08/12, where did you get that docket number from?

2 CAPTAIN MOHLAKI: From the computer in

3 our system.

4 MR BIZOS SC: That is the case which, in

5 terms of what we see on the computer, is the docket of

6 murder against the police.

7 CAPTAIN MOHLAKI: But what I'm seeing

8 here, Chair, it seems it is 148, not 138. I don't know if

9 we are watching the two different screens.

10 MR BIZOS SC: Anyway let me confine, on

11 the advice given to us by the Chairman. Can you explain

12 how an important witness like you, on the issue of whether

13 there is a self-defence or not, has not been interviewed –

14 CHAIRPERSON: Mr Bizos, I don't think

15 that's a fair question. I don't see how the witness can be

16 expected to answer why he wasn't approached and asked for

17 information. The fact, obviously, you can use in argument.

18 It's a question that you could address to those who you

19 would've expected would've approached him but I'm not sure

20 it's fair to ask him why other people didn't approach him.

21 MR BIZOS SC: Yes.

22 CHAIRPERSON: So I'm not allowing that

23 question.

24 MR BIZOS SC: Did you not report to your

25 superior officers that you, as a detective, think it

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1 strange that there should be this public statement of a

2 self-defence when in fact your evidence negatives that?

3 CAPTAIN MOHLAKI: I really don't

4 understand your question, Chair.

5 MR BIZOS SC: Which part don't you

6 understand?

7 CAPTAIN MOHLAKI: The one that you are

8 saying that if somebody approached me and indicated to me

9 that this is the statement of, police are saying this, that

10 is all, but then to approach senior officers that there is

11 a rumour what, I don't understand really.

12 MR BIZOS SC: Why do you call it a

13 rumour?

14 CAPTAIN MOHLAKI: You are saying I've

15 heard from the media or from other sources.

16 MR BIZOS SC: Or your colleagues, that

17 your colleagues are being charged with murder and you have

18 evidence as to whether that is true or not – you didn't go

19 to your senior colleague and say, what are you saying about

20 the self-defence?

21 CAPTAIN MOHLAKI: I was never told that

22 there's any police official who was charged with murder of

23 crime scene Marikana 138/8/2012.

24 MR BIZOS SC: Would you agree that if the

25 cartridges were found some 70 metres away from where a body

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1 lay, the establishment of a self-defence defence would be

2 problematic and – would you agree with that?

3 CAPTAIN MOHLAKI: I won't agree and I

4 won't disagree because I don't know if that same cartridge

5 that you are referring to it is 70 metres away, it was

6 directed to the same body that you are referring to 70

7 metres away, I won't know.

8 MR BIZOS SC: What was the purpose of you

9 taking the measurements?

10 CAPTAIN MOHLAKI: The purpose of me

11 taking the measurement is to take the evidence that I'm

12 having to the forensic at Pretoria so that they can handle

13 that department. It's not field of my work.

14 MR BIZOS SC: At the second scene you

15 found cartridges on top of a rock.

16 CAPTAIN MOHLAKI: Correct, sir.

17 MR BIZOS SC: And a body at the bottom of

18 a rock.

19 CAPTAIN MOHLAKI: Correct, sir.

20 [14:20] MR BIZOS SC: Did you not think that you

21 should draw to your senior's attention that the self-

22 defence defence would be very difficult, in view of your

23 evidence, how did the cartridges get on top of the rock

24 with the body down below?

25 CAPTAIN MOHLAKI: If I was aware that the

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1 cartridges that were on top of the rocks, the bullets were
 2 directed to the body that you are referring to, I will say
 3 yes, I will advise them, but I don't know that the
 4 cartridges that were on top of the rock they were directed
 5 to the body on the edge.

6 MR BIZOS SC: What are the possibilities
 7 or the probabilities?

8 CAPTAIN MOHLAKI: I was not there, I
 9 don't know.

10 MR BIZOS SC: You are a senior officer in
 11 the police force, you have agreed that you would have what
 12 we call nouse, a detective's nouse, if you see cartridges
 13 on top of a rock –

14 CHAIRPERSON: I am sorry, Mr Bizos, I
 15 know you are Greek speaking, so you know what the word
 16 "nouse" means, I am not sure he does.

17 MR BIZOS SC: I beg your pardon? Oh, I
 18 am sorry. In a feeling really, detectives in the feeling,
 19 you find cartridges on top of a rock, and the body below,
 20 what conclusion do you come to?

21 CAPTAIN MOHLAKI: That is why I don't
 22 have a conclusion, that is why I took all the evidence to
 23 forensics to help me on that aspect.

24 MR BIZOS SC: Captain, why are you so
 25 reluctant to admit the obvious?

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1 CAPTAIN MOHLAKI: No, I am not reluctant,
 2 I cannot agree on things that I don't understand. That is
 3 not of my work. I cannot come and give the Commissioner
 4 here, something that I don't, I am not an expert on it.

5 MR BIZOS SC: It's not a question of
 6 expertise, part of your – the job of a captain in the
 7 police force is to draw inferences from evidence in order
 8 to investigate. Surely you don't want to wash your hands
 9 completely out of that function.

10 CAPTAIN MOHLAKI: I agree with you, but
 11 if you check this current things, there was no way I can
 12 maybe use my discretion saying I will say this happened and
 13 that happened. That is why I requested the assistance of
 14 ballistic section from Pretoria.

15 MR BIZOS SC: Are you not surprised that
 16 you, such an important witness, to these events because of
 17 your thorough investigation, the 16th overnight and in the
 18 morning, that you have not been consulted by whoever is
 19 investigating this murder case, has omitted to come to you
 20 and say, can you help us?

21 CAPTAIN MOHLAKI: No, the people who are
 22 investigating the case of 138 of 8 2012, Marikana CAS that
 23 I investigated, is IPID members who approached me and asked
 24 me about my final product, how far am I. Then I said, I am
 25 busy with the Commission, if I've got time I will give

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1 them, but now I don't know which investigating officers you
 2 are referring to.

3 MR BIZOS SC: I want to make it clear,
 4 Captain, that I don't query the validity of your evidence
 5 as to what you found there. The reasons for my question
 6 is, and I appeal to you, to say that from your point of
 7 view, the absence of any enquiry to you is that this charge
 8 of murder has not been investigated properly.

9 CAPTAIN MOHLAKI: I don't understand, you
 10 are referring to which investigation, that is not properly
 11 done?

12 MR BIZOS SC: There is an allegation that
 13 the police or some of them are responsible for the murder
 14 of 34 people, Captain. I would have thought that any
 15 competent investigator would be consulting with you day and
 16 night in order to prove whether this or disprove whether
 17 the self-defence defence has any value.

18 CAPTAIN MOHLAKI: I think I have
 19 explained that even on Monday, I met with IPID, we talk
 20 what we talk, then I think they are busy with the
 21 investigation, that I cannot – I don't have any control
 22 over them.

23 MR BIZOS SC: We have the docket in the
 24 police file, but we couldn't find anybody's statement,
 25 other than the investigating officer making the brief.

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1 MR MADLANGA SC: Mr Chairman,
 2 Commissioners, it's not an objection really, the witness
 3 has repeatedly referred to IPID being the investigators and
 4 the Commissioners and my learned friends across are aware
 5 of what has been referred to as volume A of the documents
 6 that we have exchanged, that copious documentation in
 7 volume A relates to the IPID investigations, those are
 8 statement collected by IPID in their investigation of the –

9 MR BIZOS SC: I thank my learned friend
 10 for it, I have seen those statements, and we will draw
 11 attention in due course of some of the statements.

12 CHAIRPERSON: Mr Bizos, further, the
 13 point I think that's been made is the case has been
 14 investigated by IPID. They were the investigating officers
 15 of the murder charge against the police. They approached
 16 the witness, according to his evidence, they asked for a
 17 report, he said he is busy, as I understood his evidence,
 18 he is busy with a report, he is also busy with the
 19 Commission and when he gets an opportunity, he will give
 20 them the report. So it's not correct to put to him that
 21 whoever was investigating the case hadn't approached him
 22 for the information that he had to give, and insofar as
 23 that is the basis of the present line of cross-examination,
 24 I am not sure that it's fair. But I put the point to you,
 25 so you can possibly reformulate the question.

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1 MR BIZOS SC: I will confine myself to
 2 this, Mr Chairman, that not having taken a detailed
 3 statement from this witness, because what we have is one-
 4 and-a-quarter page – oh, sorry, it's two pages and this is,
 5 it's long by the standard of others for a quarter page. We
 6 only have a two page statement from him. One would have
 7 expected a very detailed statement –

8 CHAIRPERSON: I understand the point you
 9 are making, but isn't that a question you should ask of
 10 somebody else, not the captain. The captain doesn't know
 11 they only took a short statement they did. He doesn't know
 12 what, whether they are going to come back to him at some
 13 later stage, and ask for a fuller report. I am not sure
 14 it's fair to ask him about what may be as a significant
 15 omission on the part of others, but I am not sure you can
 16 lay it at his door. And that's why I am not sure that
 17 questioning him about it is going to help us to get to the
 18 truth in this matter.

