

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 234

26 MAY 2014

PAGES 29162 TO 29345



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1 [PROCEEDINGS ON 26 MAY 2014]
 2 [09:08] CHAIRPERSON: The Commission resumes.
 3 Captain, you're still under oath. Mr Bizos, I believe
 4 you're going to cross-examine this morning. I thought
 5 about it over the weekend and I thought it would be only
 6 fair to you if I gave you the extra two minutes that you
 7 want, so you have an hour.
 8 WAYNE PETER KIDD: (s.u.o.)
 9 CROSS-EXAMINATION BY MR BIZOS SC: On the
 10 16th at the koppie were you one of the commanders?
 11 CAPTAIN KIDD: That's correct, on the
 12 western side of my members.
 13 MR BIZOS SC: Now, early in the morning
 14 your approximately 100 men armed primarily with R5s were on
 15 a line in front of a settlement.
 16 CAPTAIN KIDD: Not early in the morning.
 17 MR BIZOS SC: Pardon?
 18 CAPTAIN KIDD: Not early in the morning,
 19 Mr Chair.
 20 MR BIZOS SC: What time?
 21 CAPTAIN KIDD: That only happened at
 22 about 15:40 in the afternoon.
 23 MR BIZOS SC: And the reason why you were
 24 deployed there was what?
 25 CAPTAIN KIDD: We were deployed at

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1 forward holding area 2 as a reserve reaction group.
 2 MR BIZOS SC: So earlier on when you were
 3 on the line in front of the settlement, at what time was
 4 that before you moved up to the –
 5 CAPTAIN KIDD: Mr Chairman, the line was
 6 only made when an indicated was given that the barbed wire
 7 would be deployed. That was around 15:40 in the afternoon.
 8 MR BIZOS SC: And when you were in front
 9 of the settlement – when were you in front of the
 10 settlement away from scene 2? Early in the day where were
 11 you?
 12 CAPTAIN KIDD: We were situated on the –
 13 there's a dirt road and the people were just sitting around
 14 waiting for the deployment.
 15 MR BIZOS SC: Hadn't you been deployed to
 16 make a line in front of the settlement?
 17 CAPTAIN KIDD: That was only at a later
 18 stage after the briefing.
 19 MR BIZOS SC: After?
 20 CAPTAIN KIDD: The briefing of 2:30.
 21 MR BIZOS SC: Yes, that's the early – now
 22 had there been any evidence made available to you that the
 23 people that gathered on the koppie either on the 13th or the
 24 14th or the 15th or at any other time had attacked residents
 25 of the settlements?

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1 CAPTAIN KIDD: No.
 2 MR BIZOS SC: So why would you have been
 3 sent to protect a settlement, this is before scene 2, why
 4 would you have been sent there?
 5 CAPTAIN KIDD: Mr Chairman, if I can
 6 remember correctly it was said that they, according to
 7 crime intelligence information the settlement had mainly
 8 NUM people that were residing there, so they just thought
 9 that if something would happen, if an attack would happen
 10 that it could go there. It was just instructions given to
 11 me.
 12 MR BIZOS SC: 100 heavily armed people
 13 for that purpose. Before that had you heard that part of
 14 the plan was to encircle the crowd that had gathered there
 15 from earlier days, to encircle? Did you hear that as part
 16 of the plan?
 17 CAPTAIN KIDD: It was to disperse,
 18 encircle the smaller groups.
 19 MR BIZOS SC: Encircle the smaller
 20 groups, yes, once the disperse had taken place –
 21 MR BIZOS SC: Now if I were to put to you
 22 that you gathering earlier on was part of the encirclement
 23 procedure foreseen by the plan, what would you say?
 24 CAPTAIN KIDD: That's not correct.
 25 MR BIZOS SC: It's not correct. Well,

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1 I'm going to put to you that the idea of amassing so strong
 2 a portion of the police power at that time for the purpose
 3 that you suggest is incorrect but that it was part of a
 4 plan to be, like the barbed wire, not to allow people to
 5 disperse but to encircle them.
 6 CAPTAIN KIDD: No, that's not correct.
 7 MR BIZOS SC: That's not correct.
 8 CAPTAIN KIDD: No.
 9 MR BIZOS SC: Now have you had any
 10 training on the management and control of persons taking
 11 part in a gathering, lawful or unlawful?
 12 CAPTAIN KIDD: No.
 13 MR BIZOS SC: Did you ever read the
 14 standing orders?
 15 CAPTAIN KIDD: No.
 16 MR BIZOS SC: Did you ever get any
 17 information as to when you may use lethal force against
 18 people that have gathered?
 19 CAPTAIN KIDD: No.
 20 MR BIZOS SC: And obviously –
 21 CHAIRPERSON: I'm sorry, Mr Bizos, may I
 22 ask a question flowing from the one you've just asked?
 23 MR BIZOS SC: Yes.
 24 CHAIRPERSON: Were you familiar with the
 25 terms of standing order 262?

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1 CAPTAIN KIDD: No, Mr Chairman.
 2 MR BIZOS SC: Well, thank you for the
 3 question, Mr Chairman, because I was about to refer to the
 4 specific order. I'm sorry, I had a marked copy but – 11
 5 yes, in standing order 11 –
 6 CHAIRPERSON: Standing order 262,
 7 paragraph 11, I take it is what you're referring to.
 8 MR BIZOS SC: Paragraph 11.
 9 CHAIRPERSON: It's on the screen now.
 10 MR BIZOS SC: Yes.
 11 CHAIRPERSON: You say you're not familiar
 12 with this or you – I don't know if you are now but you
 13 weren't familiar then –
 14 CAPTAIN KIDD: No.
 15 CHAIRPERSON: - the terms of the standing
 16 order so –
 17 MR BIZOS SC: In paragraph –
 18 CHAIRPERSON: - so this will enhance your
 19 education this morning.
 20 CAPTAIN KIDD: Yes, Mr Chair.
 21 MR BIZOS SC: Paragraph 4, "The following
 22 are prohibited or restricted during crowd management
 23 operations," and what is prohibited in set out in paragraph
 24 4 but let's go to paragraph 5, sub-paragraph 5. "Force may
 25 only be used on the command or instruction of the CJOC or

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1 operational commander, if appointed. Members may never act
 2 individually without receiving a command from their
 3 commander." You were the commander of that unit on that
 4 day.
 5 CHAIRPERSON: That's correct, isn't it?
 6 CAPTAIN KIDD: Well, yes, Mr Chairman,
 7 that was –
 8 CHAIRPERSON: 10 o'clock –
 9 CAPTAIN KIDD: It wasn't the one unit, it
 10 was the different people. So you can't say one unit.
 11 CHAIRPERSON: Ja.
 12 CAPTAIN KIDD: It was different groups.
 13 CHAIRPERSON: But the grouping at forward
 14 holding area 2 –
 15 CAPTAIN KIDD: From 10 o'clock was my
 16 responsibility.
 17 CHAIRPERSON: - fell under your command,
 18 yes.
 19 CAPTAIN KIDD: That's correct.
 20 CHAIRPERSON: I take it you realise that
 21 CJOC stands for –
 22 CAPTAIN KIDD: JOC.
 23 CHAIRPERSON: - the commander of, the
 24 commanding officer of the joint operational command centre
 25 and that was General Mzembe and the operational commander

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1 had been appointed and that was Brigadier Calitz.
 2 CAPTAIN KIDD: That's correct, Mr Chair.
 3 CHAIRPERSON: And force could only be
 4 used on the command and instruction of one or two, one of
 5 the two of those gentlemen. You –
 6 CAPTAIN KIDD: Yes, I see that, Mr
 7 Chairman.
 8 CHAIRPERSON: Subject to sub-paragraph
 9 (7) which you see at the bottom there.
 10 MR BIZOS SC: Yes, we'll come to
 11 paragraph (7), Mr Chairman. You were one of the three
 12 commanders that entered the third koppie on the fatal day.
 13 CAPTAIN KIDD: That's correct.
 14 MR BIZOS SC: Is that right?
 15 CAPTAIN KIDD: That's correct, Mr Chair.
 16 MR BIZOS SC: Name the other two, please?
 17 CAPTAIN KIDD: If you were talking about
 18 – I think on the one side was General Naidoo.
 19 MR BIZOS SC: Yes?
 20 CAPTAIN KIDD: And I think if you're
 21 referring to the other one, I don't know which unit you are
 22 referring to.
 23 MR BIZOS SC: It was Madiba Nqebe, was he
 24 the third commander?
 25 CAPTAIN KIDD: No, I think he was the

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1 commander of the NIU.
 2 MR BIZOS SC: Yes. There were three
 3 commanders, right?
 4 CAPTAIN KIDD: That's correct.
 5 MR BIZOS SC: Did you communicate with
 6 one another when you approached the third koppie?
 7 CAPTAIN KIDD: No, we didn't.
 8 MR BIZOS SC: Sub-order (6), "All members
 9 involved in the actions must form a part of a unified
 10 command structure consisting of sections, platoons or
 11 companies. Members may not work in sections, may not be
 12 deployed. All visible policing members deployed for such
 13 purposes must be trained in the management of crowds."
 14 That order was not complied with on the day.
 15 CHAIRPERSON: Are you putting that as a
 16 proposition or are you asking the witness a question?
 17 MR BIZOS SC: I beg your pardon?
 18 CHAIRPERSON: Are you putting that as a
 19 proposition or are you asking the witness a question?
 20 MR BIZOS SC: No, I'm asking the witness
 21 whether –
 22 CHAIRPERSON: Okay. You understand,
 23 Captain –
 24 CAPTAIN KIDD: Yes.
 25 CHAIRPERSON: - what Mr Bizos wants to

<p style="text-align: right;">Page 29170</p> <p>1 know from you? Do you agree that that sub-paragraph of 2 this paragraph of the order wasn't complied with because 3 your people were policing members, to use the expression in 4 the sub-paragraph, they were visible at some stage and they 5 weren't trained in the management of crowds. That's what 6 Mr Bizos wants to know, do you agree with that?</p> <p>7 CAPTAIN KIDD: No, I don't agree with 8 that because on my side there were 29 POP members and –</p> <p>9 CHAIRPERSON: The problem you've got is 10 that the word "all" starts the sentence.</p> <p>11 CAPTAIN KIDD: All, okay, all weren't. 12 Okay, thank you, Mr Chairman.</p> <p>13 MR BIZOS SC: Sorry, what was his answer? 14 I'm sorry, I didn't hear the answer, Mr Chair?</p> <p>15 CHAIRPERSON: He said he had, 29 of the 16 people under his command were POP people who had the 17 necessary training. I then said to him the problem you've 18 got is the word "all" which is the first word of the 19 sentence.</p> <p>20 MR BIZOS SC: Yes. 21 CHAIRPERSON: So he said yes, that's 22 correct, all were not trained. I'm just trying to help you 23 along, Mr Bizos.</p> <p>24 MR BIZOS SC: Yes, thank you, Mr Chair. 25 You were – obviously if you didn't know the standing orders</p>	<p style="text-align: right;">Page 29172</p> <p>1 minimum force" – 2 MS BALOYI: Chairperson, we're not sure 3 where Mr Bizos is reading. It's certainly not on the 4 screen. 5 CHAIRPERSON: What are you reading from, 6 Mr Bizos? 7 MR BIZOS SC: I'm reading from sub- 8 paragraph (3). 9 COMMISSIONER HEMRAJ: 11(3). 10 MR BIZOS SC: 11(3). 11 CHAIRPERSON: I see, so it's the previous 12 slide. There we are, do you see it? It's now on the 13 screen, it's the bottom of the page there. Are you happy 14 now, Ms Baloyi? 15 MS BALOYI: Thank you, Chair. 16 CHAIRPERSON: Happy is the wrong word, 17 you're satisfied. 18 MS BALOYI: Thank you, Chair, my concern 19 is addressed. 20 MR BIZOS SC: I'll start again. "If the 21 use of force is unavoidable it must meet the following 22 requirements. (a) The purpose of offensive actions are to 23 de-escalate conflict with the minimum of force to 24 accomplish the goal and therefore the success of the 25 actions will be measured by the results of the operation in</p>
<p style="text-align: right;">Page 29171</p> <p>1 you did not know if the use, sub-order (3), "if the use of 2 force is unavoidable it must meet the following 3 requirements." Do you know what the requirements are? 4 CAPTAIN KIDD: No. 5 MR BIZOS SC: What were you doing there 6 as a commander if you didn't know any of these things? 7 CAPTAIN KIDD: I was a TRT commander. 8 Then after Colonel Pitsi left I was put in charge because I 9 was the senior member behind – 10 MR BIZOS SC: You were part of the force 11 available, the order says, all those of the force 12 available. You were one of them. How could you possibly 13 be in charge of lethally armed men if you did not know the 14 fundamental requirements of the standing orders relating to 15 the management and control of crowds? What were you doing 16 there, without any knowledge of them? 17 CAPTAIN KIDD: I was put in charge when 18 Lieutenant-Colonel Pitsi of the POP left. 19 MR BIZOS SC: Now, did your superiors 20 know, the persons that were in overall command, know that 21 you had no experience on these vital, vital issues? 22 CAPTAIN KIDD: I don't know if they knew 23 that but they knew I was a TRT commander. 24 MR BIZOS SC: Yes. "The purpose of 25 offensive actions are to de-escalate conflict with the</p>	<p style="text-align: right;">Page 29173</p> <p>1 terms of the cost, damage to property, injuries to people 2 and loss of life." You didn't know anything about that? 3 CAPTAIN KIDD: No, Mr Chairman. 4 MR BIZOS SC: Now, did you give an order 5 to your men to shoot? 6 CAPTAIN KIDD: No, I didn't. 7 MR BIZOS SC: Never? 8 CAPTAIN KIDD: Never. 9 MR BIZOS SC: Now, in exhibit JJJ156 at 10 page 50 – 11 CHAIRPERSON: Do you want that on the 12 screen, Mr Bizos? 13 MR BIZOS SC: - Mr Chairman, it's one 14 sentence. 15 CHAIRPERSON: Never mind. Which page of 16 that exhibit? 17 MR BIZOS SC: Page 50. 18 CHAIRPERSON: Page 5-0. Yes, I see. A 19 long way to go, you're on 17, we need 50, is that right? 20 MR BIZOS SC: Yes. 21 CHAIRPERSON: We've got 17 on the screen 22 at the moment, 1-7. We need 5-0 on the screen. 23 MR BIZOS SC: In what is headed a 24 confidential – 25 CHAIRPERSON: No, let us wait for it to</p>

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1 get on the screen.

2 MR BIZOS SC: Sorry.

3 CHAIRPERSON: Now we've got it. Where on

4 the page?

5 MR BIZOS SC: On page 50-

6 CHAIRPERSON: No, we've got page 50.

7 Where on the page?

8 MR BIZOS SC: In the fifth line, in the

9 fifth line.

10 CHAIRPERSON: "Captain Kidd felt that" –

11 MR BIZOS SC: Yes.

12 CHAIRPERSON: Do you see that, Captain?

13 CAPTAIN KIDD: Sixth line, yes.

14 MR BIZOS SC: It reads –

15 CHAIRPERSON: Yes, your counting is

16 better than mine, 6 and 7 really. "Captain Kidd felt that

17 the lives of his members were in serious danger and gave a

18 command to shoot. The members under attack fired shots.

19 One of charging attackers" – I take it that should be "one

20 of the charging attackers fell to the ground while the

21 other attacker ran back to the group waiting on the hill."

22 And then they go on about the same attacker with the red

23 jacket coming back again and so on.

24 MR BIZOS SC: And it says, "assessing the

25 situation, Captain Kidd felt that the lives of his members

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1 were in serious danger and gave a command to shoot." Is

2 that a false statement?

3 CAPTAIN KIDD: That is a false statement.

4 MR BIZOS SC: It is contained in a

5 memorandum headed "Confidential" drawn by –

6 CHAIRPERSON: Were you aware of this

7 memorandum -

8 CAPTAIN KIDD: No.

9 CHAIRPERSON: - or was it so confidential

10 it wasn't even shown to you?

11 CAPTAIN KIDD: No, Mr Chair, I wasn't

12 aware. I can see it was also just a draft.

13 CHAIRPERSON: Yes. So if it had been, if

14 you had been aware of it would you have, what would you

15 have done about it?

16 CAPTAIN KIDD: I would have changed it,

17 definitely.

18 MR BIZOS SC: Do you know Colonel Visser

19 that was at Roots that put together this report?

20 CAPTAIN KIDD: I know him, yes.

21 MR BIZOS SC: Did you speak to him?

22 CAPTAIN KIDD: Straight to him, no.

23 MR BIZOS SC: You didn't speak to him?

24 CAPTAIN KIDD: No.

25 MR BIZOS SC: Where might he have got

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1 this false information from?

2 CAPTAIN KIDD: He had other members that

3 were working with them that were consulting with us.

4 MR BIZOS SC: And do you say that your

5 fellow members lied about you?

6 CAPTAIN KIDD: No, not lied, maybe

7 misinterpreted what I said.

8 [09:28] MR BIZOS SC: misinterpreted?

9 CAPTAIN KIDD: That's correct.

10 MR BIZOS SC: How can there be a

11 misinterpretation? "Assessing the situation Captain Kidd

12 felt that the lives of his members were in serious danger

13 and gave a command to shoot." And it's dated the 5th of

14 September when the first report was apparently put

15 together.

16 CHAIRPERSON: Mr Bizos, do you mind if I

17 interrupt for a moment? This sentence that Mr Bizos is

18 asking you about, you say it didn't come from you, you

19 don't know where Colonel Visser got it from, but let's just

20 break it into two halves. It reads, "Assessing the

21 situation Captain Kidd felt that the lives of his members

22 were in serious danger and gave a command to shoot." Now

23 never mind the command to shoot; you say you never gave a

24 command to shoot.

25 CAPTAIN KIDD: No.

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1 CHAIRPERSON: You see the earlier part

2 deals with two attackers charging the police members with

3 weapons raised, being instructed to stop and lay down, but

4 keeping on charging. You see that? And then it says you

5 were only 10 – and you did tell us about an incident –

6 CAPTAIN KIDD: Yes.

7 CHAIRPERSON: - along those lines, and it

8 says that you were only 10 metres away. Was that correct?

9 At some point were you 10 metres away from these two

10 charging people?

11 CAPTAIN KIDD: As I rectified, it's

12 between 10 and 15 metres, Mr Chairman.

13 CHAIRPERSON: Alright, okay, and then

14 could you see their faces?

15 CAPTAIN KIDD: That's correct.

16 CHAIRPERSON: Did they looked possessed

17 and focussed on what and where they were going?

18 CAPTAIN KIDD: That's correct.

19 CHAIRPERSON: Is that part right?

20 CAPTAIN KIDD: That's correct.

21 CHAIRPERSON: Then it goes on, "Assessing

22 the situation Captain Kidd felt the lives of his members

23 were in serious danger." Is that correct?

24 CAPTAIN KIDD: That's correct.

25 CHAIRPERSON: Then it says you gave a

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1 command to shoot. You say that's not true.
 2 CAPTAIN KIDD: I never gave no command –
 3 CHAIRPERSON: So everything in that
 4 paragraph is right, except for the last six words?
 5 CAPTAIN KIDD: That's correct, Mr
 6 Chairman.
 7 CHAIRPERSON: Thanks.
 8 MR BIZOS SC: There are statements which
 9 came into our possession recently where members, those
 10 persons who made the statements say that – a document which
 11 is not yet an exhibit, but which we will hand in –
 12 CHAIRPERSON: Has the witness seen the
 13 document?
 14 MR BIZOS SC: He should have. We gave
 15 them to –
 16 CHAIRPERSON: Alright, okay, UUU7,
 17 statement by whom? We haven't seen it. We're supposed to
 18 get copies of these documents. Never mind –
 19 MR BIZOS SC: It should be up, Mr
 20 Chairman.
 21 CHAIRPERSON: Anyway, let's not waste
 22 time on that –
 23 MR BIZOS SC: We asked that it should be
 24 made –
 25 CHAIRPERSON: UUU7, what's the document?

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1 Statement by whom?
 2 MR BIZOS SC: Warrant Officer Benjamin
 3 Lepitsi.
 4 CHAIRPERSON: Please spell.
 5 MR BIZOS SC: L-E-P-I-T-S-I.
 6 CHAIRPERSON: L-E-P-I-T-S-I?
 7 MR BIZOS SC: Yes.
 8 CHAIRPERSON: Okay, that's UUU7. What's
 9 the date of the statement?
 10 MR BIZOS SC: There's a squiggle which we
 11 find difficult to read, Mr Chairman, at the bottom of the
 12 page.
 13 CHAIRPERSON: Alright, well we won't
 14 bother about the date if it's illegible.
 15 MR BIZOS SC: Yes.
 16 CHAIRPERSON: Alright, well just carry on
 17 with the cross-examination.
 18 MR BIZOS SC: Yes, in paragraph – well,
 19 I'm informed that we gave it to the evidence leaders and it
 20 has been –
 21 CHAIRPERSON: Okay, well let's move on.
 22 You're busy cross-examining on it.
 23 MR BIZOS SC: In paragraph 3, "We
 24 approached the hill" – it is not easy for me to read. It's
 25 "As we see a group of people coming towards us and there

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1 are" –
 2 CHAIRPERSON: Sorry, Mr Bizos, before you
 3 carry on. Was Warrant Officer Lepitsi one of the group of
 4 people under your command at that stage?
 5 CAPTAIN KIDD: That's correct.
 6 CHAIRPERSON: And was he present at this
 7 incident where two attackers came and charged the members
 8 and you thought their lives were in danger? Was he one of
 9 those present at that time?
 10 CAPTAIN KIDD: I don't know if he was one
 11 of those. There was quite a bit –
 12 CHAIRPERSON: He may have been?
 13 CAPTAIN KIDD: He could have been, but –
 14 CHAIRPERSON: Okay, okay, alright.
 15 Alright –
 16 CAPTAIN KIDD: I'm sure he's a constable
 17 not a warrant officer.
 18 CHAIRPERSON: People in this Commission
 19 get promoted and demoted all the time. Don't worry about
 20 that. Anyway, carry on, Mr Bizos.
 21 MR BIZOS SC: Yes. I'll start again –
 22 "to see a group of people coming towards us. They were
 23 carrying sticks, pangas, iron sticks, and Captain Kidd" –
 24 we can't read the word, but it's a stun grenade – "and he
 25 told us to shoot at them with rubber bullets. It's when I

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1 use a shotgun with a number and used a produced rubber to
 2 disperse them." Now here is another order to shoot. Is
 3 this witness lying when he says that?
 4 CHAIRPERSON: You know, you don't have to
 5 put it on the basis of lying. The first question will be
 6 easy; is it correct. If he says it isn't correct than a
 7 follow-up question is, well is it –
 8 MR BIZOS SC: How do you –
 9 CHAIRPERSON: - a deliberate untruth or
 10 not?
 11 MR BIZOS SC: You know, Mr Chairman, we
 12 can't be too polite when we have contradictory evidence,
 13 with respect –
 14 CHAIRPERSON: Cross-examiners are –
 15 MR BIZOS SC: But I will accept the –
 16 CHAIRPERSON: Cross-examiners are
 17 expected to obey certain rules –
 18 MR BIZOS SC: I will accept the –
 19 CHAIRPERSON: - and be polite, and –
 20 MR BIZOS SC: You know –
 21 CHAIRPERSON: You get the truth as
 22 effectively by being direct and gentle as you do by being
 23 brutal. Brutality sometimes leads to objections the other
 24 way. So anyway, so just take it slowly the way I suggest.
 25 I'll give you an extra two minutes for that.

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1 MR BIZOS SC: Is the statement false?
 2 CAPTAIN KIDD: That I threw the stun
 3 grenade, yes that's false.
 4 MR BIZOS SC: False?
 5 CAPTAIN KIDD: And that I gave the
 6 instruction to shoot rubber bullets is false.
 7 MR BIZOS SC: It's also false?
 8 CAPTAIN KIDD: That's correct.
 9 MR BIZOS SC: Yes.
 10 CHAIRPERSON: Now the next question is,
 11 is there room for a genuine mistake or misunderstanding, or
 12 is it something that can't possibly be true and the
 13 deponent must have, the person who made the statement must
 14 have realised it?
 15 CAPTAIN KIDD: Misunderstanding I would
 16 say, Mr Chairman, because I mean even if he says stun
 17 grenades, I never had a stun grenade. I never came on
 18 duty, I don't have any stun grenades. So even like after
 19 that it says to the shoot, and out of all the statements
 20 that I've read of members, this is the first one that I've
 21 seen that they say I said they must shoot.
 22 MR BIZOS SC: There is also another
 23 person, William Kubheka –
 24 CHAIRPERSON: Will this be exhibit UUU8?
 25 MR BIZOS SC: Thank you, Mr Chairman,

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1 which is also in handwriting and difficult to read.
 2 CHAIRPERSON: Sorry, what is his rank?
 3 Or as far as the document –
 4 MR BIZOS SC: He's a constable, Mr
 5 Chairman.
 6 CHAIRPERSON: How do you spell his
 7 surname? Because I haven't seen these documents, so that's
 8 why I have to ask you.
 9 MR BIZOS SC: K-U-B-H-E-K-A.
 10 CHAIRPERSON: Sorry, K-U-P-H – sorry, K-
 11 U-B-H-E-K-A, Constable Kubheka?
 12 MR BIZOS SC: Yes.
 13 CHAIRPERSON: And his statement, can you
 14 read the date on that statement?
 15 MR BIZOS SC: It looks – the 2nd of
 16 February 2013, Mr Chairman.
 17 CHAIRPERSON: Now you've got the
 18 statement in front of you, have you?
 19 MR BIZOS SC: Yes.
 20 CHAIRPERSON: Captain Kidd?
 21 CAPTAIN KIDD: I have indeed, Mr
 22 Chairman.
 23 MR BIZOS SC: I have it, Mr Chairman.
 24 CAPTAIN KIDD: I have it.
 25 MR BIZOS SC: But unfortunately it's

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1 difficult to read –
 2 CHAIRPERSON: You know something, Captain
 3 Kidd probably is more experienced in reading the
 4 handwriting of his people than you are.
 5 MR BIZOS SC: Yes.
 6 CHAIRPERSON: So if you point to him the
 7 page and the passage in the page, perhaps he can help us by
 8 deciphering it for us.
 9 MR BIZOS SC: Yes.
 10 CAPTAIN KIDD: Can I –
 11 MR BIZOS SC: It's paragraph 3, Mr
 12 Chairman, the middle of the page, but what is clear, there
 13 was an attempt to disperse, in an attempt to disperse the
 14 crowd that they were, that they came or advanced and to
 15 the –
 16 CHAIRPERSON: Alright –
 17 MR BIZOS SC: - "and he ordered us to
 18 resort" –
 19 CHAIRPERSON: Mr Bizos, forgive my
 20 interrupting. Captain Kidd, can you read it, the passage
 21 that Mr Bizos is referring to?
 22 CAPTAIN KIDD: Not, also not clearly.
 23 It's very – it's not –
 24 CHAIRPERSON: I was hoping you would be
 25 better able to decipher it because of your experience with

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1 these people than Mr Bizos, so we'd better leave it to Mr
 2 Bizos.
 3 MR BIZOS SC: "He ordered us" – in the
 4 middle of the page, what is readable is that he, Captain
 5 Kidd, "ordered us to shoot rubber bullets."
 6 CAPTAIN KIDD: That's not correct.
 7 MR BIZOS SC: That's not correct?
 8 CAPTAIN KIDD: No, I don't even know
 9 where these two members were standing, Mr Chairman, so I
 10 couldn't even give them that instruction.
 11 CHAIRPERSON: Do you know Constable
 12 Kubheka?
 13 CAPTAIN KIDD: No, I don't know him. He
 14 was one of my members, but I don't know where he was
 15 standing.
 16 CHAIRPERSON: I see. So he was there?
 17 CAPTAIN KIDD: He was there.
 18 CHAIRPERSON: Somewhere.
 19 CAPTAIN KIDD: Somewhere.
 20 MR BIZOS SC: Now you see, how do you
 21 explain, if you can, that two of the members there have
 22 said that you ordered them to shoot in order to disperse,
 23 which is contradictory to your main evidence that their
 24 lives were in danger and they took up the challenge to save
 25 their lives? That contradicts fundamentally the evidence

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1 that you gave. How do you explain that?
 2 MS BALOYI: Chairperson, objection. The
 3 witness has not testified, it was not his testimony that
 4 Constable Kubheka and Lepitsi, their lives were in danger
 5 and they fired as a result of their lives being in danger.
 6 That's not the witness's testimony, and what Mr Bizos is
 7 putting now is effectively that.
 8 CHAIRPERSON: Mr Bizos, how do you
 9 respond to the objection?
 10 MR BIZOS SC: Mr Chairman, he says that
 11 he never told anybody to shoot. There is evidence that –
 12 CHAIRPERSON: What Ms Baloyi, you –
 13 MR BIZOS SC: How does he explain it?
 14 CHAIRPERSON: No, Ms Baloyi –
 15 MR BIZOS SC: What's wrong with the
 16 question?
 17 CHAIRPERSON: - complains that you said
 18 that those two persons who made the statement thought their
 19 lives were in danger and that was not in the statement. So
 20 may I suggest you just reformulate the question slightly –
 21 MR BIZOS SC: Yes.
 22 CHAIRPERSON: - to accommodate the
 23 objection. It won't affect the, or blunt the thrust of
 24 your cross-examination, and then carry on.
 25 MR BIZOS SC: These statements contradict

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1 your evidence that you never gave an order to anybody to
 2 shoot.
 3 CAPTAIN KIDD: That's correct.
 4 MR BIZOS SC: Have you any possible
 5 explanation as to why they together with others should say
 6 so?
 7 CHAIRPERSON: Why do you say together
 8 with others?
 9 CAPTAIN KIDD: Ja –
 10 CHAIRPERSON: If there are others –
 11 sorry, can I just ask a question? You have an advantage
 12 over me because you were given these statements in advance.
 13 Now are these two, Lepitsi and Kubheka, the only persons
 14 who made statements that you have seen, who allege that you
 15 gave a command, or were you given other statements as well,
 16 that I haven't seen, made by other people who were under
 17 your command that day who make the same allegation?
 18 CAPTAIN KIDD: Mr Chairman, I was given
 19 quite a lot of statements to read and these were the only
 20 two that say they were given instruction to shoot rubber
 21 bullets, by me.
 22 CHAIRPERSON: Anyway, now what Mr Bizos
 23 wants to know is, you say that's not correct, you never
 24 gave that instruction. That's correct, isn't it?
 25 CAPTAIN KIDD: That is correct.

