

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 17 21 NOVEMBER 2012 PAGES 1824 TO 1876

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 21 NOVEMBER 2012]
 2 [09:46] CHAIRPERSON: The Commission resumes.
 3 I'm told that the air conditioning is in the process of
 4 being attended to, and may come to our assistance at some
 5 stage. I can only express the hope that that will be soon.
 6 MR CHASKALSON: Mr Chairperson, before we
 7 start off on the new videos for the day, if I might first
 8 withdraw a retraction that I made yesterday and replace it
 9 with a new retraction? The retraction to be withdrawn
 10 relates to Exhibit X2, and you may recall that I had
 11 initially said that the time of that exhibit was 10:10 and
 12 then upon hearing Mr Botha's voice over, I said in fact
 13 it's 10:08. Mr Botha's voice over is describing the date,
 14 not the time, 11\08\2012, and he proceeds to say it is
 15 approximately ten minutes past, so it is in fact 10:10,
 16 Exhibit X2.
 17 The retraction which I must make, which is of a
 18 much more important nature, relates to Exhibit X1, which is
 19 the aerial footage taken from fixed camera 218, which I
 20 described yesterday of footage of a small crowd of
 21 protesters marching down to the NUM offices, in advance of
 22 the incident of that day.
 23 NUM has informed us that there will be evidence
 24 to show that this crowd was not a crowd of protesters
 25 marching to the NUM offices; it was in fact a group of NUM

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1 members marching back from having engaged with the
 2 protesters.
 3 We don't have direct evidence one way or the
 4 other, so for present purposes I would merely place on
 5 record that we should regard Exhibit 1, until shown
 6 otherwise by evidence, as merely reflecting a group
 7 marching near - back in the direction of, or in the
 8 direction of NUM offices. We're not suggesting that it is
 9 NUM or protesters.
 10 Then if we might start with the videos, and
 11 before we show the videos, we're going to show two overhead
 12 aerial photographs which will serve to orientate members
 13 and legal representatives in relation to the fixed camera
 14 footage from Lonmin.
 15 We've asked for the lights to be switched off and
 16 they - if we can move then to the first aerial photograph?
 17 This is an aerial photograph that has been made available
 18 to us by Lonmin, and the markings on the map are Lonmin's
 19 markings.
 20 Unfortunately, Mr Wessley - Mr Wessley if you can
 21 just mark with a mouse the position of camera 218 on that
 22 aerial photograph? It's an aerial photograph of the
 23 Wonderkop area.
 24 There seems to be a difficulty, maybe if I can
 25 point it out physically? That is the camera from which the

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1 footage of the group marching back in the direction of the
 2 NUM offices was taken. It is also the camera from which
 3 the footage of the encounter between the protesters and the
 4 Lonmin security on the 12th was taken.
 5 CHAIRPERSON: Do we know what the red
 6 lines and the - or red line rather, and the yellow line are
 7 intended to indicate? I can see where the NUM office is,
 8 because that's written there on there on the photograph.
 9 There is something else written, which I can't see to
 10 clearly, opposite some part of the yellow line, but what do
 11 the red line and the yellow line indicate?
 12 MR CHASKALSON: The red line and yellow
 13 line are Lonmin markings, and I don't want to speak for
 14 Lonmin. I have a fair - I have a clear idea of what I
 15 think they represent, but I, without committing Lonmin, it
 16 appears to me that what they represent is the red line is
 17 the inferred direction of the march of protestors, and the
 18 yellow line is the portion of the march that is actually
 19 picked up on camera 218 in that clip. But given that there
 20 is dispute as to whether it's a march of protestors at all
 21 that's captures on the clip, I don't want to suggest
 22 anything in relation to the markings, Lonmin can speak to
 23 the markings at a later stage if they choose. And just to
 24 clarify, the writing to which you referred is stating Cam
 25 218, camera 218. It's the position of the camera.

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1 If we can move then to the next aerial
 2 photograph? This is an aerial photograph of the two fixed
 3 cameras of Lonmin from which footage was taken of the
 4 events at scene 1 and not of scene 2. It explains why
 5 there wasn't footage of scene 2 from those cameras. The
 6 point of convergence to the furthest right of that picture
 7 - Mr Wessley, I wonder if you could point that out with the
 8 mouse again. That is the position of camera 241.
 9 Then the next camera is what is referred to as
 10 the Flir - F-L-I-R, and Mr Wessley if you can point out
 11 that position? Koppie 1 is the area of the map that's
 12 highlighted in green. Scene 2 is to the left, as we look
 13 at it. And if I can stop at this point to point out that
 14 the line of sight of both cameras to scene 2 is obscured in
 15 respect of the Flir camera by the power station, that's the
 16 large red circle. And in respect of the camera 241, there
 17 is a part of Rowland Shaft building structure is in the way
 18 there. That's the small red circle.
 19 If we can quickly point out the location of the
 20 small kraal? And there is a relatively unobscured line of
 21 sight from camera 241 to the small kraal. Unfortunately
 22 it's 1.9 kilometres away, so the images are very small. If
 23 we can then go to footage from camera 241?
 24 MR TIP SC: Mr Chair, whilst that is
 25 being arranged, I wonder if Mr Chaskalson could, as he very

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1 helpfully did yesterday, give us the location on the hard
 2 drives of the two photographs that are being shown, both of
 3 which are helpful.

4 MR CHASKALSON: Certainly, Mr Chair, they
 5 are on the Lonmin hard drive, \Photos\2012-08-11-NUM AMCU
 6 Clash\NUM AMCU Clash-11-08-2012.jpg. And also on the
 7 Lonmin hard drive \Photos\2012-08-16-SAPS Engagement\SAPS
 8 Engagement 16-08-2012. Sorry, the filename is in fact SAPS
 9 Engagement 16-08-2012 edited with lines.jpg.

10 The last aerial – before we get to the videos,
 11 there is one last aerial photograph which is useful for
 12 orientation. It is an aerial photograph taken by Colonel
 13 Vermaak, which is on the SAPS hard drive in the directory
 14 \Photos\Thursday 16\Luitenant-Colonel Vermaak 16th, and the
 15 file is IMG4544.jpg. That is an aerial photograph taken
 16 shortly after scene 1. The small kraal is being pointed
 17 out by Mr Wessley. To right, as we look at it, there is a
 18 small hut, which we will be pointing out on the videos, and
 19 behind the hut are some rocks. Camera 241, which is the
 20 camera in respect of which we will use this photograph for
 21 orientation purposes, is on a line so that the rocks appear
 22 almost immediately to the right of the hut. Mr Wessley can
 23 you draw a line in the direction of camera 241, thank you.

24 If we can move to our first shots from camera
 25 241, and these are on the hard drive at \Videos\2012-08-16,

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1 when I say the hard drive, it's the SAPS hard drive - \16-
 2 08-2012 Camera 241.

3 We will be showing a clip that's taken from
 4 on the running time on the CCTV. We know that,
 5 that time is not accurate, but it's accurate to within
 6 about 15 minutes, but it shouldn't be viewed as precise
 7 time. It will run – the whole clip runs to 10:54:50. We
 8 will pick up the first two minutes 23 seconds, which show
 9 the SAPS deployment on the day, and we'll then move through
 10 the clip to use it as a source of orientation at a time
 11 when there weren't events taking place around small kraal
 12 and certain features are visible which are much less
 13 visible at a later stage when we really want to be looking
 14 at the small kraal.

15 I have a sign from upstairs that they're having
 16 technical difficulties. We can do the orientation, this
 17 video, a little later. If we can move then to the next
 18 video which is a video of the arrival of Mr Mathunjwa at
 19 scene 1 at approximately midday.

20 [10:06] It is a video taken by Warrant Officer Ndlovu and
 21 it is to be found on the Lonmin hard drive at \2videos-
 22 SAPS\SAPSrecordings2012-08-16\046.MTS. A later generation
 23 copy of the same file is in fact on the SAPS hard drive at
 24 \videos2012-08-16\CIB's\00024.MTS. We use the version on
 25 the Lonmin hard drive because it seems closer to an

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1 original copy and its correct timestamp. This video shows
 2 the arrival of Mr Mathunjwa, it also shows the crowd at
 3 approximately 12 o'clock.

4 [VIDEO SHOWN]

5 If we can move then to the next video which is
 6 shortly after this point, it is a short clip of
 7 negotiations between Mr Mathunjwa and the SAPS concerning
 8 his arrangements for his address to the mineworkers and its
 9 address is again on the Lonmin hard drive \2videos-
 10 SAPS\SAPSrecordings2010-08-16\047.MTS. Again we are using
 11 the Lonmin hard drive copy because it is closer to the
 12 original. The SAPS is a later generation copy without a
 13 correct timestamp, it is to be found on the SAPS hard
 14 drive, \videos\2012-08-16\CI\00025.MTS. This is the video
 15 from which slide 162 of the SAPS' presentation was taken,
 16 although that's not a video, it's a still. If we can then
 17 play the video?