19 MR BIZOS SC: Thank you, Mr Chairman, I
 20 have made the point. I hope that those who are really
 21 investigating the matter, will take the suggestion
 22 seriously, in consulting with this witness in relation to
 23 the defence that they are putting up before this Commission
 24 and before the – or in relation to the criminal charges
 25 made. Thank you for the opportunity, Mr Chairman, I have

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1 no further questions.

2 CHAIRPERSON: Mr Bruinders have you been
 3 able to take instructions on the matter that you wanted to
 4 take instruction on? Are you prepared to cross-examine?

5 MR BRUINDERS SC: The answer is yes and
 6 no. Yes, I have, but one of the things that we haven't
 7 seen or looked at is the video of the actual crime scene
 8 investigation, it seems to - my attorney says he hasn't, he
 9 didn't know it was there. It's apparently the huge hard
 10 drive. We would like to look at that before we ask some
 11 questions about the crime scene. There won't be many, but
 12 we'd obviously like to clarify. I suppose what that means
 13 is we should reserve our right to recall this witness if
 14 necessary.

15 CHAIRPERSON: One way of doing it. The
 16 other one is, are there other questions that you wish to
 17 ask, relating to other matters? Sometimes one can cross-
 18 examine on certain points, and either reserve cross-
 19 examination on other points, or apply to recall the witness
 20 to deal with the other points. Are you able to cross-
 21 examine on anything at this stage?

22 MR BRUINDERS SC: Yes.

23 CHAIRPERSON: I suggest you start.

24 MR BRUINDERS SC: Captain, can I ask you
 25 a few questions about the morning of the 16th.

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1 CAPTAIN MOHLAKI: You are welcome.

2 CROSS-EXAMINATION BY MR BRUINDERS SC:
 3 How long do you say that that briefing took place?

4 CAPTAIN MOHLAKI: I don't know how long
 5 it took place, but for me to be briefed in that morning
 6 briefing, it was about 30 minutes to 45 minutes, then I
 7 withdraw myself to go and brief my members.

8 MR BRUINDERS SC: Your participation in
 9 that meeting was between 30 and 45 minutes.

10 CAPTAIN MOHLAKI: That is correct, Chair.

11 MR BRUINDERS SC: During your
 12 participation in that meeting, was your team given anything
 13 in writing?

14 CAPTAIN MOHLAKI: Not at all.

15 MR BRUINDERS SC: Now your team was led
 16 by I think you said Colonel Botha.

17 CAPTAIN MOHLAKI: That is correct.

18 MR BRUINDERS SC: When you left the
 19 briefing, did Colonel Botha stay on or did he leave with
 20 you?

21 CAPTAIN MOHLAKI: I have to explain this
 22 to answer your question. For me to be in that briefing, is
 23 because Colonel Botha was not available on that morning
 24 briefing, so I have to stand for Colonel Botha. In short,
 25 Colonel Botha was in the morning briefing.

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1 MR BRUINDERS SC: And when you left, the
 2 rest of your team, I take it there was more than you
 3 present left the briefing.

4 CAPTAIN MOHLAKI: I was alone in the
 5 briefing, then I withdraw myself to go and brief my three
 6 members who were outside the JOC because I was there as
 7 their representative from NCRC.

8 MR BRUINDERS SC: Was it during the
 9 course of that briefing that you were told that you were to
 10 collect evidence later on?

11 CAPTAIN MOHLAKI: That is correct, Chair.

12 MR BRUINDERS SC: And were you told where
 13 you were supposed to gather evidence?

14 CAPTAIN MOHLAKI: That is correct, Chair.

15 MR BRUINDERS SC: Where were you told you
 16 had to gather evidence?

17 CAPTAIN MOHLAKI: We were told that the
 18 people will be gathering at the koppie, the big koppie, and
 19 they will be surrendering their dangerous weapons, and
 20 unlicensed firearms or ammunition, if they are in
 21 possession of any, and they will disperse, they will
 22 withdraw from the mountain. Then we will be called to come
 23 and document those dangerous weapons and traditional
 24 weapons that will be left at the koppie.

25 MR BRUINDERS SC: This morning was the

<p style="text-align: right;">Page 798</p> <p>1 first time that you became involved in this Marikana 2 strike.</p> <p>3 CAPTAIN MOHLAKI: Sorry, repeat your 4 question.</p> <p>5 MR BRUINDERS SC: This morning was the 6 first time that you became involved in this Marikana strike 7 action.</p> <p>8 CAPTAIN MOHLAKI: That is correct.</p> <p>9 MR BRUINDERS SC: So when you were given 10 the briefing and told that you were supposed to collect 11 evidence from people at the koppie, were you told what time 12 you were supposed to collect evidence?</p> <p>13 CAPTAIN MOHLAKI: We were told that we 14 are going to get an indication from General Naidoo when 15 they need our service but they never specified that it will 16 be this time.</p> <p>17 MR BRUINDERS SC: So when you sat in that 18 briefing, you didn't know where the people were or were not 19 at the koppie that morning.</p> <p>20 CAPTAIN MOHLAKI: It is true, I was not 21 aware that they are already at the koppie or not.</p> <p>22 MR BRUINDERS SC: You did not know where 23 the people who were meant to surrender their arms or 24 weapons, where they were at that stage, at all?</p> <p>25 CAPTAIN MOHLAKI: Correct, I was not</p>	<p style="text-align: right;">Page 800</p> <p>1 on that day, it was just to document the weapons that will 2 be left at the koppie.</p> <p>3 MR BRUINDERS SC: So the reason for 4 calling you in as you understood it, was purely to make a 5 note or keep a record of the number and type of weapons 6 that people were going to surrender?</p> <p>7 CAPTAIN MOHLAKI: To add on what you are 8 saying, also to take photos of that and because we were 9 with the detectives if they need an extra thing on those 10 exhibits, they will guide us because we will be assisting 11 them.</p> <p>12 MR BRUINDERS SC: Would you repeating the 13 last part of your answer.</p> <p>14 CAPTAIN MOHLAKI: I am saying, in 15 addition of what you are saying, the document I am 16 referring to, take photos of that, videographing of that 17 and assist the detectives if they request any further 18 investigation on those exhibits.</p> <p>19 MR BRUINDERS SC: So you understood the 20 detectives would be accompanying you.</p> <p>21 CAPTAIN MOHLAKI: That is correct.</p> <p>22 MR BRUINDERS SC: How many people were in 23 your team?</p> <p>24 CAPTAIN MOHLAKI: It was eight 25 detectives.</p>
<p style="text-align: right;">Page 799</p> <p>1 aware.</p> <p>2 MR BRUINDERS SC: For all you knew, they 3 were not at the koppie at that time at all.</p> <p>4 CAPTAIN MOHLAKI: I was not aware of 5 their whereabouts.</p> <p>6 MR BRUINDERS SC: And although you were 7 not given a time as to when you were to collect the 8 evidence, were you given any indication as to when that 9 time might be?</p> <p>10 CAPTAIN MOHLAKI: Not at all. We were 11 not informed about the time.</p> <p>12 MR BRUINDERS SC: Were you given any idea 13 of how many people were expected to surrender their weapons 14 at the koppie?</p> <p>15 CAPTAIN MOHLAKI: We were just told that 16 it will be a group of people who were gathered – it seemed 17 as if they were people who used to gather at that mountain. 18 So they never informed me about the number of people who 19 will be coming to surrender their weapons.</p> <p>20 MR BRUINDERS SC: Apart from being told 21 that you would be required to gather evidence after people 22 have surrendered their weapons, and that you would be 23 called to do so by General Naidoo, were you told anything 24 else about what you were to do on that day?</p> <p>25 CAPTAIN MOHLAKI: No, the task, our task</p>	<p style="text-align: right;">Page 801</p> <p>1 MR BRUINDERS SC: In your evidence- 2 gathering team.</p> <p>3 CAPTAIN MOHLAKI: Oh, we were four.</p> <p>4 MR BRUINDERS SC: And you were going to 5 be accompanied by eight detectives, you understood.</p> <p>6 CAPTAIN MOHLAKI: That is correct, Chair.</p> <p>7 [14:40] MR BRUINDERS SC: If all that you were 8 required to do was to record and photograph the number of 9 weapons and possibly to take some guidance from the 10 detectives about those exhibits, if that was all you were 11 required to do, why were 12 of you needed for that purpose?</p> <p>12 CAPTAIN MOHLAKI: The duties that the 13 detectives are doing, is not the one that I'm doing. The 14 work that I'm doing is not the one the detectives are doing 15 because I'm from division of forensics, they are from 16 detective investigators.</p> <p>17 MR BRUINDERS SC: Well, let's stick with 18 your work and your team. You had no idea of the number of 19 people involved, correct?</p> <p>20 CAPTAIN MOHLAKI: You are referring to 21 the big gathering there?</p> <p>22 MR BRUINDERS SC: Yes.</p> <p>23 CAPTAIN MOHLAKI: No, we were not aware.</p> <p>24 MR BRUINDERS SC: You had no idea of the 25 number of weapons that you might have to record?</p>

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1 CAPTAIN MOHLAKI: Correct.