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1 CHAIRPERSON: Right, now what he wants to
 2 know is are you able to throw some light on the question as
 3 to how it came about that this allegation was made by these
 4 two members, which you say is devoid of truth? Are you
 5 able to help us in answering that question?
 6 CAPTAIN KIDD: Mr Chairman, I wouldn't –
 7 you see, I didn't know where these members were standing.
 8 At that time where I was standing and then there were the
 9 charging strikers, the only thing that was shouted by
 10 myself was "Watch out. Watch out." There was no
 11 instructions given by myself that anyone had to shoot.
 12 MR BIZOS SC: You have no possible
 13 explanation. Their evidence apparently was accepted, or
 14 their statements were apparently, or other statements to
 15 that effect was accepted by Colonel Visser that put
 16 together paragraph JJJ156. [Microphone off, inaudible]
 17 report from Roots supports their version and is, negates
 18 what you have told the Commission you never did.
 19 CAPTAIN KIDD: Mr Chairman, as far as I
 20 know –
 21 CHAIRPERSON: Sorry, before you carry on,
 22 may I point out that as far as I can see this particular
 23 incident we're busy with now is dealt with in slide 236 –
 24 is that correct? – of exhibit L?
 25 MR BIZOS SC: Yes.

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1 CHAIRPERSON: This is now the final
 2 version – could we have that on the screen, please? This
 3 is now the final version of the police presentation in
 4 respect of this incident. Now there's nothing there about
 5 the, in the third bullet about the SAPS members who fired
 6 shots, having done so on a command from Captain Kidd. So
 7 ultimately anyway those responsible for compiling the
 8 police presentation did not persist in the allegation made
 9 in the earlier draft, of which this witness had no
 10 knowledge according to him –
 11 CAPTAIN KIDD: That's correct –
 12 CHAIRPERSON: Is that correct?
 13 CAPTAIN KIDD: That's correct, Mr
 14 Chairman.
 15 COMMISSIONER HEMRAJ: There's another
 16 point as well. The narrative is drawn up in September of
 17 2012. This witness's statement, you've given us the date
 18 the 2nd of February 2013.
 19 MR BIZOS SC: Mr Chairman, I'm going to
 20 come to exhibit L because it has other matters that are
 21 relevant –
 22 CHAIRPERSON: Okay, well please carry on.
 23 I just wanted to make a point though that you talked about
 24 Colonel Visser believing things and putting it in –
 25 MR BIZOS SC: May I –

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1 CHAIRPERSON: But ultimately there was an
 2 element of disbelief, it would appear.
 3 MR BIZOS SC: May I round off the main
 4 point before I go over to exhibit L, Mr Chairman?
 5 CHAIRPERSON: This is your cross-
 6 examination.
 7 MR BIZOS SC: Thank you, Mr Chairman.
 8 Now you know that an opening statement was made at the
 9 commencement of this proceedings by Mr Semenya?
 10 CAPTAIN KIDD: Yes, I know.
 11 MR BIZOS SC: And I am going to read from
 12 page 19 and paragraph 45.5 of that statement –
 13 CHAIRPERSON: Mr Bizos, sorry, forgive me
 14 for a moment. Have you got that in front of you?
 15 CAPTAIN KIDD: No, I don't.
 16 CHAIRPERSON: Was your attention drawn to
 17 it?
 18 CAPTAIN KIDD: No.
 19 MS BALOYI: No, it wasn't. It wasn't
 20 included.
 21 MR BIZOS SC: Well, Mr Chairman, it's
 22 part of the record and –
 23 CHAIRPERSON: This witness has been here
 24 since September 2012 and he knows exactly what's in the
 25 record? Those who are representing the police know what's

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1 in the record; he doesn't. He's entitled to see the
 2 documents beforehand - that's a rule we laid down – in
 3 fairness to him. Now have you a copy of it to give to him?
 4 MR BIZOS SC: It's part of the record, Mr
 5 Chairman.
 6 CHAIRPERSON: I'm aware of that, Mr
 7 Bizos, but this witness, as I've told you, isn't familiar
 8 with everything in the record and he's not familiar with
 9 that. So have you got a copy? Let's give it to him for a
 10 moment, let him look at it and then you can ask him
 11 questions and then it will be fair. It can be put on the
 12 screen even. Can you give instructions that it be put on
 13 the screen?
 14 MR BIZOS SC: Yes, it's FFF9, Mr
 15 Chairman, paragraph 45.
 16 CHAIRPERSON: It's an exhibit, isn't it?
 17 What's the exhibit? Is this Mr Semenya's opening
 18 statement, which is an exhibit?
 19 MR BIZOS SC: FFF9.
 20 CHAIRPERSON: Sorry, I didn't hear you.
 21 What is the exhibit?
 22 MR BIZOS SC: FFF9.
 23 CHAIRPERSON: Oh, thank you very much.
 24 FFF9, it's quite a lengthy document. What page?
 25 MR BIZOS SC: Page 19, paragraph 45.5.

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1 CHAIRPERSON: Alright. Now that's the
 2 passage. Perhaps I should read it out for the benefit of
 3 those in the audience who can't read. "The evidence will
 4 be that some of the 13 protesters who were shot and killed
 5 at koppie 3" – what I'm reading is going to be interpreted
 6 into Xhosa for them to understand. "The evidence will be
 7 that some of the 13 protesters who were shot and killed at
 8 koppie 3 had charged the police officers with dangerous
 9 sharp weapons and had been shot in self-defence. These are
 10 accounted for below. Others could have been killed when
 11 police officers returned sharp fire, believing shots to
 12 have been fired from the bushes and crevices in the koppie
 13 by protesters." Do I have to read anymore of that, Mr
 14 Bizos?
 15 MR BIZOS SC: That is – no, no, to the
 16 end of the paragraph.
 17 [09:48] CHAIRPERSON: Police officers are
 18 prepared to accept that they may be responding to friendly
 19 fire, believing it to be fire from the protesters. Without
 20 forensic evidence we are unable to give an unqualified
 21 account explaining the deaths of some of the persons inside
 22 koppie 3." Now he says in the second sentence of this
 23 paragraph that some of the protesters who charged the
 24 police officers and shot in self-defence, these incidents
 25 will be accounted for below. So there must be a passage

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1 somewhere further on where further details are given in
 2 respect of these incidents. Can you give us a reference to
 3 those?
 4 MR BIZOS SC: That is the portion that I
 5 want to bring to the attention of the –
 6 CHAIRPERSON: That is the portion.
 7 Alright, now your attention has been drawn to the passage,
 8 what's the question you want to ask him about this portion?
 9 MR BIZOS SC: Is that a correct statement
 10 of fact, that there may have been friendly fire? That is,
 11 do you what that means to us, that one section of the
 12 police force thought that they were being fired by the
 13 protesters when in truth and in fact there was fire from
 14 their brethren or colleagues from another side. Did you
 15 know that was said by senior counsel for the police?
 16 CAPTAIN KIDD: I think I know it was
 17 said, yes, but as I testified –
 18 MR BIZOS SC: Is it true or not?
 19 CAPTAIN KIDD: When we arrived on our
 20 side, we were the first people to arrive. So the shots
 21 that were experienced by us could not have been by other
 22 police officers.
 23 MR BIZOS SC: No, do you –
 24 CHAIRPERSON: I'm not sure I understand
 25 that. You say you were the first to arrive –

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1 CAPTAIN KIDD: At koppie 3.
 2 CHAIRPERSON: At koppie 3. Well, you
 3 were the first to arrive at the particular point. You
 4 approached koppie 3 from the western side, didn't you?
 5 CAPTAIN KIDD: That's correct, Mr Chair.
 6 CHAIRPERSON: Your, the people under your
 7 command actually broke up into three really but practically
 8 speaking we can concentrate on two groups. This was in
 9 response to the traffic directions you got from the
 10 helicopter.
 11 CAPTAIN KIDD: That's correct.
 12 CHAIRPERSON: And what Colonel Vermaak
 13 said over the radio.
 14 CAPTAIN KIDD: That's correct, Mr Chair.
 15 CHAIRPERSON: But one of your groups was
 16 approaching from the north-western side and the other from
 17 the south-western side. Is that correct, more or less?
 18 CAPTAIN KIDD: Mr Chairman, if you say
 19 one of my groups?
 20 CHAIRPERSON: Well, you had people under
 21 your command, right? They –
 22 CAPTAIN KIDD: Oh, when they split up –
 23 CHAIRPERSON: Sub-groups. One of your
 24 sub-groups, the one you were with approached, I think, from
 25 the north-western side and the other group approached more

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1 or less from the south-western side, is that correct?
 2 CAPTAIN KIDD: That's correct, Mr
 3 Chairman, but as I said –
 4 CHAIRPERSON: Hang on – hang on. Now
 5 there is evidence that you're not aware of because you
 6 haven't been here since September 2012, that other people
 7 approached – I'm not quite sure when but other people
 8 approached from the eastern side. The NIU people
 9 approached from the eastern side, General Naidoo with some
 10 other K9 members who, unlike your K9 members, actually
 11 fired quite a lot of shots, approached from the south-
 12 eastern side. Now were you aware of that at the time, that
 13 they were there?
 14 CAPTAIN KIDD: No.
 15 CHAIRPERSON: So what is suggested here
 16 is that there may have been a bit of confusion because just
 17 as you didn't report that you'd gone there, to the JOC or
 18 Brigadier Calitz, General Naidoo didn't bother to do that
 19 either and I'm not sure whether the person in command of
 20 the NIU did that but there was a time when General Naidoo
 21 didn't know who all were there and when, you didn't know
 22 that General Naidoo was there, I take it, and General
 23 Naidoo didn't know you were there. So what is suggested is
 24 that at some point you had a situation where the strikers
 25 were in the middle on the koppie and there were police

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1 firing from both sides, thinking they were responding to
 2 what one could call enemy fire whereas in fact they were
 3 responding to the fire from each other. Do you understand?
 4 That's the point put.
 5 CAPTAIN KIDD: I do understand, Mr Chair.
 6 CHAIRPERSON: That's what Mr Bizos is
 7 busy with at the moment. You can't say you got there first
 8 because you don't know anything about the people who
 9 arrived on the other side. You don't know, you can't tell
 10 us, can you, whether they got there before you or after you
 11 or at the same time. Is that correct?
 12 CAPTAIN KIDD: Mr Chairman, I think I've
 13 looked at one of the photos and you can clearly see that
 14 myself and my members arrived first. I mean if you look
 15 from the – I don't know, I can't recall what of the slides
 16 it is, but you can see we arrived first before – I don't
 17 see any of General Naidoo's members or the NIU had not
 18 arrived at the koppie yet.
 19 CHAIRPERSON: Anyway that, I'm just
 20 trying to explain the line of questioning that Mr Bizos is
 21 following to help you to understand. Are you referring to
 22 one of the earlier photographs, I take it, taken from one
 23 of the helicopters?
 24 CAPTAIN KIDD: That's correct, Mr Chair.
 25 CHAIRPERSON: Anyway Mr Bizos, I've done

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1 my best to clear the ground for you. Would you like to
 2 carry on?
 3 MR BIZOS SC: Thank you, Mr Chairman.
 4 There are two or three vital points that I want to put to
 5 him. I see that I have six minutes, Mr Chairman.
 6 CHAIRPERSON: That's two minutes per
 7 vital point. Carry on. If you're obviously busy with an
 8 important point –
 9 MR BIZOS SC: Yes.
 10 CHAIRPERSON: - I won't bring the
 11 guillotine down too quickly. I thought we started at 10
 12 past myself, so according to my watch you've got a bit
 13 longer than you thought.
 14 MR BIZOS SC: Well, I'm glad to hear
 15 that.
 16 CHAIRPERSON: But if you're happy to use
 17 less time than I've afforded you, I won't object.
 18 MR BIZOS SC: Yes.
 19 MR WESLEY: Sorry, Chair, according to my
 20 reckoning there's another 14 minutes left at least.
 21 MR BIZOS SC: 14? Thank you very much,
 22 yes, I'll make use of that.
 23 CHAIRPERSON: A concurring judgment from
 24 Mr Wesley.
 25 MR BIZOS SC: Captain, a statement was

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1 made by Mr Mabasa, 17 a copy of which was made available to
 2 you.
 3 CHAIRPERSON: Will this be UUU9?
 4 MR BIZOS SC: Yes, Mr Chairman.
 5 CHAIRPERSON: What's his rank?
 6 MR BIZOS SC: He is –
 7 CAPTAIN KIDD: Constable.
 8 CHAIRPERSON: Constable?
 9 MR BIZOS SC: Yes.
 10 CHAIRPERSON: Constable Mabaso or Mabasa?
 11 Mabaso or –S-A? Alright.
 12 MR BIZOS SC: I see –
 13 CHAIRPERSON: Dated? What's the date of
 14 the statement? You've got it there, Captain? What's the
 15 date of the statement?
 16 MR BIZOS SC: It hasn't got a date, it's
 17 undated, Mr Chairman.
 18 CHAIRPERSON: I see, alright.
 19 MR BIZOS SC: But what I want to –
 20 CHAIRPERSON: Anyway, the Captain's got
 21 the statement, you've got the statement, put the passage to
 22 him.
 23 MR BIZOS SC: Paragraph 3.
 24 CHAIRPERSON: Can it be put on the
 25 screen, or not? Never mind, read it out to us please, Mr

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1 Bizos? The witness won't be at a disadvantage if –
 2 MR BIZOS SC: "On the very same day
 3 between 15:00 and 16:00 we were posted at the western side
 4 of the hill and we were briefed by Captain Kidd of
 5 Johannesburg tactical response team, TRT, who was our
 6 commander at that time. I was Pretoria Central TRT and
 7 other TRTs from different stations and public order
 8 policing members. Captain Kidd, chairing the briefing,
 9 informed us that we are about to approach the mountain or
 10 hill where the strikers were gathered at. We were told
 11 that those strikers were heavily armed with dangerous
 12 weapons, namely pangas, spears and possibly firearms since
 13 there were two" –
 14 CHAIRPERSON: Sorry, it's now on the
 15 screen. Perhaps, Mr Bizos had reached a point below what's
 16 on the screen so perhaps something could be done to adjust
 17 it so we can see it. Are you still reading from paragraph
 18 4, Mr Bizos?
 19 MR BIZOS SC: No, no –
 20 CAPTAIN KIDD: It's not that one.
 21 MR BIZOS SC: - I was finished paragraph
 22 3. The most important part is about to come, Mr Chair.
 23 CHAIRPERSON: I see. You're quoting now
 24 from the typed version. What is on the screen at the
 25 moment is the handwritten one. So let's have a look at the

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1 typed one, if that's possible.
 2 MR BIZOS SC: "We were told that those
 3 strikers were heavily armed with dangerous weapons, namely
 4 pangas, spears and possibly firearms since there were two
 5 police officers who were killed by the striking miners and
 6 their firearms were also taken by the same people who are
 7 the strikers and other innocent people were killed by the
 8 strikers. Our lives were force with fire - threatened in
 9 situation and again we were instructed to give them room or
 10 space for them to disperse peacefully if they volunteered
 11 to do so." Now that and also there are a number of other
 12 statements that say the same thing but we want to draw
 13 attention to the statement by Mr Momokgetla, M-O-K-G-E -
 14 CHAIRPERSON: Sorry, M-O-K?
 15 MR BIZOS SC: M-O-K-G-E-L-L-A at
 16 paragraph 5.
 17 CHAIRPERSON: What's his rank?
 18 CAPTAIN KIDD: Constable.
 19 MR BIZOS SC: Edward –
 20 CHAIRPERSON: [Microphone off,
 21 inaudible].
 22 MR BIZOS SC: Paragraph 5 –
 23 CHAIRPERSON: That will be UUU10,
 24 statement by Constable Mokgella.
 25 MR BIZOS SC: Let's read paragraph 5.

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1 "On the same day at about 3:15pm we were briefed by Captain
 2 Kidd that we were going to engage heavily armed protesters
 3 who were armed with dangerous weapons such as namely
 4 pangas, spears and possibly firearms, since they have been
 5 on the commission of aggressive" –
 6 CHAIRPERSON: It looks like murder, about
 7 murder.
 8 MR BIZOS SC: Aggressive –
 9 CHAIRPERSON: Two police officers who
 10 were killed in the line of duty. Did you –
 11 MR BIZOS SC: Like murder –
 12 CHAIRPERSON: Sorry, can I interrupt you,
 13 Mr Bizos? This is a rather inadequate summary but
 14 nevertheless it's a summary of part of the briefing you
 15 gave. Do you accept that that's what you said?
 16 CAPTAIN KIDD: No, I don't accept that,
 17 Mr Chairman.
 18 CHAIRPERSON: Did you tell the people to
 19 whom you were giving the briefing that some of the
 20 protesters with whom they might have to engage were armed
 21 or might well be armed?
 22 CAPTAIN KIDD: That's correct, Mr
 23 Chairman. As I testified on Friday, after I'd given the
 24 briefing questions were asked to me as to what firearms
 25 they could expect. Then the explanation was given by

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1 myself that there was two incidents that I knew of where
 2 firearms were taken from the people.
 3 CHAIRPERSON: You told us about the
 4 Friday. The one on the Sunday morning when the –
 5 CAPTAIN KIDD: The Sunday – the security
 6 guard –
 7 CHAIRPERSON: And the other one the
 8 Monday afternoon.
 9 CAPTAIN KIDD: That's correct.
 10 CHAIRPERSON: Alright. Did you also
 11 mention weapons such as pangas and spears?
 12 CAPTAIN KIDD: Yes.
 13 COMMISSIONER HEMRAJ: Did you use the
 14 word "engage" because I understand that has a particular
 15 meaning? Did you say that your members under your command
 16 were going to engage with them?
 17 CAPTAIN KIDD: No.
 18 COMMISSIONER HEMRAJ: What did you say?
 19 CAPTAIN KIDD: I did not say engage. I
 20 said our main objective was to look after the informal
 21 settlement. We were going to walk to the hill until we
 22 reached our intended position. Once we got there, any
 23 protesters or strikers that came to us that put down their
 24 weapons were allowed to pass. No word like "engage" was
 25 used by myself.

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1 COMMISSIONER HEMRAJ: Thank you.
 2 CHAIRPERSON: Did you use words such as
 3 "deal with" or –
 4 CAPTAIN KIDD: No, Mr Chairman.
 5 CHAIRPERSON: - something of that nature?
 6 In other words they – I mean by implication you were saying
 7 you might have to deal with them because you were, your men
 8 were going to take up position at the intended position,
 9 people might come, strikers might come from the hill. Your
 10 instructions were to get them to put down their arms and
 11 then allow them to proceed, provided they put down their
 12 arms. That was the instruction you gave.
 13 CAPTAIN KIDD: That's correct, Mr
 14 Chairman.
 15 CHAIRPERSON: So that meant by
 16 implication they would have dealings with or might well
 17 have dealings with these people and insofar as they may
 18 have arms, they had to put, to lay them down. Isn't that
 19 right?
 20 CAPTAIN KIDD: That's correct, Mr
 21 Chairman. If I can remember correctly, one of the words I
 22 used with regard to the strikers was, you will meet
 23 strikers coming through the line. No other words were
 24 used.
 25 CHAIRPERSON: When you talked about

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1 laying down their weapons, they must lay down their weapons
 2 did you mention the kinds of weapons they might have?
 3 CAPTAIN KIDD: That's correct, Mr
 4 Chairman.
 5 CHAIRPERSON: Pangas and spears?
 6 CAPTAIN KIDD: Pangas, spears, axes,
 7 sticks, knobkerries.
 8 CHAIRPERSON: So that part is right?
 9 CAPTAIN KIDD: That's correct.
 10 CHAIRPERSON: It's the "engage" that –
 11 insofar as that has a technical meaning, that's not the
 12 word you used.
 13 CAPTAIN KIDD: No, that's not the word
 14 and also the firearms, I did inform them about the
 15 firearms.
 16 MR BIZOS SC: We are informed that in the
 17 mass of statements that have been made by police officers,
 18 people involved, both sides, that similar statements to the
 19 one made by sub-paragraph (5) were made. Now what I want
 20 to ask you is this, however sad it may have been that
 21 people were killed and we don't know whether it was eight
 22 or 10 or who killed them, what made you believe that the
 23 people in the koppie were responsible for these previous
 24 deaths?
 25 CAPTAIN KIDD: I did not believe that

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1 those people were responsible.
 2 MR BIZOS SC: Why did you "op-stook" then
 3 the people under your command with language like this?
 4 CAPTAIN KIDD: I did not "op-stook", like
 5 Mr Bizos says, any members. I gave a briefing. How
 6 someone interprets it or writes it down is, that's what
 7 they do but I didn't tell – the only things I'd mentioned
 8 was about the firearms that were taken.
 9 CHAIRPERSON: The point of the question
 10 is that if you look at this statement - I know it's a
 11 summary that you don't go along with entirely – in relation
 12 to the firearms you talked about that they were possibly in
 13 possession of the firearms.
 14 CAPTAIN KIDD: That's correct.
 15 CHAIRPERSON: There was an element of
 16 possibility and no more than that but then you go on to
 17 say, according to the summary, "since they have been in the
 18 commission of offences like murder, et cetera." So what Mr
 19 Bizos is saying, that is it – according to this deponent
 20 and he says there are others too but let's concentrate on
 21 the one just for the moment, you said that people they were
 22 dealing with, the strikers that they would have to deal
 23 with were people who were involved in the commission of
 24 these earlier offences on the Sunday morning and the Monday
 25 afternoon. That's the point of the question, as I

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1 understand it. Now did you say anything of that nature?
 2 CAPTAIN KIDD: No, Mr Chairman. I did
 3 not know if the same strikers that were involved in
 4 incidents preceding to this were the same ones that were on
 5 the koppies. Why would I say something like that? I, my
 6 briefing to them was clear. This is what we had to do, we
 7 had to make the basic line, move forward, you will meet
 8 people coming down, that's what was said. Questions were
 9 asked to me and I said to them you can expect firearms and
 10 I mentioned the two incidents were the firearms were taken,
 11 that's it.
 12 MR BIZOS SC: Now –
 13 CHAIRPERSON: That might have been
 14 understood – you've got five minutes left – that might have
 15 been understood, would it be fair to say, by the people to
 16 whom you gave the briefing that these people they would be
 17 dealing with had been involved in those incidents because
 18 you warned them about the firearms and so which had been
 19 taken on the Monday and on the Sunday so they might have
 20 understood you to be saying that the people they were there
 21 with had been involved in those incidents. Would that be a
 22 fair summary? I take it your point is you didn't intend to
 23 say that but could you have been so understood?
 24 CAPTAIN KIDD: No, Mr Chairman, because
 25 you know beforehand people were talking. When we were at

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1 Lonmin people were talking about the incidents that had
 2 happened so you know, if any member was there that didn't
 3 know why we were there then I don't know, so everyone knew
 4 why we were there, why we were called. So you know
 5 whatever they wrote maybe was things that they heard on a
 6 previous occasion from someone else, it did not come from
 7 me.
 8 MR BIZOS SC: Now, would you accept that
 9 there was a possibility or a probability that the people
 10 that went into the koppie were or may have been unarmed
 11 people who sought refuge because of the earlier shooting of
 12 the people at scene 1?
 13 CAPTAIN KIDD: I cannot accept that
 14 because like I testified, what I saw when I approached were
 15 people that wanted to stay behind on the koppie were
 16 banging the weapons against each other. So to say that
 17 they didn't have weapons would not be correct.
 18 MR BIZOS SC: No, how many people did you
 19 actually see did you actually see in the bush, among the
 20 shrubs? How many people were there, did you see all that
 21 or did you just imagine that they were all murderers as you
 22 told your, or may have been understood by your members?
 23 CAPTAIN KIDD: Mr Chairman, I did not
 24 mention anything like murderers to my members.
 25 [10:07] I mean if they understood that the people on the

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1 koppie were murdered, that was not something that came from
 2 me.
 3 MR BIZOS SC: But you can't say whether
 4 there were a substantial number of people in the koppie
 5 that may have sought refuge from the earlier shooting?
 6 CAPTAIN KIDD: All I can say –
 7 MR BIZOS SC: Can you say that?
 8 CAPTAIN KIDD: No, all I can say is that
 9 the people that I saw had weapons. Lots of the people that
 10 wanted to leave passed us and they did leave.
 11 MR BIZOS SC: The question was –
 12 CHAIRPERSON: Sorry, he did give his
 13 answer. You said a lot of people passed you and you said
 14 and they didn't. I take it you meant they didn't have
 15 weapons?
 16 CAPTAIN KIDD: They didn't have weapons.
 17 CHAIRPERSON: Many of those who passed
 18 you didn't have weapons –
 19 CAPTAIN KIDD: No, they put down their
 20 weapons –
 21 CHAIRPERSON: And a number of – no, hang
 22 on. There are two possibilities. Some of the people who
 23 passed you put down weapons.
 24 CAPTAIN KIDD: That's correct.
 25 CHAIRPERSON: Did some of the people who

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1 passed you not put down weapons because they didn't have
 2 weapons to put down? In other words were they totally
 3 unarmed as they approached you?
 4 CAPTAIN KIDD: There were some, Mr
 5 Chairman.
 6 CHAIRPERSON: Ja, so some of those who
 7 approached you didn't have arms at all and you let them
 8 through.
 9 CAPTAIN KIDD: That's correct.
 10 CHAIRPERSON: Others had arms and once
 11 they'd put them down you let them through?
 12 CAPTAIN KIDD: That's correct, Mr
 13 Chairman.
 14 MR BIZOS SC: Well, you see, did it occur
 15 to you, now that you know some of the facts that have
 16 emerged before the Commission, that you and your fellow
 17 commanders not having any regard whatsoever to the standing
 18 orders, indiscriminately killed people in the koppie?
 19 CAPTAIN KIDD: That's not correct, Mr
 20 Chairman, because the incidents that I know of by my said
 21 with my members was when they were engaged at strikers that
 22 were charging at them.
 23 MR BIZOS SC: Now did you go –
 24 CHAIRPERSON: Mr Bizos, your time is up.
 25 I'll give you another minute or two to round off.