18 [VIDEO SHOWN]

19 The next clip that we would include as an
 20 annexure is in fact Mr Mathunjwa's speech but that has
 21 already been played and it is 30 minutes long, we don't
 22 propose to replay it but we would give its address and its
 23 details and make one observation about its location inside
 24 the SAPS' presentation. The address is Lonmin hard drive
 25 \2videos-SAPS\SAPSrecordings\2010-08-16\048.MTS. It is a

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1 video taken by Warrant Officer Ndlovu and it starts at
 2 . The video is the video to which there was a
 3 hyperlink at slide 169 of the SAPS' presentation, 169.

4 This video is going to be come Exhibits CC7, that will be
 5 CC7. The point that we would make about this exhibit in
 6 relation to the SAPS' presentation is that it is in fact
 7 wrongly positioned in the SAPS' presentation because the
 8 slides that are slides 163, 164, 165, 166 and 167 in the
 9 SAPS' presentation and 168. So 163 to 168 which is the
 10 protestor speaking are slides that actually in real life
 11 took place after Mr Mathunjwa's speech, not before Mr
 12 Mathunjwa's speech.

13 So although Mr Mathunjwa's speech is slide 169 in
 14 the presentation chronologically it should appear before
 15 slide 163. This is clear both from the timestamp on
 16 Warrant Officer Ndlovu's form of the speech and also from a
 17 timestamp on Warrant Officer Masenya's simultaneous form of
 18 the start of the speech, which is a two second clip which
 19 we will show now.

20 [VIDEO SHOWN]

21 The timestamp on that clip which is the entire
 22 clip is 12:27. As Annexure CC9 we would include the videos
 23 that have already been shown in the SAPS' presentation of
 24 protestors 1 to 6, and if I might give the directory
 25 addresses for each of those clips, it is the Lonmin hard

<p style="text-align: right;">Page 1832</p> <p>1 drive \videosrecordings\2012-08-16\00014.MTS for protestor 2 1 which was slide 163, 00014 for protestor 1 which was 3 slide 163, 00015 for protestor 2 which was slide 164, 00016 4 for protestor 3 which was slide 165, 00018 for protestor 5 14, slide 169, 00019 for protestor 5 which is slide 167, 6 00020 for protestor 6 which is slide 168.</p> <p>7 The next clips that we would like to show have, I 8 am afraid, we made the same error that SAPS made in terms 9 of chronologies, we would like to show some clips or we 10 will now show some clips of the reaction of the crowd 11 during Mr Mathunjwa's speech. So chronologically these 12 clips are taking place while Mr Mathunjwa is speaking 13 before the protestors are speaking. They are to be found 14 at \video recordings, on the Lonmin hard drive, \2012-08-16 15 and they start at Quadruple 09.MTS which is at 12:30:26 and 16 it is [inaudible] by Warrant Officer Masenya. This will be 17 Annexure CC, it is 0008, CC10, and if I can ask that we 18 just roll through 10, 11 and 12 which are all shots of the 19 reaction of the crowd and Mr Mathunjwa between 12:28:38 20 which is when 10 starts and 12:32:46, which is when 12 21 starts.</p> <p>22 [VIDEO SHOWN]</p> <p>23 MR MAHLANGU: Mr Mathunjwa is greeting, 24 he says, I greet you and how during the day, I am 25 Mathunjwa, the son of, he mentions his father.</p>	<p style="text-align: right;">Page 1834</p> <p>1 The different nations have been selling us, they 2 have been selling us out, their children are able to go to 3 universities. 4 [VIDEO SHOWN] 5 They go to universities and come back to be in 6 charge of our children, this is because we working at the 7 mines here are still being paid in the region of 2 000 – 8 [VIDEO SHOWN] 9 2 500, power and then the crowd says, power is 10 ours. 11 [VIDEO SHOWN] 12 Some of us have even forgotten how long ago it 13 was that we voted, but the economy in the mines is still ... 14 [10:26] MR CHASKALSON: There will be an 15 interruption before this clip. 16 [VIDEO SHOWN] 17 MR MAHLANGU: We arrived here yesterday 18 and spoke to you. 19 [VIDEO SHOWN] 20 You sent us to go to the employer. 21 [VIDEO SHOWN] 22 We mentioned to the employer, what is it that you 23 people wanted? 24 [VIDEO SHOWN] 25 The employer also mentioned what it is that he</p>
<p style="text-align: right;">Page 1833</p> <p>1 [VIDEO SHOWN] 2 I want to humble myself before you, coming to 3 talk to you about the problem that we are facing, the 4 problem of capitalism and then he says, power. 5 [VIDEO SHOWN] 6 The crowd reacts by also shouting, power is ours. 7 [VIDEO SHOWN] 8 We are facing problems, we are facing serious 9 problems. 10 [VIDEO SHOWN] 11 It was stopped before the sentence was actually 12 complete. We are saying the problem we are facing is that 13 the economy of South Africa is – 14 MR CHASKALSON: Yes, if I might explain 15 why there are these interruptions, the whole of Mr 16 Mathunjwa's speech was being from Warrant Officer Ndlovu, 17 at the same time Warrant Officer Masenya was just taking 18 clips of the crowd. So these clips are not designed to 19 capture the speech. 20 [VIDEO SHOWN] 21 MR MAHLANGU: There is quite a bit that 22 has been skipped, the film, he ended up where he was 23 saying, he was talking about the economy of South Africa 24 being something and it wasn't clear. 25 [VIDEO SHOWN]</p>	<p style="text-align: right;">Page 1835</p> <p>1 expected from the employees, from the workers. 2 [VIDEO SHOWN] 3 Comrades, there were different leaders present 4 yesterday. 5 [VIDEO SHOWN] 6 I wouldn't go much deep into that because I know 7 what your conclusion was. 8 [VIDEO SHOWN] 9 And that is the reason we have today, these 10 leaders that you see here before you. 11 [VIDEO SHOWN] 12 Again, Comrade, we came this morning as you had 13 sent us to go and talk to the employer. 14 [VIDEO SHOWN] 15 We arrived as we were supposed to talk to the 16 employer at eight o'clock, we as AMCU arrived. 17 [VIDEO SHOWN] 18 But we only managed to meet the employer there 19 after 11. 20 [VIDEO SHOWN] 21 We realised why it was so, it is because, 22 Comrades, the bigger unions which are well known, were not 23 there at the time. 24 [VIDEO SHOWN] 25 The reason we were taken for granted by the</p>

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1 employer was that the bigger unions which are well known
 2 were not there, they are not visible anymore.
 3 [VIDEO SHOWN]
 4 We are not taken seriously because it is said we
 5 are a small union that knows nothing, power.
 6 [VIDEO SHOWN]
 7 And the crowd then repeat after him, power is
 8 ours and then he says -
 9 [VIDEO SHOWN]
 10 But what we know is that we are Africans who are
 11 entitled to certain rights and that our children –
 12 [VIDEO SHOWN]
 13 - so that we should have homes and support our
 14 children.
 15 [VIDEO SHOWN]
 16 - so that we can support our children, so that
 17 our children could go to schools in order that they come
 18 back and be in charge of this Africa. Power is ours.
 19 [VIDEO SHOWN]
 20 As we've said yesterday, Comrades, that the place
 21 where we now are has been declared by the government as a
 22 security zone.
 23 MR CHASKALSON: That is the last clip
 24 that Warrant Officer Masenya took of the crowd during Mr
 25 Mathunjwa's speech. From the sequence of clips it appears

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1 he went off to film a protest of women at that point. The
 2 next annexures that will become CC13 through to 17 are the
 3 clips of the protestors 1 to 5, which have already been
 4 shown, I've given the addresses and their corresponding
 5 numbers in the SAPS' presentation, I don't propose to
 6 repeat them now, but I would like to repeat the speech of
 7 protestor 6 because we have crowd reaction to protestor 6,
 8 which is significant and that will become CC18. It is a
 9 speech that is made at 11 minutes past 1, filmed by Warrant
 10 Officer Masenya and it is at Lonmin hard drive
 11 \2videorecordings\2010-08-16\00020.MTS. It is the slide
 12 168 in the SAPS' presentation, and if we can play that
 13 video again, it is only 30 seconds of repeated showing, but
 14 it gets important to contextualise the crowd's response.
 15 [VIDEO SHOWN]
 16 MR MAHLANGU: If the police claim that
 17 they have safety, let them go and apply that safety to the
 18 employer.
 19 [VIDEO SHOWN]
 20 And come with the employer –
 21 [VIDEO SHOWN]
 22 We are not leaving this place until we get that
 23 which we want.
 24 [VIDEO SHOWN]
 25 Let them go exactly at this minute.