2 MR BRUINDERS SC: And all you understood

3 was that your team was going to do the three things that I

4 think we've already established you were going to do, not

5 so?

6 CAPTAIN MOHLAKI: Correct.

7 MR BRUINDERS SC: How did you know that

8 four of you were required for that task?

9 CAPTAIN MOHLAKI: If we have to arrive at

10 the scene I have to evaluate the scene. If we need extra

11 assistance from other people, we have to make a call.

12 MR BRUINDERS SC: Did I understand you

13 correctly that your team, the rest of your team was there

14 when you got out of your briefing session?

15 CAPTAIN MOHLAKI: That is correct, Chair.

16 MR BRUINDERS SC: In other words, they

17 were at Lonmin?

18 CAPTAIN MOHLAKI: Correct, Chair.

19 MR BRUINDERS SC: Or, to be more

20 accurate, just outside Lonmin.

21 CAPTAIN MOHLAKI: At the JOC, outside the

22 JOC.

23 MR BRUINDERS SC: And as I understood

24 your evidence, you and your team spent from between quarter

25 to seven and seven o'clock, you spent the rest of the day

Page 803

1 there until round about four o'clock when you went off to

2 scene 1.

3 CAPTAIN MOHLAKI: No, around nine, 10, we

4 had to move from the JOC to that holding area. I have

5 never recorded the time of departure from the JOC to the

6 holding area. It was some distance from the JOC.

7 MR BRUINDERS SC: Now the holding area –

8 I beg your pardon, Mr Interpreter. The holding area was at

9 a point between the JOC and the koppie?

10 CAPTAIN MOHLAKI: Correct, sir.

11 MR BRUINDERS SC: And you and your team

12 spent the rest of the day there until you went off to scene

13 1?

14 CAPTAIN MOHLAKI: Correct, sir.

15 MR BRUINDERS SC: I want to come back to

16 an earlier question of mine, how did you know that four of

17 you were required for this task when you didn't know what

18 the extent of the task was?

19 CAPTAIN MOHLAKI: That is how our

20 division, we are working. We'll send a member to the scene

21 – even if he's one member, he can go and attend that crime

22 scene and we will make or she will make a call while she is

23 at, or he is at the scene. If he needs any assistance or

24 extra pair of hands he will make a call or she will make a

25 call.

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1 MR BRUINDERS SC: And that seems – what

2 you suggest is the way that you work seems reasonable, not

3 so?

4 CAPTAIN MOHLAKI: Correct.

5 MR BRUINDERS SC: You don't know what a

6 crime scene might involve, one of you goes there, assesses

7 and then makes the call about whether reinforcements are

8 needed?

9 CAPTAIN MOHLAKI: That's correct.

10 MR BRUINDERS SC: That is not the way it

11 worked on this day.

12 CAPTAIN MOHLAKI: I don't understand, in

13 which fashion?

14 MR BRUINDERS SC: Because you have

15 already said that you didn't go to the scene to make an

16 assessment about how many people were needed to do the

17 task. The four of you were there from the outset, long

18 before the task had to be done, not so?

19 CAPTAIN MOHLAKI: No, I think you are

20 coming with two statements here. You are asking me about

21 the issue of Lonmin and the holding area and you make a

22 general statement saying, where I respond by saying even if

23 it's a crime scene, one member can go if he's on duty to

24 perform the duties on that crime scene and if he or she can

25 see that I need assistance, he will call. But if you are

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1 referring or coming back to the scene of, the incident of

2 Lonmin, we were going to be on that holding area until we

3 received a call that we must come and process, if it was

4 true that they surrendered those weapons. If we are four

5 and we arrive there and we see that we need extra people to

6 come and help us from our section, we are going to make

7 that call.

8 MR BRUINDERS SC: How did you know at

9 seven o'clock that morning that you needed four people for

10 a task later in the day that you didn't now what it might

11 involve?

12 CAPTAIN MOHLAKI: The information that I

13 received from Colonel Botha is that we must meet at Lonmin,

14 four of us. I don't know the detail of the brief. If he

15 was briefed like that, I don't know.

16 MR BRUINDERS SC: Colonel Botha gave you

17 an instruction that you and your entire team should report

18 at the JOC.

19 CAPTAIN MOHLAKI: Colonel Botha informed

20 me that I must report at the JOC and I will be joined by

21 other members because Constable Molefe was not from our

22 office, he was from Brits LCRC. I don't know the

23 communication between Molefe and Colonel Botha and Warrant

24 Officer Thamae was from Klerksdorp provincial crime scene

25 investigation team. I don't know the communication between

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1 him and Colonel Botha and Warrant Officer Henderson, he was
 2 from Rustenburg LCRC, I don't know the communication
 3 between him or Colonel Botha.
 4 MR BRUINDERS SC: Colonel Botha asked you
 5 to report at the JOC on the 16th.
 6 CAPTAIN MOHLAKI: Correct, sir.
 7 MR BRUINDERS SC: He did not tell you
 8 what other crime scene investigators would be joining you?
 9 CAPTAIN MOHLAKI: He said to me that
 10 there will be people joining me but he never specified who
 11 are those people.
 12 MR BRUINDERS SC: So he knew who would be
 13 joining you?
 14 CAPTAIN MOHLAKI: I hope so.
 15 MR BRUINDERS SC: The four of you go to
 16 the holding area.
 17 CAPTAIN MOHLAKI: Correct.
 18 MR BRUINDERS SC: When you get there, are
 19 there other officers at the holding area?
 20 CAPTAIN MOHLAKI: It was us and a
 21 detective.
 22 MR BRUINDERS SC: Did you, your team and
 23 the detectives, did you talk about the task that you were
 24 to perform later that day?
 25 CAPTAIN MOHLAKI: They were briefed about

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1 the same issue that we were there for, then when we arrived
 2 there we waited for a call. If –
 3 CHAIRPERSON: You haven't answered the
 4 question, Captain. The question you were asked was, did
 5 you and the detectives – while you were waiting there –
 6 discuss the task that you were asked, that you had been
 7 asked to perform later in the day? That's the question you
 8 haven't answered.
 9 CAPTAIN MOHLAKI: No, not at all because
 10 we were just hanging around there. Each and every one was
 11 in his vehicle.
 12 MR BRUINDERS SC: So you sat, you say, in
 13 your own vehicle hanging around?
 14 CAPTAIN MOHLAKI: Yes, we were just
 15 waiting there, so if they were talking I won't say what
 16 they were discussing because it was not a formal
 17 conversation between people, because we were just waiting
 18 there.
 19 MR BRUINDERS SC: Did you have an
 20 informal conversations with the detectives and the rest of
 21 the crime scene investigators?
 22 CAPTAIN MOHLAKI: That's correct.
 23 MR BRUINDERS SC: What did you talk
 24 about?
 25 CAPTAIN MOHLAKI: We talked about many

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1 things – soccer, just under "G", we were just talking.
 2 MR BRUINDERS SC: When you say many
 3 things, I take it you spoke about more than soccer?
 4 CAPTAIN MOHLAKI: Ja, because I never
 5 record each and every thing that – maybe when they are
 6 talking, what they're talking about, but I'm referring to
 7 me. The people who I met with sometimes talk about Kaiser
 8 Chiefs, Pirates, that and that.
 9 MR BRUINDERS SC: Kaiser Chiefs and
 10 Pirates are soccer?
 11 CAPTAIN MOHLAKI: That's correct.
 12 MR BRUINDERS SC: What was the "that",
 13 that you spoke about?
 14 CAPTAIN MOHLAKI: Talking about players,
 15 which team is the strong one, which one can lose players –
 16 MR BRUINDERS SC: You say you don't
 17 remember exactly when you got to the holding area?
 18 CAPTAIN MOHLAKI: That's correct.
 19 MR BRUINDERS SC: But it would've been in
 20 the morning.
 21 CAPTAIN MOHLAKI: Ja, it would be around
 22 nine, 10.
 23 MR BRUINDERS SC: So from nine until 3:30
 24 you talk about Kaiser Chiefs and Pirates?
 25 CAPTAIN MOHLAKI: At some stage around –

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1 we got lunch, so we have to concentrate on our food.
 2 MR BRUINDERS SC: And apart from
 3 concentrating on your food you also spoke about the squads
 4 of the two sides, the players.
 5 CAPTAIN MOHLAKI: Yes, in passing.
 6 MR BRUINDERS SC: And none of you ask
 7 each other, what exactly are we waiting here so long for to
 8 record and photograph the delivery of weapons?
 9 CAPTAIN MOHLAKI: Okay, I'll respond on
 10 my behalf because that was my thinking. I said maybe the
 11 people are still moving, surrender – because they were
 12 saying they were going to surrender and they never
 13 specified what time they will be surrendering.
 14 MR BRUINDERS SC: Did you try and get
 15 hold of Colonel Botha to find out when is this surrender
 16 happening so that I can be saved from this interminable
 17 talk about soccer?
 18 CAPTAIN MOHLAKI: No, it was not
 19 necessary for me to call Colonel Botha to ask because I was
 20 on duty, I was just waiting to assist where I have to
 21 assist.
 22 MR BRUINDERS SC: Did you call anybody
 23 else? Did you call anybody else to find out when things
 24 are going to happen?
 25 CAPTAIN MOHLAKI: Not at all.