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1 MR BIZOS SC: Thank you. Did you go into
 2 the koppie yourself?
 3 CAPTAIN KIDD: Inside where the people –
 4 MR BIZOS SC: Yes.
 5 CAPTAIN KIDD: No.
 6 MR BIZOS SC: No. So that you can't tell
 7 the Commission whether any one of your members was in
 8 mortal danger of being killed by anybody in the koppie
 9 because you could not see?
 10 CAPTAIN KIDD: As I testified, I saw two
 11 incidents where strikers charged at my members.
 12 MR BIZOS SC: 18 people were killed. You
 13 can't tell us why they were killed, because the people
 14 under your command took it upon themselves partly as a
 15 result of the way that you briefed them, to
 16 indiscriminately kill people. You can't deny that.
 17 CAPTAIN KIDD: Mr Chairman, I can testify
 18 on two of the unfortunate murders that took place –
 19 MR BIZOS SC: I'm not talking about the
 20 two –
 21 CAPTAIN KIDD: - not on the 18.
 22 MR BIZOS SC: I'm not talking at the
 23 two –
 24 CHAIRPERSON: No, no, hang on, I don't
 25 think you mean the word "murders." You can testify as to

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1 two of the deaths. Is that right?
 2 CAPTAIN KIDD: That's correct.
 3 CHAIRPERSON: And you've done so
 4 extensively. You don't have to repeat your evidence. Do
 5 you have any knowledge as to the other 16 people who died
 6 in the vicinity of koppie 3?
 7 CAPTAIN KIDD: No knowledge.
 8 CHAIRPERSON: Is it possible that some of
 9 your members who were under your command were involved in
 10 those deaths, or as far as you were concerned were your
 11 members only concerned in the two that you've told us
 12 about?
 13 CAPTAIN KIDD: No, I cannot say they were
 14 not involved. There is a possibility.
 15 MR BIZOS SC: Are you not as their
 16 commander responsible for their conduct?
 17 CAPTAIN KIDD: I don't think I would be
 18 as a commander responsible because each person, each group
 19 had a section commander as well –
 20 MR BIZOS SC: Ja, we're talking about you
 21 as a commander of any of the people that may be responsible
 22 for the other 16 people –
 23 MS BALOYI: Chairperson, objection –
 24 MR BIZOS SC: - that died in the koppie.
 25 MS BALOYI: Objection, Chairperson. This

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1 is extremely unfair to the witness. Mr Bizos speaks
 2 about –
 3 CHAIRPERSON: I think let him ask the
 4 question. The witness in my observation can look after
 5 himself. I think we can allow the question. Mr Bizos's
 6 time is nearly up. Let him finish the question and let the
 7 witness answer. Depending on the answer there may be
 8 follow-up points, which you'll be able to deal with later
 9 in re-examination. Mr Bizos –
 10 MS BALOYI: Chairperson, what I wanted,
 11 what I need to do is that there is clarity about what
 12 conduct this witness is supposed to be responsible for.
 13 CHAIRPERSON: No, I understand. The
 14 witness has said I can talk about two of the deaths, so I
 15 talked about that and I've given my evidence. I don't know
 16 anything about the other 16. He then said, "Some of my men
 17 may be involved with them; I don't know that. I don't know
 18 about it." Mr Bizos's follow-up question is a conditional,
 19 sort of hypothetical question – if those people were
 20 responsible for some of the other deaths, do you accept
 21 responsibility? That's the question. I think we must give
 22 him a chance to answer. Do you accept responsibility for
 23 it?
 24 CAPTAIN KIDD: No, Mr Chairman.
 25 CHAIRPERSON: Alright. Mr Bizos, that's

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1 your time up, isn't it?
 2 MR BIZOS SC: I have other question, Mr
 3 Chairman –
 4 CHAIRPERSON: Mr Bizos –
 5 MR BIZOS SC: I have discussed the matter
 6 with Mr Matthew Chaskalson, who I'm pleased to inform you
 7 is on the mend, but that he's not likely to be available
 8 for the rest of the week. He sends his regards, and I will
 9 hand over some of the other questions that I haven't had
 10 time to put to the witness to my other colleagues,
 11 including Mr Chaskalson –
 12 CHAIRPERSON: I see, alright.
 13 MR BIZOS SC: - and the matter will be
 14 thus covered.
 15 CHAIRPERSON: Yes, yes, thank you, Mr
 16 Bizos.
 17 MR BIZOS SC: Thank you.
 18 CHAIRPERSON: I think this is possibly an
 19 appropriate stage to take the first comfort break. Who's
 20 going to cross-examine next? Mr Ntsebeza?
 21 MR NTSEBEZA SC: Yes, Mr Chairman.
 22 CHAIRPERSON: How long have you got?
 23 MR NTSEBEZA SC: Two hours.
 24 CHAIRPERSON: Two hours?
 25 MR NTSEBEZA SC: Yes.

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1 CHAIRPERSON: Alright, well we'll start
 2 the two hours, set the clock when we come back from the
 3 first comfort break.
 4 MR NTSEBEZA SC: Thank you, Mr Chairman.
 5 [COMMISSION ADJOURNS COMMISSION RESUMES]
 6 [10:43] CHAIRPERSON: The Commission resumes.
 7 I'm sorry we came back later than we had intended to, but
 8 we had housekeeping matters to attend to, including the
 9 planning of the schedule of witnesses for the rest of the
 10 week, but we'll be communicating with the parties about
 11 that in due course. But that's the reason we're back – I
 12 apologise. Captain Kidd, you're still under oath.
 13 WAYNE PETER KIDD: (s.u.o.)
 14 CHAIRPERSON: Mr Ntsebeza.
 15 MR NTSEBEZA SC: Thank you, Mr Chairman.
 16 Mr Chairman, just housekeeping, there was a list of
 17 documents for cross-examination Captain Kidd that was
 18 circulated and I believe that there are a number of new
 19 exhibits which with your leave we probably want to give
 20 them exhibit numbers now, if I will call them out, Mr
 21 Chairman, and they're made exhibits. I believed, however,
 22 that, Mr Chairman, before we start, there was something
 23 that Mr Bizos wanted to put on record.
 24 MR BIZOS SC: Yes, Mr Chairman, my
 25 attention has been drawn that we gave a wrong reference of

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1 the date in, of the statement of Mr Kubheka. We said that
 2 it was in –
 3 CHAIRPERSON: You said the 2nd of February
 4 2013 –
 5 MR BIZOS SC: UUU8, the date –
 6 CHAIRPERSON: Yes, what's the correct
 7 date?
 8 MR BIZOS SC: It's undated, Mr Chairman,
 9 and not February 2013.
 10 CHAIRPERSON: Alright, thank you. I've
 11 altered the note in my notebook. Thank you for telling us
 12 that.
 13 MR BIZOS SC: Thank you, Mr Chairman.
 14 CHAIRPERSON: Yes, Mr Ntsebeza.
 15 MR NTSEBEZA SC: Thank you, Mr Chairman.
 16 CHAIRPERSON: How many documents are new
 17 to which we must give numbers?
 18 MR NTSEBEZA SC: The statement, Warrant
 19 Officer Batsi's statement.
 20 CHAIRPERSON: Sorry?
 21 MR NTSEBEZA SC: Batsi, B-A-T-S-I.
 22 CHAIRPERSON: Sorry, spell again.
 23 MR NTSEBEZA SC: B-A-T-S-I.
 24 CHAIRPERSON: Batsi?
 25 MR NTSEBEZA SC: Batsi.

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1 CHAIRPERSON: Is he a policeman? What is
 2 his rank?
 3 MR NTSEBEZA SC: It's a warrant officer.
 4 CHAIRPERSON: Statement of Warrant
 5 Officer Batsi. That will be UUU11. Have you got a date of
 6 the statement?
 7 MR NTSEBEZA SC: I'll have to look, Mr
 8 Chairman.
 9 CHAIRPERSON: Well, never mind. We'll
 10 get to it in due course. And how many documents are you
 11 then going to hand in as new exhibits, apart from the
 12 statement of Warrant Officer Batsi?
 13 MR NTSEBEZA SC: There's another
 14 statement, Mr Chairman –
 15 CHAIRPERSON: UUU12, yes? What will that
 16 be?
 17 MR NTSEBEZA SC: Sergeant Mahlatsi's
 18 statement.
 19 CHAIRPERSON: Spell Mahlatsi for me,
 20 please.
 21 MR NTSEBEZA SC: Mahlatsi is spelt M-A-H-
 22 L-A-T-S-I.
 23 CHAIRPERSON: Thank you. So that's
 24 UUU12. Yes, do you have another one as well?
 25 MR NTSEBEZA SC: And then there is an

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1 additional statement from Sergeant Mahlatsi.
 2 CHAIRPERSON: We'll make that one UUU13.
 3 MR NTSEBEZA SC: Thank you, Mr Chairman.
 4 Then there's Constable Pelaelo. I don't know, in some
 5 places it's spelt P-A-L-A-E –
 6 CHAIRPERSON: Sorry, give me that again.
 7 How do you spell it? L?
 8 MR NTSEBEZA SC: P-E-L-A-E-L-O.
 9 CHAIRPERSON: T-E –
 10 MR NTSEBEZA SC: P for Penelope.
 11 CHAIRPERSON: Oh, sorry, P. P for
 12 Penelope. P-E?
 13 MR NTSEBEZA SC: L-A-E-L-O.
 14 CHAIRPERSON: I see. Constable – how do
 15 you pronounce it? P-E-L-A-E-L-O P, is it?
 16 MR NTSEBEZA SC: Pelaelo.
 17 CHAIRPERSON: And that will be UUU14.
 18 MR NTSEBEZA SC: Then there's the
 19 additional statement from the same witness, Mr Chairman.
 20 CHAIRPERSON: That's UUU15.
 21 MR NTSEBEZA SC: UUU15.
 22 CHAIRPERSON: Yes?
 23 MR NTSEBEZA SC: Then there is
 24 consolidated statement from Captain Sebatiwane.
 25 CHAIRPERSON: How does the Captain spell

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1 his surname?
 2 MR NTSEBEZA SC: I think it's already an
 3 exhibit, Mr Chairman –
 4 MS PILLAY: Chair, that's UUU3.
 5 MR NTSEBEZA SC: It's UUU3, yes.
 6 CHAIRPERSON: He's a constable, so that's
 7 in already, so we don't worry about that.
 8 MR NTSEBEZA SC: Thanks, Mr Chairman.
 9 And well –
 10 CHAIRPERSON: Is that it? Is that the
 11 list of new statements?
 12 MR NTSEBEZA SC: That's it, Mr Chairman.
 13 CHAIRPERSON: It takes us up to UUU15.
 14 MR NTSEBEZA SC: Mr Chairman, there is
 15 also –
 16 CHAIRPERSON: From UUU11.
 17 MR NTSEBEZA SC: There is also – before
 18 we begin, in the course of my cross-examination we'll be
 19 referring to a man with a red shirt and sometimes use that
 20 phrase interchangeably with Arsenal shirt. Now I would
 21 like the Commission to take judicial notice that there is
 22 in the UK a club called the Arsenal Football Club –
 23 CHAIRPERSON: And they won the FA cup the
 24 other day, I believe.
 25 MR NTSEBEZA SC: Yes.

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1 CHAIRPERSON: [Inaudible]-
 2 MR NTSEBEZA SC: Managed by Arsène
 3 Wenger.
 4 CHAIRPERSON: Only judges [inaudible].
 5 MR NTSEBEZA SC: Now their shirts are red
 6 with black stripes and it appears that one of the persons
 7 who fell down in relation to which maybe Captain Kidd will
 8 be asked about, was wearing this red shirt with black
 9 stripes and I think it was also with the insignia Arsenal.
 10 CHAIRPERSON: It was suggested on Friday,
 11 I think it was, that it may well be that his name is
 12 Gadave, that's what Ms Le Roux said, but she said she
 13 wasn't sure of that. Are you able to give us better
 14 information on the identity of this wounded Arsenal
 15 supporter?
 16 MR NTSEBEZA SC: I believe it can be, I
 17 don't know whether it has been cleared with SAPS, but I am
 18 aware that even though he was down in the field that it
 19 appears he did not die.
 20 CHAIRPERSON: Yes, it seems to be common
 21 cause that he's one of the survivors. So he will be, I
 22 don't know if he was arrested, presumably he was if he was
 23 injured. So he's one of Mr Mpofu's clients, one of the
 24 injured and arrested persons. But Mr Mpofu is not here
 25 today to help us, but his attorney is. Can you help us?

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1 MS KEETSE: Not at the moment, Mr Chair.
 2 I'll definitely be able to do that immediately after lunch.
 3 CHAIRPERSON: Thank you.
 4 MS KEETSE: Thank you.
 5 CHAIRPERSON: With the housekeeping now
 6 done, can we start with the cross-examination?
 7 MR NTSEBEZA SC: Just one housekeeping
 8 matter, Mr Chairman. You will have become aware that there
 9 was a presentation which we'll start with, headed
 10 "Positions and distances."
 11 CHAIRPERSON: Perhaps that can be an
 12 exhibit as well, I take it?
 13 MR NTSEBEZA SC: Yes, Mr Chairman –
 14 CHAIRPERSON: Shall we make that UUU16,
 15 and it's called presentation –
 16 MR NTSEBEZA SC: Positions and
 17 distances –
 18 CHAIRPERSON: Presentation "Positions and
 19 distances."
 20 MR NTSEBEZA SC: Yes, Mr Chairman.
 21 CHAIRPERSON: So one last question, Mr
 22 Ntsebeza, before you start. We haven't been given the –
 23 we've been given the presentation "Positions and
 24 distances," but we haven't been given the statements of
 25 Warrant Officer – if that's his rank – Batsi, and Sergeant

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1 Mahlatsi and Constable Paelo. I know we have a problem
 2 that our secretary is ill at the moment. That may be the
 3 cause why we haven't got them, but are you able to throw
 4 any light on the question of when copies of their
 5 statements can be made available to us?
 6 MS PILLAY: Chair, we're busy attending
 7 to it.
 8 CHAIRPERSON: Is that being attended to,
 9 I see. Alright, okay, well it sounds as you'd better start
 10 then, Mr Ntsebeza.
 11 MR NTSEBEZA SC: Thank you, Mr Chairman.
 12 CHAIRPERSON: I just want to check,
 13 Captain Kidd, you've got everything that's been referred
 14 to, have you?
 15 CAPTAIN KIDD: I have, Mr Chairman.
 16 CHAIRPERSON: You're able to deal with
 17 them insofar as it's possible for you to do so.
 18 CAPTAIN KIDD: That's correct, Mr
 19 Chairman.
 20 CHAIRPERSON: Alright.
 21 CROSS-EXAMINATION BY MR NTSEBEZA SC: Now
 22 Captain, perhaps let me presage my cross-examination by
 23 stating the obvious. We were not at what has now been
 24 referred to as scene 2 or koppie 3. None of us were there,
 25 and therefore we rely on witnesses like yourself and

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1 everybody else who was there to get a picture of what took
 2 place there. You appreciate that?
 3 CAPTAIN KIDD: Yes, I do.
 4 MR NTSEBEZA SC: Now in scene 2, unlike
 5 in scene 1, there were not media people, or I think there
 6 were not media people who captured what was happening, the
 7 shootings, in much the same way as in scene 1 the shootings
 8 were captured. Is that right?
 9 CAPTAIN KIDD: That's correct.
 10 MR NTSEBEZA SC: So we do have, however,
 11 some footage in the form of videos or in the form of clips
 12 taken in one case by Lieutenant Vermaak, and in some
 13 instances I think you will have seen by Captain – is it
 14 Ryland?
 15 CAPTAIN KIDD: Ryland.
 16 MR NTSEBEZA SC: Yes. He used his cell
 17 phone to capture some of the –
 18 CAPTAIN KIDD: That's correct.
 19 MR NTSEBEZA SC: And you will have
 20 appreciated that in the documents that you were shown, that
 21 there are several pictures, or several photos, video clips
 22 that have been sourced from largely, in fact if not
 23 exclusively, from SAPS, whether these are from Lieutenant
 24 Vermaak, Captain Ryland, and LCRC stills.
 25 CAPTAIN KIDD: That's correct.

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1 MR NTSEBEZA SC: That you appreciate?
 2 CAPTAIN KIDD: Yes.
 3 MR NTSEBEZA SC: So most of the time when
 4 I say let's turn to so, it's something that you are
 5 familiar with and it's something in relation to which you
 6 know what the sources are.
 7 CAPTAIN KIDD: That's correct.
 8 MR NTSEBEZA SC: Yes, now if we went to
 9 exhibit JJJ10.4546, and if we can put it up, Mr Chairman,
 10 and I think this was shown – now if we can blow this up –
 11 CHAIRPERSON: Sorry, describe this
 12 exhibit again, just to make sure we've got it on record.
 13 What is it?
 14 MR NTSEBEZA SC: This is JJJ10 –
 15 CHAIRPERSON: Yes, 4546?
 16 MR NTSEBEZA SC: 4546.
 17 CHAIRPERSON: Thank you.
 18 MR NTSEBEZA SC: Mr Chairman, if we can
 19 blow it up.
 20 CHAIRPERSON: I think it'd be better to
 21 zoom in than blow it up. There might be –
 22 MR NTSEBEZA SC: Zoom in, well –
 23 CHAIRPERSON: - fatal consequences if we
 24 do that.
 25 MR NTSEBEZA SC: Terrible pun, Mr

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1 Chairman. I don't know if we see much of the picture. Can
 2 you zoom it in such a way that we can show Captain Kidd's
 3 unit arriving at that place?
 4 CHAIRPERSON: Captain Kidd, can you help
 5 us by telling us where north is and south is?
 6 CAPTAIN KIDD: North is at the bottom,
 7 but we must go more to the topside.
 8 MR NTSEBEZA SC: Yes.
 9 CAPTAIN KIDD: Go more up.
 10 MR NTSEBEZA SC: Ja, it will be –
 11 CAPTAIN KIDD: More up.
 12 MR NTSEBEZA SC: Yes.
 13 CAPTAIN KIDD: Then go to the left, more
 14 to the left. Okay, there we are.
 15 CHAIRPERSON: Now is this – again give us
 16 where is north, south, east, west? Can you tell us?
 17 CAPTAIN KIDD: West is there where you
 18 can see the members.
 19 CHAIRPERSON: No, I can see members –
 20 CAPTAIN KIDD: That's the west side.
 21 North side is more where that small, if you look at the
 22 bottom right there's a round rock.
 23 CHAIRPERSON: Yes.
 24 CAPTAIN KIDD: That's north.
 25 CHAIRPERSON: Oh, that's north. Alright,

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1 well if we know where north is then we can find the other
 2 points of the compass ourselves. Now you say that round
 3 rock –
 4 CAPTAIN KIDD: Would be the northern
 5 side.
 6 CHAIRPERSON: - if you drew an arrow in
 7 that rock pointing to the bottom right-hand corner, that
 8 would be north.
 9 CAPTAIN KIDD: That will be north.
 10 CHAIRPERSON: Is that right? Okay.
 11 CAPTAIN KIDD: That's correct.
 12 MR NTSEBEZA SC: Which rock is this, Mr
 13 Chair?
 14 CHAIRPERSON: Bottom right-hand corner,
 15 you see there's a round rock, circular rock there?
 16 MR NTSEBEZA SC: Is that it?
 17 CAPTAIN KIDD: That's the north side.
 18 CHAIRPERSON: That's north. If you draw
 19 an arrow through that pointing to the bottom right-hand
 20 corner of the photograph, he says that's north.
 21 CAPTAIN KIDD: Yes.
 22 CHAIRPERSON: So west, east and south
 23 fall in line based on that.
 24 MR NTSEBEZA SC: Now there's the –
 25 CHAIRPERSON: You say now in the picture,

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1 in fact if one starts at that rock and moves towards, in
 2 the direction of the left upper corner of the photograph,
 3 there appears to be a track of some kind. Is that right?
 4 CAPTAIN KIDD: That's correct.
 5 CHAIRPERSON: That's almost going from
 6 north to south.
 7 CAPTAIN KIDD: That's –
 8 CHAIRPERSON: And about, if one starts at
 9 the rock, about two-thirds of the way across there's some
 10 people.
 11 CAPTAIN KIDD: That's correct.
 12 CHAIRPERSON: Is that your men?
 13 CAPTAIN KIDD: That's correct.
 14 CHAIRPERSON: Alright.
 15 CAPTAIN KIDD: That's the arrival of some
 16 of my members.
 17 MR NTSEBEZA SC: Where is that? Is that
 18 there? Because I want – this is the dry dam, isn't it?
 19 CAPTAIN KIDD: That's correct.
 20 MR NTSEBEZA SC: Now where are your men
 21 in relation to the dry dam as they are arriving there from
 22 the forward holding area 2?
 23 CAPTAIN KIDD: Okay, if you look at the
 24 dry dam you'll look –
 25 MR NTSEBEZA SC: Yes.

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1 CAPTAIN KIDD: - there's a dry dam. If
 2 you look to the right-hand side –
 3 MR NTSEBEZA SC: Yes.
 4 CAPTAIN KIDD: That's correct, where the
 5 dam –
 6 CHAIRPERSON: The bottom left-hand corner
 7 is the dry dam –
 8 CAPTAIN KIDD: Is the dry dam. There's
 9 the rocks –
 10 CHAIRPERSON: There are rocks –
 11 MR NTSEBEZA SC: Yes, these are your men?
 12 CHAIRPERSON: - at the bottom of the dam.
 13 CAPTAIN KIDD: That's correct.
 14 MR NTSEBEZA SC: So when you said to Mr
 15 Bizos's questions you were the first people to arrive in
 16 this area, you were referring to yourselves arriving here
 17 from the forward holding area 2?
 18 CAPTAIN KIDD: That's correct.
 19 MR NTSEBEZA SC: Yes.
 20 CHAIRPERSON: Sorry, I'm just reminded
 21 that this, because it's a zoomed-in picture, when we follow
 22 this later and read the transcript and compare it with this
 23 particular exhibit it won't be bottom left. But I think
 24 it's clear that we can see, if one goes down from the rock,
 25 which is the north pointer, in a southerly direction,

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1 there's a point where we find a group of men who are your
 2 members, and if one then goes left, but – well, effectively
 3 east, in an easterly direction, there is what looks like a
 4 dam wall with some trees on the edge, and then below them
 5 there are rocks, a number of rocks exposed, which are
 6 apparently the bottom of the dry dam. Is that –
 7 CAPTAIN KIDD: That's correct, Mr
 8 Chairman.
 9 CHAIRPERSON: Okay. So now we've got our
 10 bearings.
 11 MR NTSEBEZA SC: And in slide 3 – maybe
 12 we should put the presentation up, Mr Chairman, the one
 13 that is now exhibit UUU6 –
 14 CHAIRPERSON: 16.
 15 MR NTSEBEZA SC: 16, is UUU16.
 16 CHAIRPERSON: Are you talking about slide
 17 3 of exhibit UUU16? Is that correct?
 18 MR NTSEBEZA SC: Yes, Mr Chairman. We've
 19 just established that they have arrived and we've
 20 established where the dry dam is, the wall of the dry dam
 21 is, and you see where we point, if we could again zoom, you
 22 see where we put your position. Maybe you zoom less – ja.
 23 You would –
 24 CHAIRPERSON: What is on the – for those
 25 who will read the record later and won't have this slide in

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1 front of them, on the right-hand side there's a white
 2 rectangle with the words "Captain Kidd's unit" inside and
 3 two red arrows from the top of this rectangle. Then to the
 4 left of that there's a red circle and there's an arrow
 5 pointing to that and from a rectangle which contains the
 6 words "Captain Ryland's position?" So we're literally on
 7 the same page now, Mr Ntsebeza.
 8 MR NTSEBEZA SC: Would you have put your
 9 position to be there, Captain?
 10 CAPTAIN KIDD: My position?
 11 MR NTSEBEZA SC: Just ignore – yes, you
 12 say, you know you first had arrived from the forward
 13 holding area 2 in the previous picture you saw where we
 14 were fairly agreed that you were, you arrived in the area
 15 of the dry dam, the wall of the dry dam, as we saw here.
 16 CAPTAIN KIDD: That's correct.
 17 MR NTSEBEZA SC: Yes, now we are also
 18 pointing that there are other members from your unit, those
 19 are the ones.
 20 CAPTAIN KIDD: Can I just ask, did you
 21 say - it's my members, or Captain Kidd's members, not my
 22 unit, because my unit was TRT.
 23 MR NTSEBEZA SC: Yes –
 24 CHAIRPERSON: You've explained that you
 25 were in fact the overall commander of a grouping of various

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1 people from various units.
 2 CAPTAIN KIDD: That's correct, Mr
 3 Chairman.
 4 CHAIRPERSON: Some from your unit and
 5 some from other units, you had K9 people –
 6 CAPTAIN KIDD: If it says Captain Kidd's
 7 unit then that –
 8 CHAIRPERSON: Unit is the wrong word, ja.
 9 CAPTAIN KIDD: It's TRT members.
 10 CHAIRPERSON: Group or grouping would be
 11 a better word.
 12 CAPTAIN KIDD: Yes.
 13 CHAIRPERSON: Alright. Now remind me,
 14 was Captain Ryland one of your grouping?
 15 CAPTAIN KIDD: No he was – yes, he's pat
 16 of my grouping. He was the commander of Honeydew TRT.
 17 CHAIRPERSON: Yes, but you presumably are
 18 his senior, which is why you were in charge?
 19 CAPTAIN KIDD: That's correct.
 20 CHAIRPERSON: That's right, so he was a
 21 member of your –
 22 CAPTAIN KIDD: Grouping.
 23 CHAIRPERSON: - grouping.
 24 CAPTAIN KIDD: That's correct, Mr
 25 Chairman.