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1 [VIDEO SHOWN]
 2 If there is any policeman that has been fetched
 3 from the homelands to come here, the possibility is that he
 4 might not get into that hippo, he will remain here, and
 5 then there is laughter from the crowd.
 6 [VIDEO SHOWN]
 7 We are saying he might not be able to leave here.
 8 We are saying to him, go away now.
 9 [VIDEO SHOWN]
 10 MR MADLANGA SC: Commissioners, I
 11 understood, but Mr Mahlangu, he asked that it be replayed,
 12 I understood this to be stated in the plural, [African
 13 language]. We will finish them off here, not singular.
 14 MR MAHLANGU: There is a possibility,
 15 there was a cut off, if it could be replayed, Mr
 16 Chairperson?
 17 [VIDEO SHOWN]
 18 If the police, the police, the word police there
 19 is used in its plural form, if they claimed to have any
 20 safety let them go and apply that safety to the employer.
 21 [VIDEO SHOWN]
 22 Leave us here and come back with the employer.
 23 [VIDEO SHOWN]
 24 We are not leaving this place until we find that
 25 which we want.

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1 [VIDEO SHOWN]
 2 Let them go immediately, if a policeman has been
 3 fetched from over there at our homes, at the homelands to
 4 come here –
 5 [VIDEO SHOWN]
 6 He is going to remain here and will not get into
 7 that hippo.
 8 [VIDEO SHOWN]
 9 We will finish them up here, let them leave here.
 10 [VIDEO SHOWN]
 11 Then there is laughter from the gathering.
 12 MR CHASKALSON: Mr Chairperson, that clip
 13 is time stamped 1:11:24pm. It is a 35 second clip, and 24
 14 seconds. It runs for 35 seconds. The next clip is time
 15 stamped 1:13 and 6 seconds. It is a clip of the crowd also
 16 taken by Warrant Officer Masenya.
 17 [VIDEO SHOWN]
 18 MR MAHLANGU: That wasn't very clear, if
 19 it could be repeated again?
 20 [VIDEO SHOWN]
 21 I am sorry, Chairperson, it is not clear exactly
 22 what he is saying.
 23 [VIDEO SHOWN]
 24 I am sorry, really I can't get clarity here as to
 25 what he is saying.

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1 [VIDEO SHOWN]
 2 There is some singing there and the song is not
 3 very clear.
 4 MR CHASKALSON: The next two annexures we
 5 would like to leave open at the moment as CC20 and CC21,
 6 these will be in due course water cannon videos which have
 7 emerged later in the day, but we're not yet ready to show
 8 them because we're making further inquiries about further
 9 footage, so CC20 will be left open for the northwest water
 10 cannon and CC21 will be left open for the Johannesburg
 11 POP's water cannon. The next video is the aerial video
 12 that was taken and it appears on the SAPS hard drive under
 13 the file name Lonmin Chopper MP4 in the directory
 14 \videos\2012-08-16. The name is something of a misnomer
 15 because in fact the helicopter was not Lonmin's helicopter,
 16 it was the helicopter of Coin Security. This video was
 17 taken by Mr De Waal, the chief operating officer of Coin
 18 Security. We have a statement from Mr De Waal who confirms
 19 that Major-General Mpembe and Brigadier Tewane were on
 20 board in the helicopter with him. The video we have
 21 estimated to commence at 16:03 –
 22 CHAIRPERSON: I am sorry, Mr Chaskalson,
 23 do we know what the call sign of that helicopter was, that
 24 may be helpful in relation to entries in the occurrence
 25 book and other documents?

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1 MR CHASKALSON: Mr Chairperson, it didn't
 2 have a call sign, it wasn't part, it wasn't a formal part
 3 of the operation. As we understand that Coin were
 4 requested at a late stage to take Major-General Mpembe up n
 5 the helicopter, above all of the other helicopters, to
 6 observe the operation.
 7 CHAIRPERSON: Okay.
 8 MR CHASKALSON: The helicopter is very
 9 high in the air, so the images are incredibly small, but
 10 this helicopter gives one the best overall picture of the
 11 unfolding of the SAPS operation from scene 1 to scene 2.
 12 Unfortunately it starts after the end of scene 1. The
 13 other value of this helicopter is that one of the police
 14 officers' radios was placed next to the video camera, so
 15 one hears a great deal of the police radio communications
 16 through this video and it may be useful to go, to allow the
 17 interpreter to interpret as we go along, because certainly
 18 for the first 20 minutes or so of this video one hears the
 19 police radio communications. This clip runs for 38
 20 minutes.
 21 CHAIRPERSON: Mr Chaskalson, how long is
 22 this clip?
 23 MR CHASKALSON: This clip runs for 38
 24 minutes.
 25 CHAIRPERSON: Oh, I was supposed to take

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1 the adjournment at 11 o'clock, can this clip be
 2 conveniently interrupted in the middle or is it best to
 3 take the adjournment now and then take it as one unit
 4 without interruption?
 5 MR CHASKALSON: It may be more convenient
 6 to take the adjournment now and rather run on longer after
 7 the tea break.
 8 CHAIRPERSON: Very well, the commission
 9 will adjourn for the tea break.
 10 [COMMISSION ADJOURNS COMMISSION RESUMES]
 11 [11:16] CHAIRPERSON: The commission resumes. Mr
 12 Chaskalson, once the lights have been turned out so that we
 13 can see clearly, then we can carry on.
 14 MR CHASKALSON: Mr Chairperson, in
 15 relation to the time of this video, I said it was
 16 approximately 4:03, there are two different ways of timing
 17 the commencement of this video. The file on which it is
 18 contained is time stamped 4:41:12 for the end of the video
 19 and the video is 38 minutes 34 seconds, which, if you
 20 subtract 38 minutes 34 seconds from 4:41:12 one is left
 21 with 4:02:28. So according to the clock of the video
 22 camera that took the video it started at 4:02:28. There is
 23 however a passage of the radio communications on this video
 24 which one can match to radio communications on the first
 25 video of Captain Ryland's and if one takes the time of

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1 Captain Ryland's and if one takes the time of Captain
 2 Ryland's cell phone which is what was used to capture his
 3 video, and synchronises the two videos using that time,
 4 this video would have commenced at, we make it 3:57:06. So
 5 it is somewhere between 3:57, - well, we suspect it is
 6 somewhere between 3:57:06 and 4:02:28, if we can then start
 7 this video?
 8 [VIDEO SHOWN]
 9 And maybe if I can ask, Mr Wesley, to point out
 10 scene 2, which hasn't yet happened, with the mouse?
 11 [VIDEO SHOWN]
 12 The large koppie, koppie 1 I the SAPS
 13 terminology, the small hill in front of the large koppie,
 14 koppie 2 in the SAPS terminology, and the small kraal where
 15 scene 1 has just taken place. While we have the still
 16 picture up, Mr Wesley, if you can mark the line of the
 17 Nyalas that are approaching, that are in the dispersion
 18 line? Thank you, if we can run the video?
 19 [VIDEO SHOWN]
 20 The camera will circle without any dialogue
 21 coming through for approximately another four minutes,
 22 unless people want to see the circling, there is not much
 23 that I can point out beyond the slow movement of that
 24 dispersion line, I would suggest that we advance to
 25 approximately 4:20 on the video. That is –

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1 CHAIRPERSON: If counsel wants the
 2 section that you're omitting now to be seen at a later
 3 stage it can be asked for but I suggest we proceed as
 4 you're asking.
 5 MR CHASKALSON: And if we can take it to
 6 4:20 and then stop a still there so that we can re-orient
 7 ourselves?
 8 [VIDEO SHOWN]
 9 And it looks like my attempts to save time,
 10 wasted time.
 11 [VIDEO SHOWN]
 12 This is the point at which the radio
 13 communications start becoming intelligible and I wonder if
 14 we can have those translated as they come across?
 15 [VIDEO SHOWN]
 16 We've been instructed that the direction from
 17 above is the voice of Colonel Vermaak, that Colonel Vermaak
 18 was issuing these directions.
 19 [VIDEO SHOWN]
 20 If we can just orient ourselves on this picture,
 21 Mr Wesley, I am hoping you can help us in this regard, can
 22 you point out scene 2? Can you point out the line of
 23 retreating protestors from the koppie 2 to scene 2?
 24 There is a line of retreating protestors, this
 25 expires in front scene 2, this is scene 2, there is a line

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1 of protestors retreating to just at this stage in front of
 2 where the fires have been lit.
 3 MR CHASKALSON: At a later stage on the
 4 video we'll see one of the water cannons come through to
 5 disburse that line. If we can continue? Is it possible,
 6 to orient everyone, Mr Wesley, if you can just circle the
 7 large koppie, koppie 1?
 8 [VIDEO SHOWN]
 9 That's the large koppie.
 10 [VIDEO SHOWN]
 11 In front of the large koppie is koppie 2 and
 12 retreating back from koppie 2 is the line of protestors.
 13 [VIDEO SHOWN]
 14 Mr Wesley is just pointing out that line of
 15 protestors again.
 16 [VIDEO SHOWN]
 17 That is scene 1, the small kraal is scene 1.
 18 [VIDEO SHOWN]
 19 The northern edge of scene 2, the koppie at scene
 20 2.
 21 [VIDEO SHOWN]
 22 Mr Wesley, if you can just point out where the
 23 water cannon is shooting at the protestors?
 24 [VIDEO SHOWN]
 25 Is it possible to zoom in at that point?