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1 MR BRUINDERS SC: And did you talk to
2 your team of investigators, not the detectives, about how
3 you would go about carrying out your task?
4 CAPTAIN MOHLAKI: Fortunate in our
5 division, most of the time we decide when we are at the
6 crime scene. We don't plan for something that we don't
7 know that it will happen, what. We'll make a call when we
8 arrive, assess that to make our walk through. It would
9 depend on the situation but we were for - waiting for a
10 call that we must come and process the exhibits.
11 MR BRUINDERS SC: And did General Naidoo
12 make the call?
13 CAPTAIN MOHLAKI: Yes, he did.
14 MR BRUINDERS SC: Who took his call?
15 CAPTAIN MOHLAKI: It was Captain Ngcobo
16 from detectives.
17 MR BRUINDERS SC: After taking his call,
18 did Captain Ngxoco then speak to you?
19 CAPTAIN MOHLAKI: That's correct.
20 MR BRUINDERS SC: What did he say?
21 CAPTAIN MOHLAKI: He said we are needed
22 to process the scene.
23 MR BRUINDERS SC: Did he say anything
24 else?
25 CAPTAIN MOHLAKI: He said we must go.

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1 MR BRUINDERS SC: And that's when you
2 went to scene 1?
3 CAPTAIN MOHLAKI: That's correct.
4 MR BRUINDERS SC: Did you go in your own
5 car?
6 CAPTAIN MOHLAKI: Correct.
7 MR BRUINDERS SC: Were you in radio
8 contact at all with the JOC?
9 CAPTAIN MOHLAKI: Not at all.
10 MR BRUINDERS SC: Were you in radio
11 contact with any other police officer?
12 CAPTAIN MOHLAKI: Not at all.
13 MR BRUINDERS SC: On the way to scene 1
14 while you were in your car, did nobody phone you with any
15 news?
16 CAPTAIN MOHLAKI: Not at all.
17 MR BRUINDERS SC: You did not hear
18 anything unusual?
19 CAPTAIN MOHLAKI: Not at all.
20 MR BRUINDERS SC: Not the sound of
21 gunfire?
22 CAPTAIN MOHLAKI: Not at all.
23 MR BRUINDERS SC: And forgive me for
24 asking this but I can't recall whether you described the
25 route you took from the holding area to scene 1. If you

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1 have said that, would you mind just describing for us
2 again, what was the route you took?
3 CAPTAIN MOHLAKI: We used the gravel road
4 to the direction of Marikana and I still remember somewhere
5 on the electrical, electric station, so we go in there.
6 MR BRUINDERS SC: And when you went in
7 there what did you first see?
8 CAPTAIN MOHLAKI: I still remember there
9 was some smoke. If there was no burning of grasses, but
10 there was smoke.
11 [15:00] MR BRUINDERS SC: Teargas smoke?
12 CAPTAIN MOHLAKI: I won't say it's
13 teargas smoke, because it seems as if the grass was
14 burning.
15 MR BRUINDERS SC: Apart from the smoke,
16 anything else that you saw?
17 CAPTAIN MOHLAKI: The movement of
18 paramedics and the police.
19 MR BRUINDERS SC: Where were the
20 paramedics going to? I'm sorry, forgive me, let me
21 rephrase that. In what direction were they moving?
22 CAPTAIN MOHLAKI: They were just going
23 towards the direction of the kraal.
24 MR BRUINDERS SC: And in what direction
25 were the police going?

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1 CAPTAIN MOHLAKI: The police were moving
2 around. I don't have specific directions that they were
3 going to kraal or moving away from the kraal, because they
4 were just moving around.
5 MR BRUINDERS SC: When you say they were
6 moving around, did it look to you like they were chasing
7 people?
8 CAPTAIN MOHLAKI: If they were chasing
9 people, I was going to say they were chasing people,
10 because I'll be able to see that he's taken that direction,
11 going to chase somebody, but I never saw anyone chasing
12 anybody, they were just moving around on the crime scene.
13 MR BRUINDERS SC: Moving around in
14 vehicles?
15 CAPTAIN MOHLAKI: Some in vehicles, yes.
16 There was some movement of vehicles, there was some
17 movement of police officials walking.
18 MR BRUINDERS SC: When you got to scene
19 2, what did you see as you approached it?
20 CAPTAIN MOHLAKI: Movement of paramedics
21 and police officials.
22 MR BRUINDERS SC: And this time, what
23 direction were the paramedics running towards? I beg your
24 pardon, you didn't say they were running, in what direction
25 were the paramedics moving?

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1 CAPTAIN MOHLAKI: If, Chair, you allow me
 2 to use the Google map, it will be easy for me to indicate,
 3 because when I arrived, I found that on this centre where I
 4 said it was temporary holding area and centre, police were
 5 moving in and out, and the paramedics, they were moving in
 6 this direction, because I saw some ambulances who were
 7 parked this side of the koppie. So there were movement on
 8 this passage, to and fro.

9 MR BRUINDERS SC: Chair, Commissioners, I
 10 suppose you need to describe what he's just shown us.

11 CHAIRPERSON: I would be grateful if you
 12 would, because it's not quite clear to me from the screen
 13 what it is. It may be that our screen hasn't got the
 14 arrow, but anyway, perhaps if you could describe it to us.

15 MR BRUINDERS SC: Could you show us again
 16 what direction the paramedics were moving?

17 CAPTAIN MOHLAKI: This area were a group
 18 of people, injured, treated by paramedics, and there was a
 19 movement this side, coming this area, where I saw some of
 20 the ambulances were parked here.

21 MR BRUINDERS SC: Chair, Commissioners,
 22 as I have it, he describes the holding area adjacent to
 23 AA6, to the right of it, as we look at the screen, and he
 24 describes the movement of the paramedics down a line formed
 25 by Y1 towards Z. And he says that they ran towards

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1 ambulances, which he says were in the vicinity just to –
 2 well adjacent to where the line of the trees end or the
 3 shrubs end, just to the right of that.

4 CHAIRPERSON: Thank you very much, that's
 5 on B46?

6 MR BRUINDERS SC: Correct.

7 CHAIRPERSON: That's how he described it,
 8 the arrow wasn't working on our screen, but I'm grateful to
 9 you, you've made clear to me, what was previously not
 10 clear.

11 MR BRUINDERS SC: Have I correctly
 12 described that, Captain?

13 CAPTAIN MOHLAKI: Correct, Chair.

14 MR BRUINDERS SC: And then if you could
 15 just show us the movement or the direction in which the
 16 police were moving?

17 CAPTAIN MOHLAKI: There were some
 18 movement of the police vehicle outside the koppie, and some
 19 were walking around outside of the koppie, also inside of
 20 the koppie.

21 MR BRUINDERS SC: What he describes here,
 22 Commissioners, again is the movement in that area,
 23 constituted by what he calls a temporary holding area, and
 24 then around that koppie, on the perimeter of the koppie
 25 outside the line of the shrubs. Could you tell from the

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1 movement of the police officers, whether they were chasing
 2 anybody?

3 CAPTAIN MOHLAKI: Not at all.

4 MR BRUINDERS SC: I'll just take an
 5 instruction. Chair, Commissioners, that's as far as I can
 6 go with this part of it. I suppose we reserve our right to
 7 cross-examine this witness once we've had a decent look at
 8 the video, together with some of the witnesses, who
 9 obviously could tell us more about that.

10 CHAIRPERSON: In other words, you
 11 discontinue your cross-examination at this point, but you
 12 hope you'll be able to resume once you've looked at the
 13 video, or in fact, you intend to resume it once you've seen
 14 Counsel Molefe's video?

15 MR BRUINDERS SC: Yes, it might be that
 16 there are very few questions, and it might actually be that
 17 our clients feel that we need to have you look at the
 18 video, but I can't make up my mind -

19 CHAIRPERSON: Yes, but you can't make up
 20 your mind until you've seen the video yourself?

21 MR BRUINDERS SC: Yes.

22 CHAIRPERSON: Do any of the
 23 representatives of the parties wish to cross-examine at
 24 this stage?

25 MS LEWIS: Mr Chairperson, can I just put

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1 myself on record? Nicole Lewis, I appear on behalf of the
 2 families, together with Mr Ntsebeza who couldn't be with us
 3 today. Chair, could we also reserve our right to recall
 4 this witness, once we've had a chance to have a look at
 5 Constable Molefe's video, and aside from that, Chair, we
 6 have no further cross-examination.

7 CHAIRPERSON: Thank you. Any other
 8 representative who wishes to cross-examine the witness at
 9 this stage. Mr Mpofo, you've raised your hand.