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1 MR NTSEBEZA SC: But you are quite
 2 comfortable that this is your unit?
 3 CAPTAIN KIDD: That's correct, my
 4 members.
 5 CHAIRPERSON: No, no, no, no, he doesn't
 6 like the word "unit." He's not comfortable with "unit."
 7 He prefers the word "group," so let's – we want him to be
 8 comfortable, don't we?
 9 MR NTSEBEZA SC: Now in this photo the
 10 leaders are taking their positions, are going forward, take
 11 cover behind the rocks, these rocks, or what rocks?
 12 CHAIRPERSON: You mean the rocks in the
 13 red circle?
 14 MR NTSEBEZA SC: Yes, Mr Chairman.
 15 CHAIRPERSON: The answer to my question
 16 is yes.
 17 CAPTAIN KIDD: If you say the leaders,
 18 you're talking about myself?
 19 [11:03] MR NTSEBEZA SC: Yes.
 20 CAPTAIN KIDD: Okay, in that picture I
 21 can tell you I was situated, you see where that arrow comes
 22 from Ryland's position? If you see the point, as that
 23 point stops –
 24 MR NTSEBEZA SC: Yes.
 25 CAPTAIN KIDD: That's about where I was.

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1 MR NTSEBEZA SC: You were there?
 2 CAPTAIN KIDD: On that, on that, where
 3 the edge of the dam wall, I was on that where it rises a
 4 bit, I was there.
 5 CHAIRPERSON: And you pointed out at one
 6 stage that there was a bushy of some sorts.
 7 CAPTAIN KIDD: There's a bush –
 8 CHAIRPERSON: And you were close to that
 9 bush between –
 10 CAPTAIN KIDD: - to my left.
 11 CHAIRPERSON: - between the arrowhead and
 12 the circumference of the circle.
 13 CAPTAIN KIDD: That's correct.
 14 CHAIRPERSON: One can see a bush.
 15 CAPTAIN KIDD: That's correct, Mr
 16 Chairman.
 17 MR NTSEBEZA SC: We want to go to slide
 18 4.
 19 CHAIRPERSON: Now here we see, this is
 20 from a different angle, we see the dam wall and we see two
 21 red circles, one of which has an arrow pointing to it from
 22 a rectangle which says "Captain Kidd?" So there's a
 23 question really on the photograph. Can you answer the
 24 question?
 25 CAPTAIN KIDD: That could be me, Mr

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1 Chairman.
 2 MR NTSEBEZA SC: Thank you. Well, we
 3 would like you to be more positive than that but we'll
 4 survive with that. This is where Captain Ryland is, isn't
 5 it?
 6 CAPTAIN KIDD: That's correct, those
 7 members that are –
 8 MR NTSEBEZA SC: Yes.
 9 CAPTAIN KIDD: - to the right of that
 10 Nyala, that are lying on the ground, Captain Ryland is
 11 among those.
 12 MR NTSEBEZA SC: Yes and this would be
 13 where he took some of his video clips.
 14 CAPTAIN KIDD: That's correct.
 15 MR NTSEBEZA SC: Right. And are we
 16 together in saying that that is where Mr Mkhonjwa's body
 17 was?
 18 CAPTAIN KIDD: That's correct.
 19 CHAIRPERSON: Sorry, just to make it
 20 clear. The group you're referring to, Captain Ryland's
 21 men, they are under the red line, are they –
 22 CAPTAIN KIDD: That's correct.
 23 CHAIRPERSON: - which stretches from the
 24 Nyala to the right-hand side of the picture and apparently
 25 the dry dam wall because that's what, the marking.

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1 MR NTSEBEZA SC: Yes, that's right.
 2 CHAIRPERSON: And between the Nyala and
 3 the bush which is to the left of the circle where Captain
 4 Kidd says he's possibly in the middle of that circle,
 5 that's Captain Ryland's men, is it?
 6 CAPTAIN KIDD: No, not Captain Ryland's
 7 men.
 8 MR NTSEBEZA SC: No, no –
 9 CHAIRPERSON: Sorry, sorry
 10 CAPTAIN KIDD: Captain Ryland is among
 11 those.
 12 CHAIRPERSON: Captain Ryland and a number
 13 of others.
 14 CAPTAIN KIDD: That's correct, Mr
 15 Chairman.
 16 CHAIRPERSON: Okay, that's more accurate.
 17 So that's to the left of the bush between that bush under
 18 the red line and the Nyala, that's correct?
 19 CAPTAIN KIDD: That's correct, Mr
 20 Chairman.
 21 MR NTSEBEZA SC: Then, Mr Chairman, I
 22 don't know whether you don't want to put on the record for
 23 posterity as to where, in relation to another bush - and
 24 can I just clear, when we talk about this koppie, that is
 25 the koppie that we're talking about, is that right?

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1 CAPTAIN KIDD: Part of it. Part of the
 2 bushy area that I referred to in my evidence earlier.
 3 MR NTSEBEZA SC: Yes, that's where people
 4 were darting in and out. When you say people were –
 5 CHAIRPERSON: Let me get clarity on that.
 6 Apart from the circle in which Captain Kidd says he's
 7 possibly to be seen, there's another circle more to the
 8 left just slightly to the right, above the Nyala that's
 9 being talked about, slightly –
 10 MR NTSEBEZA SC: Yes.
 11 CHAIRPERSON: And to the left of that
 12 circle, from there to the edge of the photograph are a
 13 number of bushes. That's the area you were pointing out.
 14 MR NTSEBEZA SC: Yes, Mr Chairman, and
 15 I'm saying that that formation there, that is the koppie.
 16 Does the Captain agree?
 17 CAPTAIN KIDD: I will agree to say that
 18 that's part of the koppie, yes.
 19 MR NTSEBEZA SC: Yes. And Mr Chairman,
 20 we put in that red circle the position of the body of Mr
 21 Mkhonjwa.
 22 CHAIRPERSON: Body N, isn't it?
 23 MR NTSEBEZA SC: And the –
 24 CHAIRPERSON: Body N?
 25 MR NTSEBEZA SC: And the place to the

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1 right of the body of Mr Mkhonjwa we put the, what we
 2 thought, what was thought at the time was the body but –
 3 CHAIRPERSON: You didn't put it, it was
 4 actually on the photograph.
 5 MR NTSEBEZA SC: Yes.
 6 CHAIRPERSON: To the right of that red
 7 circle –
 8 MR NTSEBEZA SC: Yes.
 9 CHAIRPERSON: Not the Kidd one but the
 10 other one –
 11 MR NTSEBEZA SC: Yes.
 12 CHAIRPERSON: - to the right of that is
 13 what we now understand to be the Arsenal supporter in the
 14 Arsenal jersey, the gentleman with the red top as it were.
 15 MR NTSEBEZA SC: Yes.
 16 CHAIRPERSON: Who fortunately survived
 17 the events of the 16th of August and we're going to hear his
 18 name after lunch.
 19 MR NTSEBEZA SC: Now we have established
 20 that we have Captain Ryland's unit there. Are there any
 21 rocks there in this area?
 22 CAPTAIN KIDD: Yes, there is.
 23 MR NTSEBEZA SC: Ja.
 24 CHAIRPERSON: I see that the exhibit on
 25 the screen doesn't contain something on exhibit UUU16 slide

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1 4, namely the name Mr Mkhonjwa with an arrow pointing down
 2 to him.
 3 MR NTSEBEZA SC: Yes, in this slide, Mr
 4 Chairman – oh, the one on the screen? It doesn't –
 5 CHAIRPERSON: It's an earlier version.
 6 It's like some of the things at Roots.
 7 MR NTSEBEZA SC: Yes.
 8 CHAIRPERSON: An earlier version of the
 9 final presentation.
 10 MR NTSEBEZA SC: Yes. Everything else
 11 looks the same but as you say, Mr Chairman, there would
 12 have been an arrow going down this way to say Mr Mkhonjwa
 13 in the presentation.
 14 CHAIRPERSON: When we read the record
 15 later in conjunction with this exhibit UUU16 we'll know
 16 what's going on.
 17 MR NTSEBEZA SC: Yes. No, that's true,
 18 Mr Chairman. Now we now know where you are, which is more
 19 or less what you also agree that is where you are. Now,
 20 you told us Mr Mkhonjwa and the man in the Arsenal shirt,
 21 in other words these two persons, your evidence was that
 22 they charged from here in the direction of these police,
 23 was it? Was it your evidence?
 24 CAPTAIN KIDD: That's correct.
 25 MR NTSEBEZA SC: Yes. So must we then

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1 assume that it was these police officers who shot at him?
 2 CAPTAIN KIDD: No, the ones situated in
 3 the dam, in the dry dam.
 4 MR NTSEBEZA SC: Where would this be,
 5 here or upwards there?
 6 CAPTAIN KIDD: It was both of those
 7 places that you pointed to but ja, Mr Chairman, if you look
 8 in the – you see in the middle of the dry dam there's a
 9 rock where there's a dark space. That's where members were
 10 lying.
 11 MR NTSEBEZA SC: Exactly, these are
 12 members. Mr Chairman, can you describe that for posterity?
 13 Those are SAPS members.
 14 CHAIRPERSON: Above the right hand red
 15 circle is what looks like a dark spot in the photograph,
 16 you say that is a number of members who were under your
 17 command.
 18 CAPTAIN KIDD: That's correct.
 19 CHAIRPERSON: Part of your group and they
 20 were, were they on the ground taking cover?
 21 CAPTAIN KIDD: They were lying down
 22 behind a little rock.
 23 CHAIRPERSON: Behind a rock, okay.
 24 MR NTSEBEZA SC: So the question was,
 25 it's probably from here that Mr Mkhonjwa was shot.

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1 CAPTAIN KIDD: Not only there. If you
 2 look just above that –
 3 MR NTSEBEZA SC: Yes.
 4 CAPTAIN KIDD: - there were also rocks
 5 there where also, I know after further discussion that's
 6 where, round about that area was where Warrant Officer
 7 Batsi and several other members were also standing.
 8 MR NTSEBEZA SC: In fact –
 9 CHAIRPERSON: Alright, so in other words
 10 if one proceeds from that point that I've just been
 11 describing and goes upwards to the left, immediately,
 12 directly above that there's a large area covered with a
 13 number of rocks and bushes and if one goes directly up from
 14 the rock behind which the people were taking cover and then
 15 goes to the left, at the beginning of that rocky area
 16 almost at the left end of it, that's the space where the
 17 witness says there were other people taking cover.
 18 CAPTAIN KIDD: That's correct, Mr
 19 Chairman.
 20 MR NTSEBEZA SC: Now if – I'm told that
 21 the times, eTV times for your arrival at the forward
 22 holding area 2 was 16:07:18 and the photo on slide 3 was
 23 taken at 16:07:18 and that's six seconds apart. It's just
 24 for us to orient ourselves but you have confirmed most of
 25 the positions that we wanted you to confirm where people

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1 were in relation to the rocks, which are the rocks, which
 2 are the thicket that people were hiding behind and now with
 3 more clarity we now know that this is the position of the
 4 members of the SAPS as the Chairman has just indicated,
 5 some on the dry wall, some where Captain Ryland was and
 6 some to the east or, as you look at the photograph, or
 7 higher up towards the – where on the picture we see Mr –
 8 but these are the positions. There were members there in
 9 terms of what you are saying. There were members here
 10 lying down and there were members along the dry wall and
 11 you have not disputed the probability that you are the
 12 person in that red circle. Now, can you get KKK – oh ja, I
 13 think KKK was going to be – we would like to look at
 14 exhibit KKK16.5127 which is slide 4 of the presentation,
 15 this is it. I think we have established that. Now what we
 16 want to – no, no, slide 4, slide 4. That's the one from
 17 which we have come, yes. Now just a small point here - go
 18 back to the slide from which you have come, slide 4, yes.
 19 Now what we want to canvass with you is that in that
 20 position you are not on the dam wall, you are slightly to
 21 the north of there, the northern side of the dam wall. Do
 22 you see that? You are not – you see that's where we draw
 23 the line but here you are, you are not exactly on the dam
 24 wall, you are –
 25 CHAIRPERSON: You say to the north, again

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1 you must forgive me but on this photograph where's north,
 2 where's south, where's –
 3 CAPTAIN KIDD: Okay Mr Chairman, there
 4 where I am, where I am there –
 5 CHAIRPERSON: Yes.
 6 CAPTAIN KIDD: - is the west.
 7 CHAIRPERSON: That's the west.
 8 CAPTAIN KIDD: North is at the bottom,
 9 bottom left-hand side.
 10 MR NTSEBEZA SC: This?
 11 CAPTAIN KIDD: This side. Yes, the
 12 bottom left-hand side of the picture.
 13 MR NTSEBEZA SC: Is that the north?
 14 CHAIRPERSON: It's the bottom left-hand
 15 corner of the photograph.
 16 CAPTAIN KIDD: That's the north. The
 17 western side is where I was, I came from the western side.
 18 The side where –
 19 CHAIRPERSON: [Microphone off, inaudible]
 20 from north to south there's a line –
 21 CAPTAIN KIDD: From –
 22 CHAIRPERSON: From north to south there's
 23 a line running from the bottom left-hand corner of the
 24 slide –
 25 CAPTAIN KIDD: Yes.

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1 CHAIRPERSON: - through to that Nyala
 2 which is substantially to the right of the rectangle in
 3 which Mr Mkhonjwa's name appears.
 4 CAPTAIN KIDD: That's correct.
 5 CHAIRPERSON: That's the axis north-
 6 south.
 7 CAPTAIN KIDD: That's correct.
 8 CHAIRPERSON: North being the bottom
 9 left-hand corner.
 10 CAPTAIN KIDD: That's correct, Mr
 11 Chairman.
 12 CHAIRPERSON: You're on the west and the
 13 other side is obviously east.
 14 CAPTAIN KIDD: That's correct.
 15 CHAIRPERSON: Right, so now we've got our
 16 compass bearings, Mr Ntsebeza, you're in business, you can
 17 carry on.
 18 MR NTSEBEZA SC: Yes, Mr Chairman, that's
 19 - I believe the Captain is agreeing that you are not
 20 exactly on the dry wall. You are to the west of the dry
 21 wall.
 22 CAPTAIN KIDD: When this photo was taken,
 23 that's when I said it was possibly me who was standing,
 24 yes, there.
 25 MR NTSEBEZA SC: Yes.

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1 CAPTAIN KIDD: Not on the dry wall.
 2 MR NTSEBEZA SC: Yes.
 3 CAPTAIN KIDD: That's correct.
 4 CHAIRPERSON: The dry wall as you look at
 5 the photograph is just above you.
 6 CAPTAIN KIDD: Is where that line is -
 7 CHAIRPERSON: Above you on the
 8 photograph.
 9 CAPTAIN KIDD: That's correct.
 10 MR NTSEBEZA SC: Chair, it's even clearer
 11 on the smaller screens but we are not seeing the smaller
 12 screen, Mr Chairman. Now can we put up exhibit OOO11?
 13 Before we get there, the point we also want to make is that
 14 this wall was between you here and the strikers who would
 15 be coming from that area.
 16 CAPTAIN KIDD: At this time when the
 17 photo is taken -
 18 MR NTSEBEZA SC: Yes.
 19 CAPTAIN KIDD: - that's correct.
 20 MR NTSEBEZA SC: Yes.
 21 CHAIRPERSON: When you say the strikers
 22 here you sort of waved your pointer about, the strikers
 23 were basically in that bushy area, were they, to the left
 24 of the circle and the arrow indicating where Mr Mkhonjwa
 25 was, is that correct?

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1 CAPTAIN KIDD: That's correct, Mr
 2 Chairman.
 3 MR NTSEBEZA SC: Yes. In fact it's going
 4 to take me to my next point. Now, if we could get exhibit
 5 OOO11 on the screen. Mr Chairman will be quite familiar
 6 with this one. Now we would like to look at the entry for
 7 16 minutes 08:42 where Lieutenant Vermaak is heard to be
 8 saying, "Alright guys, we've got them in the middle." Can
 9 we get to that?
 10 CHAIRPERSON: That's on the screen. And
 11 then it was clear that eight seconds later he says "They're
 12 going to break through."
 13 MR NTSEBEZA SC: Yes. Have you seen
 14 that, Captain?
 15 CAPTAIN KIDD: Yes, I do see that.
 16 MR NTSEBEZA SC: In fact you will see
 17 there that at some stage, I think at 16:09:25 he's
 18 interrupted by Brigadier Calitz and from previous evidence
 19 we have heard that, you know, if you are on the radio and
 20 somebody else speaks then that person gets interrupted and
 21 then - in other words the radio didn't seem to have two
 22 people, recording two people speaking at the same time.
 23 CAPTAIN KIDD: Yes, you can't speak two
 24 people at the same time.
 25 MR NTSEBEZA SC: Yes, that's why the

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1 transcript sometimes -
 2 CAPTAIN KIDD: Okay.
 3 MR NTSEBEZA SC: Now, Brigadier Calitz -
 4 after, incidentally it's been pointed out by my juniors,
 5 thanks - that between the interruption by Brigadier Calitz
 6 you see at 16:09:17 "JOC chopper." Do you see this? There
 7 you are, Lieutenant-Colonel Vermaak, "JOC chopper, two
 8 bodies, two bodies at the back of the second koppie, two
 9 bodies."
 10 CAPTAIN KIDD: That's correct.
 11 MR NTSEBEZA SC: And that obviously is
 12 reference to Mkhonjwa and the Arsenal shirt man.
 13 CAPTAIN KIDD: That's correct.
 14 MR NTSEBEZA SC: Then of course then
 15 Brigadier Calitz says what he says. At 16:09 he completes
 16 his report by saying "JOC, JOC, chopper two bodies" and
 17 "Two bodies at the back of the second koppie, two bodies."
 18 Do you see that?
 19 CAPTAIN KIDD: I do see that.
 20 MR NTSEBEZA SC: Yes. Now he obviously
 21 is -
 22 CHAIRPERSON: Can I ask a question? Are
 23 those two bodies that are being talked about, as far as you
 24 can see, the body of Mr Mkhonjwa and the Arsenal man?
 25 CAPTAIN KIDD: That's how I understood

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1 it, Mr Chairman.

2 MR NTSEBEZA SC: Now when he was asked

3 about this, when Lieutenant Vermaak testified, he said he

4 remembered seeing the bodies for the first time in the 20

5 seconds between the two reports, the reports that we have

6 given. You see there, there was a first report in this

7 exhibit which was saying "Alright guys, you have got them

8 in the middle." You see that?

9 CAPTAIN KIDD: I do see that.

10 MR NTSEBEZA SC: Yes and then there is

11 where then he says – and the time, I mean between those two

12 moments is 20 seconds – where he then says "Two bodies, two

13 bodies at the back of the second koppie." Now when he was

14 asked in his testimony he said that he remembered seeing

15 these bodies for the first time in that period, in the sort

16 of 20 seconds that I have now indicated to you between the

17 two reports, the one about the strikers trying to break

18 through and then when he starts to report two bodies down

19 at – do you see what I'm saying?

20 [11:23] CAPTAIN KIDD: Yes, I see.

21 MR NTSEBEZA SC: Yes. Now his

22 recollection, and we are painting this picture because we

23 want you to give a comment at the end, now let's go to –

24 what exhibit number did you give it, Mr Chairman, the

25 statement by Constable Pelaelo, exhibit –

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1 CHAIRPERSON: UUU –

2 MR NTSEBEZA SC: UUU14.

3 CHAIRPERSON: 14, or the additional

4 statement UUU15.

5 MR NTSEBEZA SC: Yes, where it seems that

6 what Lieutenant Vermaak testified about is confirmed by

7 this officer. Now in paragraphs 4 to 5, my summary of what

8 the Constable says there is that "Immediately after the

9 shooting of the man in the red T-shirt an Nyala came

10 rushing from" –

11 CHAIRPERSON: Sorry, this is paragraph 4.

12 MR NTSEBEZA SC: Yes.

13 CHAIRPERSON: This is paragraph 4.

14 CAPTAIN KIDD: Mr Chairman, there's –

15 which statement are we referring to?

16 CHAIRPERSON: He seems to be quoting from

17 UUU14 paragraph 4.

18 CAPTAIN KIDD: Okay.

19 CHAIRPERSON: Am I right, Mr Ntsebeza?

20 MR NTSEBEZA SC: Yes Mr Chairman. There

21 must be extra time given for deciphering this handwritten,

22 Mr Chairman.

23 CHAIRPERSON: Para 4? Are you troubling,

24 battling with para 4? "The next moment, while I was

25 looking for cover to hide, the same guy with the red T-

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1 shirt came" it looks like "leading the group aggressively,

2 saying" then there's something in the vernacular and then

3 he – that you can perhaps read for me, Mr Ntsebeza, and

4 then in brackets he says "kill them." "One of my

5 colleagues shouted to me that come to your right for cover

6 and they were then running to charge. I then shot two

7 rounds lower to the leader's thighs and two rounds towards

8 the abdomen but he was still jumping and waving his panga

9 and" - I'm not sure if there's a line missing at that

10 point, it looks like it "and then my" – it looks as if the

11 next line doesn't make sense. It does appear from the

12 photostat that there's something missing from the last

13 line. Can anybody here read, decipher for us the section

14 in the vernacular in respect of which the witness, the

15 deponent says it's the vernacular for "kill them?" Can you

16 help us, Mr Ntsebeza?

17 MR NTSEBEZA SC: Well, I'm told "abase"

18 is they must die, kill them.

19 CHAIRPERSON: How do you spell the words

20 in the vernacular?

21 MR NTSEBEZA SC: A-B-A-S-E, abase, let

22 them die.

23 CHAIRPERSON: I haven't got the original

24 of the statement, do we know what the last line is which

25 appears to be missing from the Photostat?

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1 MR NTSEBEZA SC: I certainly have only

2 copies, Mr Chairman, but the summary –

3 CHAIRPERSON: At any rate, for the

4 purposes that you –

5 MR NTSEBEZA SC: Yes.

6 CHAIRPERSON: - for your purposes we have

7 an admission by the Constable Paleal that he fired and he

8 appears to have fired four shots, two rounds towards the

9 thighs of the, the thigh of what he pertinently describes

10 as the leader and two shots towards his abdomen.

11 MR NTSEBEZA SC: And in paragraph 5, Mr

12 Chairman, which is where we would like to draw the

13 Captain's attention to, he does say that a Nyala came

14 rushing from his right which is –

15 CHAIRPERSON: To read paragraph 5 as

16 well, "The group then ran back inside the koppie as the

17 armoured vehicle Nyala came from my right-hand side

18 speeding and the guy with the red T-shirt was lying on the

19 ground, crawling" it looks like "crawling for his panga. I

20 heard all the shots," is that – "was stopped, I heard all

21 the shots was stopped and there was Nyala and the water

22 cannons."

23 MR NTSEBEZA SC: Yes.

24 CHAIRPERSON: And the top of the page,

25 the end of para 4 after that line that was missing, he

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1 seems to be saying "Breath faster, wondering that do I miss
 2 my target or hit it while shooting." So from that it
 3 appears that he wasn't sure whether the four rounds that he
 4 fired actually hit the person at whom he fired, as far as I
 5 can see.

6 MR NTSEBEZA SC: Now Mr Chairman, we
 7 would have loved to have played the Protea Coin security
 8 chopper video at 11:26 but in the interests of time we are
 9 not going to play that. What we will, however, be arguing
 10 is that the time indicated at that video at 11:26 falls
 11 within the 20 second gap that had been identified by
 12 Colonel Vermaak's transmissions. So when – and the
 13 important thing here is that they are identifying the
 14 Nyala, they see the Nyala coming rushing from the right.
 15 Now Captain, you must be aware or you must have been aware
 16 of these events, especially the Nyala coming as identified
 17 by the constable and as depicted in exhibit OOO11. There
 18 is no question of a Nyala that came rushing from the right
 19 and the times identified by the Protea security chopper
 20 video and by Colonel Vermaak in his testimony and reflected
 21 in the transcript of that Vermaak video which is exhibit
 22 OOO11, they all confirm (a) the presence of the Nyala
 23 rushing into the place and (b) that it happened at almost
 24 the same time period identified in all of these objective
 25 materials. Are you in a position to dispute that?

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1 CAPTAIN KIDD: Mr Chairman, I don't
 2 understand the question that was put to me. Was it that
 3 did the Nyala come there when, after the incidents of the
 4 shooting of these two people or was it what Colonel Vermaak
 5 said over the radio? I mean because if I even look at what
 6 was written here, nowhere it said which Nyala had to go to
 7 what place.

8 CHAIRPERSON: Well, I want to ask you
 9 about that but if I can just interrupt for a moment, I hope
 10 I assist and not the opposite but para 5 I read out earlier
 11 and of course he there talks about the armoured vehicle,
 12 the Nyala came from my right-hand side, he says. And then
 13 in 6 he says, "After a few minutes I then saw a police
 14 official inside the Nyala was outside and the medics came
 15 to inspect the lying or injured for medical treatment. The
 16 person I believe I shot was still alive as the medic" –
 17 medic or medics, I'm not sure – "removed" it looks like
 18 "him to check him and they even teared off the brown belt
 19 he was wearing on his left hand bicep and there was another
 20 guy lying on the ground, was just lying on the ground and
 21 he was still alive as the medics turned him upright to
 22 check whether he needed medical treatment immediately."
 23 Now that's what this constable says. Now does that
 24 coincide with your recollection of what happened?
 25 CAPTAIN KIDD: No, that does not, Mr

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1 Chairman. I mean first of all I don't know where this
 2 person was situated when he saw what he saw and he fired
 3 his shots. Secondly, the first time any medics arrived was
 4 much later, much later that I can recall.

5 CHAIRPERSON: I understand but let me ask
 6 you a question first to get that point out of the way.

7 CAPTAIN KIDD: Okay.

8 CHAIRPERSON: The evidence is, as I
 9 understand the medic came later, the medics came later but
 10 the evidence also is that before the medics came, Brigadier
 11 Calitz came in his Nyala with, amongst others, Colonel
 12 McIntosh and Colonel McIntosh, who has got some paramedic
 13 training, then went over to the person, to a person who was
 14 shot, I presume it's this person and tried to apply –

15 CAPTAIN KIDD: Not this one.

16 CHAIRPERSON: Not this one?

17 CAPTAIN KIDD: Not this one.

18 CHAIRPERSON: Not this one at all. So –

19 MR NTSEBEZA SC: Mr Chairman, it was
 20 somebody else.

21 CHAIRPERSON: - we're not talking about
 22 Colonel McIntosh –

23 CAPTAIN KIDD: No.

24 CHAIRPERSON: - in this case at all?

25 CAPTAIN KIDD: No.

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1 CHAIRPERSON: Yes. Of course that was at
 2 the north-western corner –

3 CAPTAIN KIDD: Body C.

4 CHAIRPERSON: That was body C, ja. So
 5 he's not talking about that.

6 CAPTAIN KIDD: No.

7 CHAIRPERSON: And you say the incident
 8 you witnessed was not followed immediately by the arrival
 9 of medics.

10 CAPTAIN KIDD: No.

11 CHAIRPERSON: They came later, is that –

12 CAPTAIN KIDD: That came much later.

13 MR NTSEBEZA SC: Ja, Mr Chairman, I
 14 didn't talk about medics. I'm simply talking about a
 15 Nyala. We say –

16 CHAIRPERSON: No, no, the reason the
 17 witness says that is that's what is in the statement. He
 18 talks about the medics, in the second line of para 6 "The
 19 medics came" and so on. Now the witness says the incident
 20 he saw wasn't followed immediately by the arrival of
 21 medics, that's his point. Let's try to get out from him
 22 how much of the statement he agrees with and how much he
 23 doesn't agree with.