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1 [VIDEO SHOWN]
 2 And we'll see that blue die patch on the ground
 3 at that point, then from this point onwards in the day.
 4 [VIDEO SHOWN]
 5 And this is quite a good orientation picture,
 6 again if we can identify scene 2?
 7 [VIDEO SHOWN]
 8 Or where scene 2 will take place?
 9 [VIDEO SHOWN]
 10 Koppie 1, little koppie 2.
 11 [VIDEO SHOWN]
 12 The retreating line of protestors and the
 13 dispersal line of Nyalas that's now breaking up.
 14 [VIDEO SHOWN]
 15 If we can roll the video now?
 16 [VIDEO SHOWN]
 17 It was quite an important piece of communication
 18 that, so if we can rewind it and replay it, I think?
 19 [VIDEO SHOWN]
 20 CHAIRPERSON: Mr Chaskalson, can you
 21 perhaps tell us what you think is being said and possibly
 22 if there is any disputes about it, someone can listen
 23 carefully to the recording and prepare a transcript for us,
 24 which hopefully can be agreed by all the parties, because
 25 if it is such an important, I must confess I couldn't

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1 understand it very clearly at all, and if it is so
 2 important it is necessary, I would imagine, for the - verba
 3 as it were to be the subject of agreement.
 4 MR CHASKALSON: The passage is at 7
 5 minutes 10 seconds into the video and I hear no need for,
 6 and it is indistinct, but I think it is firearms now,
 7 unless the target engage you, no need to shoot while they
 8 are running unless the target engages you.
 9 MR MAHLANGU: If that could be repeated,
 10 Mr Chairperson?
 11 [VIDEO SHOWN]
 12 It is clear.
 13 [11:36] [VIDEO SHOWN]
 14 MR CHASKALSON: If I might point out, the
 15 operation hasn't yet reached scene 2. Mr Wesley, can you
 16 just mark scene 2, at this stage you're marking the Nyalas?
 17 [VIDEO SHOWN]
 18 If we can roll the video?
 19 [VIDEO SHOWN]
 20 If I understand correctly the helicopter that we
 21 see circling, Mr Wesley, can you mark it? That is the
 22 helicopter from which Colonel Vermaak is directing
 23 proceedings. I don't want to put that as a fact, it is
 24 what I understand, but it does give one a sense of a
 25 perspective of how high this helicopter is relative to the

<p style="text-align: right;">Page 1848</p> <p>1 helicopter that is capable of directing the proceedings.</p> <p>2 [VIDEO SHOWN]</p> <p>3 If we can zoom in a little closer and if we see</p> <p>4 now the water cannons have split, there is a water cannon</p> <p>5 that's starting to fire blue dye from the north end of the</p> <p>6 koppie, and there is one to the south of the koppie that is</p> <p>7 being escorted by a Casper. If we can roll abroad?</p> <p>8 [VIDEO SHOWN]</p> <p>9 If we can go back slightly to the point at which</p> <p>10 both water cannons are shooting, there will be a blue dye</p> <p>11 from the north and white on the south? This is an</p> <p>12 important point for synchronising photographic sequences</p> <p>13 with videos because there are several sets of photographs</p> <p>14 which have this image or two, which have this image, which</p> <p>15 can then be matched to the time sequence of this video.</p> <p>16 Each set of photographs in each video has its own camera</p> <p>17 clock, which is not synchronised but this is one way of</p> <p>18 synchronising them.</p> <p>19 [VIDEO SHOWN]</p> <p>20 Again that's an important piece of communication,</p> <p>21 if we can replay it?</p> <p>22 [VIDEO SHOWN]</p> <p>23 Again if we can repeat that or I don't know if</p> <p>24 everybody heard that? Could I repeat it? Jock chopper, 2</p> <p>25 bodies, 2 bodies at the back of the second koppie, 2</p>	<p style="text-align: right;">Page 1850</p> <p>1 Sorry, if we could rewind that exchange again?</p> <p>2 [VIDEO SHOWN]</p> <p>3 My note is, okay, water cannons, hold back there,</p> <p>4 guys, get out of the Nyalas, as a protection, as a</p> <p>5 protection get out there, get out there, engaged. Those</p> <p>6 vehicles of the transports will come next.</p> <p>7 [VIDEO SHOWN]</p> <p>8 That exchange related to the movement of the</p> <p>9 canters with Colonel Vermaak saying, okay, go straight in,</p> <p>10 once he was informed that he had canters underneath them.</p> <p>11 The canters are soft vehicles which are there for the</p> <p>12 purposes of making arrests.</p> <p>13 [VIDEO SHOWN]</p> <p>14 We're now 14 minutes and 35 seconds into the</p> <p>15 running time of this video.</p> <p>16 [VIDEO SHOWN]</p> <p>17 Mr Chairperson, from this point on the</p> <p>18 communications becomes quite indistinct. I wonder if we</p> <p>19 can, I have fragmentary notes for the next three minutes,</p> <p>20 but maybe we should play through it anyway, because other</p> <p>21 people may hear things that I don't.</p> <p>22 [VIDEO SHOWN]</p> <p>23 [11:56] [VIDEO SHOWN]</p> <p>24 This dialogue, which comes 17 minutes and 12</p> <p>25 seconds into the video has on my note, is dialogue that we</p>
<p style="text-align: right;">Page 1849</p> <p>1 bodies, and the time is 12:10 on the tape. That's running</p> <p>2 time, not real time.</p> <p>3 [VIDEO SHOWN]</p> <p>4 MR MAHLANGU: Again there was something</p> <p>5 here said about a body, if it could be repeated?</p> <p>6 [VIDEO SHOWN]</p> <p>7 MR CHASKALSON: I don't they're speaking</p> <p>8 of a body, my note is, there is a group hiding in the</p> <p>9 middle there.</p> <p>10 [VIDEO SHOWN]</p> <p>11 Maybe if we can zoom in to see what is causing</p> <p>12 consternation to Colonel Vermaak? We think Colonel Vermaak</p> <p>13 is trying to direct the water cannon into the heart of the</p> <p>14 koppie without success.</p> <p>15 [VIDEO SHOWN]</p> <p>16 Again that's an important piece of communication,</p> <p>17 my note is, they're coming out in the small koppie, they're</p> <p>18 coming out and moving towards the substation.</p> <p>19 [VIDEO SHOWN]</p> <p>20 Can we mark the substation?</p> <p>21 [VIDEO SHOWN]</p> <p>22 Again just to repeat, ja, Papa 1, if that water</p> <p>23 cannon can wait, the people, they are encircled, you can</p> <p>24 make arrests now there.</p> <p>25 [VIDEO SHOWN]</p>	<p style="text-align: right;">Page 1851</p> <p>1 can pick up on Colonel Ryland's cell phone. It's right at</p> <p>2 the start of the very first cell phone video of Colonel</p> <p>3 Ryland's which on his cell phone clock is at 4:13:18. This</p> <p>4 line, go to your left, go to your left, two canters, go to</p> <p>5 your left.</p> <p>6 MR CHASKALSON: So Colonel Ryland's video</p> <p>7 start for 17 minutes into this video.</p> <p>8 [VIDEO SHOWN]</p> <p>9 MR CHASKALSON: Mr Chairperson, I do not</p> <p>10 have anything else of value to point out on this video from</p> <p>11 this point in and there isn't much radio communication that</p> <p>12 remains audible. Maybe if we could zoom in and just orient</p> <p>13 ourselves one last time to see where the operation is at</p> <p>14 this stage and then move to the next video.</p> <p>15 CHAIRPERSON: Yes, I suggest we do.</p> <p>16 MR CHASKALSON: If we can start again</p> <p>17 with the small kraal at scene 1.</p> <p>18 [VIDEO SHOWN]</p> <p>19 MR CHASKALSON: The blue dye stain where</p> <p>20 the water canon sprayed at the protestors retreating from</p> <p>21 scene 1.</p> <p>22 [VIDEO SHOWN]</p> <p>23 MR CHASKALSON: And then if we can then</p> <p>24 zoom in on scene 2. Unfortunately the resolution isn't</p> <p>25 good enough for us to point out much detail. There are</p>