10 MR MPOFU: Yes, thank you, Chair. I
 11 think I also need to qualify two things, the video and some
 12 consultations, so we certainly won't be able to finish the
 13 cross-examination, but we can cover some ground, with your
 14 permission, Chair?

15 CHAIRPERSON: You want to ask questions
 16 now?

17 MR MPOFU: Yes, Chair. What I was saying
 18 was I'd like to ask some questions, but –

19 CHAIRPERSON: Yes, I understand, you want
 20 to ask some questions, then you want to see the video, and
 21 then decide, and take instructions, and then see if there's
 22 anything else -

23 MR MPOFU: No, we also are going to
 24 consult with people who are not here, ja, thank you.

25 CHAIRPERSON: Mr Semenya, did you

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1 indicate you want to say something?

2 MR SEMENYA SC: No, Chair, I would have

3 put certain questions if there was nobody. Not that there

4 would – to use –

5 CHAIRPERSON: I don't waste time, it's

6 now ten past three, now we're proposing to sit until four,

7 so if there are questions that you could usefully,

8 meaningfully ask at this stage, it might be appropriate for

9 you to ask them, unless you prefer to ask them later, but I

10 mean if you can use them and the force of the questions

11 won't be in any way diluted by being asked now, rather than

12 later, I suggest you start asking.

13 MR SEMENYA SC: Thank you, Chair.

14 CHAIRPERSON: Right, Mr Mpofo, you want

15 to ask questions now, and then we give Mr Semenya a chance

16 if there's time left over before 4 o'clock?

17 MR MPOFU: Either way, Chair, I really

18 don't mind. If Mr Semenya is not going to be long, he can

19 go first.

20 CHAIRPERSON: Well, Mr Semenya, would you

21 like to ask your questions now? Yes, please proceed.

22 CROSS-EXAMINATION BY MR SEMENYA SC: Let

23 me ask them, Chair. Captain, as you told us, you were a

24 team of four who were going to do the crime scene

25 management, correct?

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1 CAPTAIN MOHLAKI: That's correct, Chair

2 and Commissioners.

3 MR SEMENYA SC: Please don't read what

4 I'm putting to you as an attack on your evidence, It was a

5 very huge scene, was it not?

6 CAPTAIN MOHLAKI: Sorry, Chair, maybe I

7 have to understand the previous question. You were

8 referring to the crime scene 2, or you're referring the

9 holding area waiting for surrounding of exhibit, let me

10 clear on that question?

11 MR SEMENYA SC: I'm referring the entire

12 scene 1 and 2, for which, as a team of four, you were to

13 compile all the evidentiary material there.

14 CAPTAIN MOHLAKI: Oh, thanks, Chair, I

15 understand. Yes, we started being a team of four members,

16 but while we were processing the crime scene, the

17 arrangement was made that there are people who would be

18 coming and assisting us at that same crime scene.

19 MR SEMENYA SC: And principally because

20 the scene was huge, correct?

21 CAPTAIN MOHLAKI: That's correct, Chair.

22 MR SEMENYA SC: And the amount of

23 evidentiary material that was to be captured was huge as

24 well?

25 CAPTAIN MOHLAKI: Correct, Chair and

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1 Commissioners.

2 MR SEMENYA SC: And the terrain was not a

3 friendly terrain to do your work, am I correct?

4 CAPTAIN MOHLAKI: Correct, Chair and

5 Commissioners.

6 MR SEMENYA SC: The terrain also had

7 activities happening whilst you were trying to do your work

8 as well, correct?

9 CAPTAIN MOHLAKI: That's correct, Chair.

10 MR SEMENYA SC: Motor vehicles were

11 moving all over the terrain where you had to look for

12 cartridges, etcetera, isn't that right?

13 CAPTAIN MOHLAKI: That's correct, Chair.

14 MR SEMENYA SC: Medical personnel and

15 other police officers were walking all over the place which

16 you had to examine, isn't that right?

17 MR MPOFU: That is correct, Chair.

18 MR SEMENYA SC: It was such an unusual

19 event that you worked cross night, isn't that right?

20 CAPTAIN MOHLAKI: That's correct, Chair.

21 MR SEMENYA SC: Can I even hazard to

22 suggest that this was the very first of its nature in your

23 professional career?

24 CAPTAIN MOHLAKI: I agree with you 100%,

25 Chair.

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1 MR SEMENYA SC: And no blame on your

2 team, but the scene was corrupted to a great extent, was it

3 not?

4 CAPTAIN MOHLAKI: I will agree with you,

5 it was disturbed.

6 MR SEMENYA SC: We see, for instance, a

7 collection of evidentiary material which ought not to

8 happen in a proper environment, am I right?

9 CAPTAIN MOHLAKI: That's correct, Chair.

10 MR SEMENYA SC: The evidence we will hear

11 includes the paramedics requesting that weapons be removed

12 there so that they can do their work. Did you see that

13 happen?

14 CAPTAIN MOHLAKI: I didn't see that

15 happening.

16 MR SEMENYA SC: Maybe I compounded my

17 question a little. Let me break it in two, weapon

18 collection that we see you capturing in your photos, ought

19 not to have happened, am I right, in the ordinary course?

20 CAPTAIN MOHLAKI: That is correct, Chair.

21 MR SEMENYA SC: You may not have heard

22 it, but I'm putting it to you that evidence will be that

23 paramedics were uncomfortable to treat the injured, whilst

24 dangerous weapons were lying around. You can't dispute

25 that, can you?

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1 CAPTAIN MOHLAKI: No, I won't dispute
2 that.

3 MR SEMENYA SC: And the evidence is that
4 they were apprehensive, so were the police, that these
5 weapons can be used to attack them as well. You can't
6 quibble with that evidence?

7 MR MPOFU: Mr Chairman, can I raise – I
8 don't know that calls for an objection or maybe clarity-
9 seeking from the Chair, or guidance. I'm not sure if it's
10 proper, I know that strictly speaking this is the evidence
11 leaders' witness, but everybody knows that this is a police
12 witness as well, and therefore I'm not sure if this is the
13 proper way of leading evidence, where the police party can
14 put leading questions to, effectively, their own witness.
15 And –

16 CHAIRPERSON: Can I interrupt you, there
17 is authority for the proposition that where a witness, for
18 example, one accused, gives evidence in criminal trial, and
19 he is cross-examined by a counsel for another accused and
20 the two accused have the same defence, that leading
21 questions can be asked in cross-examination by counsel for
22 the second accused, there's authority for that proposition.

23 MR MPOFU: Yes.

24 [15:20] CAPTAIN MOHLAKI: But the proviso is that
25 the fact that leading question were asked of an obviously

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1 friendly witness, may affect the value of the answers,
2 that's the legal position. That's why I allowed Mr Semenya
3 to ask the questions. I am not sure that these points that
4 are being put are controversial in any event, but I think
5 the answer to your possible objection, if it is an
6 objection, it's not a good one. So let Mr Semenya proceed.

7 MR MPOFU: Chairperson, just, no, I
8 accept that, Chair. All I am saying is and you've
9 qualified your statement by saying these are not
10 controversial issues anyway, which I also accept.

11 CHAIRPERSON: Even if they were
12 controversial issues, the authorities are as I have
13 explained them to you as I understand them, affects the
14 value of the answers given, by cross-examination of a
15 friendly witness. I can't stop the questioning, and Mr
16 Semenya, who knows it all as well as I do, knows that the
17 problem he has is the one I've stated, that he is entitled
18 to carry on, and I won't stop him.

19 MR MPOFU: Okay, no one is asking for
20 that.

21 MR SEMENYA SC: Captain, I hope you don't
22 get friendly with me, just give the Commission as truthful
23 an answer as you are able to. For instance, the evidence
24 will be that there were no less than 500 rounds of rubber
25 bullets fired on the day. Your recording doesn't capture

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1 anything close to that, am I right?

2 CAPTAIN MOHLAKI: On that day, I recorded
3 24 shotgun cartridge cases, correct.

4 MR SEMENYA SC: The evidence will also
5 record that there were more than 400 odd sharp ammunition
6 fired, that's hardly what your information reveals, as we
7 have seen, Captain.

8 CAPTAIN MOHLAKI: Sorry, let me
9 understand something.

10 COMMISSIONER HEMRAJ: Mr Semenya, the
11 numbers that you postulate are for Scene 1 and 2?

12 MR SEMENYA SC: Indeed.

13 COMMISSIONER HEMRAJ: And his numbers
14 refer only Scene 2.

15 MR SEMENYA SC: I am quite alive to that.

16 COMMISSIONER HEMRAJ: Alright, thank you.

17 CAPTAIN MOHLAKI: Oh, thank you, Chair,
18 that is what the question that I wanted to ask that I want
19 clarity, if you are referring to Scene 1 or Scene 2, but if
20 you are saying both scenes, yes, I can account for those
21 at Scene 1, how, the numbers that I collected there.

22 MR SEMENYA SC: And in fact your account
23 of the evidence correct as it is, it is really a reflection
24 of the collective team that was mapping out the scene,
25 isn't that right?