24 MR NTSEBEZA SC: No, Mr Chairman, the
 25 only point that we want to make is that there are times

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1 that are recorded in all these exhibits, especially exhibit
 2 OOO11 and the Protea chopper video and the times are from
 3 between, just something to assist us, 16:08:42 and 16:09:32
 4 and that's a 20 second time period. The only argument we
 5 will make is that the man in the red shirt, the Arsenal
 6 shirt, the Arsenal man and Mkhonjwa were shot in that 20
 7 second period. That's what we will argue on the objective
 8 evidence that we'll – and all I was seeking to establish
 9 from you as a person who was there is whether you are in a
 10 position to dispute that? If you are, yes. If you are
 11 not, you are not and that's what we'll argue.
 12 CAPTAIN KIDD: Okay.
 13 MR NTSEBEZA SC: Are you in a position to
 14 dispute?
 15 CAPTAIN KIDD: The times that are given
 16 on these different videos –
 17 MR NTSEBEZA SC: Yes.
 18 CAPTAIN KIDD: - I cannot dispute.
 19 MR NTSEBEZA SC: Yes.
 20 CAPTAIN KIDD: Because I didn't take
 21 times, I don't know what was said, I also didn't listen the
 22 whole time to the radio. One thing I can dispute is the
 23 fact that when this constable wrote there that as the
 24 person was shot the Nyala arrived, that did not happen
 25 straight after that.

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1 MR NTSEBEZA SC: Well, their statements
 2 say what they say, like when you were being asked questions
 3 by Mr Bizos it seems to me that there are discrepancies
 4 between what members say and what you recollect being the
 5 position. Now your testimony was that Mr Mkhonjwa and the
 6 Arsenal shirt man charged at the police from beneath the
 7 trees. We have shown where the trees are. Do you remember
 8 that?
 9 CAPTAIN KIDD: I do.
 10 MR NTSEBEZA SC: Now our argument is
 11 going to be the following and it's going to be our argument
 12 throughout. It is going to be that it's not just two, the
 13 people that have been identified who came out of those
 14 bushes, it was a whole group of strikers and we'll show why
 15 they were getting out of those bushes as a group. They
 16 came running out of the koppie in that direction of your
 17 approaching line. That's what we'll argue. What will you
 18 say to that? Not just two people, a whole group.
 19 CAPTAIN KIDD: No, I would say that is
 20 not true. What I witnessed was just the two strikers that
 21 are mentioned.
 22 MR NTSEBEZA SC: You saw and the Chairman
 23 actually pointed those out when we were showing exhibit
 24 OOO1, that Colonel Vermaak was saying they are going to
 25 break through, they are going to break through. He could

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1 not have been referring to two people, would he?
 2 CAPTAIN KIDD: I don't know who Colonel
 3 Vermaak was talking about.
 4 MR NTSEBEZA SC: Well, we have shown, we
 5 have shown here in that exhibit that he was clearly talking
 6 to the people who were in that, in that video. He was
 7 photographing the events from his helicopter and he was
 8 informing the people on the ground, they are going to break
 9 through, they are going to break through. This is at the
 10 same time as you people are there. And he says that the
 11 reason that he made this report was because the entire
 12 group of around 50 tried to run out of the koppie, that was
 13 his testimony.
 14 CHAIRPERSON: Mr Ntsebeza, I know you're
 15 contending that the reference in the transcript where
 16 Captain Vermaak says what you – where Colonel Vermaak says
 17 what you said relates to this incident, I'm not – that may
 18 be right but I'm not sure that one can put that as a fact
 19 at this stage, but what I see from paragraph 2 of the
 20 statement UUU14 is it starts off, he starts off by saying
 21 when he's on duty, et cetera, with reaction group 2. "I
 22 was coming from south to north. While approaching the
 23 koppie plus-minus 30 striker miners came out of the koppie,
 24 holding spears, pangas, et cetera. One of them who was
 25 wearing a red blanket or a T-shirt was in front with a

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1 panga." Then he goes on in 3 to say he drew his handgun
 2 and he cocked it, et cetera, shouted at them to stop. One
 3 of them threw a spear towards him, it hit the ground,
 4 missed him and he then fired four shots towards them. They
 5 retreated, running back inside the koppie and then 4 is the
 6 paragraph that dealt with "The next moment as I was looking
 7 for cover the same guy with the red T-shirt came, leading
 8 the group aggressively." So what he seems to be saying is
 9 there were a group of people, he says about 30 who came out
 10 and he fired and they went back again and then they came
 11 forward again and again he talks about the group being led
 12 by the man in the red T-shirt. So there is an element of
 13 correspondence, as it were, between what Lieutenant-Colonel
 14 Vermaak was describing apparently and what this person is
 15 describing but I'm not quite sure that the witness is able
 16 to help us on that. Do you understand the discussion
 17 between Mr Ntsebeza and myself?
 18 CAPTAIN KIDD: I do, Mr Chairman.
 19 CHAIRPERSON: Constable Paleal who is
 20 describing some – an incident, in fact two incidents
 21 really, one after the other and he's firing and so forth.
 22 What appears to be common to them is someone in a red T-
 23 shirt who we assume is the Arsenal man. Now you saw the
 24 incident involving the Arsenal man, didn't you?
 25 CAPTAIN KIDD: That's correct, Mr

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1 Chairman.

2 CHAIRPERSON: But it sounds to me as if

3 your description of what you saw and what Constable Paleal

4 says do not correspond. Am I correct in that?

5 CAPTAIN KIDD: That's correct, Mr

6 Chairman.

7 CHAIRPERSON: Now, never mind the

8 question of whether the medics came immediately or later,

9 there may have been an element of telescoping there, let's

10 leave that out but there are other differences too, aren't

11 there, between your account and what is recorded here,

12 particularly in relation to the number of people involved.

13 CAPTAIN KIDD: That's correct.

14 CHAIRPERSON: On the strikers' side.

15 CAPTAIN KIDD: That's correct, Mr

16 Chairman.

17 CHAIRPERSON: Are there any other

18 significant differences?

19 CAPTAIN KIDD: That about the Nyala

20 coming straight away. I mean after the incident when the

21 people, when I testified that the people went back into the

22 koppie behind the bushes, there were shots fired. So at

23 that time, people that were standing in the open or went

24 and took cover, they went and took cover, everyone just lay

25 and waited for a while. So that was what – that's the only

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1 other difference that I can say.

2 CHAIRPERSON: You see in para 4 he

3 describes, this is now the second charge, as it were, by

4 the group led or apparently led by the man in the red T-

5 shirt and he then fires shots as he describes. Then the

6 arrival of the Nyala is dealt with in para 5.

7 CAPTAIN KIDD: Mm-mm.

8 CHAIRPERSON: And that's preceded, that's

9 introduced with the words "The group then ran back inside

10 the koppie as the armoured vehicle, the Nyala, came from my

11 right-hand side."

12 [11:42] Now is that the part you don't agree with?

13 CAPTAIN KIDD: Yes, that's correct.

14 CHAIRPERSON: You say the Nyala came

15 after the group had run back into the koppie.

16 CAPTAIN KIDD: That's correct, Mr

17 Chairman.

18 CHAIRPERSON: What was the time lapse

19 between the two, would you say?

20 CAPTAIN KIDD: Mr Chairman, I can't

21 exactly say what was the time, but it wasn't a long time.

22 You know, it wasn't 10 minutes. It was more to the, about

23 five minutes side.

24 CHAIRPERSON: Yes, so the use of the word

25 "as" the group then ran back inside the koppie, "as" the

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1 armoured vehicle came from my right-hand side, you say

2 that's not correct?

3 CAPTAIN KIDD: That's not correct.

4 CHAIRPERSON: Perhaps instead of "as" one

5 should say "some time afterwards," or "approximately five

6 minutes afterwards" would be correct. Is that –

7 CAPTAIN KIDD: That's correct, Mr

8 Chairman.

9 CHAIRPERSON: That's the way you put it.

10 CAPTAIN KIDD: That's correct.

11 COMMISSIONER HEMRAJ: Mr Ntsebeza, can

12 you assist me with something? A question was put to the

13 last witness I think about a Nyala trying to block or cut

14 off one of the strikers. Does it have any reference to the

15 Nyala that's mentioned here in –

16 CAPTAIN KIDD: No.

17 COMMISSIONER HEMRAJ: - paragraph 5?

18 MR NTSEBEZA SC: That's in relation, and

19 I think Mr Chairman probably also was misidentifying who is

20 being killed in this line of cross-examination. That Nyala

21 you are talking about was relevant to the death of Mr

22 Mpumza and you will recall that there was a whole host of

23 statements by different people in describing how Mr Mpumza

24 died.

25 COMMISSIONER HEMRAJ: Yes.

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1 MR NTSEBEZA SC: This is seeking to

2 describe the circumstances and the events around the death

3 of Mr Mkhonjwa.

4 COMMISSIONER HEMRAJ: Yes, thank you very

5 much for clarifying that. Thank you.

6 MR NTSEBEZA SC: Now, Captain, what we

7 will be saying – and I put this to you and it should be

8 easy for you to recall – is that Mr Mkhonjwa and the man in

9 the Arsenal T-shirt may well have been in the front, or

10 towards the front, but what we are seeking you to confirm

11 is that it wasn't just the two of them. There was a – and

12 we'll tell you why; there was a whole group of them that

13 emerged, from 40 to 50 – that's why some statements are

14 giving that number. Are you able to concede that? The

15 fact that Mr Mkhonjwa and the man in the Arsenal T-shirt

16 may have been to the front of the group is neither here nor

17 there, but what I put to you, and if you throw back your

18 mind to what was happening at the time, it would have been

19 a whole group of people that emerged from that koppie and

20 from those thickets.

21 CAPTAIN KIDD: Sorry, that's not correct.

22 What I saw is that the group stayed behind. Two members of

23 the group came out of the bushes.

24 MR NTSEBEZA SC: Now and what you say

25 about the Nyala, if we have to do so during tea break or

1 whatever, we will –

2 CHAIRPERSON: I suggest we take the tea

3 break now, but if you prefer to deal with this question

4 before we do so I'll obviously accede to your request, but

5 what –

6 MR NTSEBEZA SC: No, Mr Chairman, I –

7 CHAIRPERSON: I'd like to take the tea

8 break soon, but let me put it this way; you can decide when

9 precisely it's appropriate to take it.

10 MR NTSEBEZA SC: No, Mr Chairman, we'll

11 not play the video now, but I just want the witness to know

12 that what he says about the Nyala will not be confirmed by

13 the video footage of that incident. The objective facts,

14 or the objective evidence of the Lonmin video will militate

15 against your submissions which you made to the Chairman

16 with regard –

17 CHAIRPERSON: We'll look at that after

18 we've taken the tea break.

19 MR NTSEBEZA SC: We can take the tea

20 adjournment at this stage, Mr Chairman.

21 CHAIRPERSON: Thank you.

22 [COMMISSION ADJOURNS COMMISSION RESUMES]

23 [12:15] CHAIRPERSON: The Commission resumes.

24 Captain Kidd, you're still under oath. Before Mr Ntsebeza

25 continues I want to ask you about one thing, just to get

1 clarity in my own mind. My understanding was you

2 effectively testify about two incidents where one or more

3 strikers were shot. For instance the one dealt with in

4 involving the deceased N and that is slide 236 of exhibit

5 L. And then the second one is the incident involving

6 deceased C. I'm using the language of slide C, of slide L,

7 sorry of exhibit L. That's slide 246, now slide 246 is the

8 one involving Constable Sebatjane and the spears and

9 Captain Sebatjane and his attacker falling on the ground

10 and so forth. And the Nyala that was either there already

11 or arrived shortly thereafter, Lieutenant-Colonel McIntosh

12 then came on the scene and tried to administer CPR and so

13 on. The other incident 236, there's no mention in the

14 slide, slide 236 of exhibit L about an Nyala and that, as I

15 understand it, is the incident that you're being cross-

16 examined on at the moment. You say an Nyala arrived but

17 approximately five minutes afterwards, am I understanding

18 correctly?

19 CAPTAIN KIDD: That's correct.

20 CHAIRPERSON: Okay, thank you. Sorry, Mr

21 Ntsebeza.

22 MR NTSEBEZA SC: Thank you, Mr Chairman.

23 CHAIRPERSON: I need clarity for my own

24 mind that what I understood to be the case was in fact what

25 the witness agreed with.

1 MR NTSEBEZA SC: Indeed, Mr Chairman. Mr

2 Chairman, I would like to come to that portion of the

3 cross-examination when we play the Lonmin video but we'll

4 do that towards the end of my cross because there are

5 certain fairly vital points that I want to establish at

6 this stage. Captain –

7 CHAIRPERSON: We'll you're in charge of

8 your cross-examination.

9 MR NTSEBEZA SC: Thank you, Mr Chairman.

10 Captain, what I want to put to you and I've already done so

11 in a way, is that you have read the statements that were

12 handed to you over the weekend. You will found that in the

13 statement's exhibits UUUL to UUU15 and those are the

14 statements of Warrant Officer Batsi, Sergeant Mohlatsi,

15 Constable Palaeo. In all of those statements you will find

16 that what they say and it is clear they are describing the

17 incident in which Mr Mkonjwa and the man in the arsenal

18 shirt were killed, I mean –

19 CHAIRPERSON: The man in the arsenal

20 shirt wasn't killed.

21 MR NTSEBEZA SC: Yes, perhaps I must read

22 it up. It is about the incident in which the two persons,

23 Mr Mkonjwa and the man in the arsenal shirt were shot. Now

24 all of them in those statements they say they saw a group

25 of people charging towards – they charged. They saw a

1 group of people running towards the police. Now did you

2 notice that in the statements that you had overnight? I

3 can give you the reference where Warrant Officer Batsi says

4 this in paragraphs 3 and 4 of his statement etcetera,

5 etcetera. But did you notice that when you were reading

6 their statements?

7 CAPTAIN KIDD: No I can say I didn't

8 notice it but if you can point out to me in the different

9 statements please.

10 MR NTSEBEZA SC: Well I thought we could

11 save the time. UUU11, I think that would be Warrant

12 Officer Batsi's statement. You will see it doesn't have

13 numbers but the next paragraph, the next paragraph says he

14 approached the mountain, the group of males armed with

15 pangas, knobkieries, spears, etcetera, can you see that?

16 CAPTAIN KIDD: Yes.

17 MR NTSEBEZA SC: And he carries on how he

18 shot and essentially he says, "as we approached the

19 mountain the group of males armed with pangas and

20 knobkieries, spears as well the axes, so I engaged myself

21 with the one who was approaching towards me with a panga

22 and I shot one bullet in front of his feet. But the guy

23 who was wearing a football T shirt keep on coming towards

24 me and I shot the second shot on the ground. But the guy

25 didn't give up, I was armed with a 9 millimetre." All I

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1 want to point out is that he talks about a group.
 2 CAPTAIN KIDD: Yes he talks about a group
 3 but then he indicates that one person came out from the
 4 group and that's the person that he shot.
 5 MR NTSEBEZA SC: Ja that's exactly the
 6 point, we have point that it may well have been. I don't
 7 whether – because you could go past this, all I want you to
 8 concede is that it's not as though just two people emerged
 9 and as you say he charged the police line, the point we
 10 want to make here is that's it a group of people among
 11 those Mr Mkonjwa and the man in the arsenal shirt. And I
 12 said to you earlier on it may well be that they were in the
 13 front of that group or it may well be that, you know, they
 14 were leading but the essence here is that it was a group of
 15 them. This is what Vermaak says in the other evidence,
 16 this is what the other police officers say. Sometimes they
 17 give them a number, approximately 40 people, one of these
 18 statements say that. Approximately 50 people. Vermaak
 19 also said approximately 50 people, they are going to break
 20 the wall, they are going to break through. So the point
 21 here is it was a group – you would remember this, you were
 22 there. It was a group of them, ahead of the line there may
 23 have been Mkonjwa and the man in the red arsenal shirt.
 24 Are you prepared to concede that? We're talking about a
 25 group of people which came out of those rocks and or

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1 bushes.
 2 CAPTAIN KIDD: I also testified of a
 3 group that was standing there but thereafter that two
 4 people ran out from this group and came towards the
 5 members. If you read other people's statements it is also
 6 indicated, they mention two people came running out and
 7 there's clarity on the one with the red shirt coming back,
 8 going back in and then coming out again.
 9 MR NTSEBEZA SC: But what I'm saying to
 10 you and I want to really go past this is that you do not
 11 really say that it was a group of people who came out
 12 rushing. And I'll tell you why because I'm going to get
 13 into the next thing as to why these people were coming as a
 14 group not just as the two individuals which you single out
 15 as they being the ones who were at the head.
 16 CAPTAIN KIDD: No, I testified that the
 17 group was standing there. The ones in front were crouching
 18 down, the ones at the back were standing up and these two
 19 individuals came running out apart from the group. The
 20 rest of the group stayed behind.
 21 CHAIRPERSON: Did the group remain
 22 stationery or did they also possibly move forward but more
 23 slowly than the two about whom you were talking?
 24 CAPTAIN KIDD: No, Mr Chairman, they
 25 remained stationery and I also mentioned it earlier they

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1 were banging their weapons against each other. They were
 2 stationery, these two individuals came running out, they
 3 were far from where the other people were at the back of
 4 them.
 5 MR NTSEBEZA SC: Is it your evidence that
 6 it was not a group of people that ran towards your unit?
 7 CAPTAIN KIDD: That's correct, that's my
 8 evidence.
 9 MR NTSEBEZA SC: It was only two people
 10 who ran out.
 11 CAPTAIN KIDD: The others remained
 12 stationery, it was only those two that came out.
 13 MR NTSEBEZA SC: Now, I want to explore
 14 with you why it is that we are going to be arguing that the
 15 men were running towards your unit. If you could turn to
 16 JJJ10, 4547 and I think it is what – it would be slide 3 in
 17 the presentation we would see that number. We now know
 18 where you were, at the edge of the dry dam and this
 19 photograph was taken at about 16:07.24. Now you see the
 20 two water canons on either side of the koppie, spraying
 21 into the koppie, do you see that?
 22 CAPTAIN KIDD: One on each side, yes
 23 that's correct. I see it.
 24 MR NTSEBEZA SC: And then the blue. So
 25 on both sides of the koppie are water canons. Do you see

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1 that?
 2 CAPTAIN KIDD: Yes, I do see that.
 3 MR NTSEBEZA SC: Can we zoom into the
 4 protesters because we want to locate where they are? Here
 5 is a group of protesters.
 6 CAPTAIN KIDD: That's correct.
 7 MR NTSEBEZA SC: You agree. They appear
 8 to be moving in the direction of the dry dam. Yes I don't
 9 know in terms of west and east, Mr Chairman, in the latest
 10 configuration but they seem to be moving in that direction.
 11 CHAIRPERSON: Ms Baloyi wishes to say
 12 something.
 13 MS BALOYI: Chairperson, perhaps Mr
 14 Ntsebeza can help us. We can't see any movement and I
 15 can't see any particular direction that these people are
 16 facing.
 17 MR NTSEBEZA SC: Mr Chairman, the
 18 argument is going to be that on being water cannoned from
 19 these directions and from what we now know was the end
 20 result –
 21 CHAIRPERSON: You see the point is you
 22 can't put it as a definite proposition they were there,
 23 what you can say is on the probabilities regard being had
 24 to the fact that water was being sprayed at them they were
 25 likely to have moved in a particular direction. You can't

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1 put it higher than that.

2 MR NTSEBEZA SC: Yes, no I accept that,

3 Mr Chairman. Perhaps the word to use is they seem or what

4 is your recollection if any –

5 CHAIRPERSON: Sorry to interrupt you, if

6 you look carefully at this picture, you can see what looks

7 like several directions. If one moves from the blue jet of

8 water to the left you can see people moving towards the

9 left of the photograph and a number of them have got –

10 appear to be walking. I mean their legs are apart, so it

11 does look as if they are – they're not standing still with

12 their legs together. They appear to be moving, walking as

13 it were. That's moving towards the left then there are

14 other people closer to the dam. I'm not sure one can say

15 with the same certainty as one can respectively to the ones

16 I've just referred to that they're moving towards the dam

17 but they're certainly facing in that direction. And I

18 think there are one or two as far as I can see whose legs

19 are apart and appear to be walking. But I don't think one

20 can put it any higher than that. Isn't that correct?

21 MR NTSEBEZA SC: Mr Chairman, I don't

22 know whether the video at CC22 at 10 minutes would not

23 assist us.

24 CHAIRPERSON: It may solve the problem.

25 Let's look at that and then we'll see whether Ms Baloyi's

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1 objection has still got any substance. I haven't dismissed

2 it yet.

3 MR NTSEBEZA SC: CC22 at 10 minutes.

4 [VIDEO SHOWN]

5 MR NTSEBEZA SC: To 10 minutes but I

6 cannot ignore the voice over that says the people seem to

7 be caught there in the middle.

8 [VIDEO SHOWN]

9 MR NTSEBEZA SC: You see the water canons

10 spraying but –

11 CHAIRPERSON: It didn't seem very clear

12 to me I'm afraid, Mr Ntsebeza.

13 MR NTSEBEZA SC: I thought with the zoom

14 –

15 CHAIRPERSON: On the soundtrack there was

16 reference to people apparently moving towards the centre of

17 the koppie as a result of the spray from the water canon

18 but I don't think one can take it further than that. It

19 doesn't say where they went, they just appear to have taken

20 evasive action. That's all I can see.

21 MR NTSEBEZA SC: The witness may be able

22 to see because we can show you, Mr Chairman on the laptop

23 being arrested, the detained and injured have got a clearer

24 picture on the laptop of the water canons. My colleagues

25 from SAPS could come along when we show you that footage.

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1 I don't think it's condensed yet.

2 CHAIRPERSON: It's certainly not on the

3 slide we can see on the screen at the moment. I can't see

4 the detail that you talk about, Mr Ntsebeza, I'm sorry.

5 [12:35] MR NTSEBEZA SC: Mr Chairman, wouldn't be

6 an arrangement between us and SAPS, we watch we have on

7 this laptop and where –

8 CHAIRPERSON: Perhaps you could do that

9 at lunchtime and we could –

10 MR NTSEBEZA SC: Yes, Mr Chairman.

11 CHAIRPERSON: - have the report –

12 MR NTSEBEZA SC: And then if we –

13 CHAIRPERSON: - after that?

14 MR NTSEBEZA SC: Yes, we could –

15 CHAIRPERSON: And once you've identified

16 the things particularly you can then show them to us after

17 lunch or something, if it can be, agreement on the point

18 can be reached.

19 MR NTSEBEZA SC: Thank you, Mr Chairman.

20 I think we'll take that route. But did you hear that there

21 was a voiceover there where – and I don't know if you did –

22 "Alright guys, you have got them in the middle" - did you

23 hear that?

24 CAPTAIN KIDD: I did hear that. I also

25 heard that there was another place where people had come

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1 out of the koppie and they were being arrested.

2 MR NTSEBEZA SC: Yes. In fact at 11:22

3 we'll show that Colonel Vermaak is saying, "They are going

4 to break through. They are going to break through." Did

5 you hear that?

6 CAPTAIN KIDD: No, I didn't hear that.

7 MR NTSEBEZA SC: Okay. We'll canvass

8 that with your lawyers, but as indicated, it was Lieutenant

9 Vermaak's evidence that they were about to break through

10 towards where your unit was. Would you contest that?

11 CAPTAIN KIDD: Yes, I do, because it was,

12 it wasn't said they're going to break through on the

13 western side.

14 MR NTSEBEZA SC: Well, where would they

15 have been breaking through to get to? From what side –

16 CAPTAIN KIDD: That I cannot –

17 MR NTSEBEZA SC: - in your view –

18 CAPTAIN KIDD: That I cannot answer,

19 because he was above in the chopper.

20 MR NTSEBEZA SC: Well, his evidence – and

21 we'll probably have to find the reference now, his evidence

22 was that they were about to break through towards where

23 your unit was, or your people were. At that stage he could

24 not see your men. He did not know that your men had

25 approached the dry dam, and presumably the strikers also

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1 could not see because your men had only within the last
 2 minute or so arrived on what I call the western edge of the
 3 dry dam.
 4 CAPTAIN KIDD: What question are you
 5 asking?
 6 MR NTSEBEZA SC: So what it means – and
 7 this is the point we are making – is that when the strikers
 8 ran towards your unit, as we indicated, they were in fact
 9 pushed in your direction by the water cannons. That's the
 10 whole point of this exercise. When you see this group of
 11 40 to 50 people rushing out of the koppie, out of the
 12 bushes towards where your unit is, towards where your
 13 people are, it is because they are running away from the
 14 water cannons which are propelling them in that direction.
 15 CAPTAIN KIDD: I don't think –
 16 MR NTSEBEZA SC: And they're running away
 17 from those water cannons –
 18 CAPTAIN KIDD: Okay, I don't –
 19 MR NTSEBEZA SC: They ran into your unit
 20 as your unit approached the dry dam.
 21 CAPTAIN KIDD: I don't see it that way.
 22 The people that I saw, the group that I saw were
 23 structured; they were standing there, they were banging
 24 their weapons against each other. They didn't want to go
 25 nowhere. They were standing still, singing or shouting,

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1 making funny noises.
 2 MR NTSEBEZA SC: Yes, but you probably
 3 never thought of the effect of the people being propelled
 4 by the water cannons? You can't deny that water cannons
 5 were used there and you in fact have confirmed where the
 6 water cannons were. In a subsequent slide we were able to
 7 see where at least miners were, and the Chairman indicated
 8 that, you know, in the position of their feet they are
 9 walking, they are moving. They are not stationary.
 10 CAPTAIN KIDD: That's correct.
 11 MR NTSEBEZA SC: Yes.
 12 CAPTAIN KIDD: On that slide, yes.
 13 MR NTSEBEZA SC: Yes, on that slide.
 14 What we are then saying is that our argument is going to be
 15 that far from these people charging at you because they
 16 were either possessed or whatever descriptions you gave,
 17 they were rushing out of that koppie and out of those
 18 thickets precisely because they were being water cannoned,
 19 and they were water cannoned in the direction of where your
 20 unit was. They were being flushed out. They were
 21 trammelled in a particular direction, and that's what our
 22 argument is going to be.
 23 CAPTAIN KIDD: No, what I'll say, if you
 24 look at the slide that you did show, if the water cannons
 25 were throwing the water like they were, it's a small

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1 percentage of how big the koppie is, but to say that they
 2 were going in the westerly direction to mine is probably
 3 according to myself unreasonable.
 4 MR NTSEBEZA SC: Well, the fact of the
 5 matter is the water cannons are being used in these kinds
 6 of operations to achieve a particular result, otherwise
 7 they wouldn't be brought along. Do you agree that when the
 8 SAPS use water cannons it is intended to flush people out
 9 from wherever they are hiding? It's not a rain, it's
 10 intended to achieve a particular result.
 11 CAPTAIN KIDD: To disperse people.
 12 MR NTSEBEZA SC: To disperse people.
 13 CAPTAIN KIDD: I won't use the word
 14 "flush". To disperse.
 15 MR NTSEBEZA SC: Well, you are more
 16 polite than I am perhaps.
 17 CHAIRPERSON: It's a matter of semantics,
 18 isn't it? I understand why you prefer the other word, but
 19 it's essentially the same idea; drive them out with a jet
 20 of water, isn't it?
 21 CAPTAIN KIDD: That's correct.
 22 CHAIRPERSON: So that was the purpose
 23 obviously of the water cannon, to drive the people out.
 24 Now what I'm interested in, obviously you can't say what
 25 actually made people do what they did, but as someone who