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1 however photographs which have better resolution than this
 2 still and it may be more useful to go to those photographs.
 3 If I can simply point out that the water canon has finally
 4 got to where Colonel Vermaak was directing it, it's in the
 5 koppie. We'll use better quality photographs to point out
 6 the location of where people's bodies were found. If we
 7 can move then to the next video, or the next series of
 8 clips, which are a series of clips taken from another
 9 series of aerial clips taken from a different helicopter.
 10 These are Captain Nel's videos. Captain Nel was the third
 11 person in Colonel Botha's helicopter, in the back row of
 12 Colonel Botha's helicopter. The occupant of that
 13 helicopter with the pilot, Captain Oosthuizen, his
 14 assistant, Sergeant Venter in the two front seats and in
 15 the back seats were on the left Colonel Botha, in the
 16 middle Brigadier Fritz and on the right hand side, Captain
 17 Nel of Crime Intelligence. There are – Captain Nel's video
 18 camera didn't have an accurate clock, it recorded its start
 19 time at 11:55, our estimate is, the start time is
 20 approximately 4 o'clock. He took 13 clips at various times
 21 in his flight. We will introduce each flight by indicating
 22 how far, how long after take-off this clip is taken. If we
 23 can start then with CC23.
 24 [VIDEO SHOWN]
 25 We show that clip because it showed in fact two

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1 Coin Security helicopters that were at the helicopter base.
 2 The black and the blue.
 3 [VIDEO SHOWN]
 4 Our instructions from Coin are that only one of
 5 those helicopters was in the air during the events until
 6 the point at which paramedics were called in when the
 7 second helicopter was used to assist bringing paramedics
 8 in. If we can run quickly through annexures 24, 25, 26, 27
 9 one after the other. These are short clips which span a
 10 period from take-off to four minutes and 39 seconds into
 11 the flight.
 12 [VIDEO SHOWN]
 13 If we can just quickly rewind that one to orient
 14 ourselves again on that clip. That is the Nyala dispersion
 15 line, I think, if we can just scroll a bit forward. It's
 16 the southern end of the Nyala dispersion line approaching
 17 the koppie 2 after scene 1. That's the whole Nyala
 18 dispersion line. And that is the stream of protestors
 19 retreating from scene 1 in the direction of scene 2. We
 20 can just run through that and onto the next.
 21 [VIDEO SHOWN]
 22 And onto 28.
 23 [VIDEO SHOWN]
 24 Small koppie, scene 2 in the foreground, we were
 25 – play the video.

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1 [VIDEO SHOWN]
 2 Let's move to the next. There is a shot, one can
 3 see the movement of the protestors towards scene 2 from
 4 scene 1, but we can move to the next.
 5 [VIDEO SHOWN]
 6 That is Captain Venter motioning to the TRT line
 7 to the south west of scene 2. Sergeant Venter, I
 8 apologise.
 9 [VIDEO SHOWN]
 10 That video is eight minutes after, between eight
 11 minutes and, it runs from eight minutes, from 8:11 to 8:52
 12 after take-off, so the instruction to the TRT line from
 13 Captain Venter was in that time period. If we can run
 14 quickly through the next two videos.
 15 [VIDEO SHOWN]
 16 We are now, by the end of that short clip, we are
 17 now 9½ minutes after take-off. If we can run the next
 18 video and stop that video 28 seconds in.
 19 [VIDEO SHOWN]
 20 If we scroll a little bit forward we'll see
 21 Sergeant Venter has a stun grenade in her right hand. If
 22 we stop again around 54 seconds we will be able to orient
 23 ourselves relative to scene 2. So can we roll forward to
 24 54 seconds?
 25 [VIDEO SHOWN]

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1 Possibly scroll a few frames forward and Mr
 2 Wesley, if you can identify scene 2 for us. This
 3 helicopter is to the west of scene 2. I don't want to
 4 estimate the distance but what Mr Wesley is circling is
 5 scene 2.
 6 [12:16] An earlier point that I wanted to make was, there
 7 was a second stun grenade on the seat next to Sergeant
 8 Venter. I am not sure if people need that replayed. Go
 9 forward.
 10 [VIDEO SHOWN]
 11 If we can move to the next – if I can give a time
 12 on that video, that video starts at 12:08 after take off,
 13 and ends at 14:34 after take off. If we can move to the
 14 next video, which starts at 15:49 after take off and ends
 15 at 16:18 after take off. And if I can ask for the video to
 16 be stopped at round about 24 seconds in.
 17 [VIDEO SHOWN]
 18 If one looks in Sergeant Venter's right hand
 19 there is another stun grenade in that hand.
 20 [VIDEO SHOWN]
 21 If it can run through to the end of the video.
 22 And then if we can quickly run through the last two sets in
 23 this series, which are there to time the landing of this
 24 helicopter.
 25 [VIDEO SHOWN]

1 I beg your pardon. If we can go back to that
 2 video, and just freeze it early on at the scene at scene 2,
 3 and if you can zoom in.
 4 [VIDEO SHOWN]
 5 This scene of scene 2 is approximately 20 minutes
 6 after the vehicle took off – after that helicopter took
 7 off. Mr Wesley is pointing out the water canon again, two
 8 Nyalas next to it. That appears to me not to be an
 9 armoured vehicle but I wouldn't want to commit. Maybe if
 10 we can scroll out a little bit to see the arrangement of
 11 the police vehicles at this point. The blue dye area that
 12 we see is the – is on the northern side of the – of scene
 13 2, so that's north. Mr Wesley, if you can mark west,
 14 that's where the TRT line would have come up from the
 15 south-west under Captain Kidd, I think. If we can then
 16 quickly move to the last video which times the landing of
 17 that helicopter.
 18 [VIDEO SHOWN]
 19 That shot of the helicopter landing was 45
 20 minutes and 18 seconds after take off. That was the length
 21 of the helicopter flight. Mr Chairperson, we are moving
 22 now to footage of scene 1, and certainly the first clip
 23 that we show is going to be of a distressing nature. It's
 24 to indicate that at the time that the shooting took place
 25 at scene 1, water canons were spraying into the line of

1 protesters, which is important for marking development in
 2 relation to other videos where – which were taken from a
 3 further distance.
 4 CHAIRPERSON: We've issued this warning
 5 before, those in the auditorium who are family members of
 6 persons who died, at scene 1, may find what is going to be
 7 shown on the screen will cause them a great deal of
 8 distress, and grief, and therefore, I ask those responsible
 9 for showing the videos to wait for a minute to enable those
 10 who wish to do so, to leave the auditorium.
 11 MR CHASKALSON: Most of the rest of this
 12 footage, with some exceptions we are going to be looking at
 13 that footage relating to the deaths on the 16th, and it
 14 seems to me that any family member on the 16th who would not
 15 want to see that footage, should not be watching from this
 16 point on.
 17 [VIDEO SHOWN]
 18 If we can just rewind to the start of that video,
 19 which is a video which is on the SAPS hard drive\videos
 20 2012-00-16 side view.MP4 which is a view from the eastern
 21 side. We will see water canon spray coming through, just
 22 at the point at which the shooting starts. That's the only
 23 purpose for which we wanted to show that video. If we can
 24 move then to the next video, where we will use the end of
 25 water canon spraying as a point to mark when the shooting

1 takes place but before – sorry the next video is the
 2 footage from the Roland Headgear of scene 1. I understand
 3 that the orientation video that we wanted right at the
 4 beginning has now been sorted out, and if we can briefly go
 5 to that in advance of Roland Headgear because it's the same
 6 camera but the shots from early in the morning enable us to
 7 position ourselves with more accuracy. So if we can go
 8 back to what was or what is annexure CC4, which is SAPS
 9 hard drive\videos\2012-08-16 16:08 2012 camera 241, and
 10 this is footage taken from the camera, camera 241, that was
 11 on that aerial photograph that we saw at the start of
 12 today. This footage is taken in the morning. The first
 13 two minutes of the footage describe the SAPS or depict the
 14 SAPS deployment on the day. The clip that we are showing
 15 starts at 10:43:55 on the – that's on the running clock on
 16 the CCTV camera which we believe is approximately 15
 17 minutes past. If we can run the first two minutes of this
 18 video, and this is the deployment of the SAPS on the
 19 morning of the 16th.
 20 [VIDEO SHOWN]
 21 Mr Wesley, for orientation later, if you can
 22 point out koppie 1 and little koppie 2 on this shot.
 23 That's the edge of koppie 1, on the left of our screen.
 24 Small koppie 2 is what is being pointed out now. If we can
 25 then run it through until two minutes 15 seconds. If we