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1 CAPTAIN MOHLAKI: That is correct.

2 MR SEMENYA SC: You correctly make the
3 point, Captain, don't you, that on the face of your own
4 evidence, it is not possible to link any cartridge to any
5 particular body, is that right?

6 CAPTAIN MOHLAKI: That is correct, Chair.

7 MR SEMENYA SC: Probably, it will
8 properly be the function of ballistic experts to do that
9 connections to the extent they can, correct?

10 CAPTAIN MOHLAKI: That is correct, Sir,
11 and Commissioners.

12 MR SEMENYA SC: It doesn't lie within the
13 area of your expertise to tell us whether a particular
14 defence is competent or not. You were questioned about
15 self-defence.

16 CAPTAIN MOHLAKI: That is correct, Chair
17 and Commissioners.

18 MR SEMENYA SC: It could never been even
19 competent within your field of expertise to say at what
20 distance any particular cartridge would have been fired,
21 relative to any particular body, am I right?

22 CAPTAIN MOHLAKI: That is correct, Chair.

23 MR SEMENYA SC: You'd need to know the
24 velocity of the bullet fired to make such determinations,
25 won't you?

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1 CAPTAIN MOHLAKI: That is correct, Chair.
 2 MR SEMENYA SC: You don't have any
 3 expertise in speeds of various projectiles, do you?
 4 CAPTAIN MOHLAKI: No, I don't have,
 5 Chair.
 6 MR SEMENYA SC: In fact, let me get one
 7 area out of the room. It was put to you that the police
 8 version has been that they have done no wrong, do you
 9 remember that evidence, those questioning?
 10 CAPTAIN MOHLAKI: Yes, I still remember,
 11 Chair.
 12 MR SEMENYA SC: For the record, you may
 13 not have been present when the opening statement was done
 14 for the SAPS, were you here?
 15 CAPTAIN MOHLAKI: That is correct, I was
 16 not around.
 17 MR SEMENYA SC: The opening statement
 18 conceives a possibility to where the evidence might reveal
 19 that the exchange of fire may prove disproportionate to the
 20 threat. Can you take that as a given?
 21 CAPTAIN MOHLAKI: That is correct, Chair.
 22 MR SEMENYA SC: I want to show you a
 23 document and given your answers, we will make the various
 24 copies for the Commission and Commissioners. Chair, I must
 25 apologise, this was triggered by issues that were said

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1 earlier. That document was given to – was faxed to Colonel
 2 Scott by yourself, correct?
 3 CAPTAIN MOHLAKI: That is correct, Sir.
 4 MR SEMENYA SC: It is a document to help
 5 somebody do the mapping, giving the longitude and the
 6 latitude that were found at the scene, correct?
 7 CAPTAIN MOHLAKI: That is correct, Sir.
 8 MR SEMENYA SC: Chair, at an appropriate
 9 stage, we will make the copies available to all the
 10 parties.
 11 CHAIRPERSON: Thank you. In view of the
 12 fact that it's been referred, I suppose we should give it
 13 an exhibit number. Ms Pillay is in charge of that, keeping
 14 of that, what is the next exhibit number, Ms Pillay?
 15 MR MADLANGA SC: It should G, Chairman
 16 and Commissioners.
 17 CHAIRPERSON: Thank you, Mr Madlanga. So
 18 the document you handed to the witness will be exhibit G.
 19 MR SEMENYA SC: You have already
 20 testified that that Google map mapping and your sketch plan
 21 have various points of difference, am I right?
 22 CAPTAIN MOHLAKI: That is correct, Sir.
 23 MR SEMENYA SC: I want to dispel a
 24 proposition that would suggest that the other mapping was
 25 done to mislead, it was merely a translation of the co-

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1 ordinates that were coming from this document.
 2 CAPTAIN MOHLAKI: That is correct, Sir.
 3 MR SEMENYA SC: Chair, let me stop with
 4 my questions at this point, and – can I hold the questions
 5 for the SAPS at this point?
 6 CHAIRPERSON: Yes, certainly. Is there
 7 anyone else who wants to ask questions at this point? Mr
 8 Mpofo, you are indicating that, you had said so earlier you
 9 would like to.
 10 MR MPOFU: I did.
 11 CHAIRPERSON: Please proceed.
 12 MR MPOFU: Thank you, Chair. Captain,
 13 essentially when you went to the briefing session you were
 14 standing in or deputising for Colonel Botha, correct?
 15 CAPTAIN MOHLAKI: That is correct, Sir.
 16 MR MPOFU: Because he was not available
 17 at that stage.
 18 CAPTAIN MOHLAKI: That is correct,
 19 because of duties.
 20 MR MPOFU: Because of duties. And
 21 obviously then as his stand-in, you reported back to him
 22 the goings on at the briefing sessions.
 23 CAPTAIN MOHLAKI: Not at all.
 24 MR MPOFU: So you never, until today said
 25 okay, I was standing in for you at that meeting and this is

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1 what happened at the meeting or what did not happen.
 2 CAPTAIN MOHLAKI: It is just unfortunate,
 3 Chair, because if you are outside the organisation, you
 4 won't understand the protocol. Let me just give you a
 5 background of our division. Maybe you understand why I
 6 never go back to Colonel Botha and report.
 7 MR MPOFU: Yes, I am outside the
 8 organisation.
 9 CAPTAIN MOHLAKI: Thanks Chair. I was
 10 standing on behalf of Colonel Botha, not to say I have to
 11 get the news from the briefing and go and brief him because
 12 I understand, if I am not mistaken he went for post-mortem
 13 or something else, so because he's not there I have to
 14 stand in, just on his behalf but the information that I am
 15 going to grab there is for me to make use of it.
 16 MR MPOFU: I see, so effectively one
 17 would then describe you as the acting head of LCRC rather
 18 than some deputy, when you went to the meeting.
 19 CAPTAIN MOHLAKI: Oh, I think acting and
 20 deputy is not more or less the same thing but no problem, I
 21 was there just to be a representative of HCRC because
 22 Colonel Botha is not there.
 23 MR MPOFU: Thank you. And in any event,
 24 the meeting that you attended was constituted of the top
 25 brass and unit heads.

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1 CAPTAIN MOHLAKI: That is correct, but
2 also the section leaders.

3 MR MPOFU: At what point was it decided
4 that four LCRC members would be deployed at the operation?

5 CAPTAIN MOHLAKI: I don't know. I
6 received a call from Colonel Botha to inform me that I must
7 be at the JOC on the 16th, and I will be joined by three
8 other members, so I don't know at what stage or when they
9 were deciding that we must only be four, I don't know.

10 MR MPOFU: And one of the standard duties
11 of LCRC is to videograph crime scenes, isn't it?

12 CAPTAIN MOHLAKI: That is correct, Chair.

13 MR MPOFU: And that is what, or one of
14 the things that Colonel Botha would have been asking you to
15 do, on the day?

16 CAPTAIN MOHLAKI: Yes, if he was present
17 there, and he is my group leader now, I was going to take
18 orders from him, but fortunate on that day, I was an acting
19 as you have said, so they were just going to get guidelines
20 from me to do that video.

21 MR MPOFU: Yes, now I understand, all I
22 am saying at this stage is that Colonel Botha would have
23 known that one of the key things you are going to be doing
24 there, the members of the LCRC is to videograph the scene
25 or scenes.

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1 CAPTAIN MOHLAKI: That is correct, Sir.

2 MR MPOFU: And although you were the
3 acting head, at some stage, Colonel Botha would have
4 obviously have had access to the video material that you
5 have collected, or at least known about it?

6 CAPTAIN MOHLAKI: That is correct,
7 because you remind me of another point that before I met
8 with Colonel Botha when we were at the crime scene, he
9 called me and saying we must make a video, then I informed
10 him, we have already started with the video. Obviously he
11 knows that the video was recorded.

12 MR MPOFU: Okay, I understand, so he sort
13 of reminded you that don't forget to do the video, this was
14 before you went to the scene.

15 CAPTAIN MOHLAKI: No, already, processing
16 the scene, Scene 2.

17 MR MPOFU: What time more or less do you
18 think this would have been?

19 CAPTAIN MOHLAKI: If I have to check the
20 records here, because it was not myself, I give the task to
21 Constable Molefe, if I am not mistaken he started at 17:52
22 and he said he ended up at 18:10 or 18:09 because he said
23 he make a video recording of 18 minutes.

24 MR MPOFU: 18 minutes?

25 CAPTAIN MOHLAKI: That is correct, Sir.

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1 MR MPOFU: Who were the other members of
2 the LCRC, the other three members apart from yourself and –
3 or the other two, rather, apart from yourself and – what's
4 Molefe's rank? Apart from you and –

5 CAPTAIN MOHLAKI: Constable Molefe.

6 MR MPOFU: Yes, apart from you and
7 Constable Molefe.

8 CAPTAIN MOHLAKI: It was Warrant Officer
9 Thamae and Warrant Officer Henderson but they were busy
10 processing scene 1.