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1 was there you can tell us what's possible and so on. Now
 2 is it possible that the water cannon was successful in the
 3 sense that it was driving the people out with this jet of
 4 water, that when they tried to get out they saw your people
 5 in front of them and they originally, you say they stood
 6 still, banged their spears together. That of course might
 7 have been not by way of attacking you, but telling you 'Get
 8 out of the way, we're trying to get out of here; you people
 9 are blocking our way,' and then of course two of them
 10 according to you then came forward and various things
 11 happened.
 12 But is it possible – I'm just asking you that as
 13 a possibility – is it possible that the water cannon was
 14 being successful in achieving what the police were
 15 endeavouring the bring about, namely the departure of these
 16 people from the koppie, but when they saw your people
 17 blocking the way they tried to send you a message by
 18 clanging their spears together, say 'Please get out of the
 19 way, we would like to leave, if you don't mind,' and then
 20 when that didn't happen two people – and you say only two –
 21 then came forward and the incident happened that you've
 22 described. Now is that a possible explanation for what was
 23 happening?
 24 CAPTAIN KIDD: Mr Chairman, two things; I
 25 would say no because the first thing is this, even though

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1 the water cannon, like we saw, on the southern side that
 2 was blowing the – spuit?
 3 CHAIRPERSON: Spout.
 4 CAPTAIN KIDD: Spouting the blue water,
 5 on that side people came out. With the water cannon
 6 spraying they came out on that side as far as I know, and I
 7 think it's also mentioned in that footage that, I think it
 8 was Brigadier Calitz and them arrested people there that
 9 had come out. So, and at, my second point is on my side
 10 the people were higher than what we were, so they would
 11 have seen us coming from a distance and as we were
 12 approaching, as I testified earlier, there were people that
 13 came past, they put down their weapons, they came past, and
 14 on the further notice, while we were still there and these
 15 people were chanting and shouting, we told them "Put down
 16 the weapons and come out." They had that opportunity to
 17 come out. They could have come out, but these two people
 18 that came out, they didn't intend just to come out and go
 19 past; their intention was to come out to a certain way, do
 20 something and then go back inside.
 21 CHAIRPERSON: No, no, what I was asking
 22 you about excluded the actions of those two people.
 23 CAPTAIN KIDD: Okay.
 24 CHAIRPERSON: Now I understood you to say
 25 in your evidence that those two people came out in

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1 aggressive mode to attack you people.
 2 CAPTAIN KIDD: That's correct.
 3 CHAIRPERSON: Whether that's correct or
 4 not we'll obviously have to decide in the light of all the
 5 evidence, but what I was asking you about was the others.
 6 Can you say they were coming out as part of an attacking
 7 force as it were, intending to be aggressive towards you,
 8 or is it possible – as I put to you, as I asked you whether
 9 it was a possibility - that they were trying to get out
 10 because they didn't like being sprayed with water and when
 11 they saw you people there they tried to tell you to get out
 12 of the way so that they could get past and that was the
 13 reason, in other words they weren't attacking you, they
 14 were simply sending you a message by banging their spears
 15 together to say 'We want to get out of here. We don't want
 16 to hand over our weapons. Please step aside.' Is that a
 17 possibility?
 18 CAPTAIN KIDD: Mr Chairman, I won't say
 19 that's a possibility because when I saw the people they
 20 weren't like in that way wanting to go past. Their, just
 21 their whole attitude, body language and the way they were
 22 raising their, the weapons that they had with them, it's
 23 not like they wanted to go through peacefully. Even though
 24 they wanted us to move, I mean we weren't there to move, we
 25 were there to ensure that they put down their weapons, then

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1 they could have passed.
 2 CHAIRPERSON: But what message was
 3 conveyed to them, you say you shouted – you didn't have a
 4 loudhailer, did you?
 5 CAPTAIN KIDD: No, I didn't shout. I
 6 won't, I speak English, so I wouldn't shout –
 7 CHAIRPERSON: So some of your colleagues
 8 shouted at them in one of the vernacular languages,
 9 presumably Xhosa or Tswana or whatever –
 10 CAPTAIN KIDD: There was different
 11 languages. Obviously I don't know the different cultural
 12 languages of my members, but there was different languages
 13 that was shouted.
 14 CHAIRPERSON: Things were being shouted
 15 in one or other of the vernacular languages, or one or more
 16 of the vernacular languages. What precisely it was, what
 17 the nature of the warning (if it was a warning) or the
 18 invitation (if it was an invitation) was you can't tell us?
 19 CAPTAIN KIDD: No.
 20 MR NTSEBEZA SC: Now it's your evidence,
 21 and I think you have said so a number of occasions now, at
 22 least certainly twice, that some of those protesters were
 23 unarmed. Do you confirm that, that some of them who came
 24 towards your unit were unarmed?
 25 CAPTAIN KIDD: Were?

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1 MR NTSEBEZA SC: Unarmed. In other words
 2 they didn't have any weapons with them.
 3 CAPTAIN KIDD: We're talking about now
 4 when I'm approaching the koppie?
 5 MR NTSEBEZA SC: Ja, whilst you were
 6 there.
 7 CAPTAIN KIDD: No, when we approached
 8 the, when we were still approaching the koppie people came
 9 past. Once we were there the, we heard the shots coming
 10 over our heads, we took cover. No-one else came out on my
 11 side.
 12 MR NTSEBEZA SC: Was Mr Mkhonjwa armed?
 13 CAPTAIN KIDD: Is that the body N, so I'm
 14 just correct? Body N?
 15 MR NTSEBEZA SC: Yes.
 16 CAPTAIN KIDD: Yes, according to me he
 17 had – I saw one weapon in his hand.
 18 MR NTSEBEZA SC: Can we show slide 9 of
 19 exhibit K –
 20 CHAIRPERSON: [Inaudible] exhibit K?
 21 MR NTSEBEZA SC: This would be LCRC
 22 photo.
 23 CHAIRPERSON: I see, okay.
 24 MR NTSEBEZA SC: LCRC photograph. It's a
 25 photograph – oh, Mr Chairman, a warning –

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1 CHAIRPERSON: A warning is required, I
 2 think. We're going to see a photograph of – what's this
 3 gentleman's name again? I haven't written it down. Mr
 4 Mkhonjwa?
 5 MR NTSEBEZA SC: Mkhonjwa.
 6 CHAIRPERSON: Mkhonjwa. We're going to
 7 see a photograph of him lying on the ground after being
 8 shot. I'm sure that those who were close to him, loved
 9 ones and relatives, will find it very distressing to see
 10 the photograph. So I want to ask those concerned not to
 11 show it for 30 seconds after I've finished speaking, to
 12 enable them to leave the chamber if they wish to do so. 30
 13 seconds starts now.
 14 30 seconds have expired. I see one person left
 15 the chamber. Another – yes, one person left the chamber.
 16 I think we can now see the slide.
 17 MR NTSEBEZA SC: Now can we zoom? There
 18 seem to be a fair number of weapons around.
 19 CHAIRPERSON: I'm not sure whether
 20 Warrant Officer Breedt was there before, took them away and
 21 put them back again, because –
 22 MR NTSEBEZA SC: Yes.
 23 CHAIRPERSON: - if these pictures were
 24 taken after Mr Breedt replaced the weapons – I'm not sure
 25 whether he was active in this part of the field, as it

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1 were, but if he was then of course there is a doubt as to
 2 whether he put them back in the right place.
 3 MR NTSEBEZA SC: Well, the doubt was also
 4 whether he ever found them.
 5 CHAIRPERSON: Well, there were weapons,
 6 and it's not suggested the police brought a whole cartload
 7 of weapons and dumped them on the scene to create a
 8 misleading impression. There were weapons. They were
 9 removed by Breedt and later put back, according to his
 10 statement, in an endeavour to put them back in the right
 11 place but he concedes, as I understand, for various reasons
 12 – he had a dog in one hand and so he wasn't able to make
 13 notes and he's not sure he put them back in the right
 14 place. Now if this is covered by that problem then we
 15 can't be sure that these weapons in fact were originally in
 16 the possession of the deceased gentleman who's lying on the
 17 ground there.
 18 MR NTSEBEZA SC: Do you see any weapons
 19 in that slide?
 20 CAPTAIN KIDD: Which slide is –
 21 MR NTSEBEZA SC: Slide –
 22 CAPTAIN KIDD: Which picture?
 23 MR NTSEBEZA SC: 231, the one that is on
 24 the screen.
 25 CAPTAIN KIDD: I see weapons on the top

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1 picture.
 2 CHAIRPERSON: I'm not sure whether –
 3 CAPTAIN KIDD: Ja, there's –
 4 CHAIRPERSON: You see the evidence is
 5 that at scene 2 there were weapons on the ground, deceased
 6 people lying around. In order to enable the medics to come
 7 Warrant Officer Breedt removed the weapons and only put
 8 them back afterwards. He tried to put them back in the
 9 places where he found them, but he's not sure that he did.
 10 He can't be sure. So I'm not sure whether that, the part
 11 where he was active is the part we see on the screen. So
 12 if it is then we can't rely on the fact that these weapons
 13 were found near this deceased. That's my problem. I don't
 14 know whether anybody can help me on that. We don't know
 15 the sequence of the photographs either, at what stage they
 16 were taken.
 17 MR NTSEBEZA SC: The one that is lighter
 18 seems to have been taken during the day.
 19 CHAIRPERSON: You see the problem is that
 20 the – there are three photographs; the one is, they all
 21 have different body positions. The one at the top the
 22 deceased striker is face down, as far as I can see. On the
 23 one on the bottom left he's lying on his side and his head,
 24 the left side of his head is on his left arm, and the third
 25 picture, the one on the right, he's now, he's got his left

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1 arm stretched out, head's not on it, and his head is in
 2 fact more or less flat on the ground, inclining slightly to
 3 the left. So these three photographs appear to have been
 4 taken at slightly different times, which is another
 5 problem. It's a problem –
 6 MR NTSEBEZA SC: No, there's no question
 7 of them having been taken at different times, and even the,
 8 I mean even the light, the top photograph seems to suggest
 9 that it was taken at night, and –
 10 CHAIRPERSON: Remember the evidence was
 11 that the photographs that were taken after Mr Breedt
 12 replaced the weapons were taken at night. That's how the
 13 evidence leaders were able to spot the difference. The
 14 earlier ones without the weapons were taken in fact in the
 15 daytime, and of course this is what we see in the two
 16 photographs on the bottom part –
 17 MR NTSEBEZA SC: I think at this stage,
 18 Mr Chairman, what we are trying to indicate, and if the
 19 Captain will agree with us that the top photo shows some
 20 weapons in the vicinity of the body.
 21 CAPTAIN KIDD: That's correct –
 22 MR NTSEBEZA SC: And the bottom photos
 23 show no weapons at all.
 24 CHAIRPERSON: That fits –
 25 CAPTAIN KIDD: That's –

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1 CHAIRPERSON: That fits what I call the
 2 Breedt scenario –
 3 MR NTSEBEZA SC: Yes.
 4 CHAIRPERSON: - where Breedt
 5 [inaudible] –
 6 MR NTSEBEZA SC: We'll come to different
 7 – in fact the next place where we wanted to find FFF15,
 8 page 12, the report of Warrant Officer Breedt who was asked
 9 to report on the tampering with weapons at scene 2, and
 10 there is a portion, Mr Chairman, where he says, "Ek is nie
 11 so seker van foto O in die fotoalbum nie. Daar is egter 'n
 12 moontlikheid dat ek wapens hier kon verskuif of
 13 teruggeplaas het. Ek kan ook nie die res van die foto's in
 14 die fotoalbums – daar is vyf – herken nie."
 15 CHAIRPERSON: Well, that's what I put to
 16 you. That's in Afrikaans. Would you like to translate it
 17 for us, Mr Ntsebeza, or should we ask Mr Mpofu to help you?
 18 [12:54] MR NTSEBEZA SC: So the point here is
 19 that Warrant Officer Breedt and the context of his
 20 testimony has been indicated, does not recognise Mr
 21 Mkhonjwa's body and does not claim any responsibility for
 22 the movement of weapons onto him. That's what he says
 23 there.
 24 CHAIRPERSON: You see Breedt said he had
 25 a problem. He had a dog, he's a dog handler, he had a dog

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1 in one hand and he was moving the weapons with the other so
 2 he couldn't make notes as to where the weapons were
 3 originally because presumably the dog was being held by his
 4 writing hand, if you understand what I mean. So he did his
 5 best but he can't guarantee that he put them back in the
 6 right place, but what's important is the evidence was that
 7 that happened in the daytime, photographs were then taken,
 8 the weapons removed. He then put them back in what he
 9 hoped was the right place and then photographs were taken
 10 at night and it was possible for the evidence leaders to
 11 see and I think, to be fair, Colonel Scott had also said it
 12 independently, there was an investigation ordered by the
 13 National Commissioner to find out what happened, as to what
 14 exactly the position was. So the night time photographs
 15 which – like the one at the top of the screen here, they
 16 were taken after weapons had been returned, which appears
 17 to be the case with this deceased as well. So if that is
 18 so we can't rely on any weapons near the deceased. Warrant
 19 Officer Breedt may have got it right but he may have got it
 20 wrong, so there's no way we can ascertain that. I don't
 21 know how that helps us, Mr Ntsebeza. The witness says,
 22 well, what do you say? Did you see this particular
 23 deceased person with a weapon in his hand before he was
 24 shot?
 25 CAPTAIN KIDD: That's correct, Mr Chair.

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1 CHAIRPERSON: And you say only one
 2 weapon?
 3 CAPTAIN KIDD: One weapon I saw, it was
 4 in his right hand.
 5 CHAIRPERSON: And anything in his left?
 6 CAPTAIN KIDD: Nothing in his left hand.
 7 I didn't see anything in his left hand at that time.
 8 CHAIRPERSON: Well, that's already an
 9 indication there's something wrong with what we see on the
 10 screen because there are two weapons, or three actually, I
 11 think. Four, four. You didn't see four weapons, you only
 12 saw one.
 13 CAPTAIN KIDD: I only saw one, Mr
 14 Chairman.
 15 CHAIRPERSON: So this slide doesn't
 16 corroborate your evidence one way or t'other.
 17 CAPTAIN KIDD: No.
 18 CHAIRPERSON: Is that right? Okay.
 19 MR NTSEBEZA SC: Mr Chairman, what I want
 20 to put to the Captain is that Warrant Officer Breedt
 21 doesn't say he recognises the body, what he calls "foto O"
 22 in the photo album. He doesn't say that is Mr Mkhonjwa.
 23 Do you appreciate that?
 24 CAPTAIN KIDD: I think it's body N.
 25 MR NTSEBEZA SC: No.

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1 CAPTAIN KIDD: Not O.
 2 MR NTSEBEZA SC: "Ek is nie so seker van
 3 foto O in die foto-album nie – daar 'n moontlikheid dat ek
 4 wapens hier kon verskuif of terug geplaas het, ek kan ook
 5 nie" – he doesn't say I know that this body is Mkhonjwa.
 6 That is all I, that's the first point I'm making.
 7 CAPTAIN KIDD: But I'm just confused
 8 because he says body O and as far as I know body O is body
 9 O –
 10 MR NTSEBEZA SC: It's "foto O."
 11 CAPTAIN KIDD: Body N. "Foto O?"
 12 CHAIRPERSON: He was referring to a
 13 photograph.
 14 CAPTAIN KIDD: Okay, sorry.
 15 CHAIRPERSON: But I think I summarised it
 16 accurately to you. There were weapons there, he took them
 17 away so the paramedics could come.
 18 CAPTAIN KIDD: Yes.
 19 CHAIRPERSON: He put them back, tried to
 20 put them back in the right –
 21 MR NTSEBEZA SC: But what you are saying
 22 is that during the day, which is where the bottom
 23 photographs are, slides, there are no weapons in that area
 24 at all.
 25 CHAIRPERSON: You know –

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1 MR NTSEBEZA SC: And the photos that were
 2 taken during the night, which is the top photo, has
 3 weapons. Nobody has been able to explain, not even Warrant
 4 Officer Breedt, that is what I am putting to you.
 5 CAPTAIN KIDD: Okay.
 6 CHAIRPERSON: Mr Ntsebeza, it's not as
 7 simple as all that. You will remember that the gentleman
 8 in the Arsenal T-shirt was still alive and the evidence is,
 9 I think it's not confined to Breedt. Breedt was the main
 10 one, what we call on the Cape Flats the main man, who took
 11 the weapons away and put them back, but there is some
 12 suggestion that others did it too for the same reason, that
 13 the paramedics didn't want to go anywhere near these people
 14 while there were weapons around, but the point is that
 15 these photographs establish essentially the same point,
 16 that if there was a weapon there originally as the witness
 17 says, it would have been taken away because it's certainly
 18 not visible on the two bottom photographs and the top
 19 photograph takes it no further because that doesn't
 20 coincide with the witness's evidence. So I understand
 21 you're trying to say that the fact that there are not
 22 weapons in the two bottom photographs proves the witness is
 23 wrong but that's only if a member of the SAPS didn't come
 24 to remove the weapons – and not necessarily Breedt but
 25 somebody else – removed the weapons to make this area safe

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1 for the paramedics and we don't know the answer to that, do
 2 we?
 3 MR NTSEBEZA SC: All we are going to
 4 argue, Mr Chairman, is that there is no explanation why in
 5 one photograph which seems to have been taken later on,
 6 other than what you are indicating that, you know, people
 7 took weapons away and then replaced them, but there doesn't
 8 seem to be any explanation in the light, also in light,
 9 well, in light of what the witness has been saying about
 10 some people armed or not armed, we want to say to you
 11 Warrant Officer Breedt's testimony and report not being
 12 conclusive, our argument is going to be that on these
 13 photographs there is a place where there are weapons and
 14 that's the darker photograph which was taken in the
 15 evening. And the footages were, there are no weapons and
 16 that is the footages that were taken during the course of
 17 the day and we are going to argue that the probability is
 18 that Mkhonjwa was not armed.
 19 CAPTAIN KIDD: What I saw is that he had
 20 one weapon that was in his right hand.
 21 CHAIRPERSON: Well, that's your evidence
 22 on the point. I see it's now 1 o'clock, Mr Ntsebeza. May
 23 I suggest that we take the adjournment. You can have your
 24 discussions with the SAPS representatives about the point
 25 that was raised earlier and we'll resume at 2 o'clock. We

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1 have to have a meeting at lunch time with representatives
 2 from Lonmin about the programme for the way forward, so
 3 we'll start again at 2 o'clock but in the meanwhile you can
 4 have your meeting with the representatives of the SAPS.
 5 We'll take the adjournment now.
 6 MR NTSEBEZA SC: As the Chairman pleases.
 7 [COMMISSION ADJOURNS COMMISSION RESUMES]
 8 [14:07] CHAIRPERSON: Captain Kidd, you're still
 9 under oath. Mr Ntsebeza.
 10 MR NTSEBEZA SC: Thank you Mr Chairman.
 11 Mr Chairman I believe that relevant to the water canon
 12 story our respective juniors are going to knock out a
 13 language that is acceptable to the two of them, and they
 14 will then present that as an order to be taken by consent.
 15 CHAIRPERSON: Thank you, then in due
 16 course perhaps we'll see the video of they can agree on
 17 what we have to see.
 18 MR NTSEBEZA SC: Indeed, Mr Chairman.
 19 CHAIRPERSON: Alright, thank you.
 20 MR NTSEBEZA SC: Now if I could just go
 21 to something else, Captain. In the slide - I mean in
 22 exhibit UUU16 that is the position and distances, if we
 23 could just show slide 4 thereof. Slide 4 of - that is the
 24 one we produced right at the beginning to show the
 25 position. Now we are all - you have testified that there

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1 were SAPS members in that area. These are SAPS members who
 2 are lying down, and then these are SAPS members.
 3 CHAIRPERSON: Do you know what time this
 4 photograph was taken because I don't know how effective
 5 what I'm going to suggest to you will be, but if it was
 6 shortly after the shooting before anyone had actually
 7 approached the deceased, for example, if we zoom in will we
 8 be able to see whether he has a weapon or not? You say he
 9 didn't have a weapon. The witness says he did. It may be
 10 that the pixels whatever they're called, will cause trouble
 11 when you zoom things - zoom in too enthusiastically, will
 12 undermine what I'm suggesting but is it possible that we
 13 zoom in properly on the body of Mr Mkhonjwa in the red
 14 circle we may see whether or not he had a weapon.
 15 MR NTSEBEZA SC: Well I don't know Mr
 16 Chairman, I'm a bit challenged when it comes to that kind
 17 of technology. Mr Gotz is -
 18 CHAIRPERSON: They're trying to do it for
 19 us. It is unclear. The more it's magnified the less clear
 20 it becomes, I'm afraid. So that was an idea of mine that
 21 was a disaster. I apologise. Yes Mr Gotz.
 22 MR GOTZ: Chair I've struggled with the
 23 same issue, with not only this photograph but various
 24 others taken by - I think it is Colonel Botha in this
 25 series and one cannot detect weapons in any of the

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1 photographs but, of course, that doesn't mean that there
 2 weren't - I can't say with certainty that they weren't
 3 there because of the -
 4 CHAIRPERSON: - of that nature.
 5 MR GOTZ: Sorry?
 6 CHAIRPERSON: I say I was looking for
 7 objective evidence one way or the other. It would appear
 8 there isn't any of this particular nature.
 9 MR GOTZ: Yes. What I can say is that I
 10 can't see weapons in any of these photographs but the
 11 problem is distance and pixellation when you zoom up.
 12 CHAIRPERSON: Yes, I understand.
 13 MR GOTZ: Thank you.
 14 CAPTAIN KIDD: Mr Chairman, can I say
 15 something?
 16 CHAIRPERSON: You are the witness, if you
 17 can't say anything who can?
 18 CAPTAIN KIDD: I just want to say that
 19 this photograph must have been taken not a long time after
 20 the shooting but also not a short time if you can
 21 understand me here, is that - because the firearm - the
 22 weapon in question that belonged to Mr Mkhonjwa will be far
 23 in front. When they came out first where I saw them he was
 24 shot far in front. That's where his weapon fell. In the
 25 time that all this was going on he crawled back there, so

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1 there won't be a weapon around him, it'll be far in front,
 2 and another thing is that I want to state is that although
 3 this photo was taken and it indicates where I'm standing,
 4 if that is me - when this whole incident happened I was
 5 standing on the koppie wall, which I indicated earlier next
 6 to the bush, those members that are in the middle were -
 7 some of them were by the front rocks in front of them and
 8 some of those people that are ducked by those, by that big
 9 rock at the back was standing in front of that rock in the
 10 open space. So when this photo was taken, this was after
 11 the incident had happened. People had retreated and gone
 12 backwards because that's after the whole group of strikers
 13 near the bushy area had dispersed and gone into the bushes.
 14 CHAIRPERSON: I take it as far as from
 15 what you've told us that no-one has yet removed the weapon,
 16 so - because obviously there was still action going on.
 17 That's why people were taking refuge by rocks and that kind
 18 of thing.
 19 CAPTAIN KIDD: Yes.
 20 CHAIRPERSON: So you say there was a
 21 weapon, they say there wasn't. Let's say - let me put it
 22 neutrally, if there was a weapon it would still be lying
 23 where it fell when he was shot.
 24 CAPTAIN KIDD: That's correct Mr
 25 Chairman, that is what I wanted to say.

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1 CHAIRPERSON: What Mr Gotz tells us is
 2 that he battled with these photographs and what he calls
 3 the pixellation you have the problem. As you magnify you
 4 reach a stage where you don't get the sort of clarity you'd
 5 like.
 6 CAPTAIN KIDD: That's it. I just want to
 7 also -
 8 CHAIRPERSON: Yes.
 9 CAPTAIN KIDD: - you know there was
 10 obviously, I think it was said that I was on the dam wall,
 11 then it was said I wasn't but when this - this photograph
 12 was taken after the incident had happened, after the people
 13 had moved away. So by this time people had moved and
 14 retreated still further backwards.
 15 CHAIRPERSON: I understand, thank you.
 16 CAPTAIN KIDD: Thank you.
 17 COMMISSIONER HEMRAJ: Is the dam wall
 18 high enough to obstruct your visibility of that area where
 19 Mr Mkhonjwa is?
 20 CAPTAIN KIDD: No, not where I'm standing
 21 there. It's not - it's about half a metre. It's not a big
 22 wall, it is just like a half a metre and like I said, when
 23 this whole thing happened and I saw what I saw I was not
 24 standing there, I was standing on that red line next to
 25 where the bush is about in the middle.

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1 CHAIRPERSON: Let me ask you this
 2 question. You say this photograph was taken some time
 3 later.
 4 CAPTAIN KIDD: Not a long time later but
 5 several, JA.
 6 CHAIRPERSON: You deliberately used a
 7 vague expression.
 8 CAPTAIN KIDD: Okay.
 9 CHAIRPERSON: Now it would appear that
 10 the members who are behind that rock which is above the red
 11 circle which - in which you are allegedly to be seen, they
 12 appear to be taking refuge behind a rock is that correct?
 13 CAPTAIN KIDD: That's correct.
 14 CHAIRPERSON: So there was still thought
 15 there was danger of some kind.
 16 CAPTAIN KIDD: That is correct.
 17 CHAIRPERSON: And I take it the same
 18 applies to the members who are to the left of that bush
 19 under the - in the section between what I can call your
 20 circle and the Nyala.
 21 CAPTAIN KIDD: Yes -
 22 CHAIRPERSON: They also appear to be
 23 taking cover of some sort.
 24 CAPTAIN KIDD: Mr Chairman yes, you will
 25 also see that people mention Captain Ryland. Those people

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1 remained there, they didn't move forward, backwards, but
 2 they were lying on the ground yes.
 3 CHAIRPERSON: There are other policeman
 4 lying on the right - top right-hand side there, just to the
 5 left and slightly up from that rectangle towards the dry
 6 dam wall, appear is that right?
 7 CAPTAIN KIDD: That's correct, Mr
 8 Chairman, when the incident happened they weren't there,
 9 they were out in the open next to that rock.
 10 CHAIRPERSON: Yes, but everyone seems to
 11 be taking cover.
 12 CAPTAIN KIDD: That's correct.
 13 CHAIRPERSON: So what exactly was going
 14 on when this photograph was taken?
 15 CAPTAIN KIDD: Okay after this - after
 16 this obviously the incident had happened when the people
 17 had charged out and ran back and that's when the group
 18 disappeared behind the bushes and that's other firing was
 19 heard, so the people took cover.
 20 CHAIRPERSON: So no attempts were being
 21 made at that stage to advance into the koppies and go and
 22 arrest these people, disarm them or anything of that sort?
 23 CAPTAIN KIDD: No, Mr Chairman.
 24 CHAIRPERSON: It's regarded too
 25 dangerous.