1 can then scroll forward to approximately 7 minutes and 15
 2 seconds into this clip and play one or two seconds further.
 3 [VIDEO SHOWN]
 4 Sorry, you missed my call for stop at about three
 5 seconds or four seconds ago. Mr Wesley, will you point out
 6 what you describe as the rugby poles? Those two poles mark
 7 a line from the camera, the line from the camera through
 8 those poles is essentially to the entrance of kraal 2, of
 9 the small kraal, where scene 1 takes place. If you just
 10 mark – then highlight the pole to the left, not the left
 11 rugby pole the one to the left of the rugby poles. The
 12 line on that pole, takes you to the left hedge of the small
 13 kraal which is where Nyala 4 ended up. And if you can
 14 circle the whole of the small kraal. And if you can mark
 15 the hut to the right of the small kraal, and the rocks to
 16 the right of the hut. And if you take a line through those
 17 rocks, you will reach an electricity pylon that will be
 18 glowing by the time we reach scene 1. Those markers are
 19 very helpful as orientation for when we come to see the
 20 footage to which we will now move.
 21 [12:36] That footage is from the same camera, it is the
 22 footage of scene 1 from that camera, and it will be
 23 Annexure CC37, it is to be found on the SAPS hard drive
 24 \videos\2012-08-16\16082012romansheadgear. Our clip starts
 25 at 16:08:35, 4:08:35 on that running clock, as I said

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1 earlier we estimate that that running clock is
 2 approximately 15 minutes past.
 3 [VIDEO SHOWN]
 4 And, Mr Wesley, if we could stop at this point
 5 and if you could mark what we understand to be Nyala 4, and
 6 if you can just mark it chain trailer, it is a barbed wire
 7 trailer. If we go forward we will see Nyala 3 or what we
 8 understand to be Nyala 3 coming up to Nyala 4.
 9 [VIDEO SHOWN]
 10 We now see Nyala 3 and Nyala 4 moving together.
 11 [VIDEO SHOWN]
 12 And if we look at the trailer Nyala 3 we see that
 13 it is far less than that in Nyala 4 because it has already
 14 deployed its barbed wire.
 15 [VIDEO SHOWN]
 16 At this point Nyala 4 stops with Nyala 3 behind
 17 it and people appear to come out to inspect Nyala 4's
 18 barbed wire trailer.
 19 [VIDEO SHOWN]
 20 Nyala 4 then reverses slightly to close up the
 21 gap with Nyala 3.
 22 [VIDEO SHOWN]
 23 I would ask people to time the period in which
 24 these two Nyalas are static.
 25 [VIDEO SHOWN]

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1 Nyala 4 has started to move off now.
 2 [VIDEO SHOWN]
 3 It had moved slightly forward, it stops again.
 4 [VIDEO SHOWN]
 5 We've seen approximately 30 seconds that were
 6 moved forward properly.
 7 [VIDEO SHOWN]
 8 It is starting to move now.
 9 [VIDEO SHOWN]
 10 Let's scroll the video forward, what we were
 11 going to point out was what we understand to be the STF,
 12 the equivalent high speed.
 13 [VIDEO SHOWN]
 14 The vehicles are moving in the direction of a
 15 small crowd.
 16 [VIDEO SHOWN]
 17 And the rugby post comes into view again, if we
 18 can just freeze?
 19 [VIDEO SHOWN]
 20 So we now have our orientation on the small
 21 crowd.
 22 [VIDEO SHOWN]
 23 That's the middle of the small crowd and, Mr
 24 Wesley, if you can point the left of the small crowd?
 25 [VIDEO SHOWN]

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1 If we can scroll forward?
 2 [VIDEO SHOWN]
 3 That's the right hand side.
 4 [VIDEO SHOWN]
 5 That is the first teargas that we see on the
 6 spill and this would be approximately 20 seconds to 30
 7 seconds before the shooting takes place.
 8 [VIDEO SHOWN]
 9 If I am not qualifying the observation that I
 10 just made, we've seen a fair amount of dust from vehicles
 11 moving at high speed but our view is that this is the first
 12 teargas or stun grenade that we see, in our view this is
 13 teargas, the stun grenades will follow shortly.
 14 [VIDEO SHOWN]
 15 Those are the two stun grenades.
 16 [VIDEO SHOWN]
 17 That is the first water cannon spraying that we
 18 see in this video as well.
 19 [VIDEO SHOWN]
 20 Mr Wesley is pointing out the police line and, Mr
 21 Wesley, can you just point again to the entrance to the
 22 small crowd?
 23 [VIDEO SHOWN]
 24 If we can scroll forward?
 25 [VIDEO SHOWN]

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1 We understand the shooting to have taken place at
 2 the point at which that water cannon spray stop being
 3 visible.
 4 [VIDEO SHOWN]
 5 And we can now see vehicles moving to the koppie.
 6 [VIDEO SHOWN]
 7 If we can then move to the Flir camera and I am
 8 hoping that we can get through this clip before the one
 9 o'clock break, Mr Chairperson.
 10 CHAIRPERSON: If - it won't be a problem,
 11 but we won't go beyond quarter past one, whatever happens.
 12 MR CHASKALSON: This is the file in the
 13 SAPS directory \videos\2012-08-16\16082012, and the file
 14 name is 16082012-Flir camera. This, we are informed, is
 15 the only footage that was visible from within the Jock, so
 16 we show this video for two reasons. The one is to see what
 17 it depicts, but the second is to see what it depicts having
 18 regard to this is what the command structure in the JOC was
 19 able to see on the day.
 20 [VIDEO SHOWN]
 21 We started from 15:54:59 on the running clock,
 22 and this is what members in the JOC would have seen.
 23 [VIDEO SHOWN]
 24 [12:56] If we can stop the tape. Mr Wesley, will you
 25 mark the water canon that is moving up from rear area

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1 towards where the engagement will take place. That is at
 2 15:58:16 on the running clock of this video. If we can
 3 stop there. This is apparently, we're informed by the
 4 water canon operators, the operators of the Johannesburg
 5 water cannon, if we can indicate that. Inadvertently
 6 spraying their colleagues in the North West water cannon.
 7 But if we can go forward, the water cannons are going to
 8 engage at this point. The point where we're interested in
 9 when the North West water canon starts shooting. Which is
 10 now and which is when we mark the beginning of the water
 11 canon spray that we saw at the shooting. If we can roll it
 12 forward. By this stage the shooting is taking place. If
 13 we can stop there. That is the Johannesburg water cannon,
 14 driving into a tree, we think. It's a point that can be
 15 used to synchronise this video with other videos. If you
 16 can just run back two seconds and illustrate. Mr Wesley's
 17 marking the Johannesburg water cannon. Where that collides
 18 with something or just brakes sharp, where it is a point
 19 that you can pick up on other videos to marry these two.
 20 And that is all we would want to show from this video.

21 CHAIRPERSON: Is this an appropriate
 22 stage to take the lunch adjournment?

23 MR CHASKALSON: It would be, Mr
 24 Chairperson.

25 CHAIRPERSON: The commission will adjourn

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1 for lunch.

2 [COMMISSION ADJOURNS COMMISSION RESUMES]
 3 [14:09] CHAIRPERSON: The Commission will resume.
 4 I understand that the video, the portion of videos we still
 5 have to see or the videos we still have to see, will take
 6 something over an hour, is that correct, Mr Chaskalson?

7 MR CHASKALSON: Maybe slightly less than
 8 an hour, but not much less than an hour.

9 CHAIRPERSON: Well of course, we've got
 10 some time now because we were hoping that the air-
 11 conditioning would be fixed by the time we start, and we
 12 deliberately delayed coming in to ensure that that would
 13 happen, and it hasn't. In the circumstances, what I am
 14 suggesting is that when the video material is over, and
 15 we've seen it, we should then take the adjournment rather
 16 than starting a witness and not finishing him. So I am
 17 mentioning that now, so those who appreciate having that
 18 kind of information in advance have now got it. Mr
 19 Chaskalson.

20 MR CHASKALSON: Mr Chairperson, the next
 21 set of videos that we will be showing are videos from the
 22 cell phone Sergeant Malatsi who was a TRT member who was
 23 part of the line coming up from the south-west of scene 2.
 24 The first annexure of Sergeant Malatsi, annexure CC39, that
 25 in fact is simply footage of a prayer meeting of the TRT

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1 before they moved off. We don't need to show it here but
 2 if we can start then with – my apologies, it is – I want to
 3 check that I have the correct, it's in the material that
 4 was distributed on the 15th of November, in the directory, I
 5 suspect the directory name has changed since it was written
 6 here, but \new material from SAPS for distribution 12-11-
 7 15\SAPS 2 Marikana videos. It may be that what was
 8 distributed was all of the contents of this directory were
 9 taken up to a level higher, so \SAPS 2 Marikana
 10 videos\Sergeant Norman Malatsi, and the clips that we will
 11 be asking to become annexures 39 to 51, are the entire
 12 contents of that directors with the exception of the file
 13 IMG0354, which is a couple of seconds of video footage of a
 14 helicopter in the sky. So, if we could start then showing
 15 annexure CC40 and 41 in succession. There is no time stamp
 16 on these videos and there is no sound, so all that we have
 17 is the visuals. And these are the visuals of the line
 18 forming up from the south-west.