11 [15:40] MR MPOFU: Oh I see, so you split up to
12 two?

13 CAPTAIN MOHLAKI: That's correct, sir.

14 MR MPOFU: And the other two were also
15 videoing scene 1?

16 CAPTAIN MOHLAKI: I was told like that,
17 Chair.

18 CHAIRPERSON: Did you see that they had
19 video cameras?

20 CAPTAIN MOHLAKI: That's correct, Chair.

21 CHAIRPERSON: So altogether how many
22 video cameras did you have on the scene, three?

23 CAPTAIN MOHLAKI: Myself I was having
24 one, Constable Molekoa is having one, Warrant Officer
25 Thamae was having one, Warrant Officer Henderson was having

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1 one, that means there were four.

2 CHAIRPERSON: So you had four video
3 cameras on the scene?

4 CAPTAIN MOHLAKI: That's correct, sir.

5 MR MPOFU: And as the acting head, at
6 least, on the day, did you have the chance to debrief your
7 troops? In other words to find out what their activities
8 had been?

9 CAPTAIN MOHLAKI: Yes I did, sir.

10 MR MPOFU: Thank you. And everything
11 went well except for the non-functioning timer or timers,
12 everything went well.

13 CAPTAIN MOHLAKI: That's correct, sir.

14 MR MPOFU: And what did you do in your
15 capacity as their head, with the different videos which
16 they must have presented?

17 CAPTAIN MOHLAKI: I still remember
18 Colonel Botha informed us that they need copies of CDs and
19 videos.

20 MR MPOFU: Which you supplied him?

21 CAPTAIN MOHLAKI: That's correct.

22 MR MPOFU: How many?

23 CAPTAIN MOHLAKI: I got a video from
24 Colonel Dreyer, he's the commander of Constable Molefe at
25 Brits LCRC and also a CD for post-mortems because post-

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1 mortems were conducted by two members from Brits LCRC.
 2 Then I got one CD from one member from our office. Then it
 3 was my CD, then the Rustenburg LCRC promised me that they
 4 will give me the copies, they are not yet ready.
 5 CHAIRPERSON: What were the copies that
 6 weren't ready? Is this –
 7 INTERPRETER: It's the post-mortems.
 8 CHAIRPERSON: Warrant Officer Thamae and
 9 Warrant Officer Henderson?
 10 CAPTAIN MOHLAKI: No, no, only Warrant
 11 Officer Henderson. The one of – the CD of crime scene
 12 photos of Warrant Officer Thamae, because he was at
 13 Klerksdorp, I was not involved in the arrangement of
 14 getting those copies of CDs or videos.
 15 CHAIRPERSON: Sorry, I'm not sure that I
 16 understood. You say you were asked for videos and CDs and
 17 you got a video from Colonel Dreyer who was Molefe's head,
 18 so effectively it's Molefe's video.
 19 CAPTAIN MOHLAKI: Mm-mm.
 20 CHAIRPERSON: You also got one from, in
 21 respect of the post-mortems, that was from two members from
 22 Brits. That's where you got those CDs from, is that right,
 23 CDs or videos?
 24 CAPTAIN MOHLAKI: Ja, it was – CDs was
 25 for photos, not the video.

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1 CHAIRPERSON: Yes, yes, oh, I understand.
 2 Then you got either a CD or a video from a member from your
 3 office. Now what was – was that a CD or a video and what
 4 did that relate to?
 5 CAPTAIN MOHLAKI: It was a CD of post-
 6 mortems.
 7 CHAIRPERSON: CD of post-mortems.
 8 CAPTAIN MOHLAKI: Yes.
 9 CHAIRPERSON: Thank you. And then the
 10 question arises, what about Warrant Officer Thamae and
 11 Warrant Officer Henderson, did you get anything from them
 12 or are you still waiting for it or was that sent by them
 13 directly to Colonel Botha or do you know anything about
 14 that?
 15 CAPTAIN MOHLAKI: Ja. Thanks Chair, the
 16 material that was in my possession I handed them to Colonel
 17 Botha but the one from Warrant Officer Henderson and one
 18 from Warrant Officer Thamae, I don't know what was the
 19 arrangement maybe to reach Colonel Botha.
 20 CHAIRPERSON: Thank you.
 21 MR MPOFU: Okay, I'm sorry I lost
 22 concentration and I lost count, but let's just ask it,
 23 simply like this – you mentioned that there were four
 24 cameras, correct?
 25 CAPTAIN MOHLAKI: Video cameras.

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1 MR MPOFU: Yes, video cameras.
 2 CAPTAIN MOHLAKI: That is correct.
 3 MR MPOFU: And you had CDs from each of
 4 those four video cameras at some stage.
 5 CAPTAIN MOHLAKI: Only two.
 6 MR MPOFU: That's Molefe's and the second
 7 one?
 8 CAPTAIN MOHLAKI: The video recording at
 9 the crime scene, there were two people. It was Constable
 10 Molefe and Warrant Officer Henderson, they were the
 11 videographers at the crime scene but I managed to get one
 12 video from Colonel Dreyer from, of Molefe. The one of
 13 Warrant Officer Henderson, a video recording, I don't know
 14 what was the arrangement because when I was looking for
 15 CDs, for DVD, I understand if he was not on leave he was
 16 somewhere, he was not available to give me a copy.
 17 MR MPOFU: Thank you. Okay, I just also
 18 wanted to understand the issue of the times. How do you
 19 know that you were there at four o'clock?
 20 CAPTAIN MOHLAKI: I know that we have
 21 arrived at four because Captain Ngcobo told me towards four
 22 o'clock that they are saying we must come and process the
 23 crime scene, then we drove to the crime scene. It was not
 24 far away from the scene.
 25 MR MPOFU: And this is when you were at

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1 the holding – what you call the holding area?
 2 CAPTAIN MOHLAKI: Yes, we were moving
 3 from holding area to the koppie.
 4 MR MPOFU: Yes. You were asked a
 5 question by one of the commissioners, Adv Hemraj, the trip
 6 from the holding area to the first scene took you about –
 7 did you say 10, 20 minutes or did you say five, 10 minutes?
 8 CAPTAIN MOHLAKI: I don't remember but we
 9 were talking about five, 10 minutes because we were just
 10 struggling. It was 1 point, when we made a deduction we
 11 said it may be 1.3 metres, 1.3 ja, to go there.
 12 INTERPRETER: Metres?
 13 CAPTAIN MOHLAKI: Sorry, not metres –
 14 CHAIRPERSON: If you'd gone 1.3 metres
 15 you wouldn't have taken very long at all.
 16 CAPTAIN MOHLAKI: I'm sorry, Chair.
 17 CHAIRPERSON: Okay.
 18 CAPTAIN MOHLAKI: Ja, so we never
 19 struggled to reach the - because specifically we never
 20 know, where was the crime scene where maybe the bodies are.
 21 Then we take it that all that area is the crime scene.
 22 MR MPOFU: Okay, can you just clarify
 23 that because I'm quite certain that when you were asked
 24 that question by the commissioner you said 15 to 20
 25 minutes.

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1 CAPTAIN MOHLAKI: Ja, there were a lot of
2 questions concerning time and we were estimating, so I
3 don't know specifically if that was the one you are
4 referring now – I'm not sure.

5 MR MPOFU: No, no – Captain please, I
6 don't want you to remember what your answer was to the
7 commissioner, I want you to remember how long it took you
8 from the holding area to the scene.

9 CAPTAIN MOHLAKI: I said I never recorded
10 the time but what I know, around four o'clock we were
11 around the scene 1.

12 MR MPOFU: So on your, at least on one of
13 your estimations you must have left at about 20 to four.

14 CAPTAIN MOHLAKI: I don't know if it was
15 my estimation or it was when we were doing some deductions
16 from the times, I'm not sure.

17 MR MPOFU: Well, I'm sure.

18 CAPTAIN MOHLAKI: If you are sure, no
19 problem.

20 MR MPOFU: Ja. When you were asked, you
21 estimated 15 to 20 minutes. I'm saying if we use that
22 estimation, that would mean that you left at about 20 to
23 four, anything between 20 to four and quarter to four and
24 so on.

25 CAPTAIN MOHLAKI: Let's say 10 to four.

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1 MR MPOFU: Okay, that's fine. And in
2 that, between 10 to four and four o'clock you didn't hear a
3 single shot being fired?

4 CAPTAIN MOHLAKI: That's correct.

5 MR MPOFU: And in any event, even before
6 that time you were only 1.3 kilometres from the – from
7 scene 1, correct?

8 CAPTAIN MOHLAKI: That's correct.

9 MR MPOFU: For how long?

10 CAPTAIN MOHLAKI: I would think that we
11 arrived there around 9:10 in the morning until we were
12 called to come and process the crime scene.