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1 CAPTAIN KIDD: That's correct, Mr
 2 Chairman.
 3 CHAIRPERSON: Because it may well be that
 4 the firing was the cause of their taking cover came from
 5 police on the other side but that's something you can't
 6 help us on.
 7 CAPTAIN KIDD: No.
 8 MR NTSEBEZA SC: You see, Captain, that
 9 brings me to the next question that I'm going to put. We
 10 now know from you that there are SAPS members there on the
 11 ground, there are SAPS members there and there are SAPS
 12 members there and there are members here.
 13 CHAIRPERSON: I've got difficulty of
 14 doing something if you don't do it for me, of trying to
 15 express in words what you are showing. Now can you -
 16 MR NTSEBEZA SC: I would have said if one
 17 looks at the picture then there's a red circle where
 18 Captain Kidd says he probably was the one who was there.
 19 Now in the picture to the top side of the red circle is a
 20 group of police officers who Captain Kidd says were lying
 21 on the ground, is that right?
 22 CAPTAIN KIDD: That's correct. In this
 23 picture you can see them lying there.
 24 MR NTSEBEZA SC: Yes. Yes now that's why
 25 we - we just want - as I said earlier it's for orientation

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1 purposes just so we know who is where and where, and you
 2 had said this is where Captain Ryland and his crew were.
 3 CAPTAIN KIDD: That's correct.
 4 CHAIRPERSON: That's to the left of the
 5 bush.
 6 MR NTSEBEZA SC: To the left of the bush.
 7 CHAIRPERSON: To the bush, to the left of
 8 Captain Kidd's circle -
 9 MR NTSEBEZA SC: Yes.
 10 CHAIRPERSON: - and to the left of that
 11 bush there's a group of people also lying on the ground it
 12 looks like and you go further to the left and there's an
 13 Nyala and there appear to be policemen behind the Nyala.
 14 You also indicated that I think.
 15 MR NTSEBEZA SC: Yes.
 16 CHAIRPERSON: Were they also had taken
 17 cover.
 18 MR NTSEBEZA SC: Behind the Nyala.
 19 CAPTAIN KIDD: They were taking cover
 20 yes, Mr Chairman.
 21 CHAIRPERSON: Yes, and to the left of
 22 them again, there's a sort of a greyish sort of a bush, to
 23 the left of that Nyala, and then beyond that to the left of
 24 that bush there are two groups. One looks like about three
 25 - it looks like policemen. I'm not sure what they're doing

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1 and a little bit further on there are another three
 2 policemen is that right? Now what are they doing?
 3 CAPTAIN KIDD: They're also ducking
 4 behind the rocks.
 5 CHAIRPERSON: Also ducking behind the
 6 rocks.
 7 MR NTSEBEZA SC: Yes, and you said to the
 8 top of the picture there were also SAPS members there.
 9 CAPTAIN KIDD: That's correct.
 10 MR NTSEBEZA SC: Mr Chairman how are you
 11 going to describe that? Between the red circle - no, red
 12 circle, group of police officers in that area. In that
 13 thickish bushy area.
 14 CHAIRPERSON: Yes are you -
 15 CAPTAIN KIDD: There where the word dry -
 16 CHAIRPERSON: - describe it really.
 17 You've got Captain Kidd's circle, you go up and you find a
 18 group of policemen lying down, hiding behind a rock. Then
 19 you go up further and there are some rocks, there's some
 20 policemen apparently hiding there as well, or taking cover
 21 there. Is that what you're talking about? Mr Ntsebeza?
 22 MR NTSEBEZA SC: Yes, yes Mr Chairman.
 23 CHAIRPERSON: Then further up the picture
 24 there's another Nyala some distance away, and there appear
 25 to be police behind that as well.

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1 MR NTSEBEZA SC: But I think for our
 2 immediate purposes, and I would - around the death of Mr
 3 Mkhonjwa, the police officers who will be, you know,
 4 relevant are in the areas in which we are - we have a
 5 consensus.
 6 CAPTAIN KIDD: No, like I said when the
 7 incident happened those people in the middle of that dry
 8 dam they were - one or two of those members were still
 9 forward. There's another rock, as you can see further
 10 forward, there's another rock and the people above that
 11 where you indicated where the word dry is, those people
 12 weren't behind those rocks, they were standing out in the
 13 open.
 14 MR NTSEBEZA SC: Yes, but what I'm trying
 15 to get to you is that even on your evidence, when the
 16 incident happened, there were armed police officers north,
 17 south, east of the body as you see it.
 18 CAPTAIN KIDD: Okay yes -
 19 MR NTSEBEZA SC: Yes.
 20 CAPTAIN KIDD: - but not in those
 21 positions that you can see on the photo, they were a bit
 22 forward.
 23 MR NTSEBEZA SC: Yes.
 24 CAPTAIN KIDD: That's what I'm wanting to
 25 say.

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1 MR NTSEBEZA SC: Yes. What I want to
 2 propose to you and correct me if I'm wrong - is that if one
 3 has regard to the wounds on Mkhonjwa, and there is a post
 4 mortem report that shows that the wounds were on the left,
 5 they obviously would not have been inflicted by police
 6 officers who would be in front, or the direction where you
 7 say he was running towards. If he was running out of this
 8 bush in this direction, if he has got bullet entrance
 9 wounds on his left, then he would obviously not have been
 10 shot by the police who are ahead of him.
 11 CAPTAIN KIDD: No, I cannot use the word
 12 obviously because I think - I read one or two statements
 13 where some of the members that were situated there said
 14 that one of these people that ran out threw a spear-like
 15 thing and to say the word obviously not from the front, I
 16 mean the person - Mr Mkhonjwa could have turned to that
 17 side which - meaning that it could have come from the
 18 people in front of him but not likely from the people to
 19 the right where you said Captain Ryland was.
 20 CHAIRPERSON: I want to interrupt, you
 21 said running in this direction, now you didn't say what
 22 this direction is. This direction is from the red circle
 23 in which Mr Mkhonjwa's body is lying towards the group of
 24 policemen who are hiding behind the rock which is to the
 25 left of the - the left and downwards from the rectangle in

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1 which the words "dry dam wall" appear. That's the
 2 direction as you would describe.
 3 MR NTSEBEZA SC: But I mean on your own
 4 evidence you didn't say that you saw Mkhonjwa throwing an
 5 assegai or a spear.
 6 CAPTAIN KIDD: Yes, like I -
 7 MR NTSEBEZA SC: So that person that
 8 members are talking of is not Mr Mkhonjwa. Certainly on
 9 your evidence on what you saw of what happened on that day.
 10 CAPTAIN KIDD: Yes, on my evidence I
 11 didn't see it.
 12 MR NTSEBEZA SC: Yes. So on your
 13 evidence what I'm proposing to you is that the likelihood
 14 of a post mortem report that is conclusive about where the
 15 entrance wounds were on the left side of his body, it is
 16 unlikely that it would have been from members who were in
 17 the direction in which it is claimed he was running. They
 18 would not have been these members, or any of the members in
 19 this area. The likelihood is that it would be members
 20 there or it would be members here, but if it was on the
 21 left side of his body then the likelihood is that they
 22 would have been there.
 23 CAPTAIN KIDD: No I would still say - I
 24 mean the guys that came charging out weren't running like
 25 straight-wards, they were turning their bodies and

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1 screaming and shouting. So if you say the likelihood that
 2 it wasn't from the front, I don't agree with that.
 3 MR NTSEBEZA SC: Yes we'll work with
 4 likelihoods because we were not there. Remember I said
 5 right from the beginning of your cross-examination that we
 6 have to analyse the objective evidence as best we can and
 7 we would be assisted by you in trying to come to -
 8 CAPTAIN KIDD: Ja, but you ask me do I
 9 agree and I don't agree.
 10 MR NTSEBEZA SC: Yes.
 11 CHAIRPERSON: There's one thing we could
 12 agree on and that is you've got five minutes left.
 13 MR NTSEBEZA SC: Now, there are a few
 14 other aspects I want to canvass with you. Now on the
 15 wounds, most of the wounds - he was shot from the left-hand
 16 side. But the point I want to make is that it seems that
 17 he was shot on his upper body. Is that the sense that you
 18 got from your examination of - it went into his left
 19 elbow, into his chest and exited I think - lodged on the
 20 right-hand side of his body. Now one doesn't have to be a
 21 pathologist to know that that seems to have been - ja, the
 22 bullet exits the other medial side of his left arm, goes
 23 into the left side of his chest which is from my physiology
 24 is where the heart is, and lodges in the right side of his
 25 chest. Now accepting, as we do, that the pathologist's

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1 report which is not contested, would you agree with me that
 2 if there was an attempt by those who were shooting at him
 3 to cause him to stop, then the appropriate place would have
 4 been to shoot him in his legs. I'm talking about people
 5 who want to arrest these people for having broken the law.
 6 Of course, unless there was another mandate, and the
 7 mandate was take no prisoners. Do you agree that even if
 8 the police officers shot at him were acting in self-
 9 defence, it was not an appropriate thing for them to aim at
 10 the upper body. At his upper body.
 11 CAPTAIN KIDD: I would say they were
 12 acting in self-defence but I cannot give testimony on how
 13 the people fired, or in what direction they fired. I'm
 14 sure those people can do that, I can't.
 15 MR NTSEBEZA SC: No, Captain, we seem to
 16 be at cross purposes. What I'm putting to you is there is
 17 again objective evidence of where he was shot in his body
 18 and that is the fatal shot.
 19 [14:26] It is quite clearly a shot that went through his
 20 left arm into the left side of his chest, lodged in the
 21 right side of his chest. By all accounts, even by a
 22 layman's account that I am, that is the upper body. Now
 23 I'm putting to you as an officer in the SAPS, and I say we
 24 will argue that this shot which killed him was not a shot
 25 that was intended to stop him on his tracks. It is not a

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1 kind of shot that even a police officer acting in self-
 2 defence should have fired. A policeman trained in a
 3 democratic state would have aimed to cause him to stop in
 4 his tracks, not stop dead in his tracks. He would have
 5 shot in the lower part of his body. Do you disagree with
 6 that?
 7 CAPTAIN KIDD: I disagree, because like I
 8 said if the people are shooting I cannot say where they're
 9 standing, how they're standing and how they are shooting.
 10 If they were aiming for a certain part and they didn't hit
 11 that part, I cannot say that they intended, like you're
 12 saying, to shoot them dead.
 13 MR NTSEBEZA SC: Let me put it
 14 differently, before I move on. Do you agree that if Mr
 15 Mkhonjwa had been shot in the legs he would most probably
 16 have survived?
 17 CAPTAIN KIDD: It depends –
 18 MR NTSEBEZA SC: But there were less
 19 chances of him surviving when he was shot in his upper
 20 body.
 21 CAPTAIN KIDD: If you compare the upper
 22 body into the legs, yes, it is like that.
 23 CHAIRPERSON: Mr Ntsebeza, I'm afraid
 24 your time is up, but if you've got one final question to
 25 put to the witness?

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1 MR NTSEBEZA SC: Mr Chairman, I didn't
 2 get a warning.
 3 CHAIRPERSON: I did, I told you five
 4 minutes ago. I didn't fire a warning shot, but I gave you
 5 a long warning.
 6 MR NTSEBEZA SC: I was waiting for Mr
 7 Wesley, thinking that wherever he is, he might be delayed,
 8 so that I can continue my –
 9 CHAIRPERSON: He delegated his duties to
 10 Ms Pillay and she –
 11 MR NTSEBEZA SC: Mr Chairman, can I –
 12 CHAIRPERSON: - saying five minutes, and
 13 I then told you five minutes.
 14 MR NTSEBEZA SC: Five minutes.
 15 CHAIRPERSON: I now give you one, saying
 16 time is up and – but if you want to round off this point I
 17 won't prevent you from doing that.
 18 MR NTSEBEZA SC: Mr Chairman, I wanted
 19 just to, in the five minutes the Chairman would generously
 20 give me I wanted to put to Mr Kidd what –
 21 CHAIRPERSON: I think I must give you the
 22 five minutes rather than have you address me for five
 23 minutes as to why I should give you –
 24 MR NTSEBEZA SC: Thank you, Mr Chairman.
 25 But there's something to be said about trying to persuade

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1 the Chair. Now Captain Kidd, something that has been
 2 bothering me here is the fact that you are the only person
 3 who has said with respect to the death of Mr Mpumza, and
 4 you'll find this in two of your statements; the first one
 5 is TTT8.2 and in paragraphs 16 to 18 you describe how Mr
 6 Mpumza was killed and you are consistent in one thing in
 7 that statement and that is that he had two spears in each
 8 hand, and I think in paragraph 16 that's what you say,
 9 paragraph 16 of TTT8.2. "In another incident two police
 10 members were standing on my left side behind some bushes.
 11 I noticed one black male coming running from behind some
 12 bushes on top of the hill towards them. I saw that this
 13 man," I think he wanted to say 'had,' "two, what looked
 14 like spears in each hand. These spears were raised in the
 15 air as if he was going to attack someone." Now how we link
 16 this to Mr Mpumza is because in paragraph 17 you do say,
 17 "The man with the spears had dreadlocks on his head. Shots
 18 were fired and the police official and the man with the
 19 spears fell to the ground." Then in paragraph 18 you say,
 20 "The policeman stood up and was unharmed."
 21 Now take it from me you are the only person of
 22 the following who have given an account of how Mr Mpumza
 23 died. There is an account by Colonel McIntosh. There's an
 24 account by Mr Sebatiwane who I think was the person who
 25 shot. There's Captain Greyling. All of them do not say

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1 that whoever was attacking them, which in this case is what
 2 they say is Mr Mpumza, had two spears in his hands.
 3 CAPTAIN KIDD: Okay, maybe my wording
 4 here was not correct to say he had two spears in each hand,
 5 meaning two in the left, two in the right.
 6 MR NTSEBEZA SC: Yes. No, no, no, that's
 7 not referring –
 8 CAPTAIN KIDD: What is meant –
 9 MR NTSEBEZA SC: - to also what I'm
 10 trying to – I think you meant one in each hand.
 11 CAPTAIN KIDD: One in each hand, that's
 12 correct.
 13 MR NTSEBEZA SC: Yes, but even to that
 14 extent you are the only person who says that he had two
 15 spears, one in each hand. In fact to be sure that you are
 16 not mistaken about the number of spears that he had in his
 17 hands, in UUU2, which is the statement which you now made
 18 last week on the 12th of May in Knysna, which is the
 19 consolidated statement UUU2, you say pretty much the same
 20 thing in paragraph 13. In other words when it was fresh in
 21 your mind in 2012 you mentioned as I've been reading, and
 22 then in this statement you do say pretty much the same
 23 thing. You say there, "I ran" – well let me just, it's on
 24 the thing, but if you start at 1, 2, 3, 4, 4 says, "I ran
 25 towards the members whilst shooting with the aim of

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1 ensuring that they heard me shouting," or shooting, "and so
 2 the striker that approached me, I heard two members when
 3 they instruct the striker to drop the weapons in his
 4 possession. The striker did not heed the police members'
 5 instruction to drop the weapons and instead ran towards one
 6 of the police members whilst holding the two spears raised
 7 above his head." You then say, "The striker had
 8 dreadlocks," that was on his head. "As I approached the
 9 member I heard shots being fired and noticed one member
 10 together with the striker falling down on the ground." So
 11 at least you're talking about the same incident. You are
 12 saying so in 2012; you are saying so in 2014. The one
 13 thing that is a common denominator in both statements is
 14 that he had two spears in both hands.
 15 Now what I'm saying to you, and I'm asking, why
 16 is it so that you are the only person who says he had two
 17 spears? Is your version the correct version, or is the
 18 version of the other police members who also testified that
 19 they saw what was happening, including Mr Sebajane on whom
 20 the attack was supposedly aimed at? Are they all
 21 incorrect? Are they all making a mistake? Are you making
 22 a mistake? What should the Commissioners do when they come
 23 to this point?
 24 CAPTAIN KIDD: Okay, from my first
 25 statement that you referred to, when I said there I noticed

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1 one black male come running from behind some bushes on top
 2 of the hill towards them, I saw that this man had two, what
 3 looked like spears, in each hand. You said I said he had
 4 two spears. I said what looked like spears. Obviously
 5 from where I was standing and he had the two spears above
 6 his head, I said what looked like, and later on when it was
 7 written in my statement I didn't, I was not going to change
 8 to say he had now one spear or something else just because
 9 when I got to where the person was and I saw exactly what
 10 was in his hands, I'm not going to change now and say he
 11 had a spear in one hand and a steel pipe, like a knobkierie
 12 in the other. What I saw, what looked like two spears, is
 13 what I wrote from the beginning.
 14 MR NTSEBEZA SC: Except that doesn't
 15 assist us in explaining why last week when you now write
 16 this statement, the consolidated – and you say the aim of
 17 doing this consolidated statement is to correct whatever
 18 errors there were in the statement that you made in 2012,
 19 and then in this statement you don't even say what looked
 20 like two spears; you say he had two spears.
 21 CAPTAIN KIDD: You don't write a
 22 consolidated statement to fix mistakes. You just add one
 23 or two things that maybe was not put in the statement –
 24 CHAIRPERSON: No, that can't be right.
 25 If you make a consolidated statement you obviously add

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1 extra stuff that wasn't there before.
 2 CAPTAIN KIDD: Yes.
 3 CHAIRPERSON: But inasmuch as you're
 4 remaking the statement you obviously read through it and if
 5 there was something there you saw that was wrong you'd
 6 change it, surely. You wouldn't perpetuate an error that
 7 you previously made in a consolidated statement. That must
 8 be right, surely?
 9 CAPTAIN KIDD: Okay, Mr Chairman, yes
 10 that is right, and what I thought was two spears at that
 11 time, in my consolidated statement was written that it was
 12 two spears.
 13 CHAIRPERSON: What interests me about
 14 that is that Constable Sebajane in his statement TTT7.1 in
 15 paragraph – well, in paragraph 18 he says, he talks about
 16 "The policeman stood up. The man with the spears was shot.
 17 He was lying on the ground. The spears were still in his
 18 hand." So he's seen – he made movements as to point the
 19 spears towards the police, but he could not, and then he
 20 refers again later in the same sentence to "The spears this
 21 man had looked like a traditional assegai with a sharp
 22 point." So what he says is he had two spears, but he
 23 appears to say they were in one hand. Now is that
 24 possible?
 25 CAPTAIN KIDD: No, it wasn't. It was one

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1 in each hand, Mr Chairman.
 2 MR NTSEBEZA SC: Yes. Now in fact in
 3 paragraph 3 of your consolidated statement you say "The
 4 purpose of this statement is to clarify" – you see that?
 5 You unsolicitedly tell whoever is going to read this
 6 statement, and we have read it, that you are doing so
 7 because firstly you have been asked by my colleagues,
 8 that's okay, but you say "The purpose of the statement is
 9 also to clarify certain aspects contained in both the
 10 statements already made, and to also set out some aspects
 11 which are not dealt with in both the statements."
 12 So if you say the earlier statement which you
 13 made in August, I mean in September 2012, this statement
 14 was intended to clear any possible errors that you could
 15 have made in there, and I put it to you that on that basis
 16 this statement which you made last week is clarifying the
 17 issue about whether they appeared to be two spears or not.
 18 You are saying categorically, unequivocally, that they were
 19 two spears. I think that is not now contested. Your
 20 evidence is premised on him having had two spears because
 21 you even clarified that to the extent that in your earlier
 22 statement it was unclear. Do you agree with that?
 23 CAPTAIN KIDD: I agree that I thought he
 24 had two spears. I saw him having two spears.
 25 MR NTSEBEZA SC: Do you think –

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1 CHAIRPERSON: Ja, okay. Time's up now,
 2 Mr Ntsebeza. You made the point so far as it can be made.
 3 All the material you need to argue the point is on record.
 4 We –
 5 MR NTSEBEZA SC: Yes, I will also argue,
 6 Mr Chairman, Captain Greyling's averments that –
 7 CHAIRPERSON: [Microphone off, inaudible]
 8 also put Greyling, Greyling only said there was one.
 9 MR NTSEBEZA SC: No, well –
 10 CHAIRPERSON: Greyling in his statement –
 11 MR NTSEBEZA SC: Greyling does mention
 12 that – no, not on that point, Mr Chairman, on just the
 13 point that these people were being chased, that Mpumza was
 14 being chased. He was running in the direction of where he
 15 was shot, in the direction of the people who shot him
 16 because he was being chased.
 17 CHAIRPERSON: Yes, this is the last point
 18 that I'm going to allow Mr Ntsebeza to put, but the exhibit
 19 is TTT9. That's the statement of Captain Johannes Petrus
 20 Greyling. Do you know Captain Greyling?
 21 CAPTAIN KIDD: I've no idea who he is, Mr
 22 Chairman.
 23 CHAIRPERSON: Well, he is a –
 24 MR NTSEBEZA SC: TRT.
 25 CHAIRPERSON: No, he's a hostage

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1 negotiator and he was in Nyala 1. I don't think he's TRT.
 2 He –
 3 CAPTAIN KIDD: No, he's not TRT.
 4 CHAIRPERSON: No, anyway, it doesn't
 5 matter what unit he belongs to, this is his evidence. He
 6 says in paragraph 27 – I'm not sure that this is actually
 7 the right incident, but anyway, this is the passage that Mr
 8 Ntsebeza is talking about. "During this incident I became
 9 aware of about four police officers chasing a striker with
 10 an assegai. Another Nyala blocked the striker from
 11 fleeing, which resulted in him (the striker) turning around
 12 with the assegai above his head, stormed the police
 13 officials who were chasing him. He was about" – is this
 14 the passage you want, Mr Ntsebeza?
 15 MR NTSEBEZA SC: Yes, Mr Chairman.
 16 CHAIRPERSON: "He was about five metres
 17 away from the nearest police official when this official
 18 opened fire on the striker, killing him almost instantly.
 19 Lieutenant-Colonel McIntosh tried to revive the striker,
 20 but he was already dead." Now the deceased that we're
 21 talking about in the passage that you've been dealing with
 22 up to now, is he the one Lieutenant-Colonel McIntosh tried
 23 to revive?
 24 CAPTAIN KIDD: That's correct, Mr Mpumza.
 25 MR NTSEBEZA SC: And you noticed the

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1 point that Captain Greyling is making, and that is he was
 2 shot in the process of being chased?
 3 CAPTAIN KIDD: That's not correct. What
 4 I saw is that this person was running towards the policeman
 5 that was standing still. There was no policemen behind him
 6 chasing him, so I cannot give evidence of what Captain
 7 Greyling said. I don't know where he was, where he was
 8 situated and what he saw from his angle.
 9 MR NTSEBEZA SC: All I'm saying, Captain
 10 – please bear with me, and I'm just putting this for the
 11 umpteenth time – I'm not, you can stick to your evidence in
 12 the way in which you believe things happened. What I'm
 13 putting to you is that Captain Greyling, who was there, as
 14 were you, who talks about the death of Mr Mpumza, as you
 15 have done, gives a version that puts into the mix a man who
 16 is shot whilst fleeing.
 17 CHAIRPERSON: That's the point –
 18 MR NTSEBEZA SC: You can't dispute that.
 19 CHAIRPERSON: That's the point. What do
 20 you say about it? You don't agree with that?
 21 CAPTAIN KIDD: I don't agree.
 22 CHAIRPERSON: I see. I think that's your
 23 time up, Mr Ntsebeza. Thank you.
 24 MR NTSEBEZA SC: I give up, Mr Chairman.
 25 CHAIRPERSON: [Microphone off,

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1 inaudible] -
 2 MR NTSEBEZA SC: No, no, I mean I'm not -
 3 CHAIRPERSON: You just bring your cross-
 4 examination -
 5 MR NTSEBEZA SC: Some things we must do -
 6 CHAIRPERSON: - to an end. Very well.
 7 We had scheduled a meeting for 3 o'clock, teatime, with
 8 representatives of Lonmin in respect of the programme for
 9 the rest of the week because there's a problem that we're
 10 trying to address, but I saw Mr Bham arrived - he's the
 11 leading counsel for Lonmin, so I think we'll take the tea
 12 adjournment now so we can have that meeting and get it over
 13 with as soon as we can. We would hope to be back by
 14 quarter past 3. If we can be back earlier we will
 15 endeavour to send a message to those affected. We now
 16 adjourn.
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]
 18 [15:32] CHAIRPERSON: The Commission resumes.
 19 I'm sorry we took longer to come back than we thought we
 20 would. We had discussions with Lonmin in respect of the
 21 programme going forward and we had initially anticipated
 22 that Mr X would give evidence on Wednesday, that's not
 23 possible at the moment and that creates a problem in
 24 relation to our programme. So what we've decided is that
 25 Colonel Claassen will be called to give evidence on

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1 Thursday as we anticipate that will give the parties some,
 2 at least, of Wednesday in order to prepare. I would
 3 appreciate it if those who wish to cross-examine Colonel
 4 Claassen can let us know by teatime tomorrow morning and
 5 also an indication as to the amount of time that they think
 6 they will require and the topics upon which they propose
 7 cross-examining him so that an informed decision can be
 8 made as to the amount of time that is reasonable. Captain,
 9 you're still under oath. Mr Mpofo?
 10 WAYNE PETER KIDD: (s.u.o.)
 11 CROSS-EXAMINATION BY MR MPOFU: Thank
 12 you, Chairperson. Good afternoon, Captain.
 13 CAPTAIN KIDD: Hello.
 14 MR MPOFU: You are a member of the TRT.
 15 TRT stands for tactical response team, correct?
 16 CAPTAIN KIDD: That's correct and I was a
 17 member, I am no more.
 18 MR MPOFU: Yes, at the relevant time, ja.
 19 And in the language of the police tactical response means
 20 the stage at which people might get shot at, correct?
 21 CAPTAIN KIDD: No, I don't think that's
 22 correct.
 23 MR MPOFU: What's a tactical response to
 24 a situation? When you say now we are getting into the
 25 tactical phase, what do we mean?

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1 CAPTAIN KIDD: It means it's a planning
 2 phase and you have to go through the different operations
 3 that have been put out.
 4 MR MPOFU: No, of course that's what it
 5 means but if the name of your unit is called tactical
 6 response team it can mean you'll get to a stage of an
 7 operation. It must mean something. What is a tactical
 8 response?
 9 CAPTAIN KIDD: Mr Chairman, a tactical
 10 response team was introduced I think in 2009 by the old
 11 Commissioner then. It was, as far as I understood, to do
 12 intelligence driven operations and serious, dangerous
 13 prisoners transporting and stuff. Not for no, tactical
 14 meaning that they must go out and just go and shoot.
 15 MR MPOFU: No - no, that's not what I was
 16 suggesting. Okay, in any event the tactical response team
 17 is a unit that's issued with lethal fire, correct?
 18 CAPTAIN KIDD: They're issued, like with
 19 any other person they're issued with normal 9 millimetres
 20 and then there's the option to get R5s.
 21 MR MPOFU: Yes but R5s are, they are
 22 standard issue.
 23 CAPTAIN KIDD: No.
 24 MR MPOFU: When they get deployed they
 25 normally, into a particular operation they are normally

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1 armed with R5.
 2 CAPTAIN KIDD: It depends what operation.
 3 MR MPOFU: No, normally, that's why I am
 4 saying, of course it depends what operation. I'm sure if
 5 they are going to be minding the Sunday school picnic they
 6 won't have R5s but normally do they carry R5s?
 7 CAPTAIN KIDD: Like I said, it's an
 8 optional thing for the person himself, if he wants to take
 9 an R5 he can take one.
 10 CHAIRPERSON: Surely that didn't apply at
 11 Marikana. On the 16th, of course they were there before
 12 that as well but let's just concentrate on the 16th, the
 13 plan involved their being behind the POP to do certain
 14 things, to assist the POP if they were successful in doing
 15 what they were supposed to do -
 16 CAPTAIN KIDD: That's correct.
 17 CHAIRPERSON: - and if they came under
 18 attack then the TRT had to perform other functions, inter
 19 alia protecting the POP, isn't that right?
 20 CAPTAIN KIDD: That's correct, Mr
 21 Chairman, but that didn't -
 22 CHAIRPERSON: Sorry?
 23 CAPTAIN KIDD: That didn't mean that they
 24 had to take R5s.
 25 CHAIRPERSON: But they all took R5s.