19 CHAIRPERSON: I take it the lights are
 20 going to be turned out, it's difficult to see the screen
 21 properly with the lights on. Mr Chairperson, we seem to be
 22 resorting to self help. You know, people who've come back
 23 into the auditorium after lunch, left it at an earlier
 24 stage, before we took the lunch adjournment, and whether
 25 there's anything on the videos we are now going to be shown

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1 in respect of which a warning should be given.

2 MR CHASKALSON: Very definitely, Mr
 3 Chairperson. Very early in the footage of Sergeant Malatsi
 4 there are images which would be distressing to family
 5 members of any people who died at scene 2.

6 [VIDEO SHOWN]

7 MR CHASKALSON: Sorry, Mr Chairperson. I
 8 am afraid I am not hearing you without your microphone.

9 CHAIRPERSON: I am sorry, I say, I got
 10 the impression Mr Wesley was trying to attract your
 11 attention.

12 MR CHASKALSON: Thank you, Mr
 13 Chairperson. That would be the TRT line forming up to the
 14 south-west of scene 2. If we can now move to annexure CC42
 15 and 43, which is footage from scene 2. That footage was
 16 south of scene 2. If we can continue with the next clip.
 17 I appear to have – there appears to be a miscommunication
 18 between myself –

19 CHAIRPERSON: 43 flashed past very
 20 quickly. Maybe we must go back to it and we get our
 21 bearings from the beginning.

22 MR CHASKALSON: We are looking at the
 23 file called IMG0356.

24 [VIDEO SHOWN]

25 We are then going to skip to annexure 45 to 49,

<p style="text-align: right;">Page 1868</p> <p>1 these contain fairly graphic footage of people injured and 2 dead at scene 2. If we can keep running through these 3 clips.</p> <p>4 CHAIRPERSON: Mr Chaskalson, Mr Bizos 5 wants to know whether we have the time when these clips 6 were taken.</p> <p>7 MR CHASKALSON: Unfortunately at the 8 moment, we do not have the time. We may be able to 9 establish the time, but on the files that we have at the 10 moment, we have no time stamps and no sound.</p> <p>11 [VIDEO SHOWN]</p> <p>12 Those are all of Sergeant Malatsi's videos with 13 the exception of one clip which depicts the helicopter in 14 the sky. The next series of clips that we would do so is 15 our last series is Captain Ryland's videos, parts of 16 Captain Ryland's videos, parts of the second of Captain 17 Ryland's video have already been shown. We would like to 18 show it again in its complete form and also to make some 19 observations in relation to that video. We have five 20 videos of Captain Ryland's which will be annexure CC52 to 21 56.</p> <p>22 [VIDEO SHOWN]</p> <p>23 The first starts at 16:13:18 on Captain Ryland's 24 cell phone clock. I beg you pardon, Mr Commissioner, I 25 thought I heard the passage which is the point at which we</p>	<p style="text-align: right;">Page 1870</p> <p>1 is the shooting from Sergeant Sibiyane, and the death of Mr 2 Mpumza.</p> <p>3 [VIDEO SHOWN]</p> <p>4 If we can replay that audio, which is Captain 5 Rylands saying, is he alright?</p> <p>6 [VIDEO SHOWN]</p> <p>7 And again Captain Rylands is apparently asking 8 Sergeant Sibiyane, are you okay?</p> <p>9 [VIDEO SHOWN]</p> <p>10 And that was Captain Rylands saying, ja, ja, 11 leave him, he is alright. The body that we can see is the 12 body of Mr Mpumza.</p> <p>13 [VIDEO SHOWN]</p> <p>14 That is Colonel Macintosh, the same man we saw in 15 the engagement with Mr Mathunjwa at the, the two separate 16 engagements with Mr Mathunjwa when arrangements were being 17 made for his speech both on the night of the 15th and on the 18 day of the 16th. Colonel Macintosh is apparently trained as 19 a paramedic.</p> <p>20 [VIDEO SHOWN]</p> <p>21 MR MAHLANGU: If I may just say there is 22 somebody who speaks in the background in the Sotho language 23 who says, I have broken him.</p> <p>24 [VIDEO SHOWN]</p> <p>25 If you could play it again because he seems to be</p>
<p style="text-align: right;">Page 1869</p> <p>1 synchronise the times on this video with the times on the 2 Lonmin chopper video but in fact it comes later. This is 3 the audio that one hears at 17 minutes and 12 seconds into 4 the Lonmin chopper video as well. So that is the point of 5 synchronisation. The position in Captain Ryland's video is 6 just after 1 minute and 1 second into this video.</p> <p>7 [14:29] [VIDEO SHOWN]</p> <p>8 Sorry, there is an important piece of recording 9 there, if we can rewind, it is Captain Rylands himself 10 speaking, and he is saying, don't shoot him, don't shoot 11 him.</p> <p>12 [VIDEO SHOWN]</p> <p>13 See if we can run forward?</p> <p>14 [VIDEO SHOWN]</p> <p>15 If we can then run to the next of the videos?</p> <p>16 [VIDEO SHOWN]</p> <p>17 And if I may just ask that it stops at 42 18 seconds?</p> <p>19 [VIDEO SHOWN]</p> <p>20 Mr Wesley, can you identify where a man is 21 running from right to left on the screen, the man who we 22 believe is Mr Mpumza, victim C at scene 2? If we can then 23 roll the video forward?</p> <p>24 [VIDEO SHOWN]</p> <p>25 We believe that that gunfire that you hear there</p>	<p style="text-align: right;">Page 1871</p> <p>1 using a stick.</p> <p>2 [VIDEO SHOWN]</p> <p>3 Yes, there is use of the word, I hit him with a 4 stick.</p> <p>5 [VIDEO SHOWN]</p> <p>6 And something said about, leave the muti, it is 7 not clear where.</p> <p>8 [VIDEO SHOWN]</p> <p>9 The last word that was said was, lie on the 10 ground.</p> <p>11 [VIDEO SHOWN]</p> <p>12 The last thing that has been said, it is somebody 13 speaking the Afrikaans, I must unfortunately say that is 14 usually spoken by the coloured, people are saying, het jy 15 gesien hoe pyp hy vir ons aanmekaar, he is piping us 16 continuously.</p> <p>17 [VIDEO SHOWN]</p> <p>18 MR NETSEBEZA SC: Mr Chairman, I didn't 19 get the rendition, I didn't hear properly what the 20 translation is?</p> <p>21 MR MAHLANGU: The translation of, hy pyp 22 ons aanmekaar? He says he is piping us continuously, 23 that's the only translation I can give because that's 24 really slang. Maybe if we could get again the Afrikaans 25 version, I just didn't hear properly. If that could be</p>