13 MR MPOFU: I see. So you were there for
14 something like what – eight hours, seven hours.

15 CAPTAIN MOHLAKI: Plus-minus correct.

16 MR MPOFU: Yes and in that seven hours
17 until you arrived, you didn't hear a single shot being
18 fired?

19 CAPTAIN MOHLAKI: That's correct.

20 MR MPOFU: Anyway, so you then arrived at
21 scene 1 and you saw more than 10 bodies next to the kraal,
22 correct?

23 CAPTAIN MOHLAKI: No, I never counted
24 them but I saw some bodies were lying there because at that
25 time they were a mixture of dead bodies and injured people.

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1 MR MPOFU: Did you get the impression
2 that the shooting had just recently happened – had happened
3 within a short space of time?

4 CAPTAIN MOHLAKI: That's correct.

5 MR MPOFU: In fact that must be so
6 because, as you say, some of the injured people were – had
7 not even yet been attended to.

8 CAPTAIN MOHLAKI: At scene 1, that's
9 correct, sir.

10 MR MPOFU: And were the injured people,
11 or at least some of them, attended to in your presence?

12 CAPTAIN MOHLAKI: That's correct, sir.

13 MR MPOFU: And during that time, your
14 arrival shortly after the shooting has happened – let's
15 just take that period, between that period and the time
16 when let's say that some treatment or help to the injured
17 people had happened – you didn't hear any shooting nearby?

18 CAPTAIN MOHLAKI: Not at all.

19 MR MPOFU: We're going to come back to
20 the scene. If I may just ask you something else. You said
21 something about, at what you call the Lonmin JOC in the
22 morning, that the meeting would be unit heads, you
23 remember?

24 CAPTAIN MOHLAKI: That's correct.

25 MR MPOFU: That some of the unit heads,

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1 although they accounted for the numbers of their units,
2 indicated that they were still driving from various parts
3 of the country?

4 CAPTAIN MOHLAKI: That's correct, sir.

5 MR MPOFU: Did you, from that, get the
6 impression that the decision to mobilise these people must
7 have been taken within a day or within a few hours?

8 CAPTAIN MOHLAKI: Not at all. Let me
9 explain why I'm saying that, because I was not attending
10 those morning briefings and it seems as if the incidents
11 happened before the 16th. It seems as if the people were
12 travelling from their different areas, coming to Lonmin for
13 morning parade. When they knock off afternoon they were
14 driving back home. So it seems as if the travelling, it
15 was a delay that they were referring to when they were
16 saying they are still coming – not to say they were still
17 coming just for the 16th of August 2012.

18 MR MPOFU: I see. Were you aware or are
19 you aware now or were you ever aware at any stage that some
20 of the personnel that was used on that day had been
21 mobilised from as far afield as Mthatha, Pietermaritzburg,
22 Tembisa, Soweto and places like that?

23 CAPTAIN MOHLAKI: I still remember seeing
24 some vehicles, marked vehicles from Kempton Park, Tembisa,
25 all different places but I don't recall like Mthatha if

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1 they were there, yes or no, but there were different
 2 vehicles that I saw, that they are not our local vehicles
 3 because of registration numbers were of their provinces,
 4 because I still remember I saw Free State but I don't know
 5 specifically in Free State where they were originating
 6 from.
 7 MR MPOFU: Would it be correct to say
 8 that – I take it you don't come from the area, you don't
 9 work in the Wonderkop area normally yourself.
 10 CAPTAIN MOHLAKI: That's correct, we
 11 attend cases that need our attention when it's happened in
 12 Wonderkop.
 13 MR MPOFU: Okay, so maybe given that the
 14 following question might not be fair and if you cannot
 15 answer it I will understand but did you get the impression
 16 that the numbers that were being mobilised for the 16th,
 17 that there was a particular surge for the 16th, or influx of
 18 numbers or that these were numbers that had been there for
 19 the previous day or two?
 20 CAPTAIN MOHLAKI: I wouldn't say that
 21 because on those previous days that you are referring, I
 22 was not around.
 23 [16:00] MR MPOFU: No, fair enough. Okay and
 24 once again, the next question I won't hold you to the
 25 answer because clearly there were many people, but if

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1 someone were to force you to guess, how many policemen
 2 would you say were there on the day, total?
 3 CHAIRPERSON: Is that an answer that's
 4 going to help us? We will be able to ascertain objectively
 5 how many people were there. Unless something turns on this
 6 witness's impression of how many people were there, if it's
 7 a wrong impression then I don't see how it can help us to
 8 come to the truth of the matters that we've been asked to
 9 investigate. I don't want to stop you but I just want to
 10 say it seems to me, with respect, to be a question that's
 11 not going to help anyone to get anywhere.
 12 MR MPOFU: Well, Chairperson –
 13 CHAIRPERSON: We will be able to find out
 14 with absolute accuracy, I take it, how many people were
 15 there. It appears from many of the documents that we've
 16 already seen, there were various units, how many people
 17 there were belonging to each unit. I think the IPID
 18 investigation covers that quite fully. So I don't know –
 19 obviously it's an important fact that you want to get on
 20 record –
 21 MR MPOFU: It is.
 22 CHAIRPERSON: This isn't, with respect,
 23 the best way to get it on record, is it?
 24 MR MPOFU: Yes. No, no, Chair. Chair, I
 25 accept that. Maybe I should loosen up the question. Would

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1 you say that there were hundreds and hundreds of policemen
 2 at the scene?
 3 CAPTAIN MOHLAKI: Hundreds of hundreds –
 4 it will be hundred times hundred. It will be a lot of
 5 people.
 6 MR MPOFU: No, hundreds and hundreds –
 7 not of hundreds of hundreds, there's a difference.
 8 CHAIRPERSON: It sounds like hundreds and
 9 hundreds are the same as hundreds.
 10 MR MPOFU: Okay -
 11 CHAIRPERSON: Let's limit ourselves to
 12 hundreds, were there hundreds of people there?
 13 MR MPOFU: Yes, no – I know in the little
 14 mathematics that I learnt, "of" was put as multiply by, so
 15 you're quite correct. No, when I say hundreds and
 16 hundreds, I don't mean that way. I'm saying were there
 17 maybe 300, 400 policemen on the scene or more?
 18 CAPTAIN MOHLAKI: It will be unfair for
 19 me to estimate that because really I never had an
 20 opportunity maybe to parade with them and observe when they
 21 were parading, because as I'm saying, we are different
 22 divisions. We were briefed, us, with the detectives doing
 23 our own job, own duties. When they hold a uniformed
 24 members parade, they held their own parade, so I won't be
 25 able to help you on that estimation.

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1 MR MPOFU: That's fine. Okay but –
 2 CHAIRPERSON: Mr Mpofo, it's four
 3 o'clock. I don't know that this line is going to take you
 4 any further today. You may wish to resume it next time but
 5 before we adjourn –
 6 MR MPOFU: That's fine.
 7 CHAIRPERSON: - can I ask the Captain,
 8 have you got your diary here?
 9 CAPTAIN MOHLAKI: That's correct, Sir.
 10 CHAIRPERSON: The diary that you used on
 11 the 16th.
 12 CAPTAIN MOHLAKI: That's correct, Sir.
 13 CHAIRPERSON: May I look at it for a
 14 moment? I'm interested in the time – thank you.
 15 CAPTAIN MOHLAKI: I don't have my -
 16 CHAIRPERSON: No, don't worry. Yes,
 17 thank you. Are you still using the diary?
 18 CAPTAIN MOHLAKI: No, I'm not using -
 19 CHAIRPERSON: Well, may we keep it then
 20 and copy the relevant page –
 21 CAPTAIN MOHLAKI: No, I'm still using it
 22 -
 23 CHAIRPERSON: Oh, you are using it?
 24 Okay, alright, if you're still using it then you've got to
 25 hang onto –

1 CAPTAIN MOHLAKI: - using it, you will
 2 get copies.
 3 CHAIRPERSON: I see there are still some
 4 pages here that are empty, alright. Perhaps it would be
 5 helpful if you could make copies for us.
 6 CAPTAIN MOHLAKI: Okay.
 7 CHAIRPERSON: Of – I presume the relevant
 8 dates are the 16th and the 17th –
 9 CAPTAIN MOHLAKI: Correct.
 10 CHAIRPERSON: Of August, maybe the 15th as
 11 well, if you don't mind. Let's just – yes, yes, thank you.
 12 We will adjourn now until next Monday at nine o'clock. I'm
 13 sorry we can't sit tomorrow or Friday. We'll start, as I
 14 say, on Monday and the Captain will be back in the witness
 15 box, armed with photocopies of the relevant pages of his
 16 diary, not only for the commissioners but for the evidence
 17 leaders and for the parties. On that note –
 18 MR MPOFU: Chair, can you make a request
 19 – maybe not so much to the witness but to either the
 20 evidence leaders or Mr Semenya's team, just for the sake of
 21 completion – that when the witness comes back on Monday,
 22 that he also comes with all the videos that he has
 23 mentioned. Thank you.
 24 CHAIRPERSON: Well, Mr Madlanga is in
 25 charge of leading evidence, he's heard what you have to say

1 and I'm sure he'll give it the necessary attention. The
 2 Commission will now adjourn until Monday morning at
 3 nine o'clock.

4 [INQUIRY ADJOURNED]

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