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1 CAPTAIN KIDD: Not – I can talk on my
 2 TRT, the Jo'burg one. I mean where we went I think there
 3 were only four or five people that had R5s. There was no
 4 instruction saying TRT bring R5s. There was no instruction
 5 like that.
 6 CHAIRPERSON: The TRT people who were
 7 under command of Captain Loest, they all had R5s, didn't
 8 they?
 9 CAPTAIN KIDD: I don't know –
 10 CHAIRPERSON: Their job was not like you,
 11 to protect the informal settlement. Their job was to be
 12 behind the POP and perform certain functions in particular
 13 circumstances, isn't that right?
 14 CAPTAIN KIDD: Mr Chairman, I cannot give
 15 advice on that. He is from North-West TRT. That's the
 16 first time I met him, was at Marikana.
 17 COMMISSIONER HEMRAJ: Whose decision is
 18 it, Captain, as to which of the members should be issued
 19 with R5s?
 20 CAPTAIN KIDD: Mr Chairman, you know it
 21 depends on the operation. If the person decides he wants
 22 to go book out an R5 he goes and books out an R5. It's not
 23 like me, I can talk in response to my people of 22, I don't
 24 go say, everyone take an R5. It's still at the discretion
 25 of the person that's going to book it out.

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1 COMMISSIONER HEMRAJ: But how did you –
 2 CHAIRPERSON: Captain – sorry, sorry.
 3 COMMISSIONER HEMRAJ: How did that make
 4 sense? I mean if you're 20 TRT people and you're going
 5 into a dangerous situation and only two of you elect to be
 6 armed, how does that help?
 7 CAPTAIN KIDD: It depends on the
 8 operation, Mr Chairman. I mean at that time I didn't think
 9 the Marikana was a dangerous operation so I didn't tell all
 10 the 22 people to take R5s.
 11 CHAIRPERSON: It would depend, as you
 12 say, on the nature of the operation and if the nature of
 13 the operation was to do something that you weren't there to
 14 do but to protect the POP people while they were engaging
 15 in an operation to disarm and arrest people who were in
 16 possession of dangerous weapons –
 17 CAPTAIN KIDD: That's correct.
 18 CHAIRPERSON: - who had allegedly been
 19 involved in committing certain violent crimes before that,
 20 I can't imagine that the position would be, well, if some
 21 of you TRT members would like to bring R5s please do so but
 22 if you don't want to then that's fine, you don't have to.
 23 I mean that can't be right, surely?
 24 CAPTAIN KIDD: No, Mr Chairman, that's
 25 not what I said. I didn't give, I didn't say to whoever

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1 wanted to – my instruction was, the people asked me must
 2 they go and, was it an instruction to go and book out R5s.
 3 Now it worked like that, what I was saying is not every TRT
 4 member has got one R5 on his 108 that he keeps by his
 5 house. If you need an R5 you have to go all the way to the
 6 office and you have to book it out there. So like I was
 7 saying, it was asked to me must they go book out R5s and
 8 then I said to them if they wanted to book R5s out they
 9 could go to the office and go and book one but it's not
 10 something that they kept by them at all times.
 11 CHAIRPERSON: When you people were
 12 requested to come to Marikana, to come in fact to the
 13 North-West Province, did you get an indication as to what
 14 kind of operations you were likely to be asked to perform
 15 or to participate in?
 16 CAPTAIN KIDD: Mr Chairman, me myself and
 17 my members, we were just informed to be at Rustenburg there
 18 by the Lonmin mine at 5 o'clock and we will be told then.
 19 We weren't told to bring R5s, stun grenades and all that
 20 stuff. We were just told that we had to report here for
 21 duties.
 22 COMMISSIONER HEMRAJ: So in the ordinary
 23 course of events you'd expect a command or instruction from
 24 above?
 25 CAPTAIN KIDD: That's correct.

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1 COMMISSIONER HEMRAJ: To arm your members
 2 with R5s.
 3 CAPTAIN KIDD: That's correct, Mr
 4 Chairman.
 5 COMMISSIONER HEMRAJ: Thank you.
 6 CHAIRPERSON: Was it impossible for you
 7 to get R5s if you needed them, in the light of the
 8 instructions you were going to receive in Rustenburg, once
 9 you got to Rustenburg? In other words you didn't have to
 10 bring Gauteng R5s with you, did you?
 11 CAPTAIN KIDD: No, as I understood there
 12 were R5s that the people could book out here, yes.
 13 MR MPOFU: So when you were given the
 14 instruction that your unit was going to protect the
 15 settlement to the west of the koppies, surely it was
 16 envisaged that you were going to protect them by means of
 17 your R5s?
 18 CAPTAIN KIDD: We were told we were going
 19 to – this was at the half past two briefing, we were going
 20 to protect the informal settlement –
 21 MR MPOFU: Yes.
 22 CAPTAIN KIDD: - from protesters that
 23 were going to be dispersed and coming in our direction.
 24 There was no indication to say R5s or 9 millimetres or
 25 shotguns, no.

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1 MR MPOFU: So your evidence is that when
 2 you were assigned to protect a whole residential
 3 settlement, it could have been with your bare hands or your
 4 service pistols?
 5 CAPTAIN KIDD: Ja, it didn't matter what
 6 firearm.
 7 MR MPOFU: Right, but you do know even
 8 with the benefit of hindsight that the majority of the
 9 people who were killed and injured at scene 1 at least were
 10 killed by means of TRT R5s.
 11 CAPTAIN KIDD: Mr Chairman, I cannot give
 12 comment on what happened at scene 1, even with hindsight.
 13 I mean I only saw whatever the other people saw was on the
 14 TV footage.
 15 MR MPOFU: Yes, well, what you saw on TV,
 16 did you see all those R5s rattling and killing people?
 17 CAPTAIN KIDD: But you indicate it was
 18 TRT, it was – what I saw and I know a lot of the TRTs that
 19 I met there, a lot of those were POP members also, not only
 20 TRT.
 21 MR MPOFU: Is that what you saw on TV?
 22 CAPTAIN KIDD: That's what I saw on TV.
 23 CHAIRPERSON: Sorry, can in interrupt
 24 you, Mr Mpofo, and ask you this? According to your
 25 evidence, your group – I use that expression in the sense

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1 in which I used it earlier – your group were only involved,
 2 to your knowledge, in two incidents which were fatal, is
 3 that correct?
 4 CAPTAIN KIDD: That's correct.
 5 CHAIRPERSON: Now what weapons were used
 6 to inflict the fatal wounds in those two incidents? Were
 7 they service pistols or R5s?
 8 CAPTAIN KIDD: As far as my knowledge,
 9 body N was service pistols and body C, Constable Sebatjane
 10 used a 9 millimetre. I understand that there was,
 11 Constable Mabe was standing next to him and he had an R5.
 12 CHAIRPERSON: Thank you.
 13 MR MPOFU: Yes. Your evidence, or rather
 14 what's indicated in your statement is that all the
 15 ammunition discharged by TRT members under your command at
 16 scene 2 included something like I think 39 R5 rounds which
 17 were fired, correct?
 18 CAPTAIN KIDD: Okay, if I can just look
 19 here and make sure.
 20 MR MPOFU: It's paragraph 11 of your, I
 21 think it's the consolidated statement. No, sorry, it's
 22 HHH12. I reached the 39 by putting 32 plus five plus -
 23 CAPTAIN KIDD: Yes, it's 37.
 24 MR MPOFU: Next page there's another
 25 four, so 41 it should be.

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1 CAPTAIN KIDD: Page 5?
 2 MR MPOFU: Yes.
 3 CAPTAIN KIDD: No –
 4 MR MPOFU: No, page 4. Page 3 is 37, 32
 5 plus five so you're right, then on the next page there's
 6 another four so it's 41, correct?
 7 CAPTAIN KIDD: I still only count 37. If
 8 you're going to paragraph 1 on page 4 –
 9 MR MPOFU: Ja.
 10 CAPTAIN KIDD: It says 11.1 is the four,
 11 11 pistol rounds.
 12 MR MPOFU: Ja.
 13 CAPTAIN KIDD: And four R5.
 14 MR MPOFU: Yes.
 15 CAPTAIN KIDD: Okay, that's correct.
 16 With that four, the other 32 and the five, 41 that's
 17 correct.
 18 MR MPOFU: And another four at 11.4 is
 19 45.
 20 CAPTAIN KIDD: No, it goes – it's 41.
 21 MR MPOFU: 11.4.
 22 CAPTAIN KIDD: I haven't got 11.4.
 23 MR MPOFU: Oh okay. Well, then use the
 24 screen.
 25 CAPTAIN KIDD: I think 11.1 is mentioned

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1 the four and 11.4, that 11.4 is mentioned together with 11
 2 pistol rounds and four R5 rounds in 11.1.
 3 MR MPOFU: No, but those are different
 4 shots. The ones in 11.4 are warning shots, the other ones
 5 are in response to an attack on the north-west side of the
 6 koppie. The ones at 11.4 are warning shots at a charging
 7 protester, one person.
 8 CAPTAIN KIDD: Sorry, in my statement I
 9 haven't got that 11.4.
 10 MR MPOFU: But what's on the screen is
 11 also your statement.
 12 CAPTAIN KIDD: Yes, but I've got this
 13 statement in front of me and it goes just 11.1, 2 and 3.
 14 MR MPOFU: It doesn't matter, that one is
 15 also yours so ignore the one in front of you and use the
 16 one on the screen. They both belong to you. Anyway, we
 17 don't have to waste time on this. On your statement
 18 reflected on the screen there are 45 shots, do you agree?
 19 CAPTAIN KIDD: And I'm saying I don't
 20 think that's my statement on the screen because the
 21 statement I've got is here in front of me. 11.1, 11.2,
 22 11.3 and then it goes to 12.
 23 MR MPOFU: Okay. Alright, we'll clarify
 24 that overnight with my learned colleagues from SAPS here.
 25 In any event, what is clear is that your brief, your brief

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1 was that you should not allow the strikers to proceed to
 2 the informal settlement while they were armed.
 3 CAPTAIN KIDD: That's correct.
 4 MR MPOFU: And in terms of what you said
 5 to a question put to you by the Chairperson in a different
 6 context earlier, when you were saying they might have been
 7 indicating to you that you must move away and so on, you
 8 remember that?
 9 CAPTAIN KIDD: I do remember.
 10 MR MPOFU: You said, well, yours was not
 11 – you were not there to move. That's what you said,
 12 correct?
 13 CAPTAIN KIDD: No, I don't remember that.
 14 MR MPOFU: Well, I'm telling you that's
 15 what you said.
 16 CAPTAIN KIDD: Okay, I don't recall that.
 17 MR MPOFU: Okay. Well, alright you might
 18 not recall it, let's say I'm putting to you for the first
 19 time, you would agree with that statement that you were not
 20 there to move, you were there to prevent them from passing
 21 through.
 22 CAPTAIN KIDD: I was not meant to move
 23 where? I don't understand. I was not meant to move but I
 24 was there to prevent the people –
 25 MR MPOFU: Okay fine, so sorry, maybe I

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1 shortcut. There was a discussion where the Chairperson
 2 said to you is it possible that when the people were being
 3 flushed out, what they were trying to do in putting their
 4 arms together was to indicate for the police to move, to
 5 make way, so to speak. Do you remember that discussion you
 6 had with the Chair?
 7 CAPTAIN KIDD: Okay, so we're going now
 8 to koppie 3? We're going all the way, we're going forward
 9 now, we're at koppie 3?
 10 CHAIRPERSON: Talking about koppie 3.
 11 CAPTAIN KIDD: Okay, now I'm with you.
 12 MR MPOFU: Ja.
 13 CHAIRPERSON: And what I asked you was if
 14 it was possible –
 15 CAPTAIN KIDD: Yes.
 16 CHAIRPERSON: - if they banged their
 17 spears together, weapons together to indicate to you that
 18 you must please move aside so they could get past, that
 19 there's been a jet of water directed at them which was
 20 designed to encourage them to leave where they were, they
 21 wanted to leave where they were – this was the point that
 22 was being followed up – but in order to leave where they
 23 were the suggestion had been in some of the earlier
 24 evidence that their exit was, as it were, prevented by the
 25 fact that your people were there on the perimeter. And

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1 that's why I asked you if it was possible that they were
 2 simply, they weren't attacking you but merely indicating by
 3 doing what they did that you must please move aside so they
 4 can get past and you gave reasons why you thought that
 5 wasn't the correct interpretation of what was happening.
 6 CAPTAIN KIDD: That's correct.
 7 CHAIRPERSON: That's what counsel is
 8 referring to.
 9 CAPTAIN KIDD: Okay yes, now I am with Mr
 10 Mpofo then.
 11 MR MPOFU: Yes. And part of your
 12 response was that you were not prepared or you were not
 13 there to move, I think to quote you almost directly.
 14 CAPTAIN KIDD: I don't think I said was
 15 not there to move, it was that we were taking cover at that
 16 stage. If the people wanted to come, they were just told
 17 to lay down their weapons and they were allowed to pass.
 18 MR MPOFU: Yes.
 19 CHAIRPERSON: - the real truth was,
 20 sorry, the truth was – based on what you told us before –
 21 you weren't really there to just move aside and let them
 22 pass with weapons. Your whole instruction was to allow
 23 them to leave the area where they were, provided they laid
 24 down such weapons as they had. Is that correct?
 25 CAPTAIN KIDD: I understand it now, Mr

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1 Chairman. Yes, that's correct.
 2 MR MPOFU: Thank you.
 3 CHAIRPERSON: You weren't there just to
 4 move aside and let them walk past with weapons.
 5 CAPTAIN KIDD: That's correct.
 6 CHAIRPERSON: Okay.
 7 MR MPOFU: Thank you, yes, that's the
 8 point. That was not part of the deal.
 9 CAPTAIN KIDD: No.
 10 MR MPOFU: Ja, okay. And if in fact your
 11 instructions were that if they did not disarm voluntarily
 12 you were to disarm and arrest them.
 13 CAPTAIN KIDD: That's correct.
 14 MR MPOFU: Right. And you would have
 15 effected the arrests yourselves, as TRT?
 16 CAPTAIN KIDD: Yes, we could have, as my
 17 team members, not as TRT.
 18 MR MPOFU: Yes, as your, the people under
 19 your command, let's say that.
 20 CAPTAIN KIDD: That's correct.
 21 MR MPOFU: Correct? Ja. And if they
 22 refused to disarm and they wanted to forge through anyway,
 23 you were going to shoot them?
 24 CAPTAIN KIDD: No. If they charged the
 25 members and then the members felt that their lives were in

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1 danger, then the shots would be fired.

2 MR MPOFU: No, let's – yes, fine, I

3 accept that but I'm now saying if, according to the way you

4 understood the instruction, if they refused to disarm and

5 forged through anyway towards the settlement.

6 [15:52] In other words to do exactly what you had to

7 prevent them from doing, which is to proceed to the

8 settlement armed. You were going to shoot them.

9 CAPTAIN KIDD: No, no-one, there was no

10 instructions or anything given that we were to shoot the

11 people if they didn't listen, or if they just tried to go

12 through.

13 MR MPOFU: Ja, but you were under strict

14 instructions not to allow them while they were armed to go

15 to the settlement. So what were you going to do if they

16 nevertheless wanted to do exactly that, which is to go to

17 the settlement with their arms?

18 CAPTAIN KIDD: At that time we were just

19 hoping that they would lay their firearms down.

20 MR MPOFU: I agree –

21 CHAIRPERSON: What were you going to do?

22 No, you see, there are two possibilities. The one – or

23 three possibilities. The one possibility is that they lay

24 down their arms. The second possibility was they would

25 attack the police, in which case I understand the police

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1 would defend themselves and defend their colleagues, in

2 other words it would either be a case of self-defence or

3 private defence. The third possibility is they said look

4 here, we're not going to attack you, but we're just going

5 to go to the informal settlement and proceed. Now what

6 would you have done to stop them from going to the informal

7 settlement?

8 CAPTAIN KIDD: Mr Chairman, it's very

9 difficult –

10 CHAIRPERSON: Now that's counsel's

11 question, as I understand.

12 CAPTAIN KIDD: Because he –

13 MR MPOFU: That's correct, Chairperson.

14 CAPTAIN KIDD: If they attacked the

15 police then obviously I –

16 CHAIRPERSON: [Microphone off, inaudible]

17 self-defence, we know that –

18 CAPTAIN KIDD: - where it would have been

19 self-defence –

20 CHAIRPERSON: They're not attacking you.

21 CAPTAIN KIDD: But as they –

22 CHAIRPERSON: - okay, we're going to the

23 informal settlement, we're not going to lay down our

24 weapons.

25 CAPTAIN KIDD: Okay, if they had

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1 charged –

2 CHAIRPERSON: What do you do then?

3 CAPTAIN KIDD: If they had charged and

4 decided they're coming through, that big group, I'm sure

5 the police would have fired shots and then the majority of

6 them would have gone past because they were more than what

7 we were.

8 CHAIRPERSON: [Microphone off, inaudible]

9 police wouldn't fire shots unless you gave a command.

10 CAPTAIN KIDD: No, if they –

11 CHAIRPERSON: That's what the Standing

12 Order that you don't know, you weren't familiar with, says.

13 CAPTAIN KIDD: But if they feel their

14 life is in danger, then they can also act –

15 CHAIRPERSON: That's self-defence.

16 CAPTAIN KIDD: Ja.

17 CHAIRPERSON: That's self-defence. We're

18 dealing with – what Mr Mpofu is dealing with is the third

19 contingency; the first one they lay down their arms, second

20 they attack you, in which case your members are entitled to

21 fire where appropriate in order to defend themselves or

22 their colleague. The third possibility is they're not

23 attacking you, they're just disobeying you and moving

24 forward to the informal settlement with their weapons.

25 What do you do in those circumstances?

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1 CAPTAIN KIDD: Mr Chairman, what we will

2 try do in that situation was obviously to wait for them to

3 get into the open field, try encircle them and to put them

4 into smaller groups, encircle them and try and to disarm

5 them in a peaceful manner that way. That's what I would

6 have told the members to do if they'd forced their way

7 through.

8 MR MPOFU: Yes. No, you see I'm saying

9 this because on some versions of the SAPS version that is

10 exactly what happened on the 13th. The people were told to

11 disarm. They refused, and I'll show you the video tomorrow

12 because I promised that I'll let you look at it overnight.

13 The reason I'm putting this is because that's exactly what

14 happened on the 13th. The people were told you can't go

15 through. On the version of SAPS they refused to do so and

16 they moved ahead, putting their arms together and singing,

17 and unlike you those police gave way. Remember you were

18 under instructions you were never going to give way, or

19 you're not there to move and what have you. They gave way

20 and the people went through. They didn't attack anybody.

21 So that scenario was not possible under your command

22 because yours was not to let them go through with those

23 arms, correct?

24 CAPTAIN KIDD: That's correct.

25 MR MPOFU: Alright, and therefore I

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1 suppose the obvious answer then is that if they did that
 2 unfortunately, if they were stubborn and did that you would
 3 have had to use your firearms to prevent them from going to
 4 the informal settlement and perhaps attacking other people,
 5 correct?
 6 CAPTAIN KIDD: No, that's not correct.
 7 That was only on the two incidents that I'd referred to;
 8 they came, they charged and shots were fired. It was no
 9 instruction from myself if they don't come to shoot, and to
 10 say in hindsight, or if to say if, if, it's very difficult.
 11 CHAIRPERSON: Captain Kidd, you and
 12 counsel are talking past each other. He is asking you a
 13 hypothetical question. We know that the evidence you gave
 14 about the use of firearms by your members was, or those
 15 under your command only related according to your evidence
 16 to the two incidents you spoke about. He's asking you a
 17 hypothetical question; it's a what-if question. Your
 18 instructions were to guard the informal settlement. What
 19 would have happened, he's asking you – I won't allow him to
 20 spend too much time on a hypothetical issue, but I can
 21 understand why he's asking the question – what would you
 22 have done if they'd said, 'Fine, we're not going to give up
 23 our arms, we're on our way to the informal settlement.
 24 We're not attacking you, but we're just going to the
 25 informal settlement,' what would you have done? That's his

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1 question.
 2 CAPTAIN KIDD: Mr Chairman, it's very
 3 difficult to say a what-if question if something like that
 4 didn't happen at that time. But I know –
 5 CHAIRPERSON: [Microphone off,
 6 inaudible] –
 7 CAPTAIN KIDD: I can understand –
 8 CHAIRPERSON: Yes, carry on.
 9 CAPTAIN KIDD: I can understand to ask
 10 hypothetical questions to say what would I have done, or
 11 what could have happened. There's a lot of different ways
 12 to say what I would have done and what would have happened.
 13 I mean it could have happened hypothetical that they would
 14 have laid down their arms and come running out in a big
 15 group. That could have happened, but if they didn't lay
 16 down their arms, like I said I would have given instruction
 17 then to tell the members to let them go, let them go
 18 through and then we could have regrouped and then followed
 19 them and decided at that time what to do.
 20 CHAIRPERSON: You see, the reason I
 21 allowed him to ask the hypothetical question is this; that
 22 if it's a purely hypothetical matter then it's not entirely
 23 fair always to allow a question like that. But this was
 24 something that you had to think about on that day because
 25 if it was hypothetical it was something that could have

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1 happened as a matter of reality quite soon that afternoon
 2 to you, because your instructions were protect the informal
 3 settlement. If they have weapons you must disarm them,
 4 only allow them to go forward if they lay down their
 5 weapons, and his question is if they hadn't agreed to do
 6 that what would you have done? So it was something you had
 7 to think about already that afternoon to decide what you
 8 were going to do. Isn't that so?
 9 CAPTAIN KIDD: Okay, what I would have
 10 done is for the protection of my own members, just to tell
 11 them to take cover and go away and allow a passage for them
 12 to pass.
 13 MR MPOFU: No –
 14 CAPTAIN KIDD: That's what I would have
 15 done.
 16 CHAIRPERSON: And if they'd then gone
 17 into the informal settlement –
 18 CAPTAIN KIDD: Then –
 19 CHAIRPERSON: - which you were supposed
 20 to protect, what would have happened then?
 21 CAPTAIN KIDD: The informal settlement
 22 from there was still a kilometre away. After that then I
 23 would have had another look around and then maybe the
 24 hindsight, the helicopter would have seen it and then maybe
 25 other people would have been deployed to come and assist.

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1 CHAIRPERSON: Your job was to protect the
 2 informal settlement, not to take cover if need be and hope
 3 that someone else would do the job that you were instructed
 4 to do. Isn't that right?
 5 CAPTAIN KIDD: That's correct, Mr
 6 Chairman, but –
 7 MR MPOFU: Yes, and –
 8 CAPTAIN KIDD: - to say if –
 9 MR MPOFU: Sorry.
 10 CAPTAIN KIDD: I mean –
 11 MR MPOFU: Yes, you see, Captain, you
 12 don't have – these options that you are creating now, we've
 13 already closed it off. That's why I asked you before I
 14 asked you this question; if the idea of making way and
 15 opening for them was not part of the deal, and you agreed
 16 that that was under no circumstances part of the deal, so
 17 let's rule that out because you and I have agreed that it
 18 was not going to happen, correct?
 19 CAPTAIN KIDD: Okay, that's correct.
 20 MR MPOFU: Ja, so the answer you gave to
 21 the Chair can't be correct. Let's assume now that we've
 22 ruled out the idea of making way to them. Then what were
 23 you going to do to prevent them from going to the
 24 settlement?
 25 CAPTAIN KIDD: I would have called more

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1 members to come and assist us so that we made a double line
 2 so that they don't pass.
 3 MR MPOFU: Sorry. I'm sorry. I'm sorry.
 4 And if they defied the double line, what was the double
 5 line going to do?
 6 CAPTAIN KIDD: Mr Chairman, you know to
 7 say if, if in hindsight, I mean –
 8 MR MPOFU: No –
 9 CAPTAIN KIDD: - it didn't happen. I
 10 know I had to look at all the options, but at that precise
 11 time it was very difficult to see what was the following –
 12 what was going to be my following option –
 13 MR MPOFU: Okay.
 14 CAPTAIN KIDD: I had to depend on what
 15 was happening at that moment and what was happening then.
 16 MR MPOFU: Chair –
 17 CAPTAIN KIDD: There wasn't time to think
 18 of what if these people start charging, what am I going to
 19 do. At that time –
 20 CHAIRPERSON: I'm sorry to interrupt
 21 you –
 22 CAPTAIN KIDD: - my main thing was to
 23 protect my members and tell them to go take cover.
 24 CHAIRPERSON: Yes, I'm sorry to interrupt
 25 you, but you know, this is something, you say it's

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1 hindsight, but you actually had to have some foresight
 2 about it because it was something that might well have
 3 happened for which you had to be, had to have some plan in
 4 the back of your mind to implement if it occurred. It
 5 wasn't something highly improbable, it was something that
 6 could have happened, something you were there, positioned
 7 there to prevent. So it doesn't help just to say it's
 8 hindsight, I can't deal with matters of hindsight. It's a
 9 matter that you should have foreseen at the time. Did you
 10 not foresee this might happen?
 11 CAPTAIN KIDD: At that time, no.
 12 MR MPOFU: Well, I'll show you that
 13 actually this, what we are discussing here – it's the last
 14 point, Chairperson. What we are discussing here is not
 15 even a hypothetical question, as has been put to you, and
 16 I'll show you why. If you go to – I don't know,
 17 Chairperson, if the statement of Sebattjane has been marked,
 18 has been given an exhibit number. It's UUU3.
 19 CHAIRPERSON: That's correct.
 20 MR MPOFU: Yes.
 21 CHAIRPERSON: Consolidated statement,
 22 Constable Sebattjane, is UUU3.
 23 MR MPOFU: Yes, that's UUU3. If you go
 24 to paragraph 6 of that statement, you said, or rather at
 25 least he says you said, he says, "At about 3 o'clock we

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1 were briefed by Captain Kidd [that's you] that an
 2 instruction will be given at POP members to deploy the
 3 barbed wire, at which stage we should await an instruction
 4 that the reserve group members should –
 5 6.1 Form a basic line to protect the informal
 6 settlement situated on the western side of the koppie
 7 against any attack;
 8 6.2 [That's the important part] Form a barrier
 9 line between the koppie and the informal settlement to
 10 ensure that armed protesters do not proceed to the informal
 11 settlement."
 12 So it was not hypothetical, it's actually part of
 13 what you gave an instruction that –
 14 CHAIRPERSON: Let's see what 6.3 says.
 15 MR MPOFU: Sorry, yes, and 6.3, "Members
 16 would be expected to confiscate and disarm any dangerous
 17 weapon in the possession of the strikers and allow them to
 18 proceed further." So we accept all that, but what I'm
 19 saying is that this is not hypothetical because you said to
 20 them one of the things you are here for is to ensure that
 21 if they are armed – let's assume all these nice things
 22 don't happen, they don't disarm and so on, if they are not
 23 disarmed you must ensure that they do not proceed to the
 24 informal settlement.
 25 Now what the Chair and I are putting to you now,

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1 by what means were you going to ensure that if they were
 2 recalcitrant they would not proceed to the informal
 3 settlement?
 4 CAPTAIN KIDD: Mr Chairman, as I said
 5 earlier, at that time I was thinking of what the strikers
 6 were doing at that moment, so in order to prevent them from
 7 if they decided not to put down their arms and decided to
 8 bang the weapons together and to proceed in a group, I
 9 would have – this is what I foresaw; you're looking at now
 10 what I would have foreseen – I would have told my members
 11 to allow them to go and then I would have regrouped all my
 12 members to tell them to try and make a circle around these
 13 people to see where they're going. If they don't, to try
 14 and ward them away from the informal settlement into the
 15 other, the other open area.
 16 MR MPOFU: Ja.
 17 CHAIRPERSON: I think that's perhaps a
 18 note upon which we can take the adjournment until tomorrow
 19 and we can –
 20 MR MPOFU: Thank you, Chairperson.
 21 CHAIRPERSON: - see what further
 22 questions Mr Mpofu has to ask you tomorrow. We now adjourn
 23 until tomorrow morning 9 o'clock.
 24 [COMMISSION ADJOURNED]
 25 .

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