<p style="text-align: right;">Page 1872</p> <p>1 replayed?</p> <p>2 [VIDEO SHOWN]</p> <p>3 If I may translate it now fully again? He said,</p> <p>4 hoor jy hoe pyp hy vir ons, ka, ka, ka, ka.</p> <p>5 [VIDEO SHOWN]</p> <p>6 That which was said, just before this we had it</p> <p>7 in English, hier kom hy, hier kom hy, here he comes, here</p> <p>8 he comes, bring him here, and then is the word, keeper,</p> <p>9 keeper, take out, take out.</p> <p>10 [VIDEO SHOWN]</p> <p>11 MR CHASKALSON: That second video ran</p> <p>12 from 16:18:23 for 5 minutes and 47 seconds on Captain</p> <p>13 Rylands' phone. The next video is a 24 second clip that</p> <p>14 starts at 16:35:14 on his phone.</p> <p>15 [VIDEO SHOWN]</p> <p>16 The next video is a 36 second slip, almost</p> <p>17 immediately after the video which we've just seen, the</p> <p>18 timestamp on that video is 16:36:50.</p> <p>19 [VIDEO SHOWN]</p> <p>20 And if we can then show the last video which is a</p> <p>21 2 minute 16 second video at 17:52?</p> <p>22 [VIDEO SHOWN]</p> <p>23 Mr Chairperson, those are all the videos which we</p> <p>24 would want to play to the commission at this stage.</p> <p>25 CHAIRPERSON: CC56, what was the last</p>	<p style="text-align: right;">Page 1874</p> <p>1 raised by Ms Pillay in relation to Exhibit T?</p> <p>2 MR SEMENYA SC: Mr Chair, the first</p> <p>3 document relates to the withdrawal of the use of rubber</p> <p>4 bullets. The subsequent letter is re-introducing different</p> <p>5 rubber balls.</p> <p>6 CHAIRPERSON: Essentially the main</p> <p>7 difference between the two?</p> <p>8 MR SEMENYA SC: That's the difference</p> <p>9 between the two.</p> <p>10 CHAIRPERSON: Alright, Ms Pillay, have</p> <p>11 you got copies to distribute now or are you going to</p> <p>12 distribute them tomorrow morning?</p> <p>13 MS PILLAY: Mr Chairperson, Exhibit T</p> <p>14 does form part of the SAPS bundle already, I think it is in</p> <p>15 the region of page 400, 401 –</p> <p>16 CHAIRPERSON: No, I know, I am aware of</p> <p>17 that but all the bundles aren't going to be exhibits, so</p> <p>18 the idea is to extract from the bundles documents which are</p> <p>19 before the commission as exhibits to which reference can be</p> <p>20 made. I don't know that, when we come to argument people</p> <p>21 will be able to refer without a document having been</p> <p>22 approved or admitted merely because it is somewhere in the</p> <p>23 bundle, but anyway, I don't know how many pages these</p> <p>24 various bundles amount to because I've only got them in</p> <p>25 hard drive form, I think, but I would suspect that the</p>
<p style="text-align: right;">Page 1873</p> <p>1 annexure, CC56?</p> <p>2 MR CHASKALSON: It was CC56, I have been</p> <p>3 informed by Ms Pillay that in fact CC52 to 56 have already</p> <p>4 been included as Annexure I(1) to (5) and so I think we</p> <p>5 should keep them with their original numbering, which is</p> <p>6 Annexure I(1) to (5). I mean Captain Rylands' videos were,</p> <p>7 the videos were first shown, all five were apparently</p> <p>8 introduced as annexures. So this series will now end with</p> <p>9 Sergeant Malatsi's videos at CC51.</p> <p>10 CHAIRPERSON: Thank you. Yes, before we</p> <p>11 take the adjournment until tomorrow morning at 09:30, is</p> <p>12 there anyone who wishes to raise any points that we can</p> <p>13 deal with shortly now?</p> <p>14 MS PILLAY: Mr Chairperson, if I may just</p> <p>15 raise the issue of Exhibit T, you'll recall that we</p> <p>16 reserved Exhibit T for the December letter, the December</p> <p>17 2011 letter –</p> <p>18 CHAIRPERSON: It had been quoted, so have</p> <p>19 you got copies for distribution?</p> <p>20 MS PILLAY: We were first waiting for</p> <p>21 SAPS to clear up the differences between the December</p> <p>22 letter and the July letter and then it was going to be</p> <p>23 admitted as an exhibit.</p> <p>24 [14:49] CHAIRPERSON: Mr Semanya, can you in the</p> <p>25 dark tell us anything about the points that were being</p>	<p style="text-align: right;">Page 1875</p> <p>1 number of pages is quite substantial and in order to</p> <p>2 preserve some structure and focus I think it is desirable</p> <p>3 that they should be handed in as exhibits. If you haven't</p> <p>4 got one now, that's fine, I am going to adjourn in a minute</p> <p>5 and you can hand it in tomorrow morning.</p> <p>6 MS PILLAY: As you please, Mr</p> <p>7 Chairperson.</p> <p>8 MR BIZOS SC: Can't we be informed what</p> <p>9 to prepare for tonight, for tomorrow?</p> <p>10 CHAIRPERSON: Well, I understood and</p> <p>11 perhaps Mr Mpofo can tell us, I understood that the bishop</p> <p>12 of Pretoria is to come back into the witness box to be, for</p> <p>13 the cross-examination by Mr Burger to continue, and for him</p> <p>14 thereafter to be cross-examined, I think by Mr Semanya and</p> <p>15 such other people who wish to cross-examine him, that is my</p> <p>16 understanding, but we have been surprised within the past,</p> <p>17 so let me ask Mr Mpofo whether another surprise awaits us?</p> <p>18 MR MPOFU: It does not, Mr Chairman.</p> <p>19 CHAIRPERSON: So there is the bishop,</p> <p>20 there is the bishop and there is also, I've been handed a</p> <p>21 document, I take it, – I don't know if you have, it is a</p> <p>22 statement by Warrant Officer Albert Olckers Wessels who is</p> <p>23 giving evidence –</p> <p>24 MR BIZOS SC: Yes, I have a copy of that.</p> <p>25 CHAIRPERSON: Yes.</p>

1 MR BIZOS SC: And that is the reason why
2 I wanted to make sure that he may be called tomorrow.
3 CHAIRPERSON: Well, let's find out from
4 Mr Semenya. Mr Semenya, what are your plans as far as
5 Warrant Officer Wessels is concerned?
6 MR SEMENYA SC: He is ready to testify
7 once his slot comes, Chair.
8 CHAIRPERSON: I take it that the plan is
9 that Mr Mpofu will recall the bishop. He will continue
10 with his cross-examination, well, Mr Burger will continue
11 with his cross-examination of the bishop. Mr Semenya will
12 then cross-examine and any other people who wish to cross-
13 examine will do so, and thereafter there will be re-
14 examination and the bishop will then be excused, and if we
15 still have time left before the end of the day, which I
16 hope we will, then Warrant Officer Wessels will give
17 evidence. Does that answer your question, Mr Bizos?
18 MR BIZOS SC: Thank you, yes.
19 CHAIRPERSON: So the commission will then
20 be adjourned until tomorrow morning at 09:30.
21 [COMMISSION ADJOURNED]
22 .
23 .
24 .
25 .



<p style="text-align: center;">A</p> <p>aanmekaar 1871:15,22</p> <p>able 1834:2 1838:7 1854:22 1863:19 1868:8 1874:21</p> <p>abroad 1848:7</p> <p>accuracy 1858:7</p> <p>accurate 1829:5,5 1852:18</p> <p>address 1830:8,9,22,24</p> <p>addresses 1831:25 1837:4</p> <p>adjourn 1842:9 1864:25 1875:4</p> <p>adjourned 1876:20,21</p> <p>adjournment 1842:1,3 1842:6 1864:22 1865:15 1866:24 1873:11</p> <p>ADJOURNS 1842:10 1865:2</p> <p>admitted 1873:23 1874:22</p> <p>advance 1824:21 1843:24 1858:5 1865:18</p> <p>aerial 1824:19 1825:12 1825:16,17,22,22 1827:1,2 1828:10,11 1828:12,15 1840:11 1852:9 1858:11</p> <p>afraid 1832:8 1867:8</p> <p>Africa 1833:13,23 1836:18</p> <p>African 1838:12</p> <p>Africans 1836:10</p> <p>Afrikaans 1871:13,24</p> <p>ago 1834:12 1859:5</p> <p>agreed 1846:24</p> <p>agreement 1847:3</p> <p>air 1824:3 1841:9 1853:5 1865:10</p> <p>Albert 1875:22</p> <p>allow 1841:16</p> <p>alright 1870:5,11 1874:10</p> <p>AMCU 1828:5,6 1835:16</p> <p>amount 1862:10 1874:24</p> <p>annexure 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<p>asking 1844:4 1866:11 1870:7</p> <p>assist 1853:7</p> <p>assistance 1824:4</p> <p>assistant 1852:14</p> <p>attempts 1844:9</p> <p>attended 1824:4</p> <p>attention 1867:11</p> <p>attract 1867:10</p> <p>audible 1851:12</p> <p>audio 1869:3 1870:4</p> <p>auditorium 1857:5,10 1866:23</p> <p>available 1825:17</p> <p>awaits 1875:17</p> <p>aware 1874:16</p> <hr/> <p style="text-align: center;">B</p> <p>back 1825:1,7 1826:1 1834:5 1836:18 1838:22 1845:12 1848:9,25 1850:3 1852:11,15 1856:1 1858:8 1864:16 1866:22 1867:20 1875:12</p> <p>background 1870:22</p> <p>balls 1874:5</p> <p>barbed 1860:6,14,18</p> <p>base 1853:1</p>	<p>bearings 1867:21</p> <p>becoming 1844:13</p> <p>beg 1856:1 1868:24</p> <p>beginning 1858:4 1864:10 1867:21</p> <p>believe 1858:16 1869:22,25</p> <p>best 1841:10 1842:2</p> <p>better 1852:1,5</p> <p>beyond 1843:23 1863:11</p> <p>bigger 1835:22 1836:1</p> <p>bishop 1875:11,19,20 1876:9,11,14</p> <p>bit 1833:21 1853:15 1854:20 1856:10</p> <p>Bizos 1868:4 1875:8,24